

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF LABOR RELATIONS

In the Matter of

TOWN OF BROOKLINE

and

BROOKLINE FIREFIGHTERS,
LOCAL 950, I.A.F.F.

Case No.: MUP-21-8971

Date issued: April 1, 2025

Hearing Officer:

Margaret M. Sullivan, Esq.

Appearances:

Michael Downey, Esq. - Representing the Town of Brookline

John B. Becker, Esq. - Representing the Brookline Firefighters,
Local 950, I.A.F.F.

HEARING OFFICER'S DECISION

SUMMARY

1 The issue in this case is whether the Town of Brookline (Town) violated Section
2 10(a)(5) and, derivatively, Section 10(a)(1) of Massachusetts General Laws, Chapter
3 150E (the Law) by failing to provide the Brookline Firefighters, Local 950, I.A.F.F. (Local
4 950) with relevant and reasonably necessary information that Local 950 had requested.
5 For the reasons described below, I find that the Town has violated the Law in part, but I
6 dismiss the allegation in part as well.

Statement of the Case

8 On December 3, 2021, Local 950 filed a charge with the Department of Labor
9 Relations (DLR) alleging that the Town had engaged in prohibited practices within the
10 meaning of Section 10(a)(5) and, derivatively, Section 10(a)(1) of the Law. A DLR

1 investigator investigated the charge on February 28, 2022. On March 15, 2022, the
2 investigator issued a complaint alleging that the Town violated Sections 10(a)(5) and (1)
3 of the Law by not providing Local 950 with requested information that was relevant and
4 reasonably necessary for Local 950 to execute its duties as the exclusive collective
5 bargaining representative. The Town filed its answer on December 5, 2022.

6 I conducted a hearing on February 22, 2023. Both parties had an opportunity to
7 be heard, to call witnesses, and to introduce evidence. The parties subsequently filed
8 post-hearing briefs. Upon review of the entire record, including my observation of the
9 demeanor of the witnesses, I make the following findings of fact and render the following
10 opinion.

11 Stipulated Facts

- 12 1. The Town of Brookline ("Town") is a public employer within the meaning of G.L.
13 c.150E.
- 14 2. Brookline Firefighters, Local 950, IAFF ("Union") is a labor organization within the
15 meaning of G.L. c.150E.
- 16 3. The Town and the Union are parties to a collective bargaining agreement ("CBA").
- 17 4. Fire Lieutenant Paul Trahon ("President Trahon") is the President of the Union.
- 18 5. Fire Lieutenant Justin Robinson ("Lt. Robinson") is the Pension and Welfare Officer
19 of the Union.
- 20 6. Ann Hess-Braga ("Ms. Hess-Braga") is the Town's Human Resources Director.
- 21 7. Michael Downey, Esq. ("Attorney Downey") is the Town's Labor Counsel.
- 22 8. In 1998, the Town distributed to all unions a draft policy implementing the federal
23 Family and Medical Leave Act.
- 24 9. For reasons unknown, the Town did not adopt the FMLA policy until February 26,
25 2002.

- 1 10. Under the Town's FMLA Policy, employees can ask to use FLMA leave for
2 qualifying reasons. The Policy also allows the Town to require employees to use
3 FMLA leave for qualifying reasons.
4
- 5 11. The Town's practice is to require firefighters on IOD leave to use FMLA leave
6 concurrently, so long as the absence is due to an FMLA-qualifying reason.
7
- 8 12. On November 1, 2016, former Director of the Town's Human Resources Office,
9 Sandra DeBow-Huang, disseminated a letter to all unions, including Local 950,
10 notifying them of the Town's practice of running FMLA concurrently with IOD.
11
- 12 13. The Union filed a grievance on December 20, 2016 ("2016 FMLA Grievance")
13 alleging that the Town violated Article XV "by placing injured members covered
14 under MGL 111f on FMLA leave." As a remedy, the Union ordered the Town to
15 "Cease running FMLA benefits concurrent with 111f immediately."
16
- 17 14. After the Human Resources Board denied the grievance at Step 2, on procedural
18 and substantive grounds, the Union withdrew its grievance by letter dated January
19 30, 2017.
20
- 21 15. On May 31, 2017, the Union filed an unfair labor practice charge against the Town
22 (MUP-17-6014) alleging that the Town violated Sections 10(a)(5) derivatively,
23 10(a)(1), when it unilaterally forced bargaining unit members to use FMLA leave
24 concurrent with IOD leave without first bargaining with the Union.
25
- 26 16. On November 14, 2017, the DLR dismissed MUP-17-6014 on timeliness grounds.
27
- 28 17. On December 12, 2019, the Union's executive board (including President Trahon
29 and Lt. Robinson) met with members of management, including Fire Chief Sullivan
30 and Human Resources Director Hess-Braga, to discuss a number of issues,
31 including the FMLA.
32
- 33 18. On July 31, 2020, the Union met with members of management (including Ms.
34 Hess-Braga) to discuss a number of issues, including the FMLA.
35
- 36 19. On August 26, 2020, the Union filed a charge of prohibited practice (MUP-20-8167)
37 alleging that the Town engaged in a unilateral change and repudiation of an
38 agreement with regard to the use of accrued leave during FMLA bonding time.
39
- 40 20. On December 21, 2020, the DLR issued a complaint of prohibited practice on
41 MUP-20-8167.
42
- 43 21. On January 20, 2021, the Union filed a charge of prohibited practice (MUP-21-
44 8411) alleging that the Town failed to bargain in good faith and repudiated an
45 agreement with regard to use of accrued leave when taking FMLA leave to care
46 for sick family members.

1 22. On February 9, 2021, the Union filed a grievance ("2021 FMLA Grievance")
2 alleging that the Town violated Article XV(c) "by not replenishing FMLA leave time
3 after a member [Firefighter JR] returned from injury leave to full duty status." The
4 grievance sought to discontinue the Town's practice of "placing members on FMLA
5 Leave while out injured under 111f" or, alternatively, to replenish "FMLA leave time
6 on return to full duty status."
7

8 23. On February 16, 2021, the Union advanced the FMLA replenishment grievance to
9 Step 2.
10

11 24. On March 19, 2021, the Union advanced the FMLA replenishment grievance to
12 Step 3.
13

14 25. On April 16, 2021, Justin Robinson sent an email to Ann Hess-Braga (and cc's to
15 Paul Trahon and Michael Downey, Esq.) with an attachment. The attachment
16 contained a request for information pursuant to G.L. c.150E, which was, in
17 Robinson's words "relevant and necessary to the Union's execution of its duties as
18 exclusive bargaining representative."
19

20 26. The requested information was:
21

- 22 a) Annual numbers of bargaining unit fire dept. personnel placed on FMLA who
23 requested FMLA from 1996 through 2016 including all corroborating
24 documentation.
25
- 26 b) Annual number of bargaining unit fire dept. personnel placed on FMLA from
27 1996 through 2016 who did not request FMLA, including all corroborating
28 documentation.
29
- 30 c) Annual number of bargaining unit fire dept. personnel who were carried as
31 injured on duty from 1996 through 2016 including all corroborating
32 documentation.
33
- 34 d) Annual number of notices and documentation sent to bargaining unit fire
35 dept. personnel informing them of their FMLA status from 1996 through
36 2016 including all corroborating documentation.
37
- 38 e) Annual number of notifications sent to bargaining unit fire dept. personnel
39 a[s] to FMLA use and or availability from 1996 through 2016 including all
40 corroborating documentation.
41

42 27. In the April 16, 2021 information request, Lt. Robinson asked that the Town
43 respond to the request within 10 days.

