
In the Matter of BOSTON SCHOOL COMMITTEE
and
BOSTON TEACHERS UNION, LOCAL 66, AFT/AFL-CIO

Case No. MUP-07D-5123

67.3 *furnishing information*
67.68 *refusal to implement contract*

August 31, 2010

Susan L. Atwater, Hearing Officer

Kristen J. Daley, Esq. *Representing the Boston School
Committee*
Ryan P. Dunn, Esq. *Representing the Boston Teachers
Union, Local 66,
MFT/AFT/AFL-CIO*

HEARING OFFICER'S DECISION'

Summary of the Case

The issue in this case is whether the Boston School Committee (School Committee or Employer) violated Section 10(a)(5) and, derivatively, Section 10(a)(1) of Massachusetts General Laws, Chapter 150E (the Law) by failing to provide unredacted student witness statements to the Boston Teachers Union, Local 66, AFT/AFL-CIO (Union) and/or repudiating the collective bargaining agreement (Agreement) between the parties. I find that the School Committee unlawfully failed to provide the information requested by the Union but did not repudiate the Agreement.

Statement of the Case

On December 28, 2007, Union filed a charge with the Division of Labor Relations (Division) alleging that the School Committee had violated Sections 10(a)(5) and 10(a)(1) of the Law. Following an investigation, the Division issued a complaint of prohibited practice on April 16, 2008, alleging that the School Committee had violated Section 10(a)(5) and, derivatively, Section 10(a)(1) of the Law by: failing to provide copies of unredacted student witness statements (Count I); repudiating Article IX, Section C, subsection 7 (Article IX C. 7) of the parties' Agreement (Count II); and repudiating Article X, Section E, subsection 4 (Article X E. 4) of the Agreement (Count III). The School Committee filed its answer on April 25, 2008.

I conducted a hearing on March 12, 2009 at which both parties had the opportunity to be heard, to examine witnesses and to introduce evidence. The Union and the School Committee filed post-hearing briefs on or about July 1, 2009. On September 25, 2009, the School Committee filed a Motion to Reopen the Record to admit evidence

1. Pursuant to Chapter 145 of the Acts of 2007, the Division of Labor Relations (Division) "shall have all of the legal powers, authorities, responsibilities, duties, rights, and obligations previously conferred on the labor relations commission."

The Commonwealth Employment Relations Board (Board) is the body within the Division charged with deciding adjudicatory matters. References in this decision to the Board include the former Labor Relations Commission (Commission).

of a settlement agreement that is related to this case. The Union did not file an opposition to the Motion, and consequently, I allowed it. After reviewing the record evidence and the parties' arguments, I make the following findings of fact and render the following decision.

Stipulations of Fact

1. The City of Boston (City) is a public employer within the meaning of Section 1 of M.G.L. c.150E.
2. The Respondent, School Committee of the City of Boston is the collective bargaining representative of the City with respect to school employees.
3. The Boston Teachers Union is an employee organization within the meaning of Section 1 of M.G.L. c.150E.
4. The Union is the exclusive bargaining representative for teachers employed by the School Committee.
5. The Union and the School Committee are parties to a collective bargaining agreement (Agreement) that is in effect by its terms from September 2007 through August 31, 2010.
6. In 2001, the Union filed a grievance alleging that the School Committee violated Article IX.C.7 of the Agreement by refusing to provide unredacted copies of written student witness statements that the Union requested relative to a hearing convened by the School Committee to determine whether Brenda Handy, an elementary school teacher employed by the School Committee, should be disciplined due to allegations that she used excessive force upon a student. The School Committee provided the Union with copies of student witness statements with the students' names redacted.
7. An award was issued [by Arbitrator Daly] in the Union's favor in that matter on July 17, 2005. A copy of the same has been marked as Joint Exhibit 3.
8. The Respondent filed a motion to vacate Arbitrator Daly's award [(Daly Award)] with the Superior Court. The Superior Court denied the Respondent's motion to vacate. The Superior Court's decision on the School Committee's motion to vacate was upheld by the Appeals Court, and the Supreme Judicial Court denied the School Committee's Application for further Appellate Review. The Superior Court entered judgment in favor of the Union after rescript on July 10, 2008.
9. During the 2006-2007 school year, Adeola Oluwadara was a special education teacher assigned to the Chittick Elementary School and was represented by the Union. The "Ms. Olukum" referred to in Joint Exhibit no. 13 is now known as Ms. Oluwadara.
10. The Chittick Elementary School is located at 154 Ruskindale Road, Mattapan, MA 02126.

