

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF LABOR RELATIONS

In the Matter of:

SHARON SCHOOL COMMITTEE

and

SHARON TEACHERS ASSOCIATION

Case Number: MUP-19-7148

Date Issued: September 30, 2022

Hearing Officer:

James Sunkenberg, Esq.

Appearances:

Jennifer King, Esq. - Representing Sharon School Committee

Jennifer Smith, Esq. - Representing Sharon Teachers Association

HEARING OFFICER'S DECISION

SUMMARY

1 The issue is whether the Sharon School Committee (Committee) violated Section
2 10(a)(5) and, derivatively, Section 10(a)(1) of Massachusetts General Laws, Chapter
3 150E (the Law) by not providing, or not providing in a timely manner, the Sharon
4 Teachers' Association (Union) with requested information that is relevant and reasonably
5 necessary to the execution of its duties as the exclusive collective bargaining
6 representative. Based on the record, and for the reasons explained below, I find that the
7 Committee violated the Law.

8 STATEMENT OF CASE

9 On February 11, 2019, the Union filed a charge of prohibited practice (Charge)
10 with the Department of Labor Relations (DLR) alleging that the Committee had violated

1 Section 10(a)(5) and, derivatively, Section 10(a)(1) of the Law by repeatedly refusing to
2 provide requested information. On May 7, 2019, a DLR investigator investigated the
3 charge. On May 23, 2019, the investigator issued a two-count Complaint of Prohibited
4 Practice (Complaint) alleging that the Committee violated the Law by: 1) not providing the
5 Union with information that is relevant and reasonably necessary for the execution of its
6 duties as the collective bargaining representative; and 2) not providing in a timely manner
7 relevant information reasonably necessary for the Union to execute its duties as the
8 collective bargaining representative. On May 14, 2021, the Committee filed its Amended
9 Answer of Respondent Sharon School Committee.¹ On June 8, 2021, I conducted a
10 remote hearing via WebEx, during which the parties received a full opportunity to be
11 heard, to examine and cross-examine witnesses, and to present evidence. On or around
12 August 27, 2021, the parties filed post-hearing briefs.

13

STIPULATIONS OF FACT

- 14 1. The Town of Sharon ("Town") is a public employer within the meaning of § 1 of
15 chapter 150E of the Massachusetts General Laws (the "Law").
16
17 2. The Sharon School Committee ("Committee") is the Town's collective bargaining
18 representative for the purpose of dealing with school employees.
19
20 3. The Sharon Teachers Association ("Union") is an employee organization within the
21 meaning of § 1 of the Law.

¹On or around June 3, 2019, the Committee filed its Answer of the Sharon School Committee/Department to Complaint of Prohibited Practice, with Affirmative Defenses; this document contained numerous evidentiary attachments. Additionally, on or around March 6, 2020, the Committee filed a Motion for Dismissal and a Motion for Dismissal or Summary Decision; attachments also accompanied these filings. After reviewing these materials, I indicated to the parties that I would defer ruling on the Committee's motions until after I had conducted an evidentiary hearing. On or around September 29, 2020, the Committee engaged successor counsel for this matter. Accordingly, I have decided this matter based upon the evidence that I received at the hearing and the submissions of successor counsel, including the arguments presented to me at the hearing and in the Committee's post-hearing brief.

- 1
- 2 4. The Union is the exclusive collective bargaining representative for certain
- 3 professional employees, including teachers, of the Town's public schools.
- 4
- 5 5. From July 1, 2017 through the fall of 2020, Dr. Victoria Greer ("Greer") was the
- 6 Superintendent of the Sharon School Department and an agent of the School
- 7 Committee.
- 8
- 9 6. By a letter dated December 4, 2018 bargaining unit member BL was placed on
- 10 paid administrative leave.
- 11
- 12 7. By an email dated December 13, 2019,² the Union through its attorney, Daniel
- 13 Fogarty, sent the School Committee a request for information including: BL's
- 14 personnel file, the School Committee's sexual harassment and assault policies,
- 15 and copies of the complaints filed with the school district that the Committee relied
- 16 on in placing BL on administrative leave.
- 17
- 18 8. By an email dated December 17, 2018, the School Committee, through its attorney
- 19 Harry C. Beach, responded, acknowledging the Union's information request and
- 20 indicated that it could not provide some information because its investigation was
- 21 ongoing.
- 22
- 23 9. By an email dated December 18, 2018, the School Committee, through its attorney
- 24 Harry C. Beach, responded to the Union's information request by providing the
- 25 requested policies and BL's personnel file.
- 26
- 27 10. By letter dated January 2, 2019, Greer suspended bargaining unit member BL
- 28 without pay following sexual harassment complaints filed against BL.
- 29
- 30 11. On January 3, 2019, Attorney Daniel Fogarty sent a letter on behalf of the Union
- 31 to the Committee's attorney, Harry Beach, Esq. requesting information so it could
- 32 meaningfully respond to BL's suspension and investigate any potential grievances.
- 33
- 34 12. On January 7, 2019, the Committee, through its attorney, refused to provide the
- 35 information the Union requested on January 3, 2019, instead directing the Union
- 36 to contact the Sharon Police Department.
- 37
- 38 13. Through correspondence dated January 7, 2019, the Union refreshed its request
- 39 to the School Committee.
- 40
- 41 14. On January 10, 2019, the Union filed a grievance regarding BL's January 2, 2019
- 42 suspension without pay.
- 43
- 44 15. On January 22, 2019, the Union refreshed its request for information.

²The correct date is December 13, 2018.

- 1
2 16. On January 25, 2019, the School Committee responded and refused to provide
3 the requested information.
4
- 5 17. On February 1, 2019, Greer suspended BL without pay again, citing the allegations
6 underlying the January 2 suspension and a new allegation.
7
- 8 18. On February 11, 2019, Greer notified the Union and BL of her intention to terminate
9 BL's employment. Enclosed with Greer's Notice of Intent to Terminate was a report
10 from Assistant Superintendent Elizabeth Murphy of the Committee's Title IX
11 investigation dated January 2, 2019.
12
- 13 19. In her February 11 Notice, Greer explained that the Title IX investigation, on which
14 she relied at least in part in choosing to first suspend and then terminate BL, was
15 based on documents and at least 15 staff interviews. Greer indicated in her Notice
16 that the Committee would not provide the Union with the names of the students,
17 teachers or administrators interviewed during the Committee's investigation, or
18 their statements.
19
- 20 20. On February 11, 2019, the Union filed a charge of prohibited practice in the above
21 captioned matter.
22
- 23 21. On February 14, 2019, the Union reiterated its previous requests for information
24 and requested new information so that it could respond to Greer's intention to
25 terminate BL and further investigate and evaluate ongoing and potential
26 grievances.
27
- 28 22. On February 15, 2019, the Union filed a second grievance regarding BL's
29 discipline.
30
- 31 23. On February 25, 2019, the Committee again refused to provide information
32 responsive to the Union's request because of the ongoing criminal matter.
33
- 34 24. On February 26, 2019, the Union reiterated its request for information and detailed
35 information that it had not received from the Committee.
36
- 37 25. On February 27, 2019, the Union, BL, and Attorney Fogarty met with Greer,
38 Attorney Beach, and the Sharon Public Schools Human Resource Director to
39 review the intention to terminate BL's employment.
40
- 41 26. In a letter dated March 18, 2019, Greer terminated BL's employment.
42
- 43 27. On April 24, 2019, the Committee provided the Union with a redacted copy of the
44 Sharon Police Department's reports regarding allegations against BL.
45

1 28. On May 1, 2019, the Union presented its two grievances to the Committee at Level
2 3 of the parties' grievance procedure.³

3
4 29. On May 3, 2019, the Committee, acting through Attorney Beach, provided the
5 Union with notes from 12 of the 15 interviews the Committee conducted during its
6 investigation into the allegations against BL.

