

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF LABOR RELATIONS

In the Matter of

COMMONWEALTH OF MASSACHUSETTS/
COMMISSIONER OF ADMINISTRATION
AND FINANCE, DEPARTMENT OF
CORRECTION

and

MASSACHUSETTS CORRECTION
OFFICERS FEDERATED UNION

Case No. SUP-14-4121

Date Issued: February 10, 2016

Hearing Officer:

Whitney N. Eng, Esq.

Appearances:

Earl Wilson, Esq. - Representing the Commonwealth of
Massachusetts/Commissioner of
Administration and Finance, Department of
Correction

Dennis M. Coyne, Esq. - Representing the Massachusetts Correction
Officers Federated Union

HEARING OFFICER DECISION AND ORDER

Summary

1 The issue in this case is whether the Commonwealth of
2 Massachusetts/Commissioner of Administration and Finance, Department of Correction
3 (Employer) violated Section 10(a)(5) and, derivatively, Section 10(a)(1) of
4 Massachusetts General Laws, Chapter 150E (the Law) by failing to provide certain
5 requested information, and failing to timely provide other information, that is relevant

1 and reasonably necessary to the Massachusetts Correction Officers Federated Union
2 (Union or MCOFU) in its role as exclusive bargaining representative. Based on the
3 record and for the reasons explained below, I find that the Employer did violate Section
4 10(a)(5) of the Law by failing to provide certain information, and failing to timely provide
5 other information, described in Stipulations 5(b), 5(d), 5(f), 5(g), 5(h) and 5(i), that is
6 relevant and reasonably necessary for the Union to execute its duties as collective
7 bargaining representative. I also conclude that the Employer did not violate Section
8 10(a)(5) of the Law by failing to provide the requested information described in
9 Stipulations 5(c) and 5(e).

10 Statement of the Case

11 On October 28, 2014, the Union filed a charge with the Department of Labor
12 Relations (DLR), alleging that the Employer had engaged in prohibited practices within
13 the meaning of Section 10(a)(5) and, derivatively, Section 10(a)(1) of the Law. A DLR
14 hearing officer conducted an investigation on December 1, 2014. On January 8, 2015,
15 the investigator issued a complaint alleging that the Employer violated Section 10(a)(5)
16 and, derivatively, Section 10(a)(1) of the Law by failing to provide the Union with
17 requested information that was relevant and reasonably for the Union to execute its
18 duties as exclusive bargaining representative. The Employer filed an answer to the
19 complaint on January 19, 2015.

20 On July 22, 2015, I conducted a hearing at which both parties had a full
21 opportunity to be heard, to examine and cross-examine witnesses, and to introduce
22 evidence. Both parties filed their post-hearing briefs on September 28, 2015. Based on
23 the record, which includes witness testimony, stipulations of fact and documentary

exhibits, and in consideration of the parties' arguments, I make the following findings of fact and render the following opinion.

Stipulated Facts

The parties stipulated to the following facts:

1. The Massachusetts Correction Officers Federated Union ("MCOFU") is an employee organization within the meaning of Section 1 of General Laws Chapter 150E ("the Law"), and in that capacity serves as the exclusive bargaining agent for all correction officers employed by the Commonwealth of Massachusetts within Bargaining Unit 4 ("Unit 4").
2. The Commonwealth of Massachusetts ("Commonwealth") is the public employer within the meaning of Section 1 of the Law for all Unit 4 correction officers employed at all correctional facilities within its Department of Correction ("DOC"). The Commonwealth and MCOFU are parties to a collective bargaining agreement for Unit 4 effective from July 1, 2012 through June 30, 2015 covering all such correctional officers. This CBA is attached as Exhibit 1 and made part of this record.
3. In approximately August 2014, MCOFU learned that the Disabled Persons Protection Commission (DPPC), a state agency, was investigating possible misconduct by MCOFU member COs at Bridgewater State Hospital ("BSH"), a facility operated by the Commonwealth and within the DOC, as well as other unidentified correctional facilities.
4. This DPPC investigation was pursuant to a memorandum of understanding (MOU) between the DPPC and DOC.
5. By letter dated August 11, 2014, MCOFU requested that the DOC supply it with the following:
 - a. A true and accurate copy of any and all agreements with DPPC that DOC has made relating to the conduct of DPPC investigations of allegations of inmate abuse ("investigations") in which questioning of members of Bargaining Unit 4 may be sought.
 - b. A true and accurate copy of all documentation of any name or nature provided by DPPC to DOC, and/or any official, representative, employee or agent of DOC, in advance of or during any ongoing investigation by DPPC at the Bridgewater State Hospital.