11. Principal Michelle Burnett-Herndon was the principal for the Chittick Elementary School for the 2006-2007 school year.

12. Michael McLaughlin is the Elementary School Field Representative for the Union.

13. On May 16, 2007, Ms. Oluwadara was proctoring seven fifth-grade special education students while they took the math portion of the Massachusetts Comprehensive Assessment System (MCAS) testing at the Chittick Elementary School.

14. On or about August 13, 2007, the School Committee sent a notice of Disciplinary Hearing. A copy of the same has been marked as Joint Exhibit 4.

15. On September 6, 2007, the Union requested information concerning the May 16, 2007 incident. A copy of the same has been marked as Joint Exhibit 6.

16. On September 14, 2007, the School Committee provided the Union with documents in response to its September 6, 2007 letter and explained why it had provided redacted student statements. A copy of the same has been marked as Joint Exhibit 7.

17. The Union asserted its legal right to unredacted copies of student witness statements by a letter dated October 19, 2009. A copy of the same has been marked as Joint Exhibit 8.

18. On or about November 16, 2007, the School Committee sent an amended Disciplinary Hearing notice. A copy of the same has been marked as Joint Exhibit 5.

19. By letter dated November 19, 2007, the School Committee reiterated to the Union that it would withhold the names of the students and listed its reasons why. A copy of the same has been marked as Joint Exhibit 9.

20. The hearing on whether Ms. Oluwadara should be disciplined due to the events of May 16, 2007 took place on December 19, 2007, January 24, 2008, and February 13, 2008.

21. On May 5, 2008, Superintendent Johnson imposed a ten (10) [day] suspension on Ms. Oluwadara. Ms. Oluwadara served the suspension during the spring of 2008. The Union grieved the discipline and arbitration is pending on that grievance.²

22. On September 14, 2007 the Boston School Committee provided the Union with a written statement by Ms. Taylor regarding the allegations of MCAS testing violations with the student names redacted.

Findings of Fact

The Collective Bargaining Agreement

The Agreement between the Union and the School Committee contains the following provision in Article IX C. 7, entitled "Information to the Union":

2. The School Committee and the Union settled the suspension grievance on September 9, 2009, and the American Arbitration Association confirmed the settlement on September 15, 2009.

The Committee will make available to the Union all information necessary for the Union to perform its function in collective bargaining and contract administration and otherwise as collective bargaining agent.

Article X E. 4 of the Agreement, entitled “Arbitration Award Application,” states in relevant part:

The Committee agrees that it will apply to all substantially similar situations the decision of an arbitrator sustaining a grievance and the Union agrees that it will not bring or continue, and that it will not represent any employee in any grievance which is substantially similar to a grievance denied by the decision of the arbitrator.

The Daly Award

In 2001, Boston Public School teacher Brenda Handy (Handy) allegedly slammed a door into a student who was leaving a classroom.³ During the course of the School Committee’s investigation into Handy’s conduct, the School Committee obtained written statements from several students describing what each student claimed to have seen. In response to an information request from the Union, the School Committee supplied the written statements of the student witnesses, but redacted the students’ names. The Union grieved the School Committee’s refusal to provide the names of the student witnesses, and the grievance culminated in arbitration before Arbitrator Joseph Daly (Daly). Daly issued an award (Daly Award) on July 17, 2005 finding that the School Committee had violated Article IX C.7 of the 2000-2003 collective bargaining agreement by redacting the names of student witnesses from the written statements that it provided to the Union.

The Daly Award stated in pertinent part that:

...[I]t is reasonable to infer that when the Parties continued to include Article IX C.7 in their contract, they intended that their contractual rights would be consistent with the LRC’s decision in *Boston School Committee and Boston Teachers Association*, 13 MLC 1290....That decision of the LRC has become part of the fabric of the parties’ relationship....

