In the Matter of CITY OF WOBURN

and

SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 888

Case No. MUP-09-5600

28. ***Relationship Between c.150E and Other Statutes Not Enforced by Commission***

67.3 ***furnishing information***

September 12, 2012
Kendrah Davis, Hearing Officer

Harold Jones, Esq.	*Representing Service International Employees Organization, Local 888*
John D. McElhiney, Esq.	*Representing City of Woburn*

HEARING OFFICER'S DECISION

SUMMARY

The issue in this case is whether the City of Woburn (City) violated Section 10(a)(5) and, derivatively, Section 10(a)(1) of Massachusetts General Laws, Chapter 150E (the Law) by failing to provide Service Employees International Union, Local 888 (Union) with information that is relevant and reasonably necessary for the Union to execute its duties as collective bargaining representative. I find that the City violated the Law as alleged.

STATEMENT OF THE CASE

On August 25, 2009, the Union filed a Charge of Prohibited Practice (Charge) with the Division of Labor Relations (DLR)[1] alleging that the City had violated Section 10(a)(5) and, derivatively, Section 10(a)(1) of the Law. On March 25, 2010, a duly-designated DLR investigator issued a Complaint of Prohibited Practice (Complaint), alleging that the City had violated Section 10(a)(5) and, derivatively, Section 10(a)(1) of the Law by failing to provide the Union with information that is relevant and reasonably necessary for the Union to execute its duties as collective bargaining representative. On April 1, 2010, the City filed its Answer.

I conducted a hearing on October 5, 2010, at which the parties were afforded a full opportunity to be heard, examine and cross-examine witnesses and introduce evidence. On October 27, 2010 and November 1, 2010, the City and the Union filed post-hearing briefs, respectively. Base on the record, I make the following findings of fact and render the following decision.

1. In 2007, the Division of Labor Relations (Division) succeeded the Labor Relations Commission (LRC). Pursuant to Chapter 145 of the Acts of 2007, the Division had "all of the legal powers, authorities, responsibilities, duties, rights, and obligations previously conferred on the labor relations commission." Pursuant to Chapter 3 of the Acts of 2011, the Division's name is now the DLR. References to the DLR include the LRC.

ADMISSIONS OF FACT

The City admitted to the following facts:[2]

1. The City is a public employer within the meaning of Section 1 of the Law.

2. The Union is an employee organization within the meaning of Section 1 of the Law.

3.The Union is the exclusive collective bargaining representative for a unit of non-professional employees who work within the City's departments of public works, cemeteries, parks and the pumping stations and for a unit of City employees who perform clerical, administrative, operational and custodial functions as well as the positions of assistant department head, dispatcher, inspector and the board of health nurse.

STIPULATIONS OF FACT

1. The City refused to provide the Union with the home addresses of bargaining unit members.

FINDINGS OF FACT

Bargaining unit members who began their employment with the City prior to 2006, pay a flat fee for their Union dues. Bargaining unit members who began their employment with the City in or after 2006, pay 1.6% of their weekly salary, which the City capped at $16.00, toward their Union dues. In January of 2006, employees signed authorization cards for SEIU, Local 888 representation. On the authorization cards, each employee indicated their home address, social security number, date of hire, job title, department/work location, telephone number and e-mail address. The authorization card also permitted the City to deduct Union dues from their salaries.

On June 24, 2009, the Union elected Anthony Nunes (Nunes) as its Administration-Finance Director and Anthony Koumantzelis (Koumantzelis) as its Secretary-Treasurer. After the election, Union staff informed Nunes that it was experiencing difficulty collecting accurate dues from unit members and obtaining accurate information from the City. Sometime between late July and early August of 2009, Nunes contacted City Human Resources Director Jan Cox (Cox) to discuss the Union's concerns. On August 5, 2009, Nunes and Koumantzelis met with Cox and orally requested the home addresses, job titles, salaries, work locations, personal telephone numbers and e-mail addresses of the bargaining unit members.[3] Nunes and Koumantzelis informed Cox that they needed the information to maintain contact with unit members; to calculate and collect the correct amount of Union dues, and to carry out general Union responsibilities and duties. Cox responded that providing the home addresses of unit members would violate Massachusetts' privacy law; and therefore, she could not provide the Union with that information. Cox also refused to provide the Union with the requested telephone numbers and e-mail addresses of the unit members.

During the meeting, Cox offered to provide the Union with "budget pages"[4] which contained employee names, starting dates, job titles, base salaries, longevity and the Mayor's salary recommendation. The budget pages did not contain the actual salary figures paid by the City to each employee. Cox refused to provide Nunes and Koumantzelis with the home addresses of unit members and, instead, instructed them to contact Union Steward Cheryl Kerns (Kerns) for City Hall employees to obtain the information. The Union did not make any written requests for information before or after the August 5, 2009 meeting.

