.COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF LABOR RELATIONS

In the Matter of		
BOSTON SCHOOL COMMITTEE		Case No. MUP-13-3067
and		Date Issued: August 11, 2016
BOSTON TEACHERS UNION, LOCAL 66, AFT, AFL-CIO		

Hearing Officer:

Margaret M. Sullivan, Esq.

Appearances:

Andrea L. Brown, Esq. Eamonn G. Gill, Esq.	-	Representing the Boston School Committee
Matthew E. Dwyer, Esq. Mark J. Esposito, Esq.	-	Representing the Boston Teachers Union, Local 66

HEARING OFFICER DECISION AND ORDER

Summary

The issue in this case is whether the Boston School Committee (Employer or School Committee) violated Section 10(a)(5) and, derivatively, Section 10(a)(1) of Massachusetts General Laws, Chapter 150E (the Law) by: a) failing to provide or failing to timely provide certain requested information that was relevant and reasonably necessary to the Union in its role as the exclusive bargaining representative (Count I); b) repudiating Article IX(C)(7) of the parties' 2013-2016 collective bargaining agreement (CBA) (Count II); and c) repudiating Article V(K) of the 2013-2016 CBA (Count III). I find

that the Employer violated Counts I and II, in part, and Count III, but also dismiss certain allegations pertaining to Counts I and II.

Statement of the Case

On August 23, 2013; the Union filed a charge of prohibited practice with the Department of Labor Relations (DLR) alleging that the Employer violated Sections 10(a)(5) and (1) of the Law. On November 13, 2013, a DLR hearing officer investigated the matter. The investigator issued a complaint of prohibited practice on December 13, 2013. On December 17, 2013, the Union filed an unopposed motion to amend the complaint. The investigator issued an amended complaint on December 30, 2013, alleging that the School Committee violated Section 10(a)(5) and, derivatively, Section 10(a)(1) of the Law by: a) failing to provide or failing to timely provide certain requested information that was relevant and reasonably necessary to the Union in its role as bargaining representative (Count I); b) repudiating Article IX(C)(7) of the parties' 2013-2016 CBA (Count II); and c) repudiating Article V(K) of the 2013-2016 CBA (Count III). The School Committee subsequently did not file an answer to the amended complaint.

On February 11, 2014, the Union filed a motion seeking to have the allegations in the amended complaint be deemed as true. The School Committee filed its opposition to the motion on April 11, 2014, and also filed its answer to the amended complaint on that date. On June 13, 2014, I issued a ruling denying the Union's motion that the DLR admit the allegations in the amended complaint as true.

I conducted hearings on July 1, 2014, July 2, 2014, and July 8, 2014. Both parties had an opportunity to be heard, to examine witnesses and to introduce evidence. The parties submitted their post-hearing briefs on or about September 25,

2014. On October 8, 2014, the Union filed a reply brief with an unopposed motion for leave to submit that document, a motion which I subsequently allowed. Upon review of the entire record, including my observation of the demeanor of the witnesses, I make the following findings of fact and render the following opinion.

Stipulated Facts

A. Stipulations Common to All Counts.

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

2. The School Committee is the City's collective bargaining representative for the purpose of dealing with school employees.

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

4. The Union is the exclusive bargaining representative for employees in three bargaining units: 1) teachers; 2) paraprofessionals; and 3) substitute teachers and nurses.

5. The Union and School Committee are parties to two collective bargaining agreements (CBAs). The first was effective from September 1, 2010 through August 31, 2013; the second CBA is effective from September 1, 2013 to August 31, 2016.

6. Prior to the advent of the parties' CBAs covering the period September 1, 2010 through August 31, 2016, the Union and the School Committee were parties to two collective bargaining agreements effective from September 1, 2006 to August 31, 2009 and from September 1, 2007 to August 31, 2010.

7. The parties began negotiations for a successor to their 2007-2010 collective bargaining agreement by June, 2010 and concluded their negotiations by September 10, 2012.

8. The 2010-2013 and 2013-2016 CBAs were ratified by the membership of the Union on October 16, 2012 and by the School Committee by the end of October, 2012. On or about November 6, 2012, the City Council voted to appropriate funds for the cost items of the 2010-2013 contract.

8a. The School Committee has not furnished the Union with the information described in Stipulations 11, 21, 29, 32, 36, 38, 45, 51 and 55.

9. At all times material, the persons identified below held the positions listed opposite their names and were authorized agents of either the School Committee or the Union:

Reverend Gregory C. Groover, Sr. - President, Boston School Committee

Virginia Tisei - Director of Labor Relations, Boston School Committee

Virginia Goscinak, Esq. - Senior Labor Counsel, Boston School Committee

Brendan Greene, Esq. - Labor Counsel, Boston School Committee

Samuel DePina - Chief Operating Officer, Boston Public Schools

Richard Stutman - President, Boston Teachers Union

Matthew E. Dwyer, Esq. - Counsel to the Boston Teachers Union

Mark J. Esposito, Esq. - Counsel to the Boston Teachers Union

10. The 2010-2013 and 2013-2016 CBAs state in pertinent part under Article IX(C)(7):

> 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.

11. The 2010-2013 and 2013-2016 CBAs state in pertinent part under Article V(K):

> The BTU shall receive a list of provisional teachers with letters of reasonable assurance and teachers whom the Superintendent has made permanent prior to the beginning of the transfer process.

B. Stipulations Relating to the Union's Request for a Copy of the Playworks Contract.

Article I of the 2010-2013 and 2013-2016 CBAs states in relevant part:

> The jurisdiction of the Union shall include those persons now or hereafter who perform the duties or functions of the categories of employees in the

bargaining unit, regardless of whether these duties or functions are performed by present, or modified, or new processes or equipment.

12. BTU teachers and paraprofessionals supervise students during recess activities and also guide recess activities.

13. By letter dated June 15, 2013 the Union requested that the School Committee furnish it with a copy of the contract between "Playworks" or "Playworks, Inc." and the City of Boston.

14. "Playworks" or "Playworks, Inc." is a private vendor supplying services to school districts in the nature of games and guided activities for students during recess.

15. The School Committee did not furnish a copy of the Playworks and the City of Boston contract until August 2, 2013.

C. Stipulations Relating to the Union's April 30, 2013 Request for Information Relating to Sign Language Interpreters and Lead Sign Language Interpreters.

16. The job classifications of "sign language interpreter" and "lead sign language interpreter" are included in the teachers bargaining unit represented by the Union.

17. By letter dated April 30, 2013, the Union requested that the School Committee provide to the Union the following information:

    a. A list of all sign language interpreters employed by the Boston Public Schools, along with their work locations, rates of pay, and hiring dates;

    b. A list of all lead sign language interpreters employed by the Boston Public Schools, along with their work locations, rates of pay, and hiring dates;

    c. The most current job description for sign language interpreters; and

    d. The most current job description for lead sign language interpreters.

18. The School Committee received the Union's April 30, 2013 request for information described in Stipulation No. 17.

19. The School Committee failed to provide to the Union the information described in Stipulation No. 17 until June 12, 2013.

D. Stipulations Relating to the Union's May 8, 2013 Request for Information Relating to Unit Employees Occupying So-Called "Highly Specialized Strand" Positions.

20. The School Committee deploys specialists within the teachers bargaining unit to oversee the provision of special education services to students with individual education plans in a school or group of schools grouped according to the nature of the students' learning impairment e.g. autism, emotional, intellectual (mild, moderate, severe) multiple disabilities and physical impairment, sensory impairment (hearing and/or vision) and specific learning disabilities, referred to collectively as highly specialized strands.

21. By letter dated May 8, 2013 the Union requested the following information from the School Committee regarding the procedure used to excess bargaining unit members occupying Highly Specialized Strand positions:

    a. A list of all bargaining unit members occupying Highly Specialized Strand positions, along with each such member's assignment, program area, and seniority date.

    b. A list of all bargaining unit members occupying Highly Specialized Strand positions who received excess notices to be effective upon the conclusion of the school year 2012-2013.

    c. For each Highly Specialized Strand position, the source of that position's funding (i.e., whether budgeted at the school or district level).

22. The School Committee received the Union's May 8, 2013 request.

E. Stipulations Relating to the May 6, 2013 Request for Information Gateway to the Post-Transfer Placement Process

23. The excess procedure in effect prior to the 2012-2013 school year is reflected at Article V(J) (pages 102-106) of the 2007-2010 collective bargaining agreement.

24. The 2010-2013 and 2013-2016 CBAs altered the parties' pre-existing procedures for redeploying bargaining unit members involuntarily reassigned or "excessed" from their school-based positions and replaced it with the Post-Transfer Placement Process ("PTPP").

25. The new PTPP took effect on September 1, 2012 and is reflected at Article V(K) (pages 78-82) of the successor CBAs.

26. Under the new PTPP, the School Committee is required, following the publication and close of the transfer list process, to post all vacant positions to enable excessed teachers to apply to fill them, not including positions held by provisional teachers who have received a letter of reasonable assurance.