...[A]s a matter of course, the names of student witnesses whose written statements are to be utilized in disciplinary hearings constitute “information” that is “necessary” for the Union to fulfill its role and perform its function as exclusive representative...Having so found, it must also be found that there is nothing in the conduct of the Parties under Article IX C.7 or in that provision itself that would compel the Employer to disclose the identity of a student witness if the Employer develops a specific and substantial concern unique to the circumstances of a particular pending investigatory/disciplinary hearing. In that event, the parties could choose to proceed in the fashion suggested by the Union....or, failing that, the parties could proceed to have the LRC determine their rights regarding that particular non-provision of information...(emphasis omitted).

The Allegations Against Oluwadara

During the 2006-2007 school year, Oluwadara was a special education teacher at the Chittick Elementary School, a school that serves students in grades K-1 through grade 5. On May 16, 2007, Oluwadara proctored seven fifth-grade special education students

while they took the mathematics portion of the MCAS test in Oluwadara’s classroom. Oluwadara knew the identities of the students taking the test, the testing accommodations permitted for each child, and their ability to communicate verbally and in writing. After the MCAS test concluded, two of the students spoke to teacher Julie Vercillo (Vercillo) and described certain interactions between them and Oluwadara during the MCAS test. On May 17, 2007, Vercillo reported this information to paraprofessional Barbara Taylor (Taylor), and Taylor reported it to Principal Michelle Burnett-Herndon (Burnett-Herndon). Upon receipt of this information, Burnett-Herndon approached Oluwadara while Oluwadara was proctoring another test and took over Oluwadara’s proctoring responsibilities. When the students completed the test, Burnett-Herndon escorted them to her office and asked them to provide a written description of their interaction with Oluwadara during the MCAS test on the previous day.

After the students drafted their written statements, Burnett-Herndon met with Oluwadara and Union representative Susan McCauley and described what she perceived to be MCAS testing improprieties. Burnett-Herndon told Oluwadara that the matter would be investigated, and that Oluwadara should refrain from discussing the matter during the investigation.

Oluwadara’s Interaction with Student 2

Later that same day, Vercillo brought a student (hereinafter referred to as Student 2) to Burnett-Herndon’s office. Student 2 was crying hysterically and appeared to Burnett-Herndon to be visibly shaken. Student 2 told Burnett-Herndon that Oluwadara had just called Student 2 to the door of her homeroom, yelled at her, and told Student 2 that Oluwadara would lose her teaching certificate because of Student 2. Burnett-Herndon comforted Student 2 and asked Vercillo to escort her back to her classroom. Student 2 subsequently provided the following written description of the conversation.

On May 17, 2007 I was getting ready to go home Ms. O said can I see [Student 2] for a minute and she had a serious face. She told me that she would lose her liessnist (sic) and she said it is going to be my falt (sic). So I started crying and I went to the office to tell Ms. Burnett what she said that made me cry.

Burnett-Herndon then contacted Oluwadara and relayed the conversation that she had had with Student 2. Oluwadara admitted to Burnett-Herndon that she had confronted Student 2 because Oluwadara was upset.

On May 18, 2007, the following day, Burnett-Herndon documented her prior oral directive to refrain from confronting or discussing the MCAS testing issue with students or staff members while the matter was under investigation, and gave the written directive to Oluwadara.

The Investigation and Disciplinary Hearing

Burnett-Herndon subsequently initiated an investigation and relayed the information that she had gathered to the School Depart-

3. The Daly Award describes Handy’s actions and the School Committee’s subsequent investigation.

ment's Office of Labor Relations and others. As part of the investigation, Burnett-Herndon obtained written statements from various faculty members including Vercillo and Taylor.

On June 21, 2007, Burnett-Herndon held an investigational meeting with Oluwadara, Union representative Michael McGlaughlin (McGlaughlin), and School Cluster Leader Diego Alvarado (Alvarado) regarding the MCAS testing incident and Oluwadara's confrontation of Student 2. Because Oluwadara knew the identities of the students taking the tests, she was able to provide information to the Union bearing on the students' academic capacities, their ability to communicate verbally and in writing, and their reputations for truthfulness.

