

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF LABOR RELATIONS

In the Matter of: *

CITY OF CAMBRIDGE *

and *

CAMBRIDGE POLICE PATROL OFFICERS *

ASSOCIATION *

Case Number: MUP-19-7408

Date Issued: September 23, 2021

Hearing Officer:

James Sunkenberg, Esq.

Appearances:

Melissa Murray, Esq. - Representing City of Cambridge

Kristen A. Barnes, Esq. - Representing Cambridge Police Patrol Officers Association

HEARING OFFICER'S DECISION

SUMMARY

1 The issue is whether the City of Cambridge (City) violated Section 10(a)(5) and,
2 derivatively, Section 10(a)(1) of Massachusetts General Laws, Chapter 150E (the Law)
3 by refusing to provide the Cambridge Police Patrol Officers Association (Union) with a
4 detailed statement of the reasons for involuntarily transferring two police officers from the
5 Cambridge Police Department's (Department) Criminal Investigations Division (CID) to
6 the Patrol Division (Patrol). Based on the record, and for the reasons explained below, I
7 find that the City violated the Law.

8 STATEMENT OF CASE

1 On June 25, 2019, the Union filed a charge of prohibited practice (Charge) with the
 2 Department of Labor Relations (DLR) alleging that the City had violated Section 10(a)(5)
 3 and, derivatively, Section 10(a)(1) of the Law by refusing to provide requested information
 4 regarding the transfer of two officers from the Department's CID to Patrol. On January 8,
 5 2020, a DLR investigator investigated the charge. On February 27, 2020, the investigator
 6 issued a Complaint of Prohibited Practice (Complaint) alleging that the City violated the
 7 Law by refusing to provide the requested information. On April 3, 2020, the City filed its
 8 Answer to the Complaint. On October 23, 2020, I conducted a hearing by
 9 videoconference during which the parties received a full opportunity to be heard, to
 10 examine and cross-examine witnesses, and to present evidence.¹ On January 26, 2021,
 11 the parties filed post-hearing briefs.²

STIPULATIONS OF FACT

- 13 1. The City of Cambridge ("City") is a public employer within the meaning of Section
 14 1 of M.G.L. c. 150E ("the Law").
 15
 16 2. The Cambridge Police Patrol Officers Association ("Association") is an employee
 17 organization within the meaning of Section 1 of the Law.
 18
 19 3. The Association is the exclusive bargaining representative for a bargaining unit of
 20 patrol officers employed by the City within the Cambridge Police Department
 21 ("Department").
 22
 23 4. The City and Association are parties to a July 1, 2017 to June 30, 2020 collective
 24 bargaining agreement.
 25

¹I conducted the hearing remotely pursuant to Governor Baker's teleworking directive to executive branch employees.

²Prior to the submission of briefs, the City filed, on December 9, 2020, a Motion to Withdraw Exhibit, specifically the exhibit that entered into the record as Employer Exhibit 6. The Union did not respond to this motion. I hereby grant the motion and strike the exhibit from the record.

- 1 5. The Department is comprised of multiple units including, but not limited to, a
2 Criminal Investigation Division ("CID") and a Patrol Division. Patrol officers are
3 assigned to the CID to work as detectives.
4
- 5 6. Beth Halloran and Michael Logan, patrol officers within the bargaining unit
6 referenced in paragraph 3 above, were assigned to work as detectives in CID.
7
- 8 7. In December 2018, the Police Commissioner transferred Logan from CID to the
9 Patrol Division. In May 2019, the Commissioner transferred Halloran from CID to
10 the Patrol Division.
11
- 12 8. On May 21, 2019, Union Attorney Alan McDonald wrote an email to Jamie
13 Matthews ("Mathews"), Cambridge Personnel Department, requesting that the City
14 provide a detailed statement of the reasons for transferring Halloran.
15
- 16 9. On May 22, 2019, Mathews wrote an email to McDonald stating, in part, "I am not
17 aware of any obligation to provide a detailed statement of reasons for the transfer.
18 The Commissioner based his decision on the needs and best interests of the
19 department."
20
- 21 10. On June 8, 2019, McDonald wrote to Mathews and requested a detailed statement
22 of the reasons for Logan's transfer from CID to Patrol. In addition, McDonald
23 stated, "If the Department is contending simply that the officers were transferred
24 pursuant to the Department's managerial rights, please provide a detailed
25 explanation of the reason or reasons underlying the exercise of those rights."
26
- 27 11. On June 13, 2019, Mathews responded, stating, "The Commissioner's decision to
28 transfer Officer Michael Logan is based upon the needs and best interests of the
29 Cambridge Police Department. We are declining to provide any further
30 explanation at this time with respect to the transfers of Officer Logan and Officer
31 Halloran."
32