27. Article V(K)(1) of the 2010-2013 collective bargaining agreement states, effective September 1, 2012, in relevant part as follows:

    1. This PTPP procedure will not apply to "provisional" teachers, but will apply to "permanent" teachers and the following employees with more than three (3) consecutive years of service; school nurses, student support coordinators.

    2. All voluntarily and involuntarily excessed teachers shall participate in the Post-Transfer Placement Process ("PTPP"). Each teacher who intends to voluntarily excess himself/herself from his/her position must do so on or before February 1st.

       All eligible vacancies as well as the vacancies created by those teachers who have voluntarily excessed themselves shall be included and listed in the PTPP. BPS shall transmit to the BTU a list of all employees who are participating in the PTPP, prior to the beginning of the PTPP process. For purposes of this section eligible vacancies shall not include positions held by provisional teachers with letters of reasonable assurance, nor shall it include positions held by teachers who have been made permanent by the Superintendent. The BTU shall receive a list of provisional teachers with letters of reasonable assurance and teachers whom the Superintendent has made permanent prior to the beginning of the transfer process.

28. By letter dated May 16, 2013, the Union requested information from the School Committee regarding the status of bargaining unit provisional and permanent teachers and their status for the upcoming school year in order to oversee the Post Transfer Placement Process.

29. The Union's May 16, 2013 letter requested the following information:

    a. A list of the provisional teachers who were sent letters of reasonable assurance prior to March 15, 2013 and the school assignment then held by each provisional.

    b. A copy of each letter of reasonable assurance sent to provisional teachers.

c. A list of provisional teachers made permanent by the Superintendent prior to March 15, 2013 and the school assignment then held by each provisional.

d. A copy of each letter sent to provisional teachers made permanent notifying them of that fact.

e. A list of the provisional teachers employed as of March 15, 2013 who were not sent letters of reasonable assurance (and not made permanent) together with their school assignment as of March 15, 2013.

f. The list of all teachers who voluntarily excessed themselves by February 1st and the schools from which they excessed themselves.

g. The list of all teachers who were involuntarily excessed by program area, and the schools from which they were involuntarily excessed.

h. All positions that became vacant after the transfer list procedure was completed including, without limitation, the positions that became vacant due to deaths, resignations, retirements, restoration of funding for eliminated positions or the transfer of a unit member.

30. The School Committee received the Union's May 16, 2013 letter.

F. Stipulations Relating to the Union's Request for the Results of a School Climate Survey of Unit Employees.

31. On or about the spring of 2013 the School Department conducted a "school climate" survey among teachers and other teacher bargaining unit members.

32. By letter dated May 21, 2013 the Union requested that the School Committee furnish it with a copy of the results of the 2013 school climate survey.

G. Stipulations Relating to the Union's Request for Written Communications Between the Superintendent and the School Committee Evidencing Disagreement [...].

33. In November, 2011, the Union finalized an analysis of School Committee votes on various proposals made by the Superintendent, finding that of 2,169 School Committee votes taken between January 1, 1994 and July 31, 2011, the School Committee had voted unanimously to support the Superintendent's position on 2,144 occasions.

34. The Union released its data to the Boston Globe which published an article on November 11, 2011 entitled "Little Dissent by school board: Panel votes back Superintendent; Union decries a 'rubber stamp'."

35. School Committee President Rev. Gregory C. Groover, Sr. was quoted in the November, 2011 Globe article as publicly declaring that the Union's analysis overlooked the fact that the School Committee met constantly with the Superintendent to express its views and disagreements with the Superintendent's proposals, making changes to them, in the week leading up to the School Committee's meetings out of the public eye.

36. By letter dated November 18, 2011, the Union made a public records request for the following documents and information:

    a. Any communications and/or meetings between individual School Committee members and Superintendent Johnson, from January, 2009 to the present;

    b. Any communications and/or meetings between individual School Committee members and any other Boston Public Schools personnel, from January, 2009 to the present;

    c. Any visits by School Committee members to school facilities within the Boston Public Schools, from January, 2009 to the present; and

    d. Any changes made to any Boston Public Schools proposals as a result of discussions with School Committee members, prior to those proposals being voted upon at a School Committee meeting, from January, 2009 to the present.

37. The School Committee did not respond to the Union's request until March 15, 2012 when its labor counsel, Brendan Greene, provided an estimate of the cost of reviewing e-mail communications responsive to the first two categories of information described in the Union's November 18, 2011 letter.

38. By e-mail dated March 26, 2012, the Union agreed to narrow its requests in the first two categories of sought after information to the periods September-December 2010 and July-November 2011.

39. By e-mail dated March 27, 2012 the School Committee's labor counsel, Brendan Greene, replied to the Union's March 26, 2012 offer by stating he would "be able to quickly search the files for the e-mails within your two time-frames and provide ... an updated [cost] estimate".

40. By-email dated June 17, 2012, Mr. Greene estimated the time required to review the e-mails falling within the scope of the Union's narrowed request to be 112 hours at a cost of $3,920 and that he would undertake the review if the Union were to remit payment of that amount.

41. By e-mail dated June 22, 2012, the Union signified its willingness to pay the requested sum of $3,920.

42. By e-mail dated January 21, 2013 the Union notified the School Committee that it had not received the materials responsive to the first two categories of its November 18, 2011 request, as revised on March 26, 2012 and it still wanted them produced.

43. On June 11, 2013 the Union furnished a check to the School Committee in the sum of $3,920.

H. Stipulations Relating to the Union's May 30, 2013 Request for Information Relating to the School Committee's Establishment of a System for Implementing Settlement Agreements and Arbitration Awards.

44. Article X(E)(7) of the 2010-2013 and 2013-2016 collective bargaining agreements state:

> The Committee will use its best efforts to implement a settlement agreement or an arbitrator's award within 30 days after approval of such settlement or receipt for such award and determination not to contest it.
>
> Such efforts shall include, but not be limited to, establishment of a payment system under which specified employees of the School Department are to be held accountable for compliance with this section.

45. By letter dated July 18, 2012 the Union made a public records request that the School Committee furnish it with the following documents:

    a. Documents recording, reflecting, or relating to the establishment of a payment system under which specified employees of the School Department are to be held accountable for compliance with Article X(E)(7) of the collective bargaining agreement.

    b. Documents recording, reflecting, or relating to the identities of the employees specified to be held accountable for compliance with Article X(E)(7) of the collective bargaining agreement.

c. Documents recording, reflecting, or relating to the manner in which the specified employees have been held accountable for compliance with Article X(E)(7) of the collective bargaining agreement.

46. The School Committee did not respond to the Union's letter dated July 18, 2012.

47. On May 30, 2013 the Union renewed its request for the documents identified in its July 18, 2012 letter.

48. The School Committee received the Union's July 18, 2012 and May 30, 2013 letters.

I. Stipulations Relating to BTU's July 2, 2013 Request for Disclosure of Excess Seating Capacity Data.

49. Before the end of the 2012-2013 school year, the School Committee received a report analyzing the capacity of the Boston Public School system to seat the City's student population.

50. Members of the School Committee made public statements in May and June 2012 declaring that the existence of excess capacity to seat students warranted the closure or consolidation of public schools where bargaining unit members work.

51. By letter dated July 2, 2013, the Union requested the following information:

a. Copies of any reports created in 2013 regarding the number of excess student seats available at each school within the Boston Public Schools; and

b. Copies of any documents relied upon in the drafting of any reports produced pursuant to request [a] above.

52. The School Committee received the Union's July 2, 2013 letter.

J. Stipulations Relating to BTU's Requests for Disclosure of Information Relating to Potential Discipline of Two Supervisors of Attendance.

53. The teachers bargaining unit represented by the Union includes the job classification of Supervisor of Attendance (formerly, "truant" or "attendance" officers).

54. By separate letters dated May 1, 2013, two Supervisors of Attendance (George P. and John C.) were instructed to report to disciplinary hearings to respond to allegations that they had engaged in misconduct by disregarding the employer's directive that they attend student support meetings on unspecified dates at certain schools.

55. By separate letters dated May 10, 2013, the Union requested that the School Committee provide, for each employee, particulars of the employer's directives, including disclosure of the dates, times, and school locations of the meetings the employer was alleging the employees had failed to attend, their school assignments for the 2012-2013 school year and their job descriptions.

56. The employees were both separated from service in May 2013 and placed on paid administrative leave pending the outcome of the disciplinary hearings.

57. John C. retired in or about September 2013 before any disciplinary hearing was conducted.

58. George P. was removed from paid administrative leave and ordered to report back to work in February 2014, before any disciplinary hearing.

59. By letter dated March 13, 2014, the School Committee notified George P. that it had withdrawn its request for a disciplinary hearing but was reserving its right to issue discipline to him based on the allegations contained in its May 1, 2013 letter.