7
8 30. On May 7, 2019, the Department of Labor Relations held an In-Person
9 Investigation in the above captioned matter.

10
11 31. On May 8, 2019, the Committee, acting through Attorney Beach, provided the
12 Union with notes from 1 of the 15 interviews the Committee conducted during its
13 investigation into the allegations against BL.

14
15 32. On May 19, 2021, the Committee provided the Union with: (a) a police incident
16 report dated December 5, 2018; (b) student statements to Officer Hocking dated
17 November 15, 2018; (c) District e-mails re: BL; (d) Libano student interview notes
18 (undated) and (e) Title IX investigation interview notes of a parent.

19
20 FINDINGS OF FACT

21 Background: Initial Information Request and Initial Response

22 By letter dated December 4, 2018, Superintendent Dr. Victoria Greer (Greer)
23 suspended BL, a teacher and member of the bargaining unit, with pay pending further
24 investigation of "formal complaints of sexual harassment identifying you as the alleged
25 perpetrator," and she directed BL to "refrain from all contact with any staff, student, and
26 parent/family of the Sharon Public Schools" except his Union representative. Greer's
27 letter indicated that the Sharon Public Schools (District) had received the formal
28 complaints that same day, December 4, 2018. By email on December 13, 2018, to
29 Assistant Superintendent Elizabeth Murphy, the Union's attorney, Daniel Fogarty
30 (Fogarty), requested: 1) a copy of BL's personnel file and any and all other documents
31 maintained by the District concerning BL's employment; 2) a copy of the District's sexual

³As of the date of the hearing, the grievances were consolidated for arbitration, which had been placed in abeyance pending resolution of the criminal matter related to this case.

1 harassment and assault policy; and 3) a copy of the formal complaints filed with the
2 District concerning BL.

3 By email on December 17, 2018, the Committee's attorney, Harry Beach (Beach),
4 responded to the Union's request as follows:

- 5 1. I have requested [BL's] file from my client and expect to receive it late today or
6 early tomorrow. Once I review it, I will consult with my client and respond to you.
7 To the extent [BL's] file includes complaints and investigatory materials, please
8 also see my response to your No. 3 below.
9
- 10 2. I will gather these and get them to you. In the meantime, you may also access the
11 School Committee's various policies at the Sharon School Department website.
12
- 13 3. As you may know, there are ongoing investigations regarding [BL], and the School
14 Department is cooperating with them. We are not at liberty to disclose documents
15 that have been generated by other investigatory agencies, and we cannot disclose
16 documents that could prejudice those investigations. As to the School
17 Department's own investigation, which is ongoing, we cannot disclose information
18 that prejudices that investigation or impinges on the personal privacy of third
19 parties. Within these parameters, I will review [BL's] personnel file and consult with
20 my client regarding appropriate disclosures (if any).
21

22 By follow-up email on December 18, 2018, Beach provided eleven policies, including the
23 sexual harassment and assault policy, "that are or may be relevant to the ongoing
24 investigations," and BL's personnel file, "redacted of documents that may infringe on the
25 personal privacy of third parties and/or documents germane to the ongoing investigation
26 of [BL]." That evening, Fogarty responded that he was "concerned about what information
27 may have been withheld or redacted," and that he would contact Beach to address that
28 issue "once I have had an opportunity to more fully review your response."

29 January 3, 2019 Information Request and Response

30 By letter dated January 2, 2019, Greer suspended BL without pay, effective that
31 day. In relevant part, this letter states:

1 Since December 4, 2018, we have received additional information that supports
2 the allegations against you, specifically, that you have engaged in the sexual
3 harassment and/or sexual assault of one or more Sharon Students. It is my
4 understanding that these investigations are ongoing, including by the Norfolk
5 County District Attorney's Office.
6

7 In addition, we have received information...that despite my clear instruction to you
8 of December 4, 2018, you have contacted and communicated with a group of
9 Sharon students regarding certain academic matters. This misconduct, at
10 minimum, constitutes insubordination. In addition, your contact and
11 communications with the Sharon students could be reasonably regarded as an
12 effort to intimidate those students in their cooperation with the ongoing
13 investigations, because your communications imply that you intend to return to
14 your teaching position and resume your authority over the students with respect to
15 grades and the National Honor Society.
16

17 For these reasons, effective today, you are suspended without pay from your
18 position as teacher at Sharon High School. For good cause, this suspension
19 without pay is effective immediately, given the risk that you pose to Sharon
20 students based on the information we have received.
21

22 You may review this decision with me. If you want to, please contact my office and
23 we can schedule a date and time to meet. If you elect to meet with me, you may
24 bring Attorney Fogarty and he may represent you in our meeting. At our meeting,
25 you will have the opportunity to provide me with information pertinent to my
26 suspension of you, and your status as a teacher at Sharon High.
27

28 By letter dated January 3, 2019, Fogarty requested that Beach contact him "to
29 schedule a time to review the District's actions at a mutually convenient time." Fogarty
30 also requested additional information. In relevant part, his letter to Beach states:

31 [P]lease provide the following information that is relevant and reasonably
32 necessary to the STA's representation of [BL] and its investigation of potential
33 grievances related to the District's recent actions, and for the STA and [BL] to
34 meaningfully review the District's disciplinary decision:
35

- 36 1. Any and all formal complaints of sexual harassment against [BL];
- 37
- 38 2. Any and all "additional information" referenced in the Superintendent's January
39 2, 2019 letter;
- 40
- 41 3. Any and all documents or other information related to the District's investigation
42 into [BL], including but not limited to:

- 1 a. A list of all individuals interviewed by the District related to allegations
- 2 against [BL], and the date of each such interview;
- 3 b. A copy of any and all transcripts or recordings of any interview
- 4 concerning the allegations against [BL];
- 5 c. A copy of any and all notes, summaries or other documents taken during
- 6 or created as a result of any interview related to the investigation[;]
- 7 d. A copy of any and all other documents or information provided to the
- 8 District related to its investigation of [BL][.]
- 9

- 10 4. Any and all other information relied on by the District in deciding to suspend
- 11 [BL] without pay effective January 2, 2019.
- 12

13 Please respond to this request as soon as possible to allow the STA and [BL]
14 sufficient time to investigate potential grievances and prepare a response to the
15 District's January 2, 2019 Letter. If you have any questions or concerns about this
16 request, or the provision of responsive information, please contact me directly to
17 discuss this issue further. The STA and [BL] do not intend this to be an
18 exhaustive request, and they both reserve their rights to request additional
19 information as necessary.
20

21 By email on January 7, 2019, Beach responded to Fogarty that Beach was "around

22 this morning if you want to talk." Beach's email continues:

23 As an interim measure, you should direct your questions and requests for
24 information/documents to Lt. Steve Coffey of the Sharon Police Department. As
25 you can appreciate, the School Department is not at liberty at this time to disclose
26 information or documents which would impede or interfere with the ongoing
27 criminal investigation. Once the criminal investigation is concluded, the School
28 Department can revisit the matter with you.
29