33 FINDINGS OF FACT

34 General Background

35 The Union and the City are parties to a July 1, 2017, to June 30, 2020, collective
36 bargaining agreement (CBA). The Union represents a bargaining unit of approximately
37 200 patrol officers. Ranks within the Department are patrol officer, sergeant, lieutenant,
38 deputy superintendent, superintendent, and commissioner. Patrol officers are assigned

1 to various units and divisions throughout the Department, including Patrol and CID.³
2 Branville Bard (Bard) has been the Commissioner since August 2017. Attorney Alan
3 McDonald (McDonald) has provided legal services to the Union since approximately
4 1993.

5 In May 2019, Bard involuntarily transferred Officer Beth Halloran (Halloran) from
6 CID to Patrol. At the time of her transfer, Professional Standards had an open
7 investigation into an employee complaint against Halloran.⁴ The Union sought
8 McDonald's assistance regarding concerns that Halloran had about the reasons for her
9 transfer and whether it resulted from a finding against her. On an unidentified date,
10 McDonald accompanied Halloran to a Professional Standards interview in which the
11 Department questioned Halloran about the allegations made against her.

12 In or around June 2019, Officer Michael Logan (Logan) requested the Union's
13 assistance to determine the reasons for his transfer from CID to Patrol in December 2018.

14 City Ordinance

³Properly speaking, the Department has two Divisions: Operations and Support Services. Divisions are comprised of Sections. Patrol is a Section within the Operations Division and Criminal Investigations is a Section within the Support Services Division. To avoid confusion, I have retained the parties' terminology.

In the City, detective is an assignment and not a rank. Generally, officers assigned to CID as detectives work a "five on two off" schedule, whereas patrol officers work a "four on two off" schedule. Officers assigned as detectives may, in some circumstances, receive training that differs from officers assigned to patrol. Detectives may receive access to take-home vehicles. They may also be eligible for assignment to outside agencies.

⁴Professional Standards is equivalent to what is commonly referred to as Internal Affairs. Bard explained that the "initial target" of the investigation was a "supervisor assigned to criminal investigation, but during the course of the investigation...several other allegations were made against...several individuals within the criminal investigations section including Officer Halloran and several others."

1 City Ordinance 2.52.010 – Police Commissioner – Authority, provides that:

2
3 The Police Department shall be under the charge of a Police Commissioner who
4 shall be the head of the Department and who shall, from time to time, make suitable
5 regulations governing the Department and the officers thereof, subject to the
6 approval of the City Manager. The Police Commissioner shall be in immediate
7 control of all City property used by the Department, and the police officers, who
8 shall be assigned to their respective duties by the Police Commissioner, whose
9 orders they shall obey. The Chief of Police shall be the next ranking officer of the
10 Department and in the absence of the Commissioner, shall be the head of the
11 Department.

12
13 Relevant Provisions of CBA

14
15 Article 2 Management Rights

16
17 Subject to this Agreement and applicable law, the City reserves and retains the
18 rights, powers and prerogatives of municipal management. This Agreement shall
19 not contravene any State or Municipal laws. Nor shall this Agreement be
20 interpreted as diminishing the rights of the Municipal Employer to administer and
21 prescribe (subject to this Agreement and applicable law) the methods and means
22 by which the operation of the Police Department shall be conducted.