By letter dated August 13, 2007, the School Committee directed Oluwadara to attend a disciplinary hearing on September 28, 2007 to address allegations regarding her actions on May 16, 2007. The letter stated in pertinent part as follows:

You are directed to attend a disciplinary hearing on September 28, 2007 at 9:00 a.m. on the second floor conference room at 26 Court Street regarding allegations that on May 16, 2007 you violated MCAS testing procedures by: 1) providing verbal clues and suggestions to students indicating correct responses; 2) instructing students to change their answers on the test; 3) providing students with unapproved accommodations; and 4) viewing students' tests at inappropriate times. In addition, you engaged in an inappropriate conversation with a student regarding these allegations. This conduct, if substantiated, constitutes a violation of MCAS testing procedures and constitutes conduct unbecoming a teacher.

By letter dated September 6, 2007, the Union requested documentary information to prepare for Oluwadara's disciplinary hearing, including the names of all individuals interviewed regarding Oluwadara's alleged misconduct, and copies of all witness statements obtained. The School Committee responded on September 14, 2007 and provided certain requested information including the student witness statements.⁴ However, the School Committee redacted the student witness statements by omitting the students' names. The School Committee explained in writing that it had redacted the names of the students from their statements due to the following concerns: 1) the age of the students; 2) retribution, whether overt or covert by the paraprofessional; 3) unlikelihood of receiving cooperation from students in future investigations if they know their identity will be revealed, which, in turn will interfere with the investigation of allegations of misconduct; 4) parents' willingness to permit release of unredacted statements if identity will be revealed; and 5) violations of students' statutory right to privacy.

On October 19, 2007, the Union requested additional information regarding student IEPs and MCAS accommodations and the names of the student witnesses. At some point following receipt of this request, the School Committee amended the August 13 disciplinary notice by omitting the allegation that Oluwadara had provided unapproved testing accommodations to the students. The School Committee responded to the request for additional infor-

mation on November 19, 2007, advising the Union that the additional information was irrelevant since the School Committee had withdrawn its allegation regarding unapproved testing accommodations. The School Committee also declined to provide the names of the student witnesses; explaining its position as follows:

I disagree with your statement that the Union is entitled to the unredacted copies of the student statements. The ruling under the Daly arbitration allows the Committee to withhold the names of a student witness when it can articulate a reason or concern for doing so. In addition to the reasons cited in my September 14, 2007 letter to Attorney Duddy, there are allegations that Ms. Oluwadara confronted a student witness in an inappropriate manner. We will not provide unredacted copies of the student statements.

Oluwadara's disciplinary hearing was held on December 19, 2007, January 24, 2008 and February 13, 2008. None of the student witnesses or faculty members testified at the hearing, however, the student and faculty witness statements were introduced into evidence. The School Committee modified the student witness statements by inserting a numerical reference for each student. Burnett-Herndon, who knew the identities of each student witness, testified at the hearing.

Following the hearing, Superintendent Carol R. Johnson (Johnson) found insufficient evidence to support the MCAS testing violation allegations. However, Johnson imposed a ten-day unpaid suspension based on her determination that Oluwadara had: "verbally accosted a fifth-grade special needs student on May 17, 2007, by angrily demanding to know whether she was the one who told 'untrue statements' to Principal Herndon, and by attempting to impute blame and guilt on the student by suggesting that Oluwadara could lose her teaching certificate; and that as a result of the confrontation, the fifth grade student was frightened, upset, and unnecessarily traumatized by the actions of an angry teacher."

Opinion

Count 1

If a public employer possesses information that is relevant and reasonably necessary to an employee organization in the performance of its duties as the exclusive collective bargaining representative, the employer is generally obligated to provide the information upon the employee organization's request. *City of Boston*, 32 MLC 1 (2005) (citing *Higher Education Coordinating Council*, 23 MLC 266, 268 (1997)). The employee organization's right to receive relevant information is derived from the statutory obligation to engage in good faith collective bargaining, including both grievance processing and contract administration. *Id.*

Here, the School Committee argues that the names of the student witnesses were not relevant and reasonably necessary because: 1) the School Committee had withdrawn the allegation that Oluwadara provided unapproved testing accommodations to the students; 2) Oluwadara knew the identities of the students; and 3)

4. The Complaint of Prohibited Practice does not allege that the School Committee failed to provide any other information.

the Union had maintained a practice of not contacting students for disciplinary hearing issues. I disagree.