30 Later that morning, Fogarty responded to Beach that:

31 I realize the District may want to withhold the requested information during the
32 pendency of any outside investigations. However, the District is obligated to
33 provide this information pursuant to chapters 71 and 150E of Massachusetts
34 General Laws, as well as basic principles of due process, since it decided to
35 discipline [BL] by suspending him without pay. The information is crucial for the
36 STA and [BL] to investigate, evaluate, and process potential grievances under the
37 CBA, and for the STA and [BL] to properly prepare to review the District's decision
38 with the Superintendent.
39

40 Feel free to reach out to me if you have more specific concerns about providing
41 certain documents. Otherwise, please provide the information as requested.
42

43 Union Follow-up to January 3, 2019 Information Request

1 By email on January 22, 2019, Fogarty wrote to Beach that the District had not yet
2 offered potential dates for the review of BL's suspension that the Union requested on
3 January 3, 2019. In relevant part, Fogarty's email continues:

4 During a phone call on January 7, 2019, you informed me that the District would
5 not provide any response to the January 3 information request, despite my
6 explanation that the District is obligated to provide responsive information and my
7 request to the District to explain in detail any concerns it had about providing
8 certain specific information so that we may discuss ways to alleviate the District's
9 concern. Since that date, neither I nor the STA have received any response to the
10 January 3 request. Please be advised that the STA is prepared to enforce its rights
11 to this information through appropriate channels.
12

13 By email on January 25, 2019, Beach responded to Fogarty's January 22, 2019 email
14 that:

15 Your office did not propose any dates for the meeting, either earlier this month or
16 back in December when we first invited [BL] to meet with the Superintendent. This
17 was understandable, given the collateral/criminal consequences with [BL] making
18 a statement during the ongoing criminal investigation. If [BL] is now willing to
19 engage those risks, please propose dates for [BL] to meet with the Superintendent
20 to present his explanation. You should know that on this issue, the Superintendent
21 and the STA are also discussing dates for a meeting re [BL], with the
22 Superintendent most recently asking the STA what is their plan moving forward.
23

24
25

26 In fact and as I informed you as early as January 7th, the Sharon Police
27 Department/Norfolk County D.A. has/have instructed the School Department not
28 to release information that could prejudice/compromise their investigations, and
29 has/have instructed us to ensure that all requests for information re [BL] be
30 channeled through their offices. I gave you Lt. Coffey's name as your contact point
31 for this. I infer from your email that you have not pursued this matter with Lt. Coffey.
32 In addition, while the STA has the right to pursue matters through the DLR, I
33 suspect the DLR will defer to the instructions and priorities of local law enforcement
34 agencies.⁴
35

36 Lastly, we learned this week that [BL] has – again – acted insubordinately by
37 contacting Sharon employees in an attempt to communicate with one or more of

⁴The Committee did not call any witnesses to testify at the hearing, and the record contains no evidence detailing any such instructions beyond the representations contained in Beach's communications to Fogarty.

1 the complainants against him. At this point, we are evaluating whether this new
2 instance of misconduct warrants further discipline. I understand that the
3 appropriate criminal agencies are also evaluating the matter.
4

5 Additional Suspension and Notice of Intent to Terminate

6 By letter dated February 1, 2019, Greer again suspended BL without pay, effective
7 immediately. Greer's letter summarized her December 4, 2018, and January 2, 2019
8 letters to BL, and accused BL of additional insubordination on January 18, 2019, by
9 allegedly communicating with a Sharon High School teacher.⁵ The letter concludes:

10 Please be advised that we have briefed the Sharon Police Department regarding
11 your efforts to communicate with Sharon teachers and students, and your effort to
12 contact the parents of one of your accusers. Whether your insubordination rises to
13 the level of witness intimidation or tampering is an issue better left to those law
14 enforcement agencies.
15

16 By letter dated February 11, 2019, Greer notified BL of her intent to terminate his
17 employment for conduct unbecoming a teacher and insubordination. In relevant part, this
18 letter states:

19 By letter dated January 2, 2019, I suspended you without pay. As I referenced in
20 that letter, we had received "additional information ... that supported the
21 allegations against you, specifically, that you have engaged in the sexual
22 harassment and/or sexual assault of one or more Sharon students." The primary,
23 but not exclusive, basis for my statement was the Title IX investigation required of
24 and conducted by the School Department over the period December 5, 2018 –
25 January 2, 2019. Our Title IX investigation, based on a document review and no
26 fewer than fifteen (15) interviews, culminated in a report dated January 2, 2019
27 (enclosed).
28

29
30

31 Please understand that our Title IX investigatory report is a summary of our
32 investigation and findings. At the present time, in deference to local law
33 enforcement as well as to protect the privacy of our students, we are not at liberty
34 to disclose student names or their statements. We have also been counseled not
35 to disclose the names and statements of the Sharon teachers and administrators
36 who have relevant information about the students' allegations against you.

⁵The communication referenced in this letter is not in the record.

1 Nevertheless, you should understand that one or more of the statements we have
2 reviewed involve(s) allegations that:⁶

3

4 After listing the allegations against BL, Greer stated that she had invited BL to meet with
5 her regarding his January 2 suspension but “you have not scheduled a meeting with me.”

6 Greer then discussed the Union’s January 10 grievance, which “has been denied at Level

7 One and is pending at Level Two,” writing that it “appears indifferent to the health and

8 safety of the students impacted by your misconduct” and “also reflects a lack of support

9 for the several STA teachers who have corroborated the students’ allegations against

10 you.” In relevant part, the letter continues:

11 Following my February 1st letter, the School Department was briefed by local law
12 enforcement. Although I am not at liberty to disclose the details of the briefing, I
13 can tell you that at that point (February 1), I was advised that the criminal
14 investigation was ongoing, that a recommendation regarding prosecution has been
15 transmitted to the Norfolk County District Attorney, and that a decision by the D.A.
16 would be forthcoming soon.

17
18 Today, I was informed that on Friday, February 8, 2019, criminal charges were
19 formally filed against you by law enforcement. Although I do not have the charging
20 document yet, I am informed that the criminal charges lodged against you include
21 indecent assault and battery, and annoying/accosting misconduct.

22

23 February 14, 2019 Information Request and Response

24 By letter to Beach dated February 14, 2019, Fogarty requested “to review the

25 Superintendent’s stated intention within 10 school days.” Additionally, Fogarty reiterated

26 his January 3, 2019 information request. Fogarty then requested:

27 1. Any and all information considered by Assistant Superintendent Murphy during
28 her investigation, including but not limited to:

29

30 a. Statements of the students who reported their interactions with [BL],

31 b. Information provided to Assistant Superintendent Murphy by Sharon’s
32 school resource officer,

33 c. A Sharon Police Department incident report, as supplemented,

⁶I omit the recitations of allegations.