23
24 Article 4 Employee Rights, Section 2. Protection of Rights

25
26 Further, the City agrees that neither the City, or any representative, department
27 official or agency of the City, shall violate any right of employees or of the
28 Association as provided and guaranteed by the provisions of MGL c 150E, s10(a).

29
30 Article 5 Fair Practice

31
32 The City and the Association reaffirm and will maintain the policy not to
33 discriminate against any person because of race, color, national or ethnic origin,
34 age, religion, disability, sex, sexual orientation, gender identity and/or expression,
35 genetic information, military or veteran status (special disabled veterans, disabled
36 veterans and Vietnam-era veterans), any other characteristic protected under
37 applicable federal or state law, or participation in or association with the
38 Association activities or affairs. The parties acknowledge that sexual harassment
39 is a form of unlawful sex discrimination and that no employee shall engage in such
40 conduct. The Association, subject to applicable law, will act for and represent all
41 persons covered by this Agreement, whether or not in membership.

42
43 Article 11 Unfair Labor Practices

44
45 The Association and the City agree that there shall be no unfair labor practices
46 within the meaning of MGL c. 150E.

1
2 Article 14 Shift/Job Bid Pick, Section 4. Voided Picks

3
4 If in the opinion of the Department Head an employee’s pick should be voided for
5 such period, the Department head shall have the right to do so; in so doing, the
6 Department head, if the employee(s) involved elects to grieve, shall put his
7 reasons for the void in writing. Such reasons shall be specific, shall not be
8 based upon the “good of the service” or other like reason, but may include and
9 shall not be limited to the employee’s attendance record, discipline...and use of
10 undocumented sick leave in excess of six (6) days during the calendar year in
11 which the pick occurs.⁵

12
13 Article 19 Grievance Procedure and Arbitration, Section 1. Definition/Scope

14
15 The term “grievance” shall include any dispute concerning (a) any of the provisions
16 of this Agreement, or (b) any law, ordinance, rule, regulation policy or practice
17 relating to the Police Department and its operation as any of such may touch upon
18 personnel relations, or (c) any decision or order of either the City Manager or the
19 Department Head as any such may affect police personnel or conditions of work
20 and employment.

21
22 Union Information Request and City Response

23 By email on May 21, 2019, McDonald wrote to Jamie Matthews (Matthews),
24 Deputy Director of the City’s Personnel Department:

25 I am meeting with the CPOOA leadership later this week and need some
26 information from the Department regarding some developing issues in advance of
27 that meeting. Accordingly, I am making the following information request on behalf
28 of the Association pursuant to G.L. Chapter 150E.

29
30 Please provide me with:

- 31
32 1. A detailed statement of reasons for the transfer of Officer Beth Halloran from
33 CID to patrol. I am told the so far all that the Department has reported to the
34 CPPOA regarding such transfer is that it was pursuant to its management rights
35 [sic]. In my view that is a markedly inadequate explanation under the law that
36 needs substantial supplementation to render it adequate;

37
38

⁵The City presented evidence that during negotiations in 1984-85, the parties discussed providing a statement of reasons for certain job assignments and/or transfers. Those proposals were not adopted. Since McDonald began representing the Union, it has not proposed during bargaining that the City provide a statement of reasons for transfers.

1
2 I look forward to hearing from you as soon as possible regarding these time
3 sensitive matters, but in no event later than the close of business tomorrow,
4 Wednesday, May 22, 2019.

5
6 By email on May 22, 2019, Matthews responded to McDonald that: "I am not aware
7 of any obligation to provide a detailed statement of reasons for the transfer. The
8 Commissioner based his decision on the needs and best interests of the department."