60. The following day, the School Committee by letter dated March 14, 2014, disciplined George P. by issuing him a written reprimand for failing to attend student support meetings on certain specified dates at the Grew Elementary School, the Edison K-8 School, and the Tobin K-8.

Supplemental Findings of Fact[1]

Background

The Employer's approximately one-hundred and twenty-five schools have an enrollment of about 57,000 students. The Employer has a workforce of approximately

[1] The DLR's jurisdiction in this matter is uncontested.

8500 full-time and part-time employees working in hundreds of departments. Eighty-five to ninety percent of those employees are represented by one of thirteen unions.

Union

The Union has three bargaining units, including 5300 teachers and specialists, 1200 paraprofessionals and 500 substitute teachers respectively. Richard Stutman (Stutman) has worked for the Union as president for eleven plus years.[2] Michael McLaughlin (McLaughlin) also has worked for the Union as an elementary field representative for seven years, [3] while Caren Carew (Carew) has worked for the Union as a secondary field representative for eleven years.[4]

Office of Labor Relations

One of the Employer's departments, the Office of Labor Relations, negotiates, administers, interprets and enforces the collective bargaining agreements between the Employer and the thirteen unions. From August 2011 until November 2013, the Office of Labor Relations was overseen by Assistant Superintendent of Human Resources Ann Chan (Chan). As of August 2011, the Office of Labor Relations was staffed by five attorneys including a director of labor relations, and one administrative assistant. The five attorneys were: Emily Hubbard (Hubbard), Kristen Daley (Daley), Brendan Greene (Greene), Virginia Casey Goscinak (Goscinak), senior labor counsel, and Virginia Tisei

[2] Stutman previously worked as a secondary field representative for the Union for approximately twenty years and as middle school and high school teacher in the Employer's schools for approximately eleven years.

[3] McLaughlin previously worked for twenty-two years as a teacher in the Employer's schools.

[4] Carew previously worked as a teacher in the Employer's schools and is currently on leave from her teaching position.

(Tisei), the director of labor relations. They responded to inquiries from managers and school leaders, including disciplinary questions, handled litigation related to labor grievances and discipline, drafted legal memoranda and post-hearing briefs and provided training to administrators and other school leaders. Tisei also handled all student disciplinary appeals. The attorneys responded to information requests, which included reviewing the request, contacting the necessary employees to obtain the information, examining the information upon receipt to ensure that it was responsive to the request, and transmitting the information to the union that requested it. Attorneys also were responsible for ensuring that arbitration awards and settlement agreements were implemented, which included taking the necessary steps to arrange for payment of any monies owed.[5]

Staff Turnover

In June 2012, Hubbard resigned and the Employer subsequently did not fill her position, although the position was funded in the FY13 budget. On or about July 1, 2012, Daley transferred to another of the Employer's departments. The Employer appointed Eamonn Gill (Gill) to Daley's former position on or about August 2012. In June 2013, Tisei retired,[6] and in the summer of 2013, Goscinak went on leave.[7] On or about July 2013, the Employer hired a recent law school graduate Joseph Bevington,

[5] On cross-examination, Chan acknowledged that the Office of Labor Relations did not have a written procedure for the implementation of arbitration awards and settlement agreements.

[6] Karen Glasgow, the successor director of labor relations, did not take over the position until December 2013 or January 2014.

[7] Goscinak left the Employer's employ in March 2014.

(Bevington), who took the state bar examination in July 2013. On or about August 1, 2013, Greene resigned his position.[8] As of August 2013, Gill was the only licensed attorney working at the Office of Labor Relations until October 2012 when Andrea Brown (Brown) transferred to the Office of Labor Relations from the City of Boston's Office of Corporation Counsel, and November 2013 when Bevington became admitted to practice law in Massachusetts.

2011 and 2012 Requests for Information about School Committee Members and Proposals

The School Committee has seven members who are appointed by the City's mayor.[9] The Union in its November 18, 2011 request sought information from January 1, 2009 and continuing about: communications and/or meetings between School Committee members and Superintendent Carol Johnson, (Superintendent Johnson), communications and/or meetings between School Committee members and other Employer personnel, any visits by School Committee members to the Employer's facilities, and any changes made to the Employer's proposals as a result of discussions with School Committee members, prior to those proposals being voted upon at School Committee meetings. The Union requested the information in order to analyze the processes that School Committee members undertook before voting for or against proposals, especially on the subject of school and program closings. The closing of a school or a program leads to the involuntary displacement of unit members by inverse

[8] In February or March 2013, Greene had informed the Employer of his expected departure date of August 2013. Before Greene left, he and Chan discussed outstanding labor matters in which he was involved. Chan could not recall whether they discussed any outstanding information requests.

[9] Prior to 1991, the School Committee was a thirteen-member elected body.

seniority and the need for those unit members to seek other employment in the Employer's schools, activities for which those unit members frequently seek Union assistance.

Although the Union agreed in a March 26, 2012 letter to limit the time periods for the communications between School Committee members and the Superintendent and the communications between School Committee members and the Employer's personnel, the Union reiterated its request for records pertaining to any visits by School Committee members to school facilities and for records pertaining to any changes made in any proposals made to the School Committee as a result of discussions with School Committee members.[10] On March 27, 2012, Greene sent the following email to Esposito:

> I appreciate your willingness to narrow the scope of your request further. I will be able to quickly search the files for the emails within your two time frames and provide you with an updated estimate. As you aware, it is possible that those emails may still pertain to policies still under consideration by the School Committee. Such issues include but are not limited to school assignment.
>
> In item three of your [November 18, 2011] request, you sought information regarding visits by School Committee members to schools. To the extent, BPS has this information, it was included in the three boxes of materials available for your review. For example, the very first packet of documents in the 2009 box contains a series of reminders to Rev. Groover from Elizabeth Sullivan regarding upcoming school visits the Chair had planned for the week of May 4, 2009. Each box likely has examples of these memos as well as "thank you" notes from school principals to various members of the school committee and superintendent regarding visits. I could conduct a search of these documents, but such an examination likely would be time consuming. If you would like me to provide an estimate for my time, I will provide one to you.

[10] The Union acknowledged that a School Committee member Mary Tamer previously had provided information to Stutman concerning her visits to school facilities.

> Please be advised that BPS does not have documents that are responsive to item 4 of your [November 18, 2011] request outside of the documents produced that reflect the items considered by and voted upon by the school committee. These documents remain available for your review here at Court Street. If you would like to make arrangements for these documents to be copied, I would be happy to facilitate such a request. However, the documents contained in the three boxes represent my only copies.

On June 11, 2013, Esposito sent a letter to Greene stating in pertinent part:

> Pursuant to our discussions on this subject, enclosed please find a check for $3,920 regarding the Union's public records request for communications between members of the School Committee and various Court Street personnel. As you know, the Union's willingness to remit this amount is premised on the fact that this request was brought pursuant to G.L. c.66 rather than G.L. c.150E or Article IX(C)(7) of the collective bargaining agreement.
>
> Based upon your representations, we expect to receive copies of all non-privileged, responsive records no later than July 10, 2013, along with a reimbursement for any escrowed funds no later than July 10, 2013, along with a reimbursement for any escrowed funds not expended on complying with this request.

The Employer subsequently has not provided the Union with any of the information that Esposito referenced in his June 11, 2013 letter but also has not cashed or returned the check to the Union's counsel.

April 30, 2013 Request for Information Relating to Sign Language Interpreters and Lead Sign Language Interpreters

Prior to 2010, the Union became aware that sign language interpreters were working at several schools, including the Horace Mann School, but the Union only had a general understanding as to the nature of their duties. Also, as part of the 2010-2013 CBA, the Union and the School Committee for the first time specifically referred to the title of lead sign language interpreter as a position that was included in the teacher's bargaining unit. The Union its April 30, 2013 information request was seeking what

Union president Stutman characterized as "the who, what and where" of all sign language interpreters and lead sign language interpreters, including the job descriptions for the two positions. The Union requested the information to ensure that the Employer properly classified individual sign language interpreters and lead sign language interpreters by placing them in the appropriate bargaining unit(s) and paying them the correct compensation. [11] In a June 12, 2013 email message, Employer's then counsel Greene responded to the April 30, 2013 information request by noting in part:

> According to BPS records, we have one "lead sign language interpreter." Her information is below:
>
> Sennott, Lynda Horace Mann School for the Deaf S00172 Lead Sign Language Interpreter BPS039
>
> We do not have records of employees hired as "normal sign language interpreters." It appears that some schools hire individuals trained in American Sign Language as either 1:1 paraprofessionals or CFC's [Community Field Coordinators]. The job descriptions are below.[12]

As a result of Greene's June 12, 2013 email message the Union became aware that members of the paraprofessionals bargaining unit were providing sign language interpretation services.