- c. A true and accurate list of all members of Bargaining Unit 4 who have been questioned, and/or who are expected to be questioned, by DPPC in connection with the investigation referred to in request [b] above.
 - d. A true and accurate copy of all documentation of any name or nature provided by DPPC to DOC, and/or any official, representative, employee or agent of DOC, in advance of or during any other ongoing investigation by DPPC at any facility in Massachusetts where members of Bargaining Unit 4 are employed.
 - e. A true and accurate list of all members of Bargaining Unit 4 who have been questioned, and/or who are expected to be questioned, by DPPC in connection with the investigation referred to in request d above.
 - f. A true and accurate copy of all documentation of any name or nature provided by DPPC to DOC, and/or any official, representative, employee or agent of DOC, in advance of, during, or after any completed investigation by DPPC at any facility in Massachusetts where members of Bargaining Unit 4 are employed in the last three years.
 - g. A true and accurate copy of any other documentation of any name or nature provided by DPPC to DOC, and/or any official, representative, employee or agent of DOC, in connection with any investigation by DPPC at any facility in Massachusetts where members of Bargaining Unit 4 are employed in the last three years other than the documentation being produced by DOC in response to requests [a-f] above.
 - h. A true and accurate list of any and all members of Bargaining Unit 4 who have been charged with misconduct by DOC as a result of any and all DPPC investigations conducted at any facility in Massachusetts where members of Bargaining Unit 4 are employed in the last three years.
 - i. With respect to the list provided in response to request [h] above, copies of any and all documentation generated or received by DOC in connection with its investigation and prosecution of the charges of misconduct identified.
6. A copy of the information request mentioned in ¶ 5 is attached as Exhibit 2 and made part of this record.
 7. By email dated August 21, 2014, MCOFU attorney Alan McDonald inquired about the status of the DOC's response to the information request. This email is attached as Exhibit 3 and made part of this record.

- 1 8. By email dated August 27, 2014, MCOFU attorney Alan McDonald inquired about
2 the status of the DOC's response to the information request. This email is
3 attached as Exhibit 4 and made part of this record.
4
- 5 9. By email dated August 29, 2014, the DOC provided MCOFU with three redacted
6 "intake" forms received by the DOC from the DPPC with respect to three pending
7 investigations at Bridgewater State Hospital and a copy of the MOU between the
8 DPPC and DOC. A copy of this email and its attached documents are appended
9 and made part of this record and are marked as Exhibit 5(a) – (d) (the
10 attachments are redacted of personal information of alleged victims and
11 correction officers).
12
- 13 10. By email dated September 26, 2014, MCOFU attorney Alan McDonald asked
14 DOC attorney Earl Wilson for an update on a response to the unanswered
15 portions of the August 11, 2014 information request (as well as updates in other
16 matters not relevant to this case). A copy of this email is attached as Exhibit 6
17 and made part of this record.
18
- 19 11. On October 6, 2014, DOC attorney Earl Wilson sent an email to Alan McDonald
20 stating, "Alan: I will be back in touch before the end of the week." A copy of this
21 email is attached as Exhibit 7 and made part of this record.
22
- 23 12. By email dated January 30, 2015, MCOFU attorney Dennis Coyne asked DOC
24 attorney Earl Wilson for an update on a response to the unanswered portions of
25 the August 11, 2014 information request. A copy of this email is attached as
26 Exhibit 8 and made part of this record.
27
- 28 13. On February 5, 2015, DOC attorney Earl Wilson sent an email to MCOFU
29 attorney Dennis Coyne stating, "Hi Dennis: Sorry for the late reply. I will follow
30 up next week." A copy of this email is attached as Exhibit 9 and made part of this
31 record.
32
- 33 14. To date, the DOC has provided no further documents or information responsive
34 to the August 11 information request, and the DOC has raised no objections to
35 the August 11 information request.
36
- 37 15. On July 21, 2015 at approximately 3:15 p.m., the DOC hand delivered to MCOFU
38 attorney Dennis Coyne seven more redacted DPPC intake forms. They are
39 incorporated into the record as joint exhibits 10, 11, 12, 13, 14, 15, and 16.