- 1 28. On April 23, 2021 (9:47 a.m.), Lt. Robinson sent a follow-up email to the Town
2 asking for the status of the Town's response to the request and again enclosing a
3 copy of the information request.
4
- 5 29. On April 23, 2021 (10:07 a.m.), Attorney Downey responded to Lt. Robinson in an
6 email noting that the 10-day limit does not apply to requests under G.L. c.150E.
7 Downey also wrote, "Nonetheless, the request is under review and considering the
8 breath of it, I presume that the response is going to take longer than the 10-day
9 timeframe."
10
- 11 30. On April 23, 2021 (10:23 a.m.). Lt. Robinson responded that the Union was lifting
12 the 10-day time limit and noted that the "Eboard has no problem with a reasonable
13 time frame being needed to gather the information."
14
- 15 31. On April 30, 2021, Lt. Robinson sent a follow-up email to the Town asking for a
16 status update regarding the information request.
17
- 18 32. On May 3rd, 2021, Lt. Robinson and Attorney Downey had a telephone
19 conversation regarding the information request. In that conversation, Lt. Robinson
20 explained the objective of the Union's request is to show that the Town made
21 changes to practices involving employees on FMLA or IOD, or both. Specifically,
22 Lt. Robinson alleged that starting in 2016, the Town consistently ran FMLA and
23 IOD concurrently and unilaterally placed employees on FMLA regardless of
24 whether the individual did not request, or want, such coverage. Lt. Robinson also
25 raised concern[s] surrounding the circumstances at issue in MUP-21-8411, namely
26 the alleged discrepancy between "sick in family" leave ("SICF") under the CBA
27 versus the FMLA Policy. Lt. Robinson and Attorney Downey concluded the
28 conversation by agreeing to allow the Town to initially provide information
29 pertaining to IOD instances prior to 2016 for purposes of demonstrating whether
30 the Town previously ran FMLA and IOD concurrently, as well as examples of FMLA
31 related documents to show if the Town notified employees that they were being
32 placed on FMLA prior to 2016. Despite this agreement, Lt. Robinson maintained
33 and preserved the Union's information request in full.
34
- 35 33. On May 17, 2021, Lt. Robinson sent a follow-up email to the Town referencing his
36 May 4 conversation with Attorney Downey. In the email, Lt. Robinson noted "I
37 know that when Michael and I spoke on May 4th we discussed being able to see at
38 least information in part as the rest was being compiled. If this is still the case, we
39 are amenable to a review of information gathered thus far as we await the rest."
40
- 41 34. On June 1, 2021, Lt. Robinson sent a follow-up email to the Town seeking a status
42 update and any information that had been compiled so far in response to the
43 request.
44
- 45 35. On June 14, 2021, Lt. Robinson sent a follow-up email to the Town seeking a
46 status update.

1 36. On June 21, 2021, Lt. Robinson sent an email to the Town with the attached letter
2 to Ms. Hess-Braga. The letter states, in part:

3
4 Unfortunately, for reasons not yet clear to the union, management has neglected
5 to communicate with us in a timely manner with regards to issues unresolved from
6 multiple previous meetings.
7

8 On April 16, 2021, a 150e request was sent to you requesting information related
9 to FMLA (see attached). There has been no communication from the HR office
10 following this request. Based on a phone conversation with Attorney Downey
11 sometime in May, some clarifying information was provided along with an
12 agreement to accept partial information as the rest of the 150e [request] was
13 worked on. Since that call, there has been no acknowledgement nor any response
14 to the multiple emails sent to request updates from the executive board to the
15 administration, nor has any information been given to the executive board.
16

17 We are requesting that any and all information gathered thus far be provided to the
18 executive board electronically by close of the Town's business day, 12:30 p.m. on
19 Friday the 25th of June 2021 and remaining information forthwith.
20

21 37. On July 6, 2021, the DLR dismissed MUP-21-8411 on untimeliness grounds, and
22 for lack of probable cause on the merits.
23

24 38. At a July 13, 2021 meeting, the Town presented the Union with a document entitled
25 "Guidelines of Workplace Injury and Illness."
26

27 39. On July 14, 2021, Lt. Robinson wrote an email to Attorney Downey proposing a
28 "temporary solution" of a sampling of names. The email listed 20 names (out of a
29 bargaining unit of approximately 150 members) and asked for the following
30 information for each individual:
31

32 a) FMLA status (FLMA or FMLA sickness in family) for the below named members
33 from 1998 through 2013
34

35 b) IOD status for the below listed members from 1998 through 2013
36

37 c) Copies of written notification as to FMLA status provided to the below listed
38 members who were on FMLA 1998-2013.
39

40 40. In his July 14, 2021 email, Lt. Robinson explained that the Union still expected the
41 Town to provide all the information requested in the April 16, 2021 information
42 request.
43

44 41. On July 16, 2021, Attorney Downey sent an email to Lt. Robinson stating in part:

1 I will provide records and information responsive to your narrowed request in
2 advance of our August 13th meeting on the subject of FMLA. Perhaps that will give
3 us a baseline of any possible issues, and perhaps there are no issues at all.
4

5 I agree to provide the information in the spirit of harmonious labor relations, though
6 I reserve any and all rights and defenses under MGL c150E available to the Town.
7 Specifically, as I have mentioned during our phone calls before, I am not convinced
8 that the information requested is relevant and necessary to the union's
9 responsibility preparing for bargaining and grievances, and administering the
10 parties["] collective bargaining agreement.
11

12 42. At an August 13, 2021 negotiation session regarding FMLA issues, the Union
13 made two proposals in an attempt to resolve some of the issues. The Town
14 allowed the Union to add these proposals to their main table negotiations.
15

16 43. At an August 18, 2021 main table bargaining session, the Union added the
17 following two proposals:
18

19 The following provisions shall supersede any conflicting provisions of the Town
20 policies regarding FMLA or on-duty injuries:
21

22 When an employee takes FMLA leave, either on their own initiative or upon
23 designation by the Town, the employee may use any and all accrued leave during
24 the FMLA leave, including personal, vacation, and sick leave, without restriction.
25

26 The Union and the Town agree that the Town may designate injured on duty leave
27 as concurrent FMLA leave where the reason for the leave qualifies under the
28 Town's FMLA policy. If an employee returns to work from injured on duty leave
29 after using all 12 weeks of FMLA leave and has another FMLA qualifying event
30 within the same 12-month period, that employee shall receive up to 12 weeks of
31 contractual leave. The employee may use any accrued paid leave during this
32 additional leave.
33

34 44. On September 1, 2021, Lt. Robinson sent an email to Attorney Downey stating in
35 part:
36

37 I am following up on the modified 150e request. Since we've added the FMLA
38 proposals to the negotiating table the eboard will need that data as we move
39 forward. Can you give me an update on when you will have the information?
40

41 45. On September 3, 2021, Lt. Robinson sent an email to Attorney Downey asking for
42 an update on the information request.