9 By email on June 8, 2019, McDonald wrote to Matthews that:

10 The CPPOA has asked me to secure an explanation from the Cambridge Police
11 Department as to why former detective Mike [Logan] was involuntarily transferred
12 from the Criminal Investigation Division in December of 2018. Accordingly, I
13 request on behalf of the Association, as I have previously requested with respect
14 to the more recent transfer of former detective Beth Halloran, a detailed statement
15 of reasons for Officer [Logan's] transfer. This information is relevant and
16 necessary for the Association to determine whether there is legal recourse on
17 behalf of either of these two officers to challenge the transfers. If the Department
18 is contending simply that the officers were transferred pursuant to the
19 Department's managerial rights, please provide a detailed explanation of the
20 reason or reasons underlying the exercise of those rights.

21
22 By email on June 13, 2019, Matthews wrote to McDonald that, "The
23 Commissioner's decision to transfer Officer Michael Logan was based on the needs and
24 best interests of the Cambridge Police Department." Matthews added that, "We are
25 declining to provide any further explanation at this time with respect to the transfers of
26 Officer Logan and Officer Halloran."⁶

⁶Matthews testified regarding her reasoning: "There was no requirement under contract, under the parties['] past practice, or under statute that I was aware that required us to provide the detailed statement of reasons that the Union was requesting." Matthews further testified: "[F]or the Union to be able to use Chapter 150E to require the commissioner to provide a written detailed statement of reasons for those decisions is a significant burden that would ultimately...impact and impede his ability to effectively manage the department."

Bard testified that his decisions about transfers and assignments are sometimes "based on information that only I'm going to be privy to as the department head." He added, "I'm

1 Since the transfers at issue in this matter, Halloran has applied for temporary detail
2 assignments doing background investigations and has been granted them at least twice.
3 She was also a finalist for a court assignment.

4 On December 18, 2019, the City offered to meet with the Union to “try to resolve”
5 the Charge. At that time, the City offered to provide the Union with verbal explanations
6 for the transfers of Halloran and Logan.⁷

7 Information Provided in Similar Situations

8 In December 1997, Officer Paul Xavier (Xavier) applied for an assignment in the
9 Court Prosecutor Unit. Despite both his interviewers recommending Xavier for the
10 assignment to the Superintendent, the Superintendent recommended a different

not saying that every situation is confidential and I’m not saying that every decision is made under this extreme stress, but... I need the ability to respond and to make decisions for the good of the department and do that free from unnecessary hurdles.” He opined that the Union’s request for a detailed statement of reasons “seeks to impose a condition on my exercise of a non-delegable right.” Bard added: “Sometimes there’s going to be privacy concerns, security concerns and sometimes there’s going to be integrity issues at play that result in me having to reassign and transfer individuals that I won’t be able to...state right out.” As examples, Bard testified that during ongoing, confidential investigations, he has had to move individuals without telling them why so as not to “compromise those investigations;” and that in situations where individuals have raised serious complaints, “so as not to jeopardize the individual who made the complaint, I couldn’t divulge why the move was made.” Bard did not testify that the transfers of Halloran or Logan implicated such concerns.

McDonald testified that the City’s response was not sufficient for the Union’s purposes because it did not allow for the Union to “consider whether or not a grievance was in order.” He added that sometimes in the past, when officers have known the reason for their transfers they have “sought clarification” and in at least one instance “worked out the matter themselves and remained in the position in a specialty unit.” They may also use the information to improve job performance. According to McDonald, the officers may also be demoralized when they are transferred and do not know why.

⁷McDonald explained that the Union wanted the reasons in writing because it sought a “static explanation” that it could rely upon without the risk of miscommunication.

1 candidate to the Commissioner. As a reason for not recommending Xavier to the
2 Commissioner, the Superintendent expressly questioned Xavier's "decision making and
3 ethics" based upon a prior grievance Xavier had filed. Xavier did not receive the
4 assignment. Upon learning of the reason for the non-assignment, the Union filed a
5 grievance alleging that the City discriminated against Xavier for his union activity.⁸ The
6 grievance advanced to arbitration. In a 1999 arbitration decision, an arbitrator rejected
7 the City's argument that the grievance was not arbitrable under the doctrine of
8 nondelegation because he found that the grievance pertained to anti-union discrimination;
9 interpreted the CBA as barring anti-union discrimination; concluded that the City
10 discriminated against Xavier for union activity; and ordered the City to assign Xavier to
11 the position. The City did not appeal that decision.