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

11 If there is evidence that a Union member has abused a patient or inmate, that
12 Union member can receive a letter of reprimand, a suspension, or termination, and
13 could potentially face criminal charges. However, neither the MCOFU sergeant nor
14 Dubois received any discipline as a result of the two DPPC interviews conducted at
15 Bridgewater State Hospital. As of the date of this hearing, DPPC interviews with
16 correction officers at Bridgewater State Hospital are still ongoing.

18 If a public employer possesses information that is relevant and reasonably
19 necessary to an employee organization in the performance of its duties as the exclusive
20 collective bargaining representative, the employer is generally obligated to provide the
21 information upon the employee organization's request. Higher Education Coordinating
22 Council, 23 MLC 266, 268, SUP-4142 (June 6, 1997). The employee organization's
23 right to receive relevant and reasonably necessary information is derived from the

1 statutory obligation to engage in good faith collective bargaining, including both
2 grievance processing and contract administration. Boston School Committee, 10 MLC
3 1501, 1513, MUP-4468 (April 17, 1984). The Commonwealth Employment Relations
4 Board's (Board) standard in determining whether the information requested by an
5 employee organization is relevant is a liberal one, similar to the standard for determining
6 relevancy in civil litigation proceedings. Board of Higher Education, 26 MLC 91, 92,
7 SUP-4509 (January 11, 2000); Board of Trustees, University of Massachusetts
8 (Amherst), 8 MLC 1139, 1141, SUP-2306 (June 24, 1981). Information about terms and
9 conditions of employment of bargaining unit members is presumptively relevant and
10 necessary to an employee organization to perform its statutory duties. City of Lynn, 27
11 MLC 60, 61, MUP-2236, 2237 (December 1, 2000). The relevance of the requested
12 information must be determined by the circumstances that existed at the time when the
13 exclusive bargaining representative made the request. Id.

14 Relevant and Reasonably Necessary Information

15 Applying that standard here, I find that the requested information described in
16 Stipulation 5 is relevant and reasonably necessary to the Union to perform its duties as
17 the exclusive collective bargaining representative. Faced with allegations of inmate
18 abuse and potential discipline up to and including termination, the Union sought
19 information that would help it determine how to defend its bargaining unit members and
20 whether it needed to file grievances on behalf of its members. The Board has
21 repeatedly recognized that a union is entitled to information that permits it to determine
22 whether or not to pursue a grievance. City of Boston, 29 MLC 165, 167, MUP-2483
23 (March 6, 2003). Although the Employer argues that the information request described

1 in Stipulation 5(f) and 5(g) is not relevant, I do not agree. It is not unreasonable that the
2 Union sought information on past investigations into allegations of inmate abuse and
3 past disciplinary action taken against bargaining unit members as a result of DPPC
4 investigations. At the time of the information request, there were ongoing investigations
5 by the DPPC into inmate abuse by bargaining unit members, and such information is
6 relevant to the Union in determining how to best represent its members and ensure
7 compliance with the parties' collective bargaining agreement. See Boston School
8 Committee, 22 MLC 1365, 1379, MUP-8125 (January 9, 1996) (Board determined that a
9 union's entitlement to information extended to information that assisted the union in
10 monitoring compliance with the contract). Thus, the requested information is relevant
11 and reasonably necessary to the Union in its role as exclusive bargaining
12 representative.

13 Once a union has established that the requested information is relevant and
14 reasonably necessary to its duties as the exclusive representative, the burden shifts to
15 the employer to establish that it has legitimate and substantial concerns about
16 disclosure, and that it has made reasonable efforts to provide the union with as much of
17 the requested information as possible, consistent with its expressed concerns. Board of
18 Higher Education, 26 MLC at 93 (citing Boston School Committee, 13 MLC 1290, 1294-
19 1295, MUP-5905 (November 2, 1986); Adrian Advertising a/k/a Advanced Advertising,
20 13 MLC 1233, 1263, UP-2497 (November 6, 1986), aff'd sub nom., Despres v. Labor
21 Relations Commission, 25 Mass. App. Ct. 430 (1988)). If an employer advances
22 legitimate and substantial concerns about the disclosure of information to a union, the
23 Board will examine the facts contained in the record. Boston School Committee, 13