The Board's standard for determining whether the information requested by an employee organization is relevant is a liberal one, similar to the standard for determining relevancy in civil litigation proceedings. *Board of Higher Education*, 26 MLC 91, 92 (2000). It is well-settled that a union is entitled to the information surrounding the disciplinary proceedings, including witness statements, transcripts or notes of witness statements, and investigative reports that contain witness statements, as well as other relevant information. *See Boston School Committee*, 36 MLC 48, 49 (2009); *Worcester County Jail and House of Correction*, 28 MLC 189, 190 (2001). Although the School Committee had withdrawn the allegation that Oluwadara had provided unapproved testing accommodations to the students, the School Committee continued to allege that she had violated MCAS testing procedures by providing verbal clues and suggestions to students, instructing students to change their answers, and viewing students' tests at inappropriate times. The students in the room were the only witnesses to Oluwadara's conduct during the test, and their statements formed the basis of the allegations against her. Further, Oluwadara's knowledge of the students in the room was no substitute for the identities of the individual statement-makers. Although the Union could argue at Oluwadara's disciplinary hearing that none of the statements established that Oluwadara violated MCAS testing procedures, the Union would need to link each statement with an individual student to challenge the statements based on the author's truthfulness and capacity to communicate what they saw and heard. Finally, the Union may choose to defend different cases in different ways; thus any past practice regarding student contact does not diminish its need for information.

Once a union has established that the requested information is relevant and reasonably necessary to its duties as the exclusive representative, the burden shifts to the employer to establish that it has legitimate and substantial concerns about disclosure, and that it has made reasonable efforts to provide the union with as much of the requested information as possible, consistent with its expressed concerns. *Board of Higher Education*, 26 MLC at 93 (citing *Boston School Committee*, 13 MLC 1290, 1294-1295 (1986)). If an employer advances legitimate and substantial concerns about the disclosure of information to a union, the Board will examine the facts contained in the record, and balance the employer's concerns against the employee organization's need for information. *Boston School Committee*, 13 MLC at 1295. Absent a showing of great likelihood of harm flowing from disclosure, the requirement that a bargaining representative be furnished with relevant information necessary to carry out its duties overcomes any claim of confidentiality. *Greater Lawrence Sanitary District*, 28 MLC 317, 318-319 (2002).

Within weeks of the Union's information request, the School Committee produced the redacted student witness statements and

an accompanying explanation for the redaction decision. Following receipt of the Union's October 19, 2007 request for student witness names, the School Committee explained by letter dated November 19, 2007, that it had withdrawn one of the MCAS allegations, and had withheld the names of the student witnesses in part, because Oluwadara had allegedly confronted a student witness in an inappropriate manner. At the disciplinary hearing, the School Committee numerically coded the student witness statements to clarify references to particular students without revealing the students' names. The School Committee's explanation of its specific concern, its transmission of the witness statements, and its efforts to clarify the witness statements, demonstrates that the School Committee articulated its specific concerns about disclosure and made reasonable efforts to provide as much of the requested information as possible, consistent with its those concerns.

Further, I find that the School Committee's confidentiality concerns stemming from Oluwadara's confrontation of Student 2 are legitimate and substantial.⁵ Oluwadara pulled this young special needs student out of her classroom and told her that Oluwadara would lose her teaching license because of her, thereby chastising Student 2 for following Burnett-Herndon's directive to record her observations of Oluwadara's actions during the MCAS test. Burnett-Herndon observed that Student 2 was crying hysterically and was visibly shaken after the conversation. Although there is no evidence that Oluwadara threatened to retaliate against Student 2, she spoke to Student 2 without a parent or other adult present. Oluwadara's confrontation with Student 2 legitimizes the School Committee's concerns and demonstrates that they were not speculative or hypothetical. *Compare Boston School Committee, supra* (employer presented only speculative concerns about disclosure of student witness names.) Therefore, I must balance the employer's concerns against the Union's need for the student witness names and assess whether the evidence shows a great likelihood of harm flowing from disclosure. *Greater Lawrence Sanitary District, supra*.