12 In or around 2011, Officer David Fimiani (Fimiani) was transferred from a School
13 Resource Officer position to Patrol. The Department told Fimiani that it was transferring
14 him for performance-based reasons. Fimiani spoke with the Commissioner about this
15 transfer, and the Commissioner reversed the decision, allowing Fimiani to remain as the
16 School Resource Officer. Fimiani later applied for and was denied a position within the
17 Family Services Unit, which resulted in him returning to Patrol. On October 1, 2012, the
18 Union filed a grievance alleging that Fimiani was involuntarily transferred to Patrol; the
19 grievance challenged the transfer as retaliation for union activity and as unsupported by
20 just cause. The City did not provide a written reason for Fimiani's non-selection prior to
21 the Union filing the grievance. The City's Step III answer denying the grievance contained

⁸Both McDonald and Michael Gardner, the City's former Director of Personnel and Labor Relations, testified that Xavier received a written reason for his non-appointment. Gardner testified that the Union requested a written reason.

1 information about performance issues and alleged misconduct against Fimiani, and the
2 Union elected not to pursue the matter to arbitration.

3 Early in 2020, Bard transferred two officers – Christopher Borum (Borum) and
4 Brian Hussey (Hussey) – from CID to Patrol. In or around February 2020, the Union
5 grieved both transfers. The Department did not provide written statements of reasons for
6 the transfers, but the Department did meet with the officers about the transfers and
7 informed them that it did not consider the reassignments to be disciplinary. The Union
8 grieved Borum’s transfer because it alleges that he was not given a specific reason for
9 his transfer and at the time of his transfer the Department had an open investigation into
10 Borum involving a complaint made by another officer. The Union grieved Hussey’s
11 transfer because it alleges that the Department told him that the transfer related to the
12 improper processing of evidence. The Union maintains that in both instances it requires
13 additional information related to the reasons for the transfers so that it can determine
14 whether to process the grievances to arbitration.

15 OPINION

16 The issue is whether the City violated Section 10(a)(5) and, derivatively, Section
17 10(a)(1) of the Law by refusing to provide a detailed statement of the reasons for
18 transferring Halloran and Logan from CID to Patrol. For the following reasons, I find that
19 the City violated the Law as alleged in the Complaint.

20 If a public employer possesses information that is relevant and reasonably
21 necessary to an employee organization in the performance of its duties as the exclusive
22 collective bargaining representative, the employer is generally obligated to provide the
23 information upon the employee organization’s request. Bristol County Sheriff’s

1 Department, 32 MLC 76, 78, MUP-01-3086 (August 3, 2005); Higher Education
2 Coordinating Council, 23 MLC 266, 268, SUP-4142 (June 6, 1997). The employee
3 organization's right to receive relevant and reasonably necessary information is derived
4 from the statutory obligation to bargain in good faith and includes grievance processing
5 and contract administration. Boston Public School Committee, 24 MLC 8, 11, MUP-
6 1410,1412 (August 26, 1997). The Commonwealth Employment Relations Board's
7 (CERB) standard for determining whether the information requested is relevant is a liberal
8 one, similar to the standard for determining relevancy in civil litigation discovery
9 proceedings. Board of Higher Education, 26 MLC 91, 92, SUP-4509 (January 11, 2000).
10 Information about terms and conditions of employment of bargaining unit members is
11 presumptively relevant and reasonably necessary for an employee organization to
12 perform its statutory duties. City of Lynn, 27 MLC 60, 61, MUP-2236, 2237 (December
13 1, 2000). The relevance of the requested information must be determined by the
14 circumstances that exist at the time the union requests the information. Id.