May 8, 2013 Request for Information Relating to Highly Specialized Strand Positions

In late winter, early spring 2013, the Union became aware that the Employer had created a new specialist title, the highly specialized strand position, which was included

[11] Teachers perform instructional duties and are licensed by the state Department of Elementary and Secondary Education (DESE), while paraprofessionals perform support functions and are not licensed by DESE.

[12] Greene thereby attached job descriptions for a "One to One Para Trained in American Sign Language" and a "Part-Time Educational Sign Language Interpreter-Community Field Coordinator" at the Boston Arts Academy to his email message.

in the teachers' bargaining unit.[13] In spring 2013, certain incumbents in those positions were involuntarily excessed. On May 8, 2013, the Union requested information about the highly specialized strand positions in order to ascertain where the positions were deployed and the funding sources. The Union also wanted to assist unit members in the PTPP process by determining in what program areas[14] they would be eligible to bid for available positions. The Union characterized the information request as "time sensitive" because of the upcoming PTPP. The Employer did not provide the Union with any of the requested information.

May 10, 2013 and May 20, 2013 Requests for Information Relating to Potential Discipline of Two Supervisors of Attendance

The supervisors of attendance primarily focus on middle school and high school students. They meet at their assigned schools with student support teams as well as confer with various guidance counselors, principals and headmasters. They also attend court hearings, try to cull out where absent students might be, and conduct in-service trainings on student attendance issues. Supervisors of attendance work the same hours as secondary teachers plus an additional ten minutes per day. They also work the same school year calendar as secondary teachers work plus an additional ten days. On May 10, 2013 and May 20, 2013, the Union requested information pertaining to two supervisors of attendance, George P. and John C., whom the Employer alleged had failed to attend certain meetings. The Union was seeking information about the missed

[13] In addition to teachers, the teachers bargaining unit includes so-called special groups, including guidance counselors, social workers, occupational therapists, physical therapists, speech-language therapists, the highly specialized strand positions, and supervisors of attendance.

[14] Because the highly specialized strand position was a new title, the incumbents in the positions previously may have worked for the Employer in other program areas.

meetings in order to ascertain whether those meetings were scheduled during George P.'s and John C.'s regular work hours. The Employer subsequently did not provide the Union with the requested information.

May 16, 2013 Request for Information in Preparation for the PTPP

Permanent teachers who work at both traditional and non-traditional schools[15] can voluntarily redeploy or excess themselves by February 1st of each year.[16] Also, permanent teachers whom the Employer has notified[17] will not have a placement in the next school year are involuntarily excessed.[18] Both voluntarily and involuntarily excessed teachers can bid by seniority on open positions in their program areas on the transfer list.[19] Teachers submit their bids based on seniority, and a maximum of three teachers bid on each vacancy on the transfer list.[20] Teachers apply for up to five vacancies in priority order. Excessed teachers who did not receive one of the positions for which they bid are placed in the PTPP.

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[15] Non-traditional schools include pilot schools and certain charter schools.

[16] Prior to the 2012-2013 school year, only permanent teachers at non-traditional schools could voluntarily excess themselves by February 1st of each year.

[17] Permanent teachers whom the Employer involuntarily excesses are notified before the transfer list is posted, which is some time in the period from February to April.

[18] Permanent teachers are often involuntarily excessed because of school closings and mergers, loss of grants or funding for a program, or declining student enrollment, which results in the elimination of positions by inverse seniority.

[19] Tomeka Cribb-Jones of the Employer's Office of Human Resources provided the Union with a copy of the 2013 transfer list.

[20] In order to fill a vacancy on the transfer list, at least two teachers must bid on the vacancy in order to allow the Employer to select between the bidders. If a position on the transfer list does not receive a sufficient number of bidders, it would be placed in the PTPP.

Article V(K) of the 2000-2013 CBA and the 2013-2016 CBA describes the procedure for the PTPP. The Union advises excessed teachers on how to participate in the PTPP and double-checks the list of available positions in the PTPP with other information sources. The Union verifies that: all available positions were actually listed in the PTPP; [21] unavailable positions were not mistakenly listed; [22] and any positions that became available after the transfer list procedure had been completed were also included in the PTPP.[23] Also, the Union reviewed whether the PTPP included any restored positions from which teachers were involuntarily excessed but for which those teachers have a contractual right to return, so-called attachment rights.[24]

On May 16, 2013, the Union requested information to cross-check and verify the availability and breadth of the positions included in the upcoming PTPP. The Employer subsequently did not provide the Union with any of the requested information but conducted the PTPP as scheduled. The Union was unable to verify the accuracy of the

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[21] The positions of teachers who voluntarily excessed themselves should be listed in the PTPP as well as the positions held by provisional teachers whom the Superintendent had not made permanent and positions held by provisional teachers who had not received letters of reasonable assurance.

[22] Positions held by provisional teachers, who had received letters of reasonable assurance, should not be listed in the PTPP if the Union building representative signed off on the position. Positions held by provisional teachers, who received letters of reasonable assurance, but whose Union building representative refused to sign off on their positions, should be designated as reasonable assurance positions in the PTPP, in order to notify bidders that the provisional teacher could be re-appointed to the position instead of them.

[23] Positions may become available after the transfer list procedure is completed due to changed circumstances, including resignations, retirements and deaths.

[24] Permanent teachers have attachment rights for one calendar year when the position is restored.

available positions in the PTPP, to confirm that all available positions were included in the PTPP, and to identify whether all eligible teachers participated in the PTPP.

Available positions were listed online five days in advance of the PTPP, and teachers electronically bid on five positions within their primary program areas.[25] The teachers' names were then sent to the schools' personnel subcommittees, which included the principal or headmaster. The personnel subcommittees decided which teachers they wanted to interview and which teacher ultimately would be selected for the position. If teachers were not selected for any of the positions on which they bid,[26] the Employer offered them on a seniority basis any other positions that opened up in their program areas.

May 21, 2013 Request for Results of the 2013 School Climate Survey

On or about March 24, 2013, the Employer electronically distributed a so-called school climate survey to members of the teachers bargaining unit.[27] The school climate survey asked members of the teachers bargaining unit about their working conditions by focusing on interactions between administrators and teachers, including whether the interactions were respectful and productive, as well as the manner in which performance evaluations took place. Approximately eight weeks later, the Union requested the results of the school climate survey in order to assess the information that

[25] If a teacher's primary program area had less than five available positions, the teacher was required to bid on all the available positions.

[26] Prior to September 2012, excessed teachers, who participated in the PTPP, bid on three positions based on their seniority. After three teachers bid on a position, the position was no longer available for further bidding and the personnel subcommittee would choose one of the three bidders to fill the position.

[27] In the prior thirty years, the Employer had distributed a school climate survey to members of the teacher's bargaining unit on two or three occasions.

unit members' provided about their working conditions, and to help the Union formulate proposals for successor contract negotiations that were responsive to unit members' needs. The Employer subsequently did not respond to the Union's May 21, 2013 information request.

May 30, 2013 Request for Information Relating to the School Committee's Establishment of a System for Implementing Settlement Agreements and Arbitration Awards

The language in Article X(E)(7) has been present in the parties' collective bargaining agreements for at least thirty years. In certain instances prior to July 18, 2012, the Employer failed to comply in a timely manner with arbitration awards or settlement agreements. On July 18, 2012, the Union, citing Chapter 66, §10 (Public Records Law), Chapter 150E, and Article IX(C)(7), made a request for information concerning the Employer's compliance with Article X(E)(7). Thereafter, the Union prevailed in an arbitration case involving 100 team facilitators, which resulted in a monetary award of nearly $2 million dollars. The Employer did not pay the monies owed for approximately six months. Because the Employer did not provide the requested information, the Union reiterated its request on May 30, 2013. The Employer subsequently did not provide the Union with the requested information.

June 5, 2013 Request for a Copy of the Playworks Contract

During the 2012-2013 school year, McCarthy was contacted by a bargaining unit member[28] at the Curtis Guild Elementary School, who informed McCarthy that a private

[28] The record does not identify the specific bargaining unit to which the member belonged.

vendor called Playworks[29] was overseeing students at recess and in the classrooms while teachers[30] were on planning and development time (P&D).[31] Previously, while classroom teachers were on P&Ds, their students took additional math or science classes or worked with specialists to study art or computer science.

On June 5, 2013, the Union requested a copy of the Playworks contract, and the Employer provided a copy of the contract nearly sixty days later. Article II of the 2010-2013 and 2013-2016 CBAs for the teacher's unit provides for a Joint Steering Committee that includes representatives from the Union, the Employer and parent groups. The superintendent and the president of the Union are the co-chairs of the Joint Steering Committee. Under certain circumstances, the Joint Steering Committee reviews the contracts of outside educational vendors, but did not review the Playworks contract at issue here.[32]

July 2, 2013 Request for Disclosure of Excess Seating Capacity Data

For a lengthy period prior to the 2012-2013 school year, the Employer has maintained that it has less students enrolled in certain schools than it has available seats at those schools, which is commonly referred to as excess capacity or surplus

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[29] Superintendent Johnson, in an August 6, 2012 letter to former Mayor Thomas Menino, described Playworks as: "providing safe, healthy and inclusive play and physical activity to schools, at recess throughout the school day."