- 1 d. Assistant Superintendent Murphy's interviews of various Sharon High
 2 School staff members and administrators, and
 3 e. Any past disciplinary records and notes that have not yet been provided;
 4
- 5 2. Any and all anonymous written complaints provided to the District in November
 6 2018 that are referenced in Assistant Superintendent Murphy's Investigation;
 7
- 8 3. Any and all documents related to Student Y's claims concerning [BL];⁷ and
 9
- 10 4. Any and all other documents relied upon by Superintendent Greer in forming
 11 her intention to terminate [BL's] employment.
 12

13 By email to Fogarty on February 25, 2019, Beach confirmed that, "We have agreed
 14 to meet on February 27, 2019, at 3 p.m." He further responded that:

15 In your February 14th letter, you stated, among other things, that the School
 16 Department "has repeatedly refused to provide the information requested despite
 17 its legal obligations under chapter 150E of Massachusetts General Laws." The
 18 facts do not support this statement. Your file should indicate that on December 18,
 19 2018, the School Department produced 363 pages of documents in response to
 20 your client's request for documents. Further, your file should show that on February
 21 11, 2019, the School Department produced 98 pages of documents in support of
 22 the Superintendent's notice of intended termination.
 23

24 Moreover, on January 7 and 22, 2019, we informed [BL], through your office, that
 25 the Sharon Police Department had instructed the School Department to tell [BL]
 26 that his request for additional documents should be directed to Lieutenant Stephen
 27 Coffey of the Police Department. As you know, at that time the Sharon P.D. and
 28 the Norfolk County District Attorney's Office were conducting investigations into
 29 your client's misconduct. Those investigations culminated in your client's being
 30 charged on or around February 8, 2019, with indecent assault on a minor older
 31 than 14 years old, and annoying/accosting behavior. I understand that your client's
 32 arraignment is scheduled for next month.
 33

34 I infer from your letter that despite our directing your office to Lt. Coffey, your office
 35 has not contacted Lt. Coffey for additional documents. I again encourage you and
 36 your client to do so.
 37

38 In any case, the file materials associated with the police/D.A. investigations –
 39 including incident report(s) and witness statements – can be requested from the
 40 D.A.'s Office by [BL's] criminal defense attorney in the course of discovery in the
 41 criminal proceedings.
 42

⁷The Title IX Investigation Report refers to a student as "Student Y."

1 Whatever labor relations obligations the School Department may have under ch.
2 150E, the School Department is not free in the middle of an active criminal
3 investigation/prosecution to compromise either the work of our local public law
4 enforcement agencies, the criminal process or the rights of victims.
5

6 That said, I enclose with this email certain additional documents that fall outside
7 the scope of the documents addressed with us by the Police Department.
8 Specifically, you will find attached Dr. Greer's February 11, 2019, public statement
9 to the school community, and her February 14, 2019 referral letter to DESE. As to
10 the latter, you should know that the enclosures to this letter consist of Dr. Greer's
11 letter of February 11th to your client along with its 98 pages of supporting
12 documents, all of which you already have. I also enclose two further documents:
13 (1) An email from your client to Dr. Libiano dated November 2, 2018; and (2) an
14 email string between Peter Schoonmaker and Dr. Libiano in mid-December 2017,
15 relating to Dr. Libiano's discipline of [BL] at that time on account of his questionable
16 interactions with students.
17

18 It is my understanding that exclusive of, (a) the above-referenced 461 pages of
19 documents previously produced by the School Department to your office; (b) the
20 additional five (5) pages attached to this email; (c) attorney-client privileged
21 communications between my office and the School Department, and (d)
22 communications (letters/emails) between your office and mine (which you already
23 have), the School Department is withholding only the November/December 2018
24 police incident report and related witness statement/communications and
25 investigatory materials.
26

27 As indicated above, the latter group of documents is in the possession of the Police
28 Department/D.A., and you may contact those agencies with your request for them.
29

30 By letter dated February 26, 2019, Fogarty responded to Beach, in relevant part, that:

31
32 SPS's documented refusal to provide documents and other information underlying
33 its decisions to suspend and now terminate [BL's] employment is an affront to basic
34 principles of due process, as well as SPS' contractual and statutory obligations.
35 SPS has failed to provide responsive information including, but not limited to:

- 36
37 1. Information concerning the individuals alleging [BL] engaged in misconduct,
- 38
39 2. Information concerning when the alleged misconduct occurred;
- 40
41 3. Information concerning the details of the alleged misconduct, including what
42 supposedly happened, when it supposedly happened, and how it supposedly
43 happened,
44

- 1 4. Information concerning the 15 interviews the District conducted as part of
2 Assistant Superintendent Murphy's investigation into the alleged allegations
3 against [BL],
4
- 5 5. Information concerning the anonymous written complaints students provided to
6 an unnamed SPS teacher, which are referenced in Assistant Superintendent
7 Murphy's report,
8
- 9 6. Information provided by the Sharon Police Department to SPS regarding this
10 matter, including an incident report and any other documents related to Student
11 Y's allegations against [BL], and
12
- 13 7. Any other information relied upon by SPS in forming its intention to suspend
14 and now terminate [BL's] employment.⁸
15

16 SPS's administrative, disciplinary actions are separate and distinct from any
17 ongoing criminal proceedings. That some, or all of the information was provided
18 by SPS to law enforcement agencies is irrelevant to SPS's obligation to provide
19 the information to the Union and [BL]. SPS has not provided any authority for its
20 decision to disregard its own obligations in deference to the Sharon Police
21 Department's apparent request that SPS not provide [BL] with information
22 concerning the allegations against him. However, SPS could have chosen to
23 respect the Police Department's request as a courtesy, if it refrained from taking
24 disciplinary action against [BL] until the conclusion of the criminal proceedings.
25 Instead, it chose to rush to judgment based on mere allegations, in violation of the
26 collective bargaining agreement and the law.
27

28 Additionally, please take note that SPS's statements to the school community and
29 the Department of Elementary and Secondary Education that it terminated [BL's]
30 employment on February 11, 2019 provide another example of SPS's disregard
31 for the applicable law. As you know, SPS may not terminate [BL's] employment
32 before providing him with notice of its intention to do so (which it did on February
33 11th), **and** an opportunity to review those intentions with SPS (which is scheduled
34 for tomorrow, February 27th). SPS's assertion that it already terminated [BL]

⁸Item 7 included a footnote that states:

The provision of some information does not relieve SPS of its obligation to provide all information responsive to the requests at issue. Despite your appeal to the number of pages provided to date, it must be noted that the vast majority of pages provided consist merely of [BL's] personnel file as it existed prior to the current investigation, SPS policies, and your correspondence with me. I do not believe there is any contention that SPS provided all information responsive to the requests at issue. Furthermore, the documents produced do not provide [BL] with sufficient notice of the allegations against him such that he can meaningfully respond.

1 seemingly serve as a frustrating and timely reminder that it will not provide him
2 with a fair or meaningful review meeting, despite its legal obligations.

3
4 BL's Termination

5 By letter dated March 18, 2019, Greer terminated BL. The letter states, in relevant
6 part, that:

7 Despite receiving advanced notice of the allegations and claims against you, you
8 failed to submit any evidence or information...that dispute, contradict or is
9 inconsistent with the specifications set out in my letter or in the School
10 Department's Title IX report. Additionally, you failed to submit any evidence or
11 information that supports your claim of innocence. Your decision not to present
12 information or documents to dispute the claims on February 27 leaves as
13 undisputed the detailed evidence outlined in my letter.

14
15

16
17 At our meeting...you objected to the process by which you were disciplined.
18 Specifically, you objected to the School Department's asking you – as early as
19 January 7, 2019 – to direct your request for witness statements and the Sharon
20 Police Department's incident report to the Sharon Police Department, as the Police
21 Department requested the School Department to do. I take from this objection at
22 our meeting that neither you nor your representative requested these documents
23 from the Sharon Police Department. If correct, it is difficult to understand why this
24 is the case. Regardless, the School Department is not in a position to disregard a
25 reasonable request from law enforcement regarding witness statements and police
26 reports, particularly because the witnesses and accusers involved are minors. In
27 addition, the School Department is not willing to compromise the pending criminal
28 process, and is not willing to violate the privacy of minors and other witnesses who
29 have confided in us after we assured their confidentiality.