43 46. On September 7, 2021, Attorney Downey responded in an email as follows:
44

1 Sorry for the delay. I'll put together information for at least some of the employee
2 names provided and will have it to you by the week prior to the next negotiation
3 session scheduled on September 29th.
4

5 47. On September 9, 2021, the DLR held Day 1 of the hearing on MUP-20-8167.
6

7 48. On September 29, 2021, Attorney Downey sent an email to Lt. Robinson stating:
8

9 Attached you will find FMLA notice letters to several of the firefighters named in
10 your request. You and I, and perhaps Ann, should talk after negotiations today as
11 I am not sure how to provide the "status" of employees on IOD or FMLA.
12

13 49. Attached to Attorney Downey's email were copies of six letters from 2010
14 regarding FMLA leave for members of the bargaining unit:
15

16 a) January 11, 2010 letter to CH from Sandra DeBow (former director of the
17 Human Resources Office) regarding request from FMLA leave.
18

19 b) March 16, 2010 letter to RD from Leslea Noble (assistant human resources
20 director) regarding placement on FMLA leave.
21

22 c) July 14, 2010 letter to CH from Leslea Noble regarding placement on FMLA
23 leave.
24

25 d) July 29, 2010 letter to DM regarding possible entitlement to FMLA leave.
26

27 e) October 1, 2020 letter to TF regarding placement on FMLA leave.
28

29 f) October 15, 2020 letter to LM regarding entitlement to FMLA leave.
30

31 50. On September 30, 2021, Lt. Robinson sent an email to Attorney Downey that
32 states in part:
33

34 As a follow-up to yesterday's meeting I am writing to you regarding the 150e
35 (temporary modification) sent back in June/July.
36

37 In light of the recent suggested progress during yesterday's contract negotiations
38 with regards to the 2 FMLA proposals, the union will leave in place the temporary
39 info modification for the 20 firefighters.
40

41 We request that this information be supplied to us before our next scheduled
42 bargaining session scheduled for October 21.
43

44 51. On October 12, 2021, the DLR held Day 2 of the hearing in MUP-20-8167.
45

1 52. On October 15, 2021, Lt. Robinson sent an email to Attorney Downey regarding
2 the information request that reads in substantial part:

3
4 I was hoping to hear from either you or Ann with regards to the status of my 150e
5 request. At this point the information provided thus far does not offer any
6 substantive information that could be interpreted as useable data. The notice
7 letters are all for one year and only for a small number of the modified number of
8 members requested. I would like to schedule a meeting for next Monday or Friday
9 to try and sort this out. Please advise as to your availability.

10
11 53. On October 18, 2021, Attorney Downey sent an email to Lt. Robinson stating, in
12 relevant part:

13
14 I will be meeting with Ann/HR to discuss coming up with more documents and I
15 have sent an inquiry to PBSO [Public Safety Business Office] to gather information
16 about the status of IOD leave for the named FFs as you suggested. I'll be in touch
17 when I have more information.

18
19 54. On November 5, 2021, Lt. Robinson sent an email to Attorney Downey stating, in
20 relevant part:

21
22 Following our contract negotiations on Oct. 21 we had a conversation about your
23 office going to the PBSO to obtain information relevant to our temporarily modified
24 150e request. Having not heard from you or Ann or receiving any information since
25 that date; the executive board is hereby requesting that the information requested
26 in the original 150E, submitted April 16, 2021 be provided to the executive board
27 by Friday November 12.

28
29 55. On November 12, 2021, Attorney Downey sent an email to Lt. Robinson stating in
30 relevant part:

31
32 Attached you will find the information obtained from PBSO, which relates to the
33 timeframes of IOD absences as requested by the union. This information
34 supplements the FMLA notices that the Town provided on September 29, 2021,
35 attached hereto. As HR Director, Ann Braga, indicated to you following contract
36 negotiations on October 21, 2021, the HR Office reviewed electronic and hard-
37 copy files in search of additional FMLA notices pertaining to the firefighters named
38 by the union but did not find any additional materials. As such, the Town believes
39 it has satisfied the union's modified information request.

40
41 Additionally, as mentioned in my July 16, 2021 email to you (also attached), we
42 provide this information in the spirit of promoting and maintaining positive labor
43 relations. However, based on our many conversations regarding this request, I
44 remain convinced that the information sought is not relevant and reasonably
45 necessary to the union's performance of duties as the exclusive collective
46 bargaining representative. Furthermore, as I have mentioned on several

occasions, it is extremely difficult, if not impossible, for the Town to determine whether an employee requests FMLA as opposed to being placed on FMLA without request. For these reasons, the Town does not intend to produce any additional information in response to your request.

56. Attached to Attorney Downey's November 12, 2021 email was a list of four firefighters with the dates that they were on injured on duty (IOD) status in the years 2010, 2011 and 2012.

57. On November 12, 2021, the Union advanced the 2021 FMLA Grievance to arbitration.

58. On September 18, 2022, Arbitrator Sharon Henderson Ellis denied the Union's 2021 FMLA Grievance on grounds of untimeliness (procedural arbitrability), substantive arbitrability, and on the merits.

Findings of Fact¹

Background

Local 950 is the exclusive bargaining representative for a unit of approximately 150 firefighters, including lieutenants, captains, and deputy chiefs, who are employed by the Town in its Fire Department, but excluding the executive officer and the chief. The Town and Local 950 were parties to a collective bargaining agreement that, by its terms, was in effect from July 1, 2018 through June 30, 2021 (2018-2021 CBA).² In 1998, the Town distributed an FMLA policy to all its employee unions, but the Town did not adopt the FMLA Policy until February 26, 2002. On November 1, 2016, the Town sent a letter (November 1, 2016 letter) to all its employee unions, including Local 950, notifying them of the Town's practice of running FMLA concurrently with IOD.

Grievances and Prohibited Practice Charges

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

² It was undisputed that the 2018-2021 CBA continued to remain in effect as of the date of the hearing.