The School Committee contends that the balance of interests weighs in favor of non-disclosure, arguing that Oluwadara's confrontation of Student 2 put the other students in jeopardy of similar inappropriate contact and undermined the School Committee's efforts to create a safe educational environment. The School Committee further notes that the Union was free to question the bias, credibility and capacity of the student witnesses without knowing which student wrote which statement, and did not actually need the students' names because Oluwadara already knew them. I am not persuaded by these arguments.

First, although Oluwadara knew the names of all the student test-takers, she could not challenge statements that may have contained inaccurate information about her interaction with a particular student without identifying the author of each statement. Similarly, she could not challenge a statement on the basis of the

5. The School Committee indicated in its September 14, 2007 letter that it had redacted the student witness names due to the students' age, the unlikelihood of receiving future student cooperation, parental concerns, and violations of students' privacy rights. Because the School Committee offered no evidence to support these

concerns, I need not consider them. *See Boston School Committee*, 36 MLC 207, 213 (H.O., 2010). I also note that the Board considered and rejected these defenses in *Boston School Committee*, 36 MLC 48 (2009).

author's ability to perceive and communicate information without linking the statement to an individual. Second, there was no evidence that Oluwadara had physical proximity or access to the student witnesses at the time that the School Committee would have released their names. The Chittick Elementary School serves students in kindergarten through grade 5. The student witnesses were in grade 5 in May of 2007, the time of the MCAS test. However, the Union requested the student witnesses' names in the fall of the following school year, after the student witnesses would have graduated to a different school. Finally, at the time of the information request, the School Committee had scheduled a disciplinary hearing regarding Oluwadara's contact with Student 2. Oluwadara's separation from the students and the pendency of disciplinary proceedings regarding her prior student contact diminishes the probability that Oluwadara would inappropriately contact another student witness if the School Committee released their names. Therefore, on balance, I find that the likelihood of harm flowing from disclosure of the requested information was not great, and that the Union's need for the information outweighed the School Committee's confidentiality concerns.⁶

Count II

I next consider whether the School Committee violated its obligation to bargain in good faith by repudiating Article IX C.7 of the Agreement. A public employer's deliberate refusal to abide by an unambiguous collectively bargained agreement constitutes a repudiation of that agreement in violation of the Law. *Commonwealth of Massachusetts*, 36 MLC 65, 68 (2009). The Board gives effect to the clear meaning of the bargained-for language and does not inquire into the parties' intent where the words of the agreement are unambiguous. *Boston School Committee*, 22 MLC 1365, 1376 (1996).

The Union asserts that the language of the Agreement obligating the School Committee to provide "all information necessary for the Union to perform its function" tracks the statutory standard and arguably imposes a broader obligation. The Union asserts that the Daly Award clarifies the meaning of the contractual language, requiring production of all necessary information, subject only to the limited exception permitting non-disclosure where the School Committee states specific concerns regarding disclosure.

I agree with the Union that the Arbitrator Daly clarified the meaning of the contractual language, and thus I interpret the contractual language in light of the Daly Award. See *Brockton School Committee*, 36 MLC 82, 90 (2009) (Board defers to arbitrator's interpretation of the contractual recognition clause); *Boston School Committee*, 36 MLC at 215 (citing *Town of Brookline*, 20 MLC 1570, 1593-94 (1994)). The Daly Award concluded that the Union and the School Committee intended their contractual rights to correspond to the statutory standards articulated in *Boston School Committee and Boston Teachers Association*, 13 MLC 1290 (1986), and that *Boston School Committee* was part of the "fabric" of the parties' relationship. As the Union acknowledges, the Daly

Award also interprets the contractual language to include an exception to the information production requirement where the School Committee develops a specific and substantial concern unique to the circumstances of a particular pending case. In that event, the Award allows the parties to agree to alternate means - including a Board proceeding - to resolve the dispute.

As discussed above, Oluwadara's confrontation of Student 2 prompted a specific, substantial and unique concern over disclosure of these student witnesses' names. The Agreement, as interpreted by the Daly Award, does not uniformly require disclosure in such a situation, but permits the parties to resolve the dispute through other means. Accordingly, the School Committee did not deliberately refuse to abide by the provisions of Article IX C.7 by failing to provide the unredacted witness statements in this case.