[30] Students in elementary school, which is either kindergarten through fifth grade or kindergarten through eighth grade, have fifteen to twenty-minute recess periods each day. Teachers supervise their students while at recess or join with other teachers to provide rotating recess coverage.

[31] P&Ds provide elementary school teachers with individualized, self-directed planning periods four times per week with each period being forty-eight minutes in length.

[32] The Joint Steering Committee has not met in the past three years.

capacity. During the 2012-2013 school year, the Employer commissioned a study to examine excess capacity. On July 2, 2013, the Union requested a copy of the study and the underlying data used to compile the study, because the Union previously had determined that excess capacity in certain schools often was a precursor to the closure of those schools and the involuntary displacement of unit members. The Employer subsequently did not provide the Union with the requested information or give any explanation why the information was not provided.

Opinion

Count I-Failure to Provide Information and Failure to Timely Provide Information

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. Higher Education Coordinating Council, 23 MLC 266, 268, SUP-4142 (June 6, 1997). The employee organization's right to receive relevant and reasonably necessary information is derived from the statutory obligation to engage in good faith collective bargaining, including both grievance processing and contract administration. Boston School Committee, 10 MLC 1501, 1513, MUP-4468 (April 17, 1984). The Commonwealth Employment Relations Board's (CERB) standard in 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, SUP-4509 (January 11, 2000); Board of Trustees of University of Massachusetts (Amherst), 8 MLC 1139, SUP-2306 (June 24, 1981). Information about terms and

conditions of employment of bargaining unit members is presumptively relevant and necessary to an employee organization to perform its statutory duties. City of Lynn, 27 MLC 60, 61, MUP-2236, 2237 (December 1, 2000). The relevance of the requested information must be determined by the circumstances that existed at the time when the exclusive bargaining representative made the request.

Here, the Union requested information relating to: a) the highly specialized strand positions, b) the two supervisors of attendance, c) the PTPP, d) the 2013 school climate survey, e) any system for implementing settlement agreements and arbitration awards, f) data about excess seating capacity, g) communications and/or meetings between individual School Committee members and Superintendent Johnson or other Employer personnel, any visits by School Committee members to the Employer's facilities, and any changes to the Employer's proposals as a result of discussions with School Committee members, prior to those proposals being voted upon at School Committee meetings; h) the Playworks contract, and i) the sign language interpreters and lead sign language interpreters.

Employer's Jurisdictional Defense

As a threshold matter, the Employer argues that because two of the information requests were made pursuant to Chapter 66 (Public Records Law), the CERB does not have jurisdiction to decide whether the Employer's failure to provide the requested information violates that provision of the Law. The parties stipulated that the Union made the requests for information about the establishment of a system for implementing settlement agreements and arbitration awards and for information about School Committee members' communications, meetings and visits and any changes to the

Employer's proposals as a result of discussions with School Committee members pursuant to the Public Records Law. It is also undisputed that the CERB does not have jurisdiction to enforce Chapter 66. However, when the Union made its July 18, 2012 request for information about the establishment of a system for implementing settlement agreements and arbitration awards, it also cited Chapter 150E thereby triggering the CERB's jurisdiction.

In contrast, when the Union requested the information about the School Committee members, it solely referenced Chapter 66. Also, when the Union remitted a check for $3,920 to the Employer on June 11, 2013, it noted in an attached letter that the Union's willingness to remit the monies was "premised on the fact that [the] request was brought pursuant to G.L. c.66 rather than G.L. c.150E or Article IX(C)(7) of the collective bargaining agreement." Because the Union made the information request solely pursuant to Chapter 66, the Union's right to challenge the Employer's failure to provide the requested information arises exclusively from the provisions of Chapter 66 rather than from Chapter 150E. Furthermore, I am not persuaded by the Union's argument in its reply brief that the information request was brought within the ambit of Chapter 150E merely because the Union cited the Employer's failure to provide the requested information in its charge of prohibited practice and during the hearing. Thus, I dismiss the allegation that the Employer's failure to provide information about individual School Committee members' communications, meetings, and visits, and any changes in the Employer's proposals as a result of discussions with School Committee members violated Section 10(a)(5) and, derivatively, Section 10(a)(1) of the Law.

Relevant and Reasonably Necessary Information

The Employer, in its answer to the amended complaint, denied that the requested information was relevant and reasonably necessary to the Union in its role as the exclusive bargaining representative. I turn first to the Union's request for information about incumbents in the highly specialized strand positions, including their assignments, their program areas and seniority dates, as well as the funding sources for their positions. Certain of those incumbents had received involuntary excess notices, which might require them to participate in the PTPP. The Union needed the information to fulfill its obligation as the exclusive representative by assisting unit members to identify all of the program areas in which they could be eligible to apply for positions in the PTPP and to maximize their opportunities to secure new positions.

Also, the Union requested information about two supervisors of attendance George P. and John C., whom the Employer placed on paid administrative leave pending disciplinary hearings because of their alleged failures to attend student support meetings. The Union requested the dates, times, and school locations of the meetings that the Employer had alleged that George P. and John C. had failed to attend, their school assignments for the 2012-2013 school year, and their job descriptions. The Union sought the information about the meetings in order to ascertain whether the alleged missed meetings took place during George P.'s and John C.'s regularly scheduled hours, when they arguably would be obligated to attend. The information also was necessary for the Union to defend the employees at their upcoming

disciplinary hearings [33] and if the employees[34] received discipline, to assess whether to file grievances challenging that discipline.

Third, the Union requested information about the PTPP in order to ensure that the Employer had adhered properly to the procedure described in Article V(K) of the 2000-2013 and the 2013-2016 CBAs. Specifically, the Union asked for facts about provisional teachers, voluntarily excessed teachers, involuntarily excessed teachers, and positions that became vacant after the transfer list was completed. The Union needed the information in order to verify that: all available positions were listed in the PTPP, unavailable positions were not mistakenly listed, and any positions, which became available after the transfer list procedure had been completed, were also included in the PTPP.

Additionally, the Union solicited the results of the 2013 school climate survey that the Employer had distributed electronically to members of the teachers bargaining unit. The survey asked unit members about their working conditions, including whether their interactions with administrators were respectful and productive, as well as the manner in which performance evaluations took place. The Union requested the survey results in order to assist it in formulating bargaining proposals for successor contract negotiations that would be responsive to unit members' concerns. Cf. Trustees of the University of Massachusetts Medical Center, 28 MLC 102, 107-108 (2001) (information about

[33] The disciplinary hearings ultimately did not take place.

[34] The Employer contends that the Union subsequently became aware of the dates and locations of student support meetings that George P. allegedly missed because the Employer referenced that information in the March 14, 2012 written reprimand that he received. However, the written reprimand, which was not copied to the Union, does not constitute a response to the Union's request for information.

potential plans to affiliate, merge, consolidate, or develop a joint venture with other facilities is relevant and reasonably necessary to the union's role as the employees' bargaining agent, notwithstanding the absence of a pending related grievance, on-going negotiations, or the administration of the contract).

Fifth, the Union sought information in July 2012 relating to the Employer's establishment of a system for implementing settlement agreements and arbitration awards, and then reiterated the request in May 2013. The Union needed the information because in prior instances, the Employer had failed to timely comply with settlement agreements and arbitration awards. Even after the Union made the July 2012 information request, another instance arose where the Employer took over six months to comply with an arbitration award, which was not appealed, with a monetary remedy of over $2 million dollars.

Also, the Union requested a copy of the study that the Employer commissioned to examine excess capacity and the underlying data, which was used to compile the study. The Union previously had concluded that a showing of excess capacity in schools or programs was often a precursor to the closings of those schools and programs and the involuntary displacement of unit members who worked there. The Union requested the information in order to be prepared to act on behalf of its members if school or program closings appeared imminent.

Seventh, the Union sought a copy of the contract between a private vendor, Playworks, and the City of Boston. The Union needed the information to confirm a unit member's observations that Playworks' employees were performing duties that teachers or specialists at the Curtis Guild School previously performed, i.e. working with students

who were at recess or whose teachers were on P&D. The Union also sought to examine the Playworks contract to determine whether the Joint Steering Committee should have reviewed the contract, which it had not done.

Finally, the Union sought certain information about the sign language interpreters and the lead sign language interpreters, including lists of those employees, their work locations, rates of pay and hiring dates, and most recent job descriptions for the positions. The Union requested the information to ensure that the Employer had properly classified individual sign language interpreters and lead sign language interpreters by placing them in the appropriate bargaining unit(s) and paying them the correct compensation.