1 In 2016 and 2017, Local 950 filed a grievance and a prohibited practice charge in
2 Case No. MUP-17-6014 challenging the Town's practice of placing unit members on IOD
3 leave and FMLA leave concurrently. Local 950 withdrew the grievance on January 30,
4 2017 after the Town's Step II denial, and on November 14, 2017, the DLR dismissed
5 Case No. MUP-17-6014, which is described in Stipulation #15, as untimely. On
6 December 12, 2019, Local 950 and the Town met to describe various issues regarding
7 FMLA, including the Town's refusal to permit a unit member who previously had been on
8 IOD to take FMLA leave because the Town claimed that he had not been on active duty
9 for the necessary 1250 hours, and the use of FMLA leave to provide bonding time for
10 non-birth parents. On August 26, 2020, Local 950 filed a prohibited practice charge in
11 Case No. MUP-20-8167 concerning the bonding time issue, which is described in
12 Stipulation #19. On January 20, 2021, Local 950 filed a prohibited practice charge in
13 Case No. MUP-21-8411 concerning the amount of accrued sick leave that unit members
14 could use when taking FMLA leave to care for sick family members, which is described
15 in Stipulation #21. On February 9, 2021, Local 950 filed the grievance described in
16 Stipulation #22 alleging that the Town violated a provision of the 2018-2021 CBA by not
17 replenishing the twelve weeks of protected leave that a unit member depleted when the
18 Town concurrently placed them on IOD leave and FMLA leave (replenishment grievance).
19 On February 16, 2021 and April 16, 2021, Local 950 submitted the replenishment
20 grievance to Step II and Step III respectively. On November 12, 2021, Local 950
21 submitted the replenishment grievance to arbitration.

22 April 16, 2021 Information Request

1 On April 16, 2021, Robinson, as Local 950's Health and Welfare Officer, sent an
2 email to the Town's Human Resources Director Braga,³ as described in Stipulation #25,
3 requesting certain information (April 16, 2021 information request) that Robinson
4 characterized as relevant and necessary to Local 950 in the performance of its duties as
5 the exclusive bargaining representative. The information request was organized into five
6 bullet points all of which covered the time period from 1996 through 2016.⁴ Local 950
7 requested: a) the annual number of unit members who requested FMLA leave and whom
8 the Town placed on FMLA leave, b) the annual number of unit members whom the Town
9 placed on FMLA leave but who had not requested FMLA leave, c) the annual number of
10 unit members who were on IOD leave, d) the annual number of notices and
11 documentation that the Town sent to unit personnel notifying them of their FMLA status,
12 and e) the annual number of notifications sent to unit members as to FMLA use and
13 availability. Local 950 also sought all corroborating documentation for each request.⁵
14 Local 950 sought the information to determine whether the Town had notified unit
15 members that it had placed them on FMLA leave and whether the Town tracked how that
16 leave was used. Local 950 also wanted the requested data to help craft a proposal at the
17 bargaining table.

18 Additionally, Local 950 sought the requested information for the replenishment
19 grievance. Local 950 believed that the Town had applied FMLA in a piecemeal fashion

³ I have referred to Braga using the surname with which she identified herself at hearing.

⁴ Local 950 used an end date of 2016 for its request because it was the year in which the Town notified Local 950 that it would run IOD leave and FMLA leave concurrently.

⁵ Robinson, at the hearing, characterized d) as "a catchall request" and e) as "a catchall of a catchall."

1 and Robinson thought that Local 950 needed the information to rebut the Town's claims
2 during grievance processing and at arbitration that it consistently placed unit members on
3 FMLA leave concurrent with IOD leave.⁶ Robinson requested unit members' IOD status
4 and supporting corroboration to understand the Town's data collection process, including
5 whether there was such a process.

6 Modified Request

7 On various dates in April, May, and June 2021, Local 950 requested status
8 updates as to the Town's response to the April 16, 2021 information request. As of June
9 21, 2021, the Town had not provided any of the requested information to Local 950. On
10 June 21, 2021, Robinson sent an email to Braga requesting that the Town provide all the
11 requested information electronically by June 25, 2021. On June 24, 2021, Robinson and
12 Downey had a telephone conversation in which they discussed whether the Town could
13 provide a sampling of the requested information. On July 14, 2021, Robinson sent an
14 email (June 24, 2021 request) to Downey offering what Robinson characterized as a
15 "temporary solution" to providing some of the information that Local 950 had requested.
16 Local 950 submitted a three-part request (modified request), concerning twenty
17 bargaining unit members for the period 1998 through 2013. The bargaining unit members
18 were JC, PC, GD, TD, RD, TD2, TF, KF, KF2, CH, FJ, LM, CM, DM, SN, NP, PP, JR, PT,
19 and LW. Local 950 asserted that those unit members had been on FMLA during the
20 operative period. Local 950 requested: a) the unit members' FMLA status (FMLA or
21 FMLA sickness in family), b) the unit members' IOD status, and c) copies of the written

⁶ Robinson made a general statement at hearing that there were instances in the past where unit members were on IOD leave but the employees' FMLA leave remained untouched. Robinson provided no specific facts in support of his statement.

1 notification that the Town sent to the unit members concerning their FMLA status.
2 Robinson also noted that despite the modified request, Local 950 still expected the Town
3 subsequently to provide all the information that Local 950 previously requested on April
4 16, 2021.⁷ On July 16, 2021, Downey responded to Robinson by stating that although
5 the Town would provide information responsive to the June 24, 2021 request in advance
6 of a scheduled meeting on August 13, 2021, Downey was not convinced that the
7 requested information was relevant and reasonably necessary. He also reiterated that
8 the Town was preserving all its rights and defenses under the Law.

9 *Local 950's FMLA Proposals in Successor Contract Negotiations*

10 On August 13, 2021, the Town and Local 950 met to negotiate over certain
11 outstanding FLMA issues, and Local 950 made two proposals. The Town agreed to allow
12 Local 950 to submit those proposals as part of main table bargaining during ongoing
13 successor contract negotiations. At successor contract negotiations on August 18, 2021,
14 Local 950 made the following proposals: 1) a unit member on FMLA leave may use all
15 accrued personal, sick and vacation leave without restriction; and 2) when a unit member
16 returns to work after being on IOD leave, which ran concurrently with twelve weeks of
17 FMLA leave, the unit member shall receive up to twelve additional weeks of contractual
18 leave if they have another FMLA qualifying event with the same twelve-month period
19 (additional leave proposal). The unit member may use any accrued paid leave during
20 those additional twelve weeks of leave.

21 Additional Communications Regarding Local 950's Information Requests

⁷At hearing, Robinson acknowledged that the information that Local 950 sought in its April 16, 2021 request and its modified request was not necessary for Local 950 to pursue Case Nos. MUP-20-8167 and MUP-21-8411.