15 Once a union has established that the requested information is relevant and
16 reasonably necessary, the burden shifts to the employer to establish that it has legitimate
17 and substantial concerns about disclosure, and that it has made reasonable efforts to
18 provide the union with as much of the requested information as possible, consistent with
19 its expressed concerns. Bristol County Sheriff's Department, 32 MLC at 79; Board of
20 Higher Education, 26 MLC at 93. If an employer advances legitimate and substantial
21 concerns about the disclosure of information, the case is examined on the facts contained
22 in the record. Boston School Committee, 13 MLC 1290, 1295, MUP-5905 (November 2,
23 1986). The employer's concerns are then balanced against the union's need for the

1 information. Commonwealth of Massachusetts, Chief Administrative Justice of the Trial
2 Court, 11 MLC 1440, 1443-43, SUP-2746 (February 21, 1985). Absent a showing of
3 great likelihood of harm flowing from the disclosure, the requirement that a bargaining
4 representative be furnished with the information overcomes any claim of confidentiality.
5 Greater Lawrence Sanitary District, 28 MLC 317, 318-319, MUP-2581 (April 19, 2002).
6 Relevant and Reasonably Necessary

7 Here, McDonald stated to the City in his June 8, 2019 email that the Union sought
8 the information “to determine whether there is legal recourse on behalf of either of these
9 two officers to challenge the transfers.” At the hearing, McDonald elaborated that the
10 Union sought the information not only to determine whether to file a grievance, but also
11 to determine whether a resolution short of legal action, such as a clarifying discussion,
12 might have resolved the officers’ concerns. He also indicated that the officers could
13 potentially use any explanation to improve their morale and overall job performance. The
14 Union has further argued that the information was relevant and reasonably necessary to
15 determine whether the transfers affected any bargainable subjects, such as the workload
16 or job duties of other detectives.

17 The City argues that the requested information is not relevant and reasonably
18 necessary because the Union has no recourse even if the City were to provide the
19 information. Since detective is an assignment in Cambridge and not a rank, no just cause
20 protection exists.⁹ Because assignment of police officers is a non-delegable right of the
21 Commissioner, it is not a proper subject for collective bargaining, and the Commissioner

⁹ See M.G.L. c. 7, Section 4H, which provides just cause protection prior to a “transfer from the rank of detective” in certain cities employing more than 350 police officers.

1 is not required to explain or justify his decision to transfer Logan and Halloran. Under
2 Town of Framingham v. Framingham Police Officers Union, 93 Mass. App. Ct. 537 (July
3 10, 2018), a union cannot challenge a transfer as disciplinary under the parties'
4 negotiated grievance procedure, and it cannot question the Commissioner's motives for
5 exercising his non-delegable authority.¹⁰

6 I respectfully disagree with the City's position. Although the court in Framingham
7 stated that, "Framingham is not required to justify the transfer and reassignment... or
8 prove that the decision, predicated on the best interest of the department, was not
9 otherwise pretext behind disciplinary motives," Id. at 545-46, it qualified this sentence with
10 a footnote that plainly stated that, "A different analysis would be necessary" if the claim
11 was based upon constitutional discrimination because "[t]he doctrine of nondelegation
12 generally must give way to the constitutional and statutory prohibitions on invidious
13 discrimination." Id. at 546, fn. 11.¹¹

14 As Xavier's previous arbitration demonstrates, the parties have negotiated a broad
15 grievance procedure into their CBA that allows the Union to grieve disputes over "any of
16 the provisions of this Agreement." Article 4, Section 2 protects employee rights
17 guaranteed under the Law, which includes Section 10(a)(3)'s prohibition on discrimination
18 related to "membership in any employee organization." Article 5 prohibits discrimination

¹⁰The City's argument also includes the position that City Ordinance 2.52.010 gives the Commissioner the non-delegable authority to assign personnel. I note that a municipality cannot unilaterally absolve itself of bargaining obligations by giving itself authority over its personnel through an ordinance. See Section 7(d) of the Law.

¹¹Non-delegability extends only so far as is necessary to preserve the public employer's discretion to carry out its statutory mandates. Town of Dracut v. Dracut Firefighters Union, IAFF Local 2586, 97 Mass. App. Ct. 374, 379 (May 1, 2020), discussing Board of Higher Education v. Commonwealth Employment Relations Board, 483 Mass. 310 (2019).