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, MUP-5905 (November 2, 1980); Adrian Advertising a/k/a Advanced Advertising, 13 MLC 1233, 1263, UP-2497 (November 5, 1986), aff'd sub nom., Despres v. Labor Relations Commission, 25 Mass. App. Ct. 430 (1988)). Here, the Employer has not expressed any concerns about the disclosure of the information to the Union. Instead, the Employer contends that the volume and frequency of the Employer's information requests, as well as the unusually high staff turnover in the Employer's Office of Labor Relations, were the reasons why it did not provide or did not timely provide the

information. The Employer emphasizes that it never actually refused to provide the information and thus, did not act in bad faith.

It is undisputed that the Employer did not provide the Union with any information about six of the above-referenced six requests and only gave the Union information about the sign language and lead sign language interpreters and the Playworks contract, information which also are the subjects of the failure to timely provide allegation. While the volume and frequency of the information requests and the staff turnover arguably could be factors to be considered when analyzing the allegation that the Employer failed to timely provide information or when analyzing the appropriate remedy in the case, those factors do not constitute a defense to the Employer's unlawful failure to provide any of the other requested relevant and reasonably necessary information. Further, prior CERB case law does not require a union to specifically show bad faith to prevail on a claim that the Employer failed to provide information. See Commonwealth of Massachusetts, 11 MLC 1440, 1444, SUP-2746 (February 21, 1985) (requiring an employer, who refused to provide requested relevant and reasonably necessary information to a union, to post a notice to employees despite its claims that it acted in "good faith"). Moreover, the Employer has not presented any evidence or arguments that the requested information is not in its possession or control. See Bristol County Sheriff's Department, 32 MLC 76, 81, MUP-01-3086 (August 3, 2005) (where employer failed to establish that it did not possess or control certain requested information, or that the information did not exist, the CERB could not conclude that it acted lawfully by failing to respond to the union's information request).

Accordingly, I conclude that the Employer violated Section 10(a)(5) and, derivatively, Section 10(a)(1) of the Law by failing to provide relevant and reasonably necessary requested information relating to: a) the highly specialized strand positions, b) the potential discipline of two supervisors of attendance, c) the PTPP, d) the results of the 2013 school climate survey, e) the School Committee's establishment of a system for implementing settlement agreements and arbitration awards, and f) data about excess seating capacity.

Failure to Timely Provide Information

I next must consider whether the Employer failed to provide the requested information about the Playworks contract and the sign language and lead sign language interpreters in a timely manner. The facts before me establish the following time line. On April 30, 2013, the Union requested information about the sign language interpreter and the lead sign language interpreters, and the Employer provided the information on June 12, 2013. On June 15, 2013, the Union requested a copy of the Playworks contract, and the Employer provided the information on August 2, 2013. The Union filed its prohibited practice charge on August 23, 2013.

An employer may not unreasonably delay furnishing requested information that is relevant and reasonably necessary. Boston School Committee, 24 MLC 8, 11, MUP-1410, 1412 (August 26, 1997). In determining whether a delay in the production of information is unreasonable, the CERB considers a variety of factors including: 1) whether the delay diminishes the employee organization's ability to fulfill its role as the exclusive representative; Id.; 2) the extensive nature of the request, UMass Medical Center, 26 MLC 149, 158, SUP-4392, 4400 (March 10, 2000); 3) the difficulty of

gathering the information, Id.; 4) the period of time between the request and the receipt of the information, Higher Education Coordinating Council, 23 MLC at 269; and 5) whether the employee organization was forced to file a prohibited practice charge to retrieve the information. Board of Higher Education, 26 MLC at 93.

Here, the Employer took approximately six weeks to respond to both requests, but the information was provided to the Union prior to its filing of the prohibited practice charge. As referenced above, the Employer contends that the volume and frequency of the Union's requests for information, as well as high staff turnover, were the reasons for the delays in providing the information. Although the Union did make eight information requests during the period from late April to early August 2013, the two requests at issue here do not appear to be so complex that the Employer required extra time to respond to those requests. Compare UMass Medical Center, 26 MLC at 158 (finding delay in providing information reasonable because of the extensive nature of the request and the difficulty in calculating the information). Further, the Employer does not argue that the complexity of the requests was the reason for the delay.

Also, the facts before me show that the Employer received the Union's request for information about the sign language and lead sign language interpreters and even provided that information while the Office of Labor Relations still had three staff attorneys and a director, thereby undercutting the claim that staff turnover was the basis for the six week delay in providing that information.[35] Further, other than broad statements, the Employer has not established a nexus between staff turnover and the six-week delay in providing a copy of a discrete item-the Playworks contract- to the

[35] The Employer's Office of Labor Relations typically employs four staff attorneys and a director.

Union, especially in light of the fact that Greene provided the information shortly before his resignation.

The Union had the right to review the information about the sign language and lead sign language interpreters and the Playworks contract and make its own assessment of whether or not the information would be useful in its role as bargaining representative. See City of Boston, 35 MLC 95, 102, MUP-04-4050 (December 10, 2008) (raising the possibility that a union and an employer could review the same information and draw different conclusions as to the usefulness of the information). When the Employer failed to give the Union access to the requested information in order to make the necessary assessment about the usefulness of the information contained therein, the Employer diminished the Union's role as the exclusive bargaining representative. Compare Board of Higher Education, 26 MLC at 93 (diminishing union's role as bargaining representative because the delay in providing information hampered union's ability as the exclusive representative) with Massachusetts State Lottery Commission, 22 MLC 1468, 1472, SUP-3666, 3667, 3676 (February 2, 1996) (during negotiations over a reorganization, one-day delay in providing information did not impact union as representative because union had made no proposals at two earlier bargaining sessions prior to the information request). Accordingly, on the facts before me, the Employer's approximate six-week delays in providing the Union with requested information about the Playworks contract and the sigh language and lead sign language interpreters was unreasonable.

Mootness

Contrary to the Employer's claims, the delayed production of the documents does not render this allegation moot. Compare Bristol County Sheriff's Dep't, 30 MLC 47, 51-52, MUP-02-3345 (September 19, 2003) (compelling a union to file charges to obtain information to which it is legally entitled does not effectuate the purposes of the Law). The CERB recognizes an exception to the mootness doctrine if there is a possibility that the challenged conduct will recur in substantially the same form, especially if the asserted violator contends that it was properly engaged in the conduct. City of Boston, 41 MLC 119, 129, MUP-13-3771, MUP-14-3466, MUP-14-3504 (November 7, 2014); City of Cambridge, 35 MLC 183, 186, MUP-04-4429 (March 5, 2009). In this case, the Employer provided no assurance that its conduct would not recur by admitting that it had an obligation to timely provide the Union with relevant and reasonably necessary information. Therefore, I find that the case is not moot.

Accordingly, I find that the Employer violated Section 10(a)(5) and, derivatively, Section 10(a)(1) of the Law by failing to timely provide the Union with relevant and reasonably necessary information that the Union had requested concerning the sign language and lead sign language interpreters and the Playworks contract.[36]

Counts II and III-Repudiation

Section 6 of the Law requires public employers and unions that represent their employees to meet at reasonable times to negotiate in good faith regarding wages, hours, standards of productivity and performance, and any other terms and conditions

[36] The Union in its post-hearing brief made a general statement that the Employer failed to provide all of the requested information regarding the sign language interpreters and lead sign language interpreters. However, the Union has not identified what information it still contends is outstanding. Additionally, the Union did not seek to amend the complaint to allege a failure to provide all requested information rather than a failure to timely provide information.

of employment. The statutory obligation to bargain in good faith includes the duty to comply with the terms of a collectively bargaining agreement. Commonwealth of Massachusetts, 26 MLC 165, 168, SUP-3972 (March 13, 2000) (citing City of Quincy, 17 MLC 1603, MUP-6710 (March 20, 1991); Massachusetts Board of Regents of Higher Education, 10 MLC 1196, SUP-2673 (September 8, 1983)). 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. Town of Falmouth, 20 MLC 1555, 1559, MUP-8114 (May 16, 1994), aff'd sub nom., Town of Falmouth v. Labor Relations Commission, 42 Mass. App. Ct. 1113 (1997). If the evidence is insufficient to find an agreement or if the parties hold differing good faith interpretations of the language at issue, the CERB will conclude that no repudiation has occurred. Commonwealth of Massachusetts, 18 MLC 1161, 1163, SUP-3439, SUP-3556 (October 16, 1991).

Article IX(C)(7) of the 2013-2016 CBA

The issue in Count II of the Complaint is whether the Employer repudiated Article IX)(C)(7) by failing to provide and failing to timely provide the information that is described in Count I of the Complaint. Article IX(C)(7) of the 2013-2016 CBA states:

> 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.