1 On September 1, 2021, Robinson sent an email to Downey seeking an update as
2 to when the Town would respond to Local 950's modified request. Robinson noted that
3 Local 950 needed the data because it had submitted its two FMLA proposals at recent
4 successor contract negotiations. More specifically, Local 950 was seeking to use the
5 requested information for the additional leave proposal to show the Town that the
6 proposal's cost would be marginal because very few unit members likely would be eligible
7 to receive the additional twelve weeks of leave.⁸ Robinson followed up with a request for
8 an update on September 3, 2021. On September 7, 2021, Downey apologized for the
9 delay, stated that he would put together information for at least some of the named
10 employees and would provide it to Local 950 by the week prior to the September 29, 2021
11 negotiation session. On September 29, 2021, Downey emailed Robinson FMLA notice
12 letters, all of which bore dates in 2010 for five firefighters named in Local 950's modified
13 request, RD, TF, CH, LM, and DM. Downey also suggested that Robinson speak with
14 Braga and him because Downey was not sure how to provide the status of employees on
15 IOD and FMLA. On September 30, 2021, Robinson noted that Local 950 would leave the
16 modified request in place considering the possible progress that the Town and Local 950
17 had made at the September 29, 2021 bargaining session, but that Local 950 sought to
18 have the information provided before the October 21, 2021, bargaining session.

19 On October 15, 2021, Robinson informed Downey that the notice letters that the
20 Town had provided so far did not offer any substantive information that could be
21 interpreted as useable data because all the notice letters were for one year, 2010, and

⁸ At hearing, Robinson explained the specific purpose for the information and indicated that from 2017 to the date of the hearing, only two unit members would have qualified to receive additional leave under the additional leave proposal.

1 only for some of the unit members requested. Robinson then requested a meeting for
2 the upcoming Monday or Friday. Downey responded to Robinson on October 18, 2021,
3 stating that Downey would be meeting with Braga to discuss coming up with more
4 documents and that Downey had sent an inquiry to the Town's Public Safety Business
5 Office [PBSO] to gather information on the status of the IOD leave for the named
6 firefighters.⁹

7 On November 5, 2021, Robinson sent an email to Downey seeking an update
8 regarding Local 950's April 16, 2021 request, as well as the modified request. Robinson
9 noted that Local 950 was seeking to have the Town provide the information requested on
10 April 16, 2021 by Friday, November 12, 2021. In a November 12, 2021 email, Downey
11 responded to Robinson by attaching information obtained from the PSBO which relates
12 to the timeframes of IOD absences as requested by Local 950. Downey noted that the
13 attached information supplemented the FMLA notices that the Town provided Local 950
14 on September 29, 2021. Downey listed four-unit members, TF, KF, FJ, and CH, who
15 were referred to in Local 950's modified information request and the dates that they began
16 and ended IOD leave for the period from 2010 to 2012.

17 In Downey's November 5, 2021 email, Downey also referenced a conversation that
18 Braga had with Robinson after the October 21, 2021 bargaining session. Downey
19 described how Braga had informed Robinson that the HR office had reviewed electronic
20 and hard-copy files in search of additional FMLA notices pertaining to the firefighters
21 named by Local 950 but did not find any additional materials. Downey stated that the

⁹ On October 21, 2021, Robinson and Downey had a conversation with Downey and Braga about the Town seeking the requested information from the PBSO.

1 Town believed that it had satisfied Local 950's modified information request. Downey
2 also commented that the information that Local 950 had requested was not relevant and
3 reasonably necessary to Local 950's performance of its duties as the exclusive collective
4 bargaining representative. Downey noted that it was extremely difficult, if not impossible,
5 for the Town to determine whether an employee requested FMLA as opposed to being
6 placed on FMLA without making a request.¹⁰ Downey ended the email by stating that for
7 these reasons, the Town did not intend to produce any additional information in response
8 to Local 950's request.

9 Notwithstanding Downey's view, Robinson thought that by examining the unit
10 member's file, the Town could determine whether a unit member had requested FMLA
11 leave or whether the Town had placed the unit member on FMLA leave without the
12 employee requesting it. Robinson believed that the Town required a unit member who
13 sought FMLA leave to submit a written request and that there would be no request in the
14 file when the Town concurrently placed a unit member on FMLA leave while the unit
15 member was on IOD. The record shows that that half of the Town's employees made
16 FMLA requests verbally over the phone, and some employees did not want their own
17 municipal departments to know the reasons for their requests.¹¹ There are different
18 reasons why a unit member would request FMLA leave, including the unit member's
19 medical condition, a family member's medical condition, birth of a child, and that those

¹⁰ Robinson acknowledged at hearing that Downey previously had informed him several times that it was nearly impossible for the Town to determine which unit members had requested FMLA leave and which unit members the Town had placed on FMLA even though the unit members did not request the leave.

¹¹ Braga gave this evidence at hearing, and her testimony was undisputed.

1 different reasons dictated whether a written request for FMLA leave was needed. When
2 a unit member requested FMLA leave to care for a family member, the family members'
3 doctor would need to complete a form. If a unit member was seeking leave for childbirth,
4 no medical form needed to be submitted. The Town sends a letter¹² to an employee
5 when the Town places the employee on FMLA leave.¹³ The Town also contacts
6 employees who are absent for three or more shifts, with a different standard for the Fire
7 Department, to inquire whether the employees need to access FMLA.

8 Human Resources Department

9 The Human Resources (HR) Department (HR) employs a staff of seven who
10 oversees employee benefits, which includes unemployment benefits, and various types
11 of employee leave, including worker's compensation, for 3500 full-time and part-time
12 employees, who work for both the Town and the Brookline Public Schools. The HR
13 Department also oversees labor and employment issues for the Town, administration of
14 the collective bargaining agreements between the Town and its employee unions, and
15 payroll administration. The HR Department includes approximately 1000 cubic feet of
16 paper files, what Braga estimated as thousands of medical and personnel files, for both
17 past and present town and school employees.¹⁴ The files are arranged alphabetically but

¹² Currently, the Town issues the letters electronically and saves them on laserfiche. Prior to the outbreak of the pandemic, the Town sent hard copies of the letters, which were then scanned onto the laserfiche system.

¹³ In response to a question on cross-examination, Braga confirmed that although the Town should have sent the letters notifying unit members of their placement on FMLA leave, she could not confirm that the Town always did so prior to 2019 when she began her employment with the Town.

¹⁴ Braga indicated the Town must keep personnel files for twenty years after an individual leaves the Town's employment.

1 not grouped by municipal department. Additional files for long-term employees are stored
2 in the basement of the Pierce School. The Town has used MUNIS for its payroll system
3 since 2014.¹⁵ From 2000 or 2001 to 2014, the Town used Millenium for its payroll system,
4 which only produces static payroll reports.¹⁶

5 In 2022, the Town hired a benefits and disability leave specialist, Ryan Kassala
6 (Kassala), who manages workers compensation, IOD leave and FMLA leave, as well
7 other forms of leave and disability benefits. When an employee is on FMLA leave,
8 Kassala inputs that information on a spreadsheet and scans all the supporting information
9 into the laserfiche system. The laserfiche system is a repository for documents but does
10 not index them electronically. The Town has utilized the laserfiche system since 2013
11 or 2014 but did not subsequently scan pre-existing documents into the laserfiche system.
12 When Braga needs to locate information regarding FMLA status in 2013, she asks the
13 payroll coordinator, who is familiar with Millenium, to put the request in that system.
14 Based on the responses, Braga and her staff would be looking at medical files, both hard
15 copy and electronic. Braga would follow the same process for information about IOD
16 leave that was requested for 2013. The Town cannot keep medical information in
17 personnel files, and the Town only must retain FMLA information for three years.¹⁷ Also,

¹⁵ The Town pays Fire Department employees on a weekly basis.