1 against protected characteristics “under applicable federal or state law,” or for
2 participation in or association with the Union. Article 11 further prohibits unfair labor
3 practices within the meaning of the Law. In short, the parties’ grievance procedure allows
4 the Union to grieve violations of the CBA that extend beyond the reach of the doctrine of
5 nondelegation. I therefore do not agree with the City that the Union necessarily has no
6 recourse under the CBA if it receives the information.

7 The City also argues that the requested information is not relevant and reasonably
8 necessary because this was the first time in the parties’ decades-long history in which the
9 Union has attempted to receive a reason for a transfer through an information request
10 outside of the grievance process. In that time, the Union has been able to file grievances,
11 and the CBA does not require the information before the Union can file a grievance. I
12 again disagree.

13 The Union’s right to information includes information that is relevant to evaluating
14 whether to pursue a grievance. Boston School Committee, 8 MLC 1380, 1382, MUP-
15 3909 (October 20, 1981). Additionally, although a Union can waive through the CBA its
16 right to obtain certain information, that right is implied in the Law, and the Union’s failure
17 in the past to request this information prior to filing a grievance does not constitute a
18 waiver to now obtain the information. Id. Moreover, the CERB will not find waiver of a
19 statutory right to information unless the evidence shows a specific and intentional
20 agreement to limit the union’s right to information, which is not here present. Boston Public
21 Health Commission, 38 MLC 6, 8, MUP-08-5279 (June 16, 2011). Accordingly, neither
22 the Union’s inability in the 1980s to successfully negotiate language into the CBA that

1 parallels the language in Article 14, Section 4 for Voided Picks, nor the Management
2 Rights clause at Article 2 waives its right to information.

3 Based upon these considerations, I conclude that the Union's information request
4 was relevant and reasonably necessary to the exercise of its duties as the exclusive
5 bargaining representative.

6 Legitimate and Substantial Concerns

7 The City rejected the Union's request for a detailed reason and offered no
8 explanation for so doing beyond its opinion that it had no obligation to provide the
9 information. The City also made no effort to provide the Union with as much information
10 as possible, consistent with any expressed concerns.¹²

11 At the hearing, Bard expressed concern that requiring him to provide this
12 information would undermine his non-delegable authority and his ability to manage the
13 Department in the interest of public safety. The City further argues that requiring it to
14 provide the information in the requested form would unduly burden the Department.
15 Finally, the City argues that the Union is seeking to create a new condition of employment
16 that it could not obtain through bargaining.

17 Bard testified that there are certain instances where the reasons underlying a
18 transfer cannot be disclosed due to confidentiality concerns, such as privacy, security, or
19 integrity issues. He also testified that those concerns are not always present. Notably,

¹² The City essentially argues that it did precisely this when, in December 2019, it offered to provide verbal reasons to the Union in an effort to "resolve" the Charge. The Union objected to this information entering the record because the Union argued that it constituted an offer of settlement. I agree with the Union. Regardless, in June 2019, the Union was forced to file the Charge to pursue the information, and the City's untimely offer in December 2019, is insufficient to satisfy its obligation under the Law. See Board of Higher Education, 26 MLC 91.

1 he did not represent that those concerns existed when he transferred Halloran or Logan,
2 or when the Union requested the information. Additionally, the evidence does not show
3 that any explanations for transfers or assignments that the City has previously provided
4 in any way undermined the Commissioner's authority or imposed any kind of undue
5 burden on the Department.

6 Under Framingham, the transfers of Halloran and Logan are not substantively
7 arbitrable under a just cause disciplinary standard. The doctrine of nondelegation does
8 not, however, apply to statutory prohibitions on invidious discrimination, and the record
9 contains evidence that the parties have previously arbitrated a grievance involving a
10 discriminatory, anti-union non-assignment. If allegedly disciplinary transfers are not
11 substantively arbitrable, but allegedly unlawful, discriminatory transfers are arguably
12 arbitrable, then providing a reason for the transfer would not undermine the
13 Commissioner's non-delegable authority. As McDonald indicated at the time he
14 submitted the request, the Union sought the information to ascertain whether legal
15 recourse existed. The non-delegability of the decision, and the existence of any recourse,
16 would necessarily depend upon management's reasoning, which the Union must have
17 access to so that it can represent the bargaining unit.