The CERB gives clear meaning to bargained-for language and does not inquire into the parties' intent where the words of the agreement are unambiguous. Commonwealth of Massachusetts, 28 MLC 339, 347, SUP-4333 (May 17, 2002); see also Boston School Committee, 22 MLC 1365, 1376, MUP-8125 (1996). I determined above that the

requested information relating to: a) the highly specialized strand positions, b) the two supervisors of attendance, c) the PTPP d) the 2013 school climate survey, e) a system for implementing settlement agreements and arbitration awards, and f) data about excess seating capacity was relevant and reasonably to the Union in its role as exclusive representative. Reading the language of Article IX(C)(7) carefully, giving the words their plain and normal meaning, the Employer's failure to provide the requested information constitutes a repudiation of Article IX(C)(7) in violation of Section 10(a)(5) and, derivatively, Section 10(a)(1) of the Law. [37]

However, I decline to find that the Employer repudiated Article IX(C)(7) by failing to provide the Union with information about individual School Committee members' communications, meetings and visits, and any changes in the Employer's proposals that resulted from discussions with School Committee members. Union counsel specifically noted in his June 11, 2013 email message that the request for information about the School Committee members was not being made pursuant to Article IX(C)(7) but instead, was being made pursuant to Chapter 66.[38] Therefore, I dismiss that allegation.

Also, the Union contends that the Employer repudiated Article IX(C)(7) by failing to timely provide information about the sign language interpreters and lead sign

[37] As the Employer has expressed no concerns about disclosure of the requested information to the Union, the present case can be distinguished from two prior information cases involving the same parties, Boston School Committee, 36 MLC 208, 214, 215 (H.O. June 25, 2010) and Boston School Committee, 37 MLC 57, 62, ,MUP-07D-5123 (H.O. August 31, 2010). Both cases interpreted Article IX(C)(7) in light of an arbitrator's award finding an exception to the information production requirement where the Employer has a legitimate and substantial concern about disclosure unique to the circumstances of a particular pending case.

[38] Because I conclude that the above-referenced request was made pursuant to Chapter 66 rather than Article IX(C)(7), I need not reach the issue of whether the requested information was necessary for the Union to perform its function in collective bargaining and contract administration and as collective bargaining agent.

language interpreters and a copy of the Playworks contract. Upon review, the language in Article IX(C)(7) does not identify a time frame in which the Employer must provide the information to the Union. See Boston School Committee, 38 MLC 344, 345, MUP-09-5583 (H.O. June 28, 2012) (finding that Article IX(C)(7) did not specify that the employer must provide information in a timely manner). Here, because the Employer ultimately provided the information to the Union, albeit approximately six weeks after the Union made each of the requests, I do not find that the Employer repudiated Article IX(C)(7) when it failed to timely provide information about the sign language and lead sign language interpreters and the Playworks contract and dismiss those allegations.

Article V(K)

The issue in Count III of the Complaint is whether the Employer's failure to provide requested information relating to the PTPP, specifically information about certain provisional and permanent teachers, repudiated Article V(K) of the 2013-2016 CBA. Article V(K)(2) states in pertinent part:

> The BTU shall receive a list of provisional teachers with letters of reasonable assurance and teachers whom the Superintendent have made permanent prior to the beginning of the transfer process.

Here, the Union in its May 16, 2013 letter requested, in part, a list of provisional teachers who were sent letters of reasonable assurance prior to March 15, 2013 and a list of provisional teachers made permanent by the Superintendent prior to March 15, 2013. As described earlier in this decision, the Employer failed to provide the requested information. A plain reading of Article V(K) reveals that the Employer's failure to provide the requested information constitutes a repudiation of that provision in violation of Section 10(a)(5) and, derivatively, Section 10(a)(1) of the Law.

Remedy

Pursuant to Section 11 of the Law, once the CERB determines that a prohibited practice under Section 10 has been committed, it is authorized to issue a cease and desist order to the offending party "and shall take such further affirmative action as will comply with provisions of this section ... ." The phrase "further affirmative action" has been construed as granting the CERB authority to fashion appropriate orders to remedy unlawful conduct, including remedial measures not specified in Section 11. Labor Relations Commission v. City of Everett, 7 Mass. App. Ct. 826, 829 (1979). Moreover, Section 11 of the Law broadly commits the design of appropriate remedies to the CERB's discretion and expertise.

When an employer violates the Law, the CERB typically orders the employer to cease and desist from in any like or related manner interfering with, restraining or coercing employees in the exercise of their rights, guaranteed under the Law as well as to take certain affirmative action. The affirmative action here would include providing the relevant and reasonably necessary requested information, producing relevant and reasonably necessary requested information in a timely manner, and adhering to the pertinent provisions of the parties' collective bargaining agreement. However, the Union contends that the present case warrants the imposition of two extraordinary remedies. First, rather than the imposition of a cease and desist order containing the above-referenced language, the Union seeks a so-called "broad" cease and desist order enjoining the Employer from "in any other manner interfering with, restraining or coercing employees in the exercise of their rights protected under the Law." The Union

also requests that the DLR institute judicial contempt proceedings to enforce that order, if needed.

In the absence of CERB case law concerning broad cease and desist orders, I turn to consider National Labor Relations Board (NLRB) case precedent on this issue.[39] In Hickmott Foods, 242 NLRB 1357, 1357 (1979), the NLRB stated that a broad cease and desist order is warranted "when a respondent is shown to have a proclivity to violate the Act or has engaged in such egregious or widespread misconduct as to demonstrate a general disregard for the employees' fundamental statutory rights." Here, the Union argues that the Employer has a proclivity for violating the Law by failing to provide or failing to timely provide requested information. In support of its argument, the Union refers in its post-hearing brief to nine CERB or hearing officer decisions dated from 1982 to 2014, which found that the Employer had failed to provide or failed to timely provide information in violation of Section 10(a)(5) of the Law. The Union argues that past cease and desist orders have failed to cure the Employer's recidivism. Also, the Union points to Postal Service, 339 NLRB 1162, 1163 (2003) in which the NLRB concluded that a broad cease and desist order was warranted when the Postal Service was shown to have a proclivity to violate the Act by repeatedly refusing to provide requested information at many of its locations over a twenty-year period.

The CERB previously has concluded that extraordinary circumstances require extraordinary remedies. Town of Saugus, 2 MLC 1480, 1486, MUP-591 (May 5, 1976). In Higher Education Coordinating Council (HECC), 25 MLC 37, 42, SUP-4255 (August

[39] The decisions of the NLRB and the federal courts provide useful guidance in interpreting state law. See Greater New Bedford Infant Toddler Center, 12 MLC 1131, 1155, n.42, UP-2493 (August 8, 1985), aff'd 13 MLC 1620 (April 17, 1987).

24, 1998), the CERB imposed an extraordinary remedy, albeit not a broad cease and desist order,[40] where an employer had an established pattern of refusing to provide information or failing to provide information in a timely manner and prior cease and desist orders were ineffective. However, while not condoning the Employer's failure to provide or timely provide the requested information to the Union or minimizing the Union's need for that information, I conclude that the facts as presented here distinguish this case from the Postal Service case and do not warrant the issuance of a broad cease and desist order.

The breadth of a remedial order must depend on the circumstances of each case. See NLRB v. U.S. Postal Service, 486 F.3d 683, 687 (2007) (10th Cir. 2007) (citing to NLRB v. Express Publishing, Co., 312 U.S. 426, 436 (1941)).[41] The United States Supreme Court previously has concluded that a key inquiry in determining the appropriateness of a broad cease and desist order is whether the employer's actions display "an attitude of opposition to the purposes of the Act to protect the rights of employees generally." May Dept. Stores Co. v. NLRB, 326 U.S 376, 392 (1945). Here, in a nine-week period, the Union made multiple requests for information regarding eight subject areas.[42] Coincidentally, in or about that time, the number of active-duty legal

[40] The CERB's extraordinary remedy in the HECC case required the presidents or human resources directors of the colleges at issue to co-sign the postings along with a representative of HECC. See HECC, 25 MLC at 42.

[41] Postal Service, 339 NLRB at 1162 and NLRB v. U.S. Postal Service, 483 at 683 are unrelated cases.

[42] Although the Union first requested information about the establishment of a system for implementing settlement agreements and arbitration awards in July 2012, it reiterated its request for that information in May 2013. Thus, the second request was made during the relevant nine-week period.

counsel in the School Committee's Office of Labor Relations was significantly reduced. The volume of information requests in an abbreviated period of time, coupled with the Employer's demonstrated significant reduction in available labor counsel during the operative period, are the factors specific to this particular case that persuade me to exercise my discretion and issue the traditional cease and desist order. Moreover, the facts before me do not show that the Employer ever affirmatively refused to provide or refused to timely provide the requested information. Compare Albertsons, 351 NLRB 254, 260 (2007) (issuing a narrow remedial order even though the employer's failure to respond to information requests was unlawful and a persistent problem because its misconduct did not demonstrate a general disregard for the employees' statutory rights).