Count III

Article X E.4 of the Agreement states that: "the Committee agrees that it will apply to all substantially similar situations the decision of an arbitrator sustaining a grievance...." The Union argues that the Handy case underlying the Daly Award is similar to Oluwadara's case, and therefore, the School Committee's failure to produce the student witness names repudiated Article X E.4 of the Agreement.

I find no merit in this argument. First, Oluwadara's situation is not substantially similar to the situation underlying the Daly Award: Oluwadara's confrontation of Student 2 distinguishes the two cases. Second, the Daly Award does not uniformly require disclosure where, as here, the School Committee develops a specific, substantial and unique concern over disclosure of student witnesses' names. Consequently, the School Committee did not fail to apply the Daly decision by providing redacted student witness statements in this case, and did not repudiate this portion of the Agreement.

Conclusion

Based on the record and for the reasons explained above, I conclude that the School Committee violated Section 10(a)(5) and, derivatively, Section 10(a)(1) of the Law by failing to provide unredacted student witness statements to the Union. However, School Committee did not repudiate Article IX, Section C, subsection 7 or Article X, Section E, subsection 4 of the collective bargaining agreement.

Remedy

Although I have found that the School Committee violated the Law by failing to provide the information at issue, I do not require the School Committee to produce the student witnesses' names. Superintendent Johnson found insufficient evidence to support the MCAS testing violation allegations, and the Union and the School Committee subsequently settled the suspension grievance stemming from Oluwadara's contact with Student 2. Accordingly, the

6. I would likely have reached a different conclusion if Oluwadara and the student witnesses attended the same school at the time of the information request.

Union no longer has a practical need for the information at issue to satisfy its obligations as the exclusive bargaining representative. See *City of Newton*, 36 MLC 71, 75 (2009).

Order

WHEREFORE, based upon the foregoing, it is hereby ordered that the School Committee shall:

- 1) Cease and desist from:
 - a) Failing to bargain in good faith by not providing information relevant and reasonably necessary to the Union in its role as exclusive bargaining representative.
 - b) In any like or related manner, interfering with, restraining or coercing employees in the exercise of their rights guaranteed under the Law.
- 2) Take the following affirmative action that will effectuate the purposes of the Law:
 - a) Post in all conspicuous places where members of the Union’s bargaining unit usually congregate, or where notices are usually posted, including electronically, if the School Committee customarily communicates with these unit members via intranet or email, and display for a period of thirty (30) days thereafter, signed copies of the attached Notice to Employees.
 - b) Notify the Division in writing of the steps taken to comply with this decision within ten days of receipt of the decision.

SO ORDERED.

APPEAL RIGHTS

The parties are advised of their right, pursuant to M.G.L. Chapter 150E, Section 11 and 456 CMR 13.02(1)(j), to request a review of this decision by the Commonwealth Employment Relations Board by filing a Notice of Appeal with the Executive Secretary of the Division of Labor Relations within ten days after receiving notice

of this decision. If a Notice of Appeal is not filed within ten days, this decision shall become final and binding on the parties.

THE COMMONWEALTH OF MASSACHUSETTS
DIVISION OF LABOR RELATIONS

NOTICE TO EMPLOYEES

POSTED BY ORDER OF THE COMMONWEALTH
EMPLOYMENT RELATIONS BOARD

AN AGENCY OF THE COMMONWEALTH OF
MASSACHUSETTS

A hearing officer of the Massachusetts Division of Labor Relations has held that the Boston School Committee (the School Committee) violated Section 10(a)(5), and, derivatively, Section 10(a)(1) of Massachusetts General Laws, Chapter 150E by failing to bargain in good faith by not providing requested information relevant and reasonably necessary to the Boston Teachers Union, Local 66, AFT/AFL-CIO.

The School Committee posts this Notice to Employees in compliance with the hearing officer’s order.

WE WILL NOT fail to bargain in good faith by not providing unredacted student witness statements regarding alleged bargaining unit member misconduct that is relevant and reasonably necessary to the Union in its role as exclusive bargaining representative.

WE WILL NOT in any like or related manner, interfere with, restrain or coerce employees in the exercise of their rights guaranteed Section 2 of the Law.

[signed]
Boston School Committee

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