18 In Dracut School Committee, 13 MLC 1281, MUP-6143 (H.O. November 21, 1986),
19 a hearing officer considered whether a request for information that included
20 management's "thought processes" fell within the purview of a Section 10(a)(5)
21 information request. The hearing officer reasoned that the requested information was
22 relevant to the Union's ability to determine whether a management decision "conformed

1 to the contractual strictures.” Id. at 1285. I find this reasoning persuasive in the instant
2 matter.

3 The parties have incorporated statutory prohibitions on invidious discrimination
4 into their CBA. Those prohibitions are subject to the parties’ negotiated grievance
5 procedure. The Union seeks the information to ascertain whether the City has arguably
6 violated the parties’ contract. Under these circumstances, providing the Union with the
7 information that it needs to “act for and represent” the members of the bargaining unit
8 pursuant to Article 5 of the parties’ CBA and the Law would not unduly burden the
9 Department. Nor would providing the Union with the information in a form that
10 memorializes the information create a new condition of employment. Rather, it would
11 allow the Union to verify that the City is complying with its statutory and contractual
12 obligations without forcing the Union to take the City at its word.

13 In sum, the City did not advance legitimate and substantial concerns about
14 providing the information at issue at the time that it refused the Union’s request. The City
15 made no timely effort to provide an acceptable alternative, consistent with any expressed
16 concerns. The City’s subsequent arguments do not outweigh the Union’s interest in
17 receiving the information, and there is no evidence on this record of any harm flowing
18 from the disclosure of the requested information. In fact, the City has disclosed this type
19 of information in the past without any evident harm to its operations or the public safety.
20 I therefore conclude that the Union is entitled to the information, and the City violated the
21 Law when it refused to provide it.

22 CONCLUSION

1 The Union’s information request was relevant and reasonably necessary to the
 2 execution of its duties as the exclusive representative. The City did not establish that it
 3 had legitimate and substantial concerns that warranted its refusal to provide the
 4 information. Accordingly, the City violated Section 10(a)(5) and, derivatively, Section
 5 10(a)(1) of the Law when it refused the Union’s information request that the City provide
 6 a detailed statement of its reasons for transferring Halloran and Logan.

7 ORDER

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

- 9 1. Cease and desist from:
 - 10
 - 11 a. Failing to bargain in good faith by refusing to provide the Union with information
 - 12 that is relevant and reasonably necessary to the execution of its duties as the
 - 13 exclusive bargaining representative.
 - 14
 - 15 2. Take the following affirmative action that will effectuate the purpose of the Law:
 - 16
 - 17 a. Provide the Union with information that is relevant and reasonably necessary
 - 18 to the execution of its duties as the exclusive bargaining representative,
 - 19 including a detailed statement of the reasons for transferring Halloran and
 - 20 Logan.
 - 21
 - 22 b. Post immediately in all conspicuous places where members of the Union’s
 - 23 bargaining unit usually congregate, or where notices are usually posted,
 - 24 including electronically if the City customarily communicates with these
 - 25 members via intranet or email, and display for a period of thirty (30) days
 - 26 thereafter, signed copies of the attached Notice to Employees.
 - 27
 - 28 c. Notify the DLR in writing of steps taken to comply with this Order within ten
 - 29 (10) days of receipt.
 - 30

31 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 City of Cambridge (City) violated Section 10(a)(5) and, derivatively, Section 10(a)(1) of Massachusetts General Laws, Chapter 150E (the Law) by refusing to provide the Cambridge Police Patrol Officers 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 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 the Law.

WE WILL provide the Union with a detailed statement of the reasons for transferring Officers Halloran and Logan.

City of Cambridge

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).