Second, the Union also requests the extraordinary remedy that the Superintendent or the President of the School Committee be required to read aloud the contents of the notice to employees at the next School Committee meeting. In cases where the NLRB has granted the remedy of having a respondent or its representative read the notice in public, the unlawful conduct has been egregious. See Ishikawa Gasket America Inc., 337 NLRB 175 (2001) (finding employer's surveilling and discharging of employees as well as decreasing their annual bonuses during an organizing campaign was egregious and warranted a reading of the notice). Egregious unfair labor practices make employees so afraid to exercise their rights that simply posting a notice is not enough to dispel that fear. See Charlotte Amphitheater Corp., 331 NLRB 1274, 1275-1276 (2000) (finding that traditional remedies will not adequately eliminate the effects of unfair labor practices). The reading aloud of a notice is considered necessary to enable employees to exercise their rights free of coercion.

Postal Service, 339 NLRB at 1163 (declining to order a notice reading because employer's sporadic refusals to provide information while unlawful did not constitute egregious conduct). Because the Employer's violations of the Law cannot be characterized as egregious, nor does the Union make that assertion, the traditional remedy of having the notice posted in all conspicuous places where members of the Union's bargaining units usually congregate, or where notices are usually posted, including electronically, if applicable, is adequate to reassure employees of their ability to exercise their rights under the Law.

Conclusion

Based on the record and for the reasons stated above, I conclude that the School Committee violated Section 10(a)(5) and, derivatively, Section 10(a)(1) of the Law in the manner alleged in Count I of the amended Complaint, except I dismiss the allegation that the Employer failed to provide information relating to: communications and/or meetings between individual School Committee members and Superintendent Johnson, communications and/or meetings between School Committee members and other Employer personnel, any visits by School Committee members to the Employer's facilities, and any changes to the Employer's proposals as a result of discussions with School Committee members, prior to those proposals being voted on at School Committee meetings.. Also, I conclude that the School Committee violated Section 10(a)(5) and, derivatively, Section 10(a)(1) of the Law in the manner alleged in in Counts II and III of the amended complaint, except that I dismiss the allegations that the School Committee repudiated Article IX(C)(7) of the 2006-2010 CBA by failing to provide the above-referenced information relating to the School Committee members

and by failing to timely provide requested information relating to the sign language and lead sign language interpreters and a copy of the Playworks contract.

Order

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

1. Cease and desist from:

    a) Failing to bargain in good faith with the Union by not providing requested information relevant and reasonably necessary to the Union in its role as the exclusive bargaining representative.

    b) Failing to bargain in good faith with the Union by not producing in a timely manner requested information relevant and reasonably necessary to the Union in its role as exclusive bargaining representative.

    c) Failing to bargain in good faith by repudiating Articles IX(C)(7) and V(K) of the 2013-2016 CBA.

    d) In any like or related manner, interfering with, restraining and coercing its 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) Provide the Union with previously requested relevant and reasonably necessary information relating to:

        1. Highly specialized strand positions, including:

            (a) a list of all unit members occupying highly specialized strand positions, along with each member's assignment, program area and seniority date,

            (b) a list of all bargaining unit members occupying highly specialized strand positions who received excess notices to be effective upon the conclusion of the school year 2012-2013, and

            (c) the funding source for each highly specialized strand position (i.e. whether budgeted at the school or district level).

2. The PTPP, including:

   (a) a list of all provisional teachers who were sent letters of reasonable assurance prior to March 15, 2013 and the school assignment then held by each provisional,

   (b) a copy of each letter of reasonable assurance sent to provisional teachers,

   (c) a list of provisional teachers made permanent by the Superintendent prior to March 15, 2013 and the school assignment then held by each provisional,

   (d) a copy of each letter sent to provisional teachers made permanent notifying them of that fact,

   (e) a list of the provisional teachers employed as of March 15, 2013, who were not sent letters of reasonable assurance (and not made permanent), together with their school assignments as of March 15, 2013,

   (f) the list of all teachers who voluntarily excessed themselves by February 1st and the schools from which they excessed themselves,

   (g) a list of all teachers who were involuntarily excessed by program area, and the schools from which they were voluntarily excessed, and

   (h) all positions that became vacant after the transfer list procedure was completed including, without limitation, the positions that became vacant due to deaths, resignations, retirements, restoration of funding for eliminated positions or the transfer of a unit member.

3. A copy of the results of the 2013 school climate survey.

4. Establishment of system for implementing settlement agreements and arbitration awards, including:

   (a) documents recording, reflecting, or relating to the establishment of a payment system under which specified employees are to be held accountable for compliance with Article XE(7) of the collective bargaining agreement;

(b) documents recording, reflecting, or relating to the identities of the employees specified to be held accountable for compliance with the Article X(E)(7) of the collective bargaining agreement; and

(c) documents recording, reflecting or relating to the manner in which the specified employees have been held accountable for compliance with Article X(E)(7) of the collective bargaining agreement.

5. Excess seating capacity, including:

(a) copies of any reports created in 2013 regarding the number of excess student seats available at each of the Employer's schools, and

(b) copies of any documents relied upon the in the drafting of any reports created in 2013 regarding the number of excess student seats available at each of the Employer's schools,

6. Potential discipline of two supervisors of attendance, including:

(a) for each employee, particulars of the Employer's directives, including disclosure of the dates, times and school locations of the meetings that the Employer was alleging that the John C. and George P. had failed to attend,

(b) John C.'s and George P.'s school assignments for the 2012-2013 school year, and

(c) John C.'s and George P.'s job descriptions.

b) Provide requested information in a timely manner that is relevant and reasonably necessary to the Union in its role as the exclusive bargaining representative.

c) Immediately abide by Articles IX(C)(7) and V(K) of the 2013-2016 CBA.

d) Post immediately in all conspicuous places where members of the Union's bargaining units usually congregate, or where notices are usually posted, including electronically, if the Employer customarily communicates with these bargaining unit members via intranet or email and display for a

period of thirty (30) days thereafter signed copies of the attached Notice to Employees.

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

SO ORDERED.

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF LABOR RELATIONS

MARGARET M. SULLIVAN
HEARING OFFICER

APPEAL RIGHTS

The parties are advised of their right, pursuant to M.G.L. c. 150E, Section 11 and 456 CMR 13.15, 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 Department of Labor Relations not later than ten days after receiving notice of this decision. If a Notice of Appeal is not filed within the ten days, this decision shall become final and binding on the parties.

POSTED BY ORDER OF A HEARING OFFICER OF
THE MASSACHUSETTS DEPARTMENT OF LABOR RELATIONS
AN AGENCY OF THE COMMONWEALTH OF MASSACHUSETTS

A Hearing Officer of the Massachusetts Department of Labor Relations (DLR) has held that the Boston School Committee (Employer) violated Section 10(a)(5) and, derivatively, Section 10(a)(1) of Massachusetts General Laws, Chapter 150E (Law) when it failed to bargain in good faith by: not providing the Boston Teachers Union, Local 66, AFT, AFL-CIO (Union) with requested information that was relevant and reasonably necessary to the Union in its role as the exclusive bargaining representative; b) not providing the Union in a timely manner with requested information that was relevant and reasonably necessary to the Union's role as exclusive bargaining representative; and c) repudiating Articles IX(C)(7) and V(K) of the 2013-2016 collective bargaining agreement (CBA) between the Employer and the Union.

> Section 2 of Chapter 150E gives public employees the right to form, join or assist a union; to participate in proceedings at the DLR; to act together with other employees for the purpose of collective bargaining or other mutual aid or protection; and, to choose not to engage in any of these protected activities.

The Employer assures its employees that:

WE WILL NOT fail and refuse to bargain in good faith by:

1. Not providing the Union with requested information that was relevant and reasonably necessary to the Union in its role as the exclusive bargaining representative;

2. Not producing in a timely manner requested information that was relevant and reasonably necessary to the Union in its role as the exclusive bargaining representative.

3. Repudiating Articles IX(C) (7) and V(K) of the 2013-2016 CBA.

WE WILL NOT in any like or similar manner interfere with, restrain or coerce employees in the exercise of their rights protected under the Law.

WE WILL take the following affirmative action that will effectuate the purpose of the Law:

1. Provide the Union with relevant and reasonably necessary requested information as described in the hearing officer's August 11, 2016 decision and order in Case No. MUP-13-3067.

2. Provide in a timely manner to relevant and reasonably necessary requested information to the Union.

3. Immediately abide by Articles IX(C)(7) and V(K) of the 2013-2016 CBA.

_____ _____

For the Boston School Committee Date

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED OR REMOVED

This notice must remain posted for 30 consecutive days from the date of posting and must not be altered, defaced, or covered by any other material. Any questions concerning this notice or compliance with its provisions may be directed to the Department of Labor Relations, 19 Staniford Street, 1st Floor, Boston, MA 02114 (Telephone: (617) 626-7132).