Sometime after the August 5, 2009 meeting, Cox explained to Kerns that providing the home addresses of unit members was against the City's policy. Cox also explained that if Nunes and Koumantzelis could not obtain the requested information through her, then they should contact their local Union representatives to acquire the information. Cox also repeated her offer to provide Kerns and Nunes with the budget pages, which neither accepted. Sometime after Cox's conversation with Kerns, the City began sending the Union a weekly "deduction register"[5] which is an invoice of weekly dues deducted by the City from the paychecks of the unit members. The deduction register contains the names of each employee, the department in which they work and the amount of dues deducted by the City each week.

OPINION

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. *Boston School Committee*, 38 MLC 339, 342 (2012) (*citing City of Boston*, 32 MLC 1 (2005); *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. *Boston School Committee*, 24 MLC 8, 11 (1998) (citing *Boston School Committee*, 10 MLC

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2. In its Answer, the City made full and partial admissions of fact. This section of my decision reflects only the City's full admissions of fact.

3. Cox testified that she was not aware that Nunes and Koumantzelis had made a specific request for salary information, work locations, telephone numbers and e-mail addresses at the August 5, 2009 meeting. Instead, she testified that she was only aware of the Union's request for the home addresses and job titles of unit members. The City was unable to reconcile Cox's unawareness of the Union's request for salary information and home addresses on August 5, 2009, with her offer to provide the Union with salary "budget pages" and her specific instruction to contact Kerns to procure the home addresses of the unit members. Based on this inconsistency, and because Nunes testified to having a clearer recollection of the August 5, 2009 meeting, I credit Nunes' testimony and find that the Union requested from Cox information pertaining to the home addresses, job titles, salaries, work locations, telephone numbers and e-mail addresses of the bargaining unit members, and that City knowingly refused to provide the Union with the information requested at the August 5, 2009 meeting.

4. At the hearing the City submitted a copy of the budget pages for FY 2011.

5. The deduction registers that the City submitted into evidence were for the pay-periods ending on September 11 and 18, 2010. The record is not clear about whether these were the first deduction registers received by the Union after its August 5, 2009 meeting with the City.

1501, 1513 (1984)). The Commonwealth Employment Relations Board's (Board) 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. *Boston School Committee*, 36 MLC 28 (2009); *Boston School Committee*, 8 MLC 1380, 1382 (1982). It is well settled that the relevancy of the requested information is determined by the totality of the circumstances at the time that the union requested the information. *See City of Lynn*, 27 MLC 60, 61 (2000) (*citing, Providence and Mercy Hospitals* v. *NLRB*, 93 F3d. 1012, 1020 (1st Cir. 1996)); *see also Tenneco Automotive, Inc.*, 357 NLRB No. 84, slip op. at 2 (2011) (*citing Wayne Memorial Hospital Assn.*, 322 NLRB 100, 110 (1996)).

Once an employee organization has established that the information it requested from the public employer is relevant and reasonably necessary to execute its duties as collective bargaining representative, the burden shifts to the employer to demonstrate that its concerns about disclosure are legitimate and substantial, 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. *Boston School Committee*, 13 MLC 1290, 1298 (1986). 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 by the City. *Board of Trustees, University of Massachusetts*, 8 MLC 1139, 1143-44 (1981).

Telephone Numbers and E-mail Addresses

The evidence shows that the Union requested current personal telephone numbers and e-mail addresses of bargaining unit members on August 5, 2009, and the City refused to provide the requested information. The City does not dispute that it possesses updated telephone numbers and e-mail addresses of the bargaining unit members. Instead, it argues that the Union already has that information in its possession via the 2006 authorization cards and, therefore, is not obligated to provide the information. However, the City's argument must fail because as the City concedes, the authorization cards have not been updated since 2006.

Further, information concerning bargaining unit members is presumptively relevant, including personal telephone numbers and e-mail addresses. *City of Boston*, 28 MLC 49, 50 (2001) (*citing Shoppers Food Warehouse*, 315 NLRB 258 (1994)); *Dynacorp/ Dynair Services, Inc.*, 322 NLRB 602 (1996). Accordingly, I find that the Union's request for telephone numbers and e-mail addresses is presumptively relevant. I also find that the City failed to meet its burden of rebutting the presumption of relevance of that information and is obligated to provide the information to the Union so that it may perform its duties as the exclusive collective bargaining representative. *City of Boston*, 28 MLC at 50; *City of Boston*, 32 MLC at 1-2; *Boston School Committee*, 24 MLC at 11.

Job Titles, Salaries, Work Locations and Union Dues

On August 5, 2009, the Union also requested current information from the City pertaining to bargaining unit members' job titles, salaries, and work locations. At the meeting, Cox offered to provide the Union with budget pages for FY 2011 that only contained the employees' starting dates, base salaries and recommended salaries by the Mayor, but did not contain the employees' current job titles or current salary information. The Union rejected Cox's offer because the budget pages did not include current job title, salary and work location information.