¹⁶ Braga described Millenium as only producing static payroll reports.

¹⁷ At hearing, Braga explained that federal law prohibits the Town from keeping medical information in personnel files, although she acknowledged the possibility that some commingling could have occurred in various departments' personnel files.

1 the Town is required to maintain information about injured on duty or workers'
2 compensation claims for seventy-five years.

3 Braga and Kassala spent approximately four hours looking for the information that
4 Local 950 sought for the twenty unit members listed in the modified request. Kassala first
5 checked in the laserfiche system whether the unit members were still employees of the
6 Town. Some were still employed and some were not. Braga and Kassala then looked
7 for the requested information in electronic files and then in physical files. Braga and
8 Kassala located information for ten of the twenty employees. Braga did not contact the
9 Fire Department to inquire whether the Fire Department had any copies of the requested
10 information. The Fire Department maintains personnel files for its current and former
11 employees.

12 On February 21, 2023, the day before the hearing, the Town provided Robinson
13 with four reports that the parties entered as joint exhibits. The Town generated Joint
14 Exhibit #48 from MUNIS showing payroll checks that the Town paid to unit members who
15 were on FMLA leave from January 1, 2014 through December 31, 2016. Joint Exhibit
16 #49 is a list of unit members who were on FMLA leave from 2011 through 2013 with the
17 start dates of their leave, which included TF, LM, NP, and LW. Joint Exhibit #50 is a list
18 of unit members who were on IOD leave on certain dates from 2011 to 2013, which
19 included GD, TF, KF, CH, and FJ. Also, the Town generated Joint Exhibit #51 from
20 MUNIS showing payroll checks that the Town paid to unit members who were on IOD
21 leave from January 1, 2011 through December 31, 2016. Braga believed that there would
22 be no overlap between the information contained in the two reports marked as Joint
23 Exhibit #48 and Joint Exhibit #51 because the default designation is IOD leave when unit

1 members are on IOD leave and FMLA leave concurrently. Unit members would only
2 appear on the IOD payroll reports because IOD leave carries a different payroll code from
3 FMLA leave. A unit member's salary while on IOD leave is not taxable, unlike FMLA
4 leave and other forms of leave

5 Opinion

6 If a public employer possesses information that is relevant and reasonably
7 necessary to an employee organization in the performance of its duties as the exclusive
8 collective bargaining representative, the employer is generally obligated to provide the
9 information upon the employee organization's request. Higher Education Coordinating
10 Council, 23 MLC 266, 268, SUP-4142 (June 6, 1997). The employee organization's right
11 to receive relevant and reasonably necessary information is derived from the statutory
12 obligation to engage in good faith collective bargaining, including both grievance
13 processing and contract administration. Boston School Committee, 10 MLC 1501, 1513,
14 MUP-4468 (April 17, 1984). The Commonwealth Employment Relations Board's (CERB)
15 standard in determining whether the information requested by an employee organization
16 is relevant is a liberal one, similar to the standard for determining relevancy in civil
17 litigation proceedings. Board of Higher Education, 26 MLC 91, 92, SUP-4509 (January
18 11, 2000); Board of Trustees of University of Massachusetts (Amherst), 8 MLC 1139,
19 SUP-2306 (June 24, 1981). Information about terms and conditions of employment of
20 bargaining unit members is presumptively relevant and necessary to an employee
21 organization to perform its statutory duties. City of Lynn, 27 MLC 60, 61, MUP-2236, 2237
22 (December 1, 2000). The relevance of the requested information must be determined by

1 the circumstances that existed at the time when the exclusive bargaining representative
2 made the request.

3 Relevant and Reasonably Necessary Information

4 The Town in its answer denied that the information that Local 950 had sought in
5 its April 16, 2021 information request and its subsequent modified request was relevant
6 and reasonably necessary to Local 950. Here, Local 950 in its April 16, 2021 information
7 request sought information pertaining to bargaining unit members' receipt and use of
8 FLMA leave and IOD leave, and notices and documents that the Town sent to Local 950's
9 unit members regarding FMLA leave and IOD leave for the period 1996 through 2016. In
10 its modified request, Local 950 focused on twenty bargaining unit members and
11 requested information about their FLMA status, IOD status, and notices that they received
12 regarding their IOD status for the period from 1998 through 2013. The Town in its post-
13 hearing brief cites a hearing officer decision in Cambridge Health Alliance, 36 MLC 156,
14 MUP-08-5195 (H.O. April 14, 2010)¹⁸ to argue that for information to be deemed relevant,
15 it must seem probable that it will be of legitimate use in carrying out its duties and
16 responsibilities. 36 MLC at 159. However, the facts of the present case and Cambridge
17 Health Alliance are distinguishable. The information that was sought in Cambridge Health
18 Alliance was not presumptively relevant because it concerned non-bargaining unit
19 members. Id. (finding that an employee organization's request for information about a
20 private security firm providing services to be relevant and reasonably necessary even

¹⁸ The parties did not appeal Case No. MUP-08-5195 to the CERB. Although unappealed hearing officer decisions are final and binding on the parties to the case in which the decision issues, unappealed hearing officer decisions do not constitute precedent for subsequent decisions. Town of Ludlow, 17 MLC 1191, 1196, n.11, MUP-7040 (August 3, 1990).

1 though there was no presumption of relevance). Here, Local 950 requested information
2 about how the Town distributed a benefit, FMLA leave, which is a term and condition of
3 employment of unit members (see City of Revere, 21 MLC 1325, 1327, MUP-8793, 8795
4 (September 30, 1984)), and thus, is presumptively relevant.

5 Also, the Town argues that Local 950 does not need the requested information to
6 explore and prepare another legal challenge to the Town's practice of placing unit
7 members on IOD leave and FMLA leave concurrently, because Local 950 filed various
8 unsuccessful grievances and prohibited practice charges to the practice in 2016 and
9 2017, all of which were deemed to be untimely. The Town asserts that any new challenge
10 to the practice by Local 950 certainly would be untimely. However, Robinson testified
11 that Local 950 was seeking the information, in part, to compile data to pursue the
12 replenishment grievance, which Local 950 filed on February 22, 2021. The fact that
13 Arbitrator Henderson Ellis denied Local 950's grievance in September 2022 is not
14 pertinent to whether the information was relevant and reasonably necessary when Local
15 950 requested it. See generally City of Boston, 29 MLC 165, 167, MUP-2483 (finding that
16 union is entitled to information that permits it to determine whether to pursue a grievance).
17 Also, Robinson stated that Local 950 made the information request to prepare FLMA
18 proposals to submit at bargaining. In August 2021, Local 950 submitted two proposals
19 regarding FMLA, which included the additional leave proposal. Robinson contended that
20 Local 950 needed the requested information to show that the requested leave proposal
21 would only be a marginal expense for the Town. See Boston School Committee, 24 MLC
22 8, 11, MUP-1410, 1412 (August 26, 1997).