30
31 Committee Provides Redacted Police Report

32 By email on April 24, 2019, Beach forwarded to Fogarty a redacted copy of the
33 Sharon Police Report (Police Report), dated February 7, 2019, which Beach indicated he
34 had received "yesterday." In relevant part, Beach's email states that, "This week I
35 confirmed...that the police report had... been produced...by the DA's Office in the course
36 of discovery." Beach further stated that "before its disclosure" to BL, the Police Report

1 “had been redacted by agreement between the DA and [BL’s] criminal defense attorney,
2 to shield the identities of the students involved.”

3 The Police Report contained a March 6, 2019 Joint Motion to Submit Redacted
4 Police Report, which states that the Commonwealth and the Defendant agreed “to
5 protective orders in place that seek to protect identifying information of victims and
6 witnesses. The police report originally filed with the court does not fully accomplish that
7 goal.”⁹ Additionally, the Police Report contained a redacted Sharon Police Department
8 Warrant Report;¹⁰ a redacted Sharon Police Department Personnel Narrative for Patrol
9 Michael J. Balestra;¹¹ a redacted Sharon Police Department Supplemental Narrative for
10 Patrol Michael J. Hocking (Hocking);¹² and a redacted Personnel Narrative for Sergeant
11 Kevin C. Bishop (Bishop).¹³

⁹Handwriting on the motion appears to state that the court allowed this motion on March 6, 2019.

¹⁰The name and personal information of four parents is redacted; the name of Eileen Alberico (Alberico), a Sharon High School employee and teacher, is not redacted.

¹¹The name of a student who accused BL of misconduct, and the names of her parents, are redacted.

¹²Hocking is the School Resource Officer. The name of a student and her parents are redacted, as are the names of three additional students and one additional parent, and up to two more additional students. Alberico’s name is not redacted, and neither is the name of Mary Trahan, a retired Assistant Principal.

¹³In relevant part, Bishop’s narrative states that:

As a result of this investigation, several sexual assault (SAIN) interviews were scheduled through the NCDA’s Office and Child Advocacy Center. The involved students are known to this department and their identities are available if required in the future. In order to protect the students’ identities, I will refer to them in the order in which their SAIN interviews were conducted chronologically by date. Example: The first SAIN was done on December 19, 2018 and will be referred to as (S1) for SAIN or STUDENT #1, followed by the student’s initials.

Committee Partially Provides Title IX Investigation Witness Interview Notes

By email on May 3, 2019, Beach wrote to Fogarty that:

Please find attached to this email and the next the School Department's redacted notes regarding statements made by twelve (12) witnesses in the course of the School Department's Title IX investigation regarding [BL] in December 2018.¹⁴ The School Department interviewed fourteen (14) people in the course of its investigation. As explained below, Witness #13 has objected to the disclosure of her notes; and the notes regarding the statement of Witness #14 are being withheld in their entirety.

As you will see, the attached twelve (12) sets of notes have been redacted of names and other identifiers associated with Sharon students who are either victims of [BL's] misconduct or witnesses to that misconduct. These redactions are consistent with the student-related redactions made by the District Attorney's Office to the Sharon PD incident report, which in its redacted form has been produced by the DA to [BL's] defense counsel.... As your file will indicate, I then produced the same DA-redacted incident report to you on April 24, 2019.¹⁵

The redactions made to the attached notes are reasonable and necessary for at least two reasons: (1) To protect the privacy and security of the student victims and witnesses, who are minors; and, (2) To avoid compromising the pending criminal process involving [BL], a process that compelled the DA to redact student identifiers from the police report.

Prior to today's disclosure, the Sharon PD had asked the School Department to have you direct your requests for the School Department's Title IX investigatory notes to Lt. Coffey of the PD. We did what the PD asked us to do so as not to

The students' initials are not redacted, and the four SAIN interviews are: S1 RR; S2 SM; S3 AK; and S4 IA. Additionally, the initials of another student – KW – appear in the narrative, as does the name of Alberico. Bishop's narrative concludes by stating that "as a result of this investigation," BL will be charged with "INDECENT A&B AGE 14 & OVER (S1)" and "ANNOYING & ACCOSTING SEXUALLY (S3)."

¹⁴Regarding redactions to the information that the Committee produced, Fogarty testified that, "The District redacted the documents unilaterally before providing them, which was part of our frustration." Fogarty further testified that he attempted to "open the door" with Beach about the safeguarding of sensitive information to address the Committee's concerns, but that Beach was "unwilling to have that conversation." I credit Fogarty's testimony.

¹⁵Beach did not provide the Sharon Police Department Incident Report on April 24, 2019. The Committee produced the Incident Report on May 19, 2021. See *infra*, page 20.

1 compromise the PD's criminal investigation. I infer from your continuing interest in
2 the interview notes that your office did not request and/or obtain the notes from
3 Lt. Coffey. In any case, following the DA's production of the redacted incident
4 report to [BL] ... we learned that the DA is now willing to have the School
5 Department make its own decision re its Title IX investigatory notes. That decision
6 is reflected in the disclosure today of the attached redacted notes.
7

8 In addition, you will find attached to the second of this morning's emails a
9 supplemental email statement from one of the witnesses.
10

11 As you know, on April 29, 2019, advance notice of the School Department's
12 consideration whether to disclose these redacted notes was given to the Title IX
13 witnesses, along with a copy of that witness's redacted notes (no witness received
14 a copy of any other witness's redacted notes). With our notice, we asked each
15 witness to respond to us by the end of the day May 2, 2019, if they objected to the
16 School Department's release of their redacted notes to you. We provided this
17 advance notice and opportunity to object out of fairness to each witness, because
18 the School Department had assured them of the confidentiality of their statements
19 when they were interviewed in December 2018. We also provided this advance
20 notice to the witnesses because [BL] – by his insubordinate acts in December 2018
21 and January 2019 – revealed his interest in contacting the witnesses against him.
22 In any case, the School Department is now satisfied that its concerns have been
23 addressed.
24

25 Witness #13. One witness, an STA member, has objected to the School
26 Department's disclosure of notes regarding her Title IX interview. This witness
27 objected by way of an email to me on May 1, 2019. She copied her email to me to
28 Bernadette Murphy, President of the STA. This witness's objection puts the School
29 Department in a bind: An STA member objects to notes that the STA wants the
30 School Department to disclose. Please let me know your position on this matter,
31 both in your status as counsel to the STA and as counsel to [BL], and I will confer
32 with Superintendent Greer. If you decide that this situation creates a conflict of
33 interest for you, please let me know if/when separate legal counsel is engaged.
34

35 Witnesses #14. The School Department will continue to withhold its notes, in their
36 entirety, re the statement of Witness #14. That witness is a parent of one of the
37 student victims/witnesses, and the notes cannot be redacted without disclosing the
38 identity of that student.
39

40 Lastly, your file should indicate prior to today, the School Department produced
41 477 pages of documents in response to your requests for [BL]-related documents.
42 Today's email attachments add an additional 31 pages to that production.
43

44 Beach attached the Committee's witness interview notes, all taken between December
45 10 and 19, 2018, for Bernadette Murphy; Beth Gavin (Gavin); Cheryl Harris; Chuck

1 Fazio; Glenn Sheibler (Sheibler); Joan Glasheen (Glasheen); Lori Leveckis (Leveckis);
2 Peter Schoonmaker; Bob Pomer; Ruth Zakarin (Zakarin); Steve Banno (Banno); and
3 Alberico.¹⁶ The notes for Gavin, Sheibler, Glasheen, Leveckis, Zakarin, Banno, and
4 Alberico contain redactions; the remainder do not. Beach also included an April 30, 2019
5 supplemental statement from Alberico.¹⁷

6 By email to Fogarty on May 8, 2019, Beach supplemented the interview notes that
7 the Committee produced on May 3, 2019. Beach wrote that:

8 As I stated yesterday, there was a 15th witness in connection with the School
9 Department's Title IX investigation. I had thought there were 14 witnesses but I
10 realized earlier this week that I had conflated two witnesses who shared a first
11 name.