Sometime after the August 5, 2009 meeting, the City provided the Union with deduction registers of weekly union dues deducted by the City for the pay-periods ending on September 11 and 18, 2010. While the Union does not dispute the accuracy of the information contained in those deduction registers, the record does not show whether the City provided the Union with "current" deduction registers after the August 5, 2009 meeting.

While the City claims that it attempted to comply with the Union's request by offering budget pages and sending weekly deduction registers, the information it provided was not current and, therefore, non-responsive to the Union's request. During or after the August 5, 2009 meeting, the City did not raise any concerns with the Union about potential burdens or disclosure issues with providing the requested information, and if it did, the City was required to notify the Union about those concerns and make reasonable efforts to provide the Union with as much of the requested information as possible. *See, Board of Trustees, University of Massachusetts*, 8 MLC at 1144 (where a union requests relevant and reasonably necessary information, whether the employer invokes the claim of expense of production or any other concern, it must demonstrate that its interests in nondisclosure are legitimate and substantial and that it has made an effort to otherwise accommodate the union's request). Here, it did not do so.

Wage and related information pertaining to employees in the bargaining unit is presumptively relevant and the burden rests upon the employer to rebut the relevance of such information. *Commonwealth of Massachusetts*, 8 MLC 1118, 1123 (1981) (*citing Curtiss-Wright Corp.* v. *NLRB*, 347 F.2d 61, 64-65 (3rd Cir. 1965) (job classifications, job titles, job descriptions and regular rates of pay, including the grade or range for each such classification or title, is relevant data; employer is required to produce such data absent a legitimate concern about disclosure)). Accordingly, I find that the Union's request for current job titles, salaries, work locations and union dues was presumptively relevant. *Commonwealth of Massachusetts*, 8 MLC at 1123; *Curtiss-Wright Corp.*, 347 F.2d at 64-65. *See also Boston Herald-Trav. Corp.* v. *N.L.R.B.*, 223 F.2d 58 (1 Cir. 1955) (wage and related information pertaining to employees in the bargaining unit is presumptively relevant). I also find that the City failed to rebut the presumption of relevance of that information and, therefore, is obligated to provide the Union with the requested information so that it may perform its duties as the exclusive collective bargaining representative. *Boston School Committee*, 24 MLC at 11; *Commonwealth of Massachusetts*, 8 MLC at 1123.

Home Addresses and Public Records Law

The Union requested the current home addresses of bargaining unit members at the August 5, 2009 meeting, and the City admits that it refused to provide the Union with that information. The City

does not dispute the relevancy of the Union's request for the home addresses of bargaining unit members; instead, it disputes whether that information requested by the Union was reasonably necessary or causally related to the Union's collection of accurate dues. Relying solely on *City of Boston* v. *Labor Relations Commission*, 61 Mass. App. 397, 402-03 (2004), the City first argues that the Union's request is merely designed to contact unit members, which presents an undue burden for the City because it shifts the administrative task of updating and verifying the home addresses of the members from the Union to the City. The City argues next that the Union already possesses the home addresses of unit members through the 2006 authorization cards, and that the City's interest in protecting the privacy of its employees outweighs the Union's need for the City to produce the information. Last, the City contends that furnishing the home addresses of unit members is not required by law because it is not a "public record" pursuant to G.L. Chapter 4, Section 7, 26th (o) and, therefore, it is exempted from disclosure by statutory law.

G.L. chap. 4, sec. 7, Twenty-sixth (o), states:

> Public records shall mean all books, papers, maps, photographs, recorded tapes, financial statements, statistical tabulations, or other documentary materials or data, regardless of physical form or characteristics, made or received by any officer or employee of any agency, executive office, department, board, commission, bureau, division or authority of the commonwealth, or of any political subdivision thereof, or of any authority established by the general court to serve a public purpose, unless such materials or data fall within the following exemptions in that they are:
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> (o) the home address and home telephone number of an employee of the judicial branch, an unelected employee of the general court, an agency, executive office, department, board, commission, bureau, division or authority of the commonwealth, or of a political subdivision thereof or of an authority established by the general court to serve a public purpose, in the custody of a government agency which maintains records identifying persons as falling within those categories; provided that the information may be disclosed to an employee organization under chapter 150E....

When an employer raises a statutory defense to its failure to provide a union with requested relevant information, the Board reviews the cited statutory provision in light of the employer's obligation under the Law. *City of Boston*, 32 MLC at 2. If the requested information is not exempt from disclosure under the cited statute, it must be furnished to the union unless there exist other legitimate and substantial concerns that outweigh the union's need for the information. *Id.* (*citing Board of Trustees, University of Massachusetts*, 8 MLC at 1149-52).