23 Employer's Shifting Burden

1 Once a union has established that the requested information is relevant and
2 reasonably necessary to its duties as the exclusive representative, the burden shifts to
3 the employer to establish that it has legitimate and substantial concerns about disclosure,
4 and that it has made reasonable efforts to provide the union with as much of the requested
5 information as possible consistent with its expressed concerns. Board of Higher
6 Education, 26 MLC at 93 (citing Boston School Committee, 13 MLC 1290, 1294-1295,
7 MUP-5905 (November 2, 1980)); Adrian Advertising a/k/a Advanced Advertising, 13 MLC
8 1233, 1263, UP-2497 (November 5, 1986), aff'd sub nom., Despres v. Labor Relations
9 Commission, 25 Mass. App. Ct. 430 (1988). Here, the Town contends that it has various
10 legitimate and substantial concerns about disclosure of the information.

11 April 16, 2021 Information Request

12 First, the Town contends that it did not possess certain information that Local 950
13 requested on April 16, 2021. Specifically, Local 950 had requested: a) the annual number
14 of unit members who requested FMLA leave and whom the Town placed on FMLA leave
15 1996 through 2016; and b) the annual number of unit members whom the Town placed
16 on FMLA leave but who had not requested FMLA leave from 1996 through 2016, as well
17 as all supporting documentation. Downey had informed Local 950 several times,
18 concluding with his November 12, 2021 email, that it was extremely difficult for the Town
19 to determine whether unit members who were on FMLA leave from 1996 through 2016
20 had requested FMLA leave or whether the Town, of its own accord, unilaterally placed
21 the unit members on FMLA leave. At hearing, Robinson challenged Downey's assertions
22 by noting that if an employee requested FMLA leave, the documentation should be in the
23 employee's file. However, Braga explained in her testimony that some employees

1 request FMLA verbally and the Town does not always require medical documents
2 depending on the reasons why the employee requested FMLA leave. Further, she
3 indicated that although the Town previously sent written notices confirming the placement
4 of unit members on FMLA leave, those notices do not always indicate whether the FMLA
5 leave was requested or not.

6 It is well-established that an employer is not required to provide information that is
7 not within its possession or control. See Bristol County Sheriff's Department (Bristol
8 County), 32 MLC 76, MUP-01-3068 (August 3, 2005); Board of Regents, 19 MLC 1248,
9 1271, SUP-3267-3272 (August 24, 1992); Woods Hole, 12 MLC 1531, 1545-1547, UPL-
10 100 (January 21, 1986). The facts in the present case can be distinguished from Bristol
11 County where the CERB rejected the employer's claim that the information did not exist
12 because the employer had presented no evidence in the record in support of that claim.
13 32 MLC at 81. Here, the Town had timely notified Local 950 that the information did not
14 exist on several occasions before Local 950 filed its prohibited practice charge on
15 December 3, 2021. Compare Commonwealth of Massachusetts, 34 MLC 148, 152, SUP-
16 03-4965 (June 6, 2008) (employer did not act unlawfully when it promptly informed the
17 union at negotiations that it could not say that requested information existed and that
18 information later turned out not to exist). Consequently, the Town did not violate its duty
19 to bargain by failing to provide Local 950 with the information that Local 950 had
20 requested in paragraphs a) and b) of its April 16, 2021 information request.

21 Next, the Town contends that certain information that Local 950 had requested in
22 paragraphs d) and e) of the April 16, 2021 request was unduly burdensome. Specifically,
23 Local 950 had requested: d) the annual number of notices and documentation sent to unit

1 personnel informing them of their FMLA status from 1996 through 2016 including all
2 corroborating documentation; and e) the annual number of notifications sent to unit
3 members as to FMLA use and availability from 1996 through 2016 including all
4 corroborating documentation. At hearing, Robinson characterized the two requests as a
5 catchall and a catchall of a catchall. The hearing record does not reveal why Local 950
6 selected 1996 as the starting point for its requests, which is twenty years before the Town
7 notified Local 950 that unit members on IOD leave would be designated as concurrently
8 on FMLA leave, and six years before the Town adopted an FMLA policy. Additionally, in
9 paragraph e), Local 950 sought copies of all documents that unit members received for
10 the twenty-year period regarding FMLA use and availability. Local 950's request
11 potentially encompasses any document that contained a reference to FMLA leave, not
12 just whether a unit member sought or was approved or denied FMLA leave. Upon review,
13 Local 950's request is overly broad. See Board of Higher Education, 26 MLC at 93.

14 Also, Local 950 in paragraph c) requested annual numbers of unit members who
15 were on IOD leave from 1996 through 2016 and all corroborating documentation. Again,
16 the record is devoid of any reason why Local 950 selected 1996 as the starting date for
17 its request, especially as there could be no interchange between IOD leave and FMLA
18 leave at that time. Robinson only indicated that he made the request to understand the
19 Town's data collection process and whether there was such a process. Local 950 also
20 did not indicate why it needed twenty years of corroborating documentation to understand
21 the data collection process, especially as it was only during the final year of the twenty
22 year period when IOD leave and FMLA leave ran concurrently. Local 950's request in

1 paragraph c) of its April 16, 2021 request is overly broad because it is not tailored to a
2 reasonable period.

3 When an employer asserts that providing disputed information amounts to an
4 undue burden, it remains obligated to provide as much information consistent with the
5 employer's expressed concerns or to discuss alternative ways to provide the information.

6 Bristol County, 32 MLC at 81. Here, the record shows that the Town and Local 950 had
7 multiple discussions about alternative ways for the Town to provide the requested
8 information. On June 24, 2021, Downey and Robinson discussed whether the Town
9 could provide a sampling of the requested information. On July 14, 2021, Local 950
10 issued its modified request, which will be discussed further below. On September 29,
11 2021, Downey suggested that Robinson speak with Braga and Downey because Downey
12 was not sure how to provide the status of unit members on both IOD and FMLA. On
13 September 30, 2021, Robinson agreed to leave the modified request in place based on
14 possible progress that the parties had made at successor contract negotiations, which
15 took place the prior day. On October 15, 2021, Robinson expressed dissatisfaction with
16 certain information that Town had provided in response to the modified request. On
17 October 21, 2021, Robinson and Braga had a discussion after successor contract
18 negotiations about the modified request. Robinson then reiterated Local 950's demand
19 for the information that Local 950 sought in its April 16, 2021 request and imposed a
20 deadline of November 5, 2021. Because the Town engaged in multiple conversations
21 with Local 950 about how to provide the requested information, the Town has satisfied
22 this aspect of its shifting burden.