12
13 In any case, attached are the redacted notes re the School Department's Title IX
14 interview of Witness #15.

15
16 Please also refer to the intro in the first of my May 3rd emails to you.

17
18 Beach attached the Committee's witness interview notes, taken December 11, 2018, for
19 Lori Novick-Carson. These notes contained redactions.

20 Information Provided in Advance of DLR Hearing

21 On May 19, 2021, the Committee provided the Union with the Title IX Investigation
22 witness interview notes for "A.K.'s Parent."¹⁸ At that time, the Committee also provided

¹⁶Each set of notes contains an "Intro" that states, in relevant part: "We will do everything we can to guard the confidentiality of your answers. Please understand that the School Department may be required by law to share its information with others, in order to protect students."

¹⁷Alberico's supplemental statement is not in the record.

¹⁸These are the notes for "Witness #14," taken December 11, 2018, that the Committee refused to provide on May 3, 2019. The notes contain redacted names, but initials such as "A.K.," "J," and "A.K.'s Parent" are written above the redacted names. The notes also contain a redaction to protect "student medical information."

1 the Union with a redacted December 5, 2018 Sharon Police Department Incident
2 Report;¹⁹ five redacted student statements to Hocking;²⁰ a series of redacted emails
3 regarding BL;²¹ and Principal Jose Libano's redacted student interview notes.²² The
4 Committee did not produce the notes for the employee referred to in Beach's May 3, 2019
5 email as "Witness #13."

6 OPINION

7 The two-count Complaint in this matter alleges that the Committee violated Section
8 10(a)(5) and, derivatively, Section 10(a)(1) of the Law by: I) not providing the Union with
9 information that is relevant and reasonably necessary for the Union to execute its duties
10 as the collective bargaining representative; and II) not providing in a timely manner
11 relevant information reasonably necessary for the Union to execute its duties as the
12 collective bargaining representative. Count I alleges that the Committee provided – on
13 April 24, 2019, and May 3, 2019 – some but not all of the information that the Union

¹⁹Names and other information are redacted. Initials such as "A.K.," "A.K. Mother," and "A.K. Father," are written above the redacted names. Additionally, "R.R.," "B.A.," and "N.K." are written next to the redacted witness names, and Alberico is identified as a participant. Unlike with the Police Report, the record does not indicate that the Committee received the Incident Report in redacted form.

²⁰The names of the students making the statements are redacted and replaced with their initials: "R.R.," "I.A.," "S.M.," "B.A.," and "N.K." The first statement is dated November 15, 2018, but signed November 16, 2018; the second is undated; the third is dated December 5, 2018; and the fourth and fifth statements are dated November 16, 2018.

²¹Names are redacted and replaced with initials such as "A.K.," "A.K. Parent," "J.," "X.," and "Y." The emails contain additional redactions for student medical information and a hyperlink that "leads to [a] blog that reveals student identities." The emails are undated.

²²The initials "A.K." replace a redacted name throughout, and the notes are undated.

1 requested on January 3, 2019, and February 14, 2019; this allegation includes the
2 Committee's refusal to provide certain unredacted information. Relatedly, Count II
3 alleges that the Committee's April 24, 2019, and May 3, 2019 responses were in
4 themselves untimely. Because the Committee's response to the Union's requests
5 continued after the Complaint issued, I resolve the allegations in the Complaint based
6 upon the totality of the record that the parties submitted during the hearing.

7 If a public employer possesses information that is relevant and reasonably
8 necessary to an employee organization in the performance of its duties as the exclusive
9 collective bargaining representative, the employer is generally obligated to provide the
10 information upon the employee organization's request. Bristol County Sheriff's
11 Department, 32 MLC 76, 78, MUP-01-3086 (August 3, 2005); Higher Education
12 Coordinating Council, 23 MLC 266, 268, SUP-4142 (June 6, 1997). The employee
13 organization's right to receive relevant and reasonably necessary information is derived
14 from the statutory obligation to bargain in good faith and includes grievance processing
15 and contract administration. Boston Public School Committee, 24 MLC 8, 11, MUP-
16 1410,1412 (August 26, 1997). The Commonwealth Employment Relations Board's
17 (CERB) standard for determining whether the information requested is relevant is a liberal
18 one, similar to the standard for determining relevancy in civil litigation discovery
19 proceedings. Board of Higher Education, 26 MLC 91, 92, SUP-4509 (January 11, 2000).
20 Information about terms and conditions of employment of bargaining unit members is
21 presumptively relevant and reasonably necessary for an employee organization to
22 perform its statutory duties. City of Lynn, 27 MLC 60, 61, MUP-2236, 2237 (December

1 1, 2000). The relevance of the requested information must be determined by the
2 circumstances that exist at the time the union requests the information. Id.

3 Relevant and Reasonably Necessary

4 Here, Greer's January 2, 2019 letter suspending BL without pay cited allegations
5 of sexual harassment and assault, in addition to a new allegation of insubordination
6 and/or intimidation, as the reasons for BL's suspension without pay. In response, on
7 January 3, 2019, the Union requested information from the Committee to investigate,
8 evaluate, and process a potential grievance and to prepare to review with Greer her
9 decision to suspend BL without pay. Similarly, the Union's February 14, 2019 information
10 request followed Greer's February 1, 2019 suspension of BL and her February 11, 2019
11 notice of intent to terminate BL. A union's right to information includes information that is
12 relevant to evaluating whether to pursue a grievance. Boston School Committee, 8 MLC
13 1380, 1382, MUP-3909 (October 20, 1981). Additionally, the CERB has previously
14 determined that a union must have access to the information surrounding the disciplinary
15 proceedings, including witness statements, transcripts or notes of witness statements,
16 and investigative reports that contain witness statements, as well as other relevant
17 information, to properly fulfill its role to bargaining unit members. Boston School
18 Committee, 36 MLC 48, 49, MUP-05-4532 (September 30, 2009). Accordingly, the
19 Union's January 3, 2019, and February 14, 2019 information requests are relevant and
20 reasonably necessary to the execution of its duties as the exclusive collective bargaining
21 representative.