First, I find that the requested home addresses are presumptively relevant and that the Union needs the information to fulfill its role as exclusive bargaining representative and to verify the accuracy of dues collected from each bargaining unit member. *See City of Boston*, 28 MLC at 50; *Tenneco Automotive*, 357 NLRB No. 84, slip op. at 3-4. *See also Boston School Committee*, 36 MLC at 30 (*citing Board of Trustees, University of Massachusetts*, 8 MLC at 1141 (1981) (the Board's standard in determining whether the information requested by a union is relevant is a liberal one); *see also Providence and Mercy Hospitals*, 93 F.3d at 1017 (*citing NLRB* v. *Acme Industrial Co.* (requested information is relevant if it seems probable that the information will be of legitimate use to the union in carrying out its duties and responsibilities as the employees' bargaining agent).

Second, I find that the City failed to rebut the relevancy presumption of the home addresses because it did not demonstrate that there is a legitimate and substantial concern that a great likelihood of harm will flow from the disclosure. *Board of Trustees, University of Massachusetts*, 8 MLC 1143-44; *Boston School Committee*, 13 MLC at 1298. Although the City argues that the Union seeks to contact the unit members, this reason alone does not amount to "clear and present danger" that the Union will misuse the requested information. *See Tenneco Automotive*, 357 NLRB No. 84, slip op. at 3-4. As addressed above, the 2006 authorization cards are not current and since August of 2009, the Union has been without any other means to contact the unit members and obtain the updated information.

Next, I find that the Union's request for the current home addresses of unit members did not present an undue burden for the City because City already possesses that information. *Compare Board of Regents*, 19 MLC 1248, 1271 (1992) (public employer has no obligation to provide information that is not in its possession or control). Further, the evidence shows that the City failed to notify the Union that providing the home addresses would cause an undue hardship and failed to quantifiably substantiate at the hearing the time or resources it would need to expend to comply with the Union's request. *See Colgate-Palmolive Co.*, 261 NLRB 90, 92 (1982). *Compare, City of Boston*, 35 MLC 95, 101 (2008) (Commonwealth Employer Relations Board found that a request for seven years of non-computerized, non-centrally located information on 2,200 employees was not unduly burdensome).

Last, I find that the City failed to make reasonable efforts to provide the Union with as much of the requested information as possible. *Board of Trustees, University of Massachusetts*, 8 MLC at 1144. The City argues that furnishing the home addresses of unit members is not required by law because it is not a "public record" pursuant to G.L. Chapter 4, Section 7, 26th (o) and, therefore, it is exempted from disclosure. While G.L. chap. 4, sec. 7, Twenty-sixth (o) specifically exempts from disclosure the home addresses of an employee of an "agency...division or authority of the commonwealth," it is silent about whether the home addresses of employees employed in towns or municipalities of the Commonwealth are also exempted. Further, the statute makes an express exception for "employee organizations under chapter 150E." Therefore, regardless of whether the information requested by the Union is exempt as a public record under G.L. chap. 4, sec. 7, Twenty-sixth (o), that statute does not control whether the Union is entitled to those reports under G.L. c. 150E. *See Sheriff of Bristol County* v. *Labor Relations Commission*, 62 Mass. App. Ct. at 670-71. Absent a showing of great likelihood of harm flowing from the disclosure, which the City failed to show, the City was required to furnish the Union with the requested information, which was necessary for the Union to carry out its duties as the exclusive bargaining representative. *Board of Trustees*, 8 MLC at 1143-44.

CONCLUSION

Based on the record, and for the reasons stated, I conclude that the City has failed to bargain in good faith by refusing to provide relevant information that was reasonably necessary for the Union to execute its duties as the collective bargaining representative in violation of Section 10(a)(5) and, derivatively, Section 10(a)(1) of the Law.

ORDER

WHEREFORE, based upon the foregoing, IT IS HEREBY ORDERED that the City shall:

1. Cease and desist from:

   a) Refusing to provide relevant and reasonably necessary information when requested by the Union.

2. Take the following action that will effectuate the purposes of the Law.

   a) Provide the Union with requested information pertaining to the bargaining unit members' current job titles, salaries, work locations, union dues, telephone numbers, e-mail addresses and home.

   b) Post immediately in all conspicuous places where members of the Union's bargaining unit usually congregate, or where notices are usually posted, *including electronically*, if the City 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.

   c) Notify the Department in writing of the steps taken to comply with this decision within ten (10) days of receipt of this decision.

SO ORDERED.

APPEAL RIGHTS

The parties are advised of their right, pursuant to MGL 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 Request for Review with the Executive Secretary of the Department of Labor Relations within ten days after receiving notice of this decision. If a Request for Review is not filed within ten days, this decision shall become final and binding on the parties.

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