1 Finally, an employer must present detailed facts to support its argument that an
2 employee organization's information request constitutes an undue burden. See Id. at 80.
3 The Town has approximately 1000 cubic feet of paper medical and personnel files for
4 both past and present Town and school employees stored in the HR office and in the
5 Pierce School. The files were arranged alphabetically by employees' names rather than
6 by departments. The Town did not begin using a laserfiche system for scanning and
7 storing documents until 2013 or 2014 and did not subsequently scan older documents
8 into the laserfiche system. Also, from 2000 or 2001 until 2014, the Town used Millenium
9 as its payroll system which will only produce static payroll records and thus, a running
10 report of payroll records could not be compiled. Here, because Local 950 was seeking
11 all corroborating documentation in paragraphs c), d), and e) of its April 16, 2021 request,
12 the Town would be required to search through all files looking first for unnamed bargaining
13 unit personnel. When a file was found, Town personnel would need to search within each
14 file for the requested documents. Upon review of the facts before me, the Town has
15 presented sufficient facts to support its claim that it would be an undue burden for the
16 Town to provide the information that Local 950 requested in paragraphs c), d), and e) of
17 its April 16, 2021 request. Consequently, the Town did not violate its duty to bargain by
18 failing to provide the information that Local 950 had requested in paragraphs c), d), and
19 e) of its April 16, 2021 request.

20 Accordingly, the Town did not violate Sections 10(a)(5) and, derivatively, Section
21 10(a)(1) of the Law by failing to provide Local 950 with the information that Local 950
22 initially sought in its April 16, 2021 request.

23 Modified Request

1 Local 950's modified request sought information about twenty named unit
2 members for the period from 1998-2013. Specifically, Local 950 requested: 1) the unit
3 members' FMLA statuses, including whether they were classified as on FMLA or FMLA
4 sickness in family, 2) the IOD status of the unit members, and 3) copies of the notices
5 that the Town sent for the FMLA status (FLMA notices) of the unit members. On
6 September 29, 2021, the Town provided Local 950 with FMLA notices for five unit
7 members. On November 5, 2021, the Town provided the dates when four of the unit
8 members began and ended their IOD leave in 2010, 2011, and 2012. The Town also
9 informed Local 950 that the Town would provide no more of the requested information.
10 Thereafter, on February 21, 2023, more than fourteen months after Local 950 filed its
11 prohibited practice charge, the Town provided Local 950 with certain other information
12 which included a list of unit members who were on FMLA leave from 2011 to 2013 and
13 the start dates of their leave, a list of employees on IOD leave from 2011 to 2013.

14 However, as Local 950 correctly claims, the Town failed to fully respond to the
15 modified request. Unlike Local 950's April 16, 2021 request, the modified request was
16 not overly broad. Local 950 identified twenty unit members about whom it was seeking
17 information rather than all unit members. Regarding the information requested about
18 FMLA leave. Local 950 identified those twenty unit members as actually having been on
19 FMLA leave on certain dates during the relevant time, and thus, the Town would not be
20 engaging in an academic exercise when it looked for the requested information. Local
21 950 also narrowed the scope of its request by five years. Further, Local 950 did not
22 request all corroborating documentation as it did in paragraphs c), d) and e) of its April
23 16, 2021 request. Because the modified request was reasonable in scope, it was not

1 unduly burdensome even though the Town would need to do a physical search in the
2 stored files that are described above. Although Braga and Kassala spent four hours
3 looking for the requested information for the twenty unit members referenced in the
4 modified request, a four-hour search, while time-consuming, is not unduly burdensome.
5 Further, the Town never explained why all the FMLA notices that it provided on
6 September 29, 2021 only pertained to 2010. Moreover, despite federal regulations which
7 require the Town to maintain IOD information for seventy-five years, the Town provided
8 no explanation why it did not provide any information about the twenty unit members that
9 pertained to dates prior to 2010. Also, the Town did not affirmatively notify Local 950 that
10 the information requested in the modified order did not exist. Finally, although the Town's
11 Fire Department maintained its own personnel files, Braga never inquired whether the
12 Fire Department maintained copies of any of the information sought in the modified
13 request. Therefore, the Town has failed to bargain in good faith by failing to provide Local
14 950 with certain relevant and reasonably necessary information that Local 950 sought in
15 its modified request in violation of Section 10(a)(5) of the Law.

16 Conclusion

17 Based on the record and for the reasons stated above, I conclude that the Town
18 violated 10(a)(5) by failing to provide Local 950 with certain information requested in its
19 modified request. I dismiss the allegation that the Town violated Section 10(a)(5) by
20 failing to provide Local 950 with the information sought in its April 16, 2021 request.

21 Order

22 WHEREFORE, based upon the foregoing, it is hereby ordered that the Town shall:
23

- 24 1. Cease and desist from:
25

- 1 a) Failing to bargain in good faith with Local 950 by not providing
2 requested information that was relevant and reasonably
3 necessary to Local 950 in its role as the exclusive bargaining
4 representative.
5
6 b) In any like or related manner, interfering with, restraining and
7 coercing its employees in the exercise of their rights guaranteed
8 under the Law.
9

10 2. Take the following affirmative action that will effectuate the purposes of the Law:
11

- 12 a) Provide Local 950 with the relevant and reasonably necessary
13 information for JC, PC, TD, TD2, GD, RD, TF, KF, KF2, CH, FJ,
14 LM, CM, DM, SN, NP, PP, JR, PT, and LW that Local 950 sought
15 in its modified request including:
16
17 i. Their FMLA status (FMLA or FMLA sickness in family)
18 for the period from 2002¹⁹ through 2013 but excluding
19 the information that the Town previously had provided
20 concerning TF, LM, NP, and LN in Joint Exhibit #49.
21
22 ii. Their IOD status from 1998 through 2013 but excluding
23 the information that the Town provided about TF, KF,
24 CH, and FJ on November 5, 2021, and for TF, KF, CH,
25 FJ, and GD in Joint Exhibit #50.
26
27 iii. Copies of the written notification that the Town sent
28 them regarding their FMLA status from 2002 through
29 2013 but excluding the letters that the Town provided
30 on September 29, 2021, regarding TD, TF, CH, LM,
31 and DM.
32
33 b) Post immediately in all conspicuous places where members of Local
34 950's bargaining unit usually congregates, or where notices are usually
35 posted, including electronically, if the Town customarily communicates
36 with these bargaining unit members via intranet or email and display for
37 a period of thirty (30) days thereafter signed copies of the attached
38 Notice to Employees.

¹⁹ I have amended the period for when the Town must provide information regarding FMLA leave in paragraphs i and ii above to reflect the fact that the Town did not adopt the FMLA policy until 2002.

- 1 c) Notify the DLR in writing of the steps taken to comply with this decision
2 within ten (10) days of receipt of this decision.
3

SO ORDERED.

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF LABOR RELATIONS



MARGARET M. SULLIVAN
HEARING OFFICER

APPEAL RIGHTS

The parties are advised of their right, pursuant to M.G.L. c.150E, Section 11 and 456 CMR 13.19, 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 be final and binding on the parties.