22 Legitimate and Substantial Concerns

1 Once a union has established that the requested information is relevant and
2 reasonably necessary, the burden shifts to the employer to establish that it has legitimate
3 and substantial concerns about disclosure, and that it has made reasonable efforts to
4 provide the union with as much of the requested information as possible, consistent with
5 its expressed concerns. Bristol County Sheriff's Department, 32 MLC at 79; Board of
6 Higher Education, 26 MLC at 93. Rather than merely articulating concerns about the
7 disclosure of information, an employer must produce evidence in support of its
8 contentions. Commonwealth of Massachusetts, Chief Administrative Justice of the Trial
9 Court, 11 MLC 1440, 1443-34, SUP-2746 (February 21, 1985). The employer's concerns
10 are then balanced against the union's need for the information. Id. Absent a showing of
11 great likelihood of harm flowing from the disclosure, the requirement that a bargaining
12 representative be furnished with the information overcomes any claim of confidentiality.
13 Greater Lawrence Sanitary District, 28 MLC 317, 318-319, MUP-2581 (April 19, 2002).

14 Here, the Committee did not produce evidence sufficient to support its articulated
15 concerns about the disclosure of the requested information. On January 7, 2019, the
16 Committee, through its attorney, refused to provide the Union with the evidence that it
17 relied upon to suspend BL. Citing the "ongoing criminal investigation," the Committee
18 told the Union to "direct" its requests for information to "Lt. Steve Coffey of the Sharon
19 Police Department." On January 25, 2019, the Committee, referring to the
20 communication of January 7, 2019, again refused to produce the evidence, stating that
21 "the Sharon Police Department/Norfolk County D.A. has/have instructed the School
22 Department not to release information that could prejudice/compromise their
23 investigations, and has/have instructed us to ensure that all requests for information re

1 [BL] be channeled through their offices.” The Committee stated that the DLR would likely
2 “defer to the instructions and priorities of local law enforcement.” On February 25, 2019,
3 the Committee reiterated that the Sharon Police Department “had instructed the School
4 Department to tell [BL] that his request for additional documents should be directed to
5 Lieutenant Stephen Coffey of the Police Department.” The March 18, 2019 termination
6 letter of BL further stated that “the School Department is not in a position to disregard a
7 reasonable request from law enforcement regarding witness statements and police
8 reports, particularly because the witnesses and accusers involved are minors.”
9 Assuming, without deciding, that instructions from local law enforcement to withhold
10 information pending a criminal investigation constitute legitimate and substantial
11 concerns, the evidentiary record contains no such instructions, and the Committee did
12 not produce any witnesses at the hearing to testify and be cross-examined about the
13 specific instructions that the Committee represented that it had received. I therefore
14 cannot evaluate the Committee’s claim that these instructions precluded it from
15 producing, or partially producing prior to May 3, 2019, the evidence that it relied upon to
16 discipline and, ultimately, discharge BL.²³

17 Similarly, the Committee did not produce evidence sufficient to support its
18 contention that BL’s alleged attempts to communicate with students and/or employees
19 warranted withholding the evidence underlying its decision to suspend and, ultimately,
20 discharge him. The record contains only the Committee’s representations about BL’s

²³The Committee cites no legal authority for the position that a municipal law enforcement agency may unilaterally abrogate a school committee’s statutory bargaining obligations, or that an employer need not produce evidence that underlies its decision to discipline and discharge an employee if that employee has been accused of criminal conduct.

1 conduct on this point,²⁴ and the Committee did not produce any witness at the hearing to
2 testify and be cross-examined about these concerns. I therefore cannot evaluate any
3 claim that BL's alleged insubordination constituted a legitimate and substantial concern
4 about producing the evidence that it relied upon to discipline and discharge BL.

5 Additionally, the Committee did not produce evidence sufficient to establish that it
6 had legitimate and substantial concerns about withholding the Title IX interview notes of
7 the bargaining unit member identified as Witness #13. On May 3, 2019, the Committee
8 stated that Witness #13 "objected to the School Department's disclosure of notes
9 regarding her Title IX interview." The Committee did not produce any evidence that
10 proves that this request occurred, and it did not produce any witness at the hearing to
11 testify and be cross-examined about its concerns on this point. The Committee also cites
12 no legal authority for the position that it may withhold a witness statement at the request
13 of that witness.

14 Moreover, the record does not establish that the Committee made reasonable
15 efforts to provide the Union with as much of the requested information as possible,
16 consistent with its expressed concerns. Rather than initiate a discussion with the Union
17 to explore alternative ways to permit the Union access to the information the Union
18 required to represent BL in disciplinary proceedings, the Committee refused to produce
19 any of the underlying evidence until after it had discharged BL on March 18, 2019. As
20 Fogarty testified, the Committee was unwilling to discuss the safeguarding of the
21 requested information to address its concerns. When it started to partially produce the

²⁴The Committee did not produce the actual communications that it referenced when suspending and discharging BL.

1 underlying evidence in April and May 2019, the Committee continued to refuse to initiate
2 a discussion with the Union to provide access to the information that the Union still
3 required. The Committee cited no legal authority or specific confidentiality requirements,
4 referring only to non-specific instructions it claimed to have received from the Sharon
5 Police Department, without producing those instructions, and without any attempt to
6 reconcile those instructions with the obligations that the Law imposes. Cf. Boston School
7 Committee, 13 MLC 1290, 1295-96, MUP-5905 (November 21, 1986) (employer had
8 legitimate and substantial concerns about disclosing information in violation of M.G.L. c.
9 41, Section 97D). Where an employer has concerns about disclosing what it deems
10 confidential information to a union, it has an obligation to initiate a discussion to explore
11 acceptable alternative ways to permit the union access to the necessary information. City
12 of Boston, 22 MLC 1698, 1709, MUP-9605 (April 26, 1996); City of Newton, 36 MLC 71,
13 73, MUP-05-4489 (October 28, 2009) (city did not properly demonstrate legitimate and
14 substantial concerns where it closed the door on requested information without referring
15 to or citing specific confidentiality requirements).

16 Furthermore, the Committee's position on providing the requested information has
17 arbitrarily shifted over time. On January 7, 2019, after it had initiated discipline against
18 BL, the Committee refused to produce the information due to the "ongoing criminal
19 investigation." On February 25, 2019, after the Committee had again disciplined BL and
20 initiated the process of discharging him, and after the separate determination had been
21 made to criminally charge BL, the Committee again refused to provide the requested
22 information on the grounds that doing so would interfere with "an active criminal
23 investigation/prosecution." When the Committee finally began producing the underlying

1 evidence from its own internal investigation, on May 3, 2019, after the Union filed the
2 Charge, after the Committee discharged BL, and after the Level 3 grievance meeting
3 occurred, it unilaterally did so in a manner that was more restrictive than the safeguards
4 contained in Bishop's narrative within the Police Report, which contained redactions but
5 included student initials. Additionally, as mentioned, the Committee cited no authority for
6 its decision to permanently withhold the notes from its interview with a member of the
7 bargaining unit. Upon producing most, but not all, of the outstanding materials on May
8 19, 2021, more than two years after the Union filed the Charge, the Committee now
9 provided, without explanation, initials of student witnesses instead of complete
10 redactions. Throughout the entire process, the Committee refused to explore alternative
11 ways to permit the Union access to the necessary information, including the materials it
12 produced in redacted or partially redacted form, and the materials it continued to
13 withhold.²⁵

14 In its post-hearing brief, the Committee argues that the Family Educational Rights
15 and Privacy Act of 1974 (FERPA), 20 U.S.C. §1232g, and M.G.L. c. 71, § 34D and its
16 accompanying regulations at 603 CMR § 23.01 et seq., prohibit disclosure of the
17 requested information pertaining to unredacted student witness statements because they

²⁵The record indicates that the Committee did not redact the Police Report but produced it as received. I therefore find that the Committee's failure to produce the unredacted Police Report did not violate the Law. I also find that the Committee's production of the redacted Police Report was not untimely because the record indicates that the Committee produced it the day after receiving it.

Additionally, the record does not demonstrate that the Union had any need for unredacted student medical information. I therefore find that the Committee's decision to redact student medical information from the documents it produced on May 19, 2021, did not violate the Law.

1 include student names. The CERB, citing City of Boston School Committee v. Boston
2 Teachers Union, Local 66, AFT, MFT, AFL-CIO, No. 05-3525-H, 2006 WL 4125023
3 (Mass. Super. Ct., Nov. 30, 2006), has previously determined that unredacted student
4 statements concerning alleged teacher misconduct are not the type of student academic
5 or disciplinary records whose disclosure FERPA or state law prohibit. Boston School
6 Committee, 36 MLC at 50-51. Accordingly, this argument fails.²⁶

7 Unreasonable Delay

8 The Committee further argues that any delay on its part in producing the requested
9 information was not unreasonable or harmful to the Union. An employer may not
10 unreasonably delay furnishing requested information that is relevant and reasonably
11 necessary to the union's function as the exclusive bargaining representative. Boston
12 Public School Committee, 24 MLC at 11. The CERB considers the following factors when
13 deciding whether an employer has unreasonably delayed providing relevant information:
14 1) whether the delay diminishes the union's ability to fulfill its role as exclusive bargaining
15 representative, Id.; 2) the extensive nature of the request, Trustees of the University of
16 Massachusetts Medical Center, 26 MLC 149, 158, SUP-4392, 4400 (March 10, 2000); 3)
17 the difficulty of gathering the information, Id.; 4) the period of time between the request
18 and the receipt of the information, Higher Education Coordinating Council, 23 MLC at
19 269; and 5) whether the employee organization was forced to file a prohibited practice
20 charge to retrieve the information, Board of Higher Education, 26 MLC 91, 93, SUP-4509

²⁶I note that in City of Boston School Committee v. Boston Teachers Union, the court stated that the committee was "by no means, obligated to disclose student names in all situations." 2006 WL 4125023 at *5. Here, the Committee merely asserts, without citing legal authority to support its position, that the allegations against BL warrant withholding all student names in their entirety. Without more, I reject the Committee's position.

1 (January 11, 2000). Here, although the arbitration was placed in abeyance, the Union
2 was forced to represent BL throughout the grievance process without access to the
3 evidence underlying the accusations; the Committee possessed the requested
4 information; it delayed production of the redacted statements until after it discharged BL
5 and the Union presented its grievances at Level 3, and did not produce the last batch of
6 redacted materials until May 19, 2021; and the Union was forced to file the Charge to
7 obtain the information. Accordingly, the delay was unreasonable and violated the Law.

8 CONCLUSION

9 The Union's requests for information were relevant and reasonably necessary to
10 the execution of its duties. The Committee did not satisfy its burden to establish that it
11 had legitimate and substantial concerns about disclosing the requested information. The
12 Committee also did not make reasonable efforts to provide the Union with as much of the
13 requested information as possible, consistent with its expressed concerns. I therefore
14 find that the Committee violated the Law by refusing to provide information and by
15 unreasonably delaying the production of information. To wit: the Committee's refusal to
16 provide the evidence underlying its discipline and discharge of BL prior to May 3, 2019,
17 violated the Law; the Committee's production of redacted statements on May 3 and 8,
18 2019, violated the Law; the Committee's production of additional redacted materials on
19 May 19, 2021, violated the Law; and its decision to continue withholding the interview
20 notes from Witness #13 violated the Law.

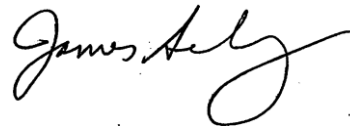
21 ORDER

22 WHEREFORE, based upon the foregoing, IT IS HEREBY ORDERED that the Committee
23 shall:

- 1 1. Cease and desist from:
 - 2
 - 3 a. Failing to bargain in good faith by refusing to provide the Union with information
 - 4 that is relevant and reasonably necessary to the execution of its duties as the
 - 5 exclusive bargaining representative.
 - 6
 - 7 b. Failing to bargain in good faith by not providing to the Union in a timely manner
 - 8 information that is relevant and reasonably necessary to the execution of its
 - 9 duties as the exclusive bargaining representative.
 - 10
 - 11 c. In any like or related manner, interfering with, restraining or coercing
 - 12 employees in the exercise of their rights guaranteed under the Law.
 - 13
- 14 2. Take the following affirmative action that will effectuate the purpose of the Law:
 - 15
 - 16 a. If the Union has an ongoing practical need for the unredacted Title IX witness
 - 17 interview notes to represent BL in disciplinary proceedings related to his
 - 18 suspension and discharge, provide the Union with all unredacted Title IX
 - 19 witness interview notes, including the unredacted notes of the interview with
 - 20 the bargaining unit member that the Committee has continued to withhold. The
 - 21 Committee may continue to redact student medical information as necessary.
 - 22
 - 23 b. If the Union has an ongoing practical need for the unredacted student
 - 24 statements to Hocking, District emails, Incident Report, and Libano student
 - 25 interview notes to represent BL in disciplinary proceedings related to his
 - 26 suspension and discharge, provide the Union with all such notes, subject to
 - 27 redaction of student medical information.
 - 28
 - 29 c. Post immediately in all conspicuous places where members of the Union's
 - 30 bargaining unit usually congregate, or where notices are usually posted,
 - 31 including electronically if the Committee customarily communicates with these
 - 32 members via intranet or email, and display for a period of thirty (30) days
 - 33 thereafter, signed copies of the attached Notice to Employees.
 - 34
 - 35 d. Notify the DLR in writing of steps taken to comply with this Order within ten
 - 36 (10) days of receipt.
 - 37

38 SO ORDERED.

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF LABOR RELATIONS



JAMES SUNKENBERG, ESQ.
HEARING OFFICER

APPEAL RIGHTS

The parties are advised of their right, pursuant to M.G.L. c.150E, Section 11 and 456 CMR 13.19, to request a review of this decision by the Commonwealth Employment Relations Board by filing a Notice of Appeal with 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 ten days, this decision shall become final and binding on the parties.



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NOTICE TO EMPLOYEES

**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 Sharon School Committee (Committee) violated Section 10(a)(5) and, derivatively, Section 10(a)(1) of Massachusetts General Laws, Chapter 150E (the Law) by refusing to provide, and failing to provide in a timely manner, the Sharon Teachers Association (Union) with information that is relevant and reasonably necessary to the execution of its duties as the exclusive bargaining representative.

Section 2 of the Law gives public employees the right to engage in self-organization; to form, join or assist any union; to bargain collectively through representatives of their choosing; to act together for the purpose of collective bargaining or other mutual aid or protection; and to refrain from all the above.

WE WILL NOT fail and refuse to bargain in good faith with the Union by refusing to provide, or failing to timely provide, information that is relevant and reasonably necessary to the Union's execution of its duties as the exclusive bargaining representative.

WE WILL NOT in any like or similar manner interfere with, restrain, or coerce the Union in the exercise of its rights guaranteed under Section 2 of the Law.

Sharon 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, Lafayette City Center, 2 Avenue de Lafayette, Boston, MA 02111 (Telephone: (617) 626-7132).