1 MLC at 1295. The employer's concerns are then balanced against an employee
2 organization's need for the information. Commonwealth of Massachusetts, Chief
3 Administrative Justice of the Trial Court, 11 MLC 1440, 1443-1444, SUP-2746
4 (February 21, 1985) (adopting the balancing test approach used by the United States
5 Supreme Court in Detroit Edison Co. v. NLRB, 440 U.S. 301, 100 LRRM 2728 (1979)).
6 Absent a showing of great likelihood of harm flowing from disclosure, however, the
7 requirement that a bargaining representative be furnished with relevant information
8 necessary to carry out its duties overcomes any claim of confidentiality. Greater
9 Lawrence Sanitary District, 28 MLC 317, 318-319, MUP-2581 (April 19, 2002).

10 Here, there is no dispute that the Union requested certain information on August
11 11, 2014, and that the Employer provided some of the requested information on August
12 29, 2014. There is also no dispute that the Employer provided the MOU between the
13 DOC and the DPPC in response to the Union's information request described in
14 Stipulation 5(a). However, there is a dispute as to whether the Employer provided the
15 Union with the information described in Stipulations 5(b), 5(c), 5(d), 5(e), 5(f), 5(g), 5(h),
16 and 5(i).

17 Stipulation 5(b)

18 The Employer first argues that it responded to the Union's information request
19 described in Stipulation 5(b) when it provided three redacted DPPC intake forms related
20 to pending investigations at Bridgewater State Hospital to the Union on August 29,
21 2014. Although the Employer did provide three DPPC intake forms to the Union on
22 August 29, 2014, it is unclear whether the Employer's response to the Union's
23 information request described in Stipulation 5(b) was complete. In its August 29, 2014

1 response, the Employer states, "Also attached, please find redacted copies of the intake
2 forms received by the DOC from the DPPC with respect to three pending investigations
3 at Bridgewater State Hospital." The Employer's response did not state, and the
4 Employer did not provide any evidence, that the three provided intake forms were all of
5 the intake forms in its possession. Additionally, the Employer did not allege or provide
6 evidence that the intake forms were the only documents provided by the DPPC to the
7 DOC in advance of the investigations at Bridgewater State Hospital. For these reasons,
8 I reject the Employer's argument that it provided a complete response to the Union's
9 information request as described in Stipulation 5(b) on August 29, 2014. Accordingly, I
10 find that the Employer violated Section 10(a)(5) and, derivatively, Section 10(a)(1) of the
11 Law when it failed to provide the information described in Stipulation 5(b).

12 Stipulations 5(c) and 5(e)

13 The Employer next argues that it responded to the Union's information request
14 described in Stipulations 5(c) and 5(e) in its August 29, 2014 email. In its email, the
15 Employer stated that, "The DOC does not not maintain records of which, if any, Unit 4
16 employees have been questioned in connection with DPPC investigations, nor is it
17 informed by DPPC who, if any, Unit 4 employees DPPC expects to question in
18 connection with any investigation." The Employer argues that it does not maintain
19 information concerning the identities of bargaining unit employees who have been or
20 may be interviewed by the DPPC in the course of its investigation and, therefore, cannot
21 provide such information to the Union. The Union argues that the MOU "makes it clear"
22 that the DOC possessed the information requested as described in Stipulations 5(c) and
23 5(e). The MOU states in part, "...the DPPC investigator will provide the Superintendent

1 or designee with information relevant to the allegations contained in the 19C intake
2 report, and fax a copy of the intake report to the Superintendent or designee....”
3 However, contrary to the Union’s assertion, I do not find that the MOU “makes it clear”
4 that the Employer possesses “a true and accurate list of all members of Bargaining Unit
5 4 who have been questioned, and/or who are expected to be questioned, by DPPC....”
6 If an employer does not possess information requested by a union, then the employer
7 cannot be found to violate the Law by failing to provide the requested information. See
8 Higher Education Coordinating Council, 22 MLC 1662, 1673, SUP-4078 (April 11, 1996)
9 (citing, Board of Regents of Higher Education, 19 MLC 1248, 1271, SUP-3267, 3268,
10 3269, 3270, 3271, 3272 (August 24, 1992)). In this case, the Employer informed the
11 Union on August 29, 2014 that it did not possess the information described in
12 Stipulations 5(c) and 5(e) and, as such, I find that the Employer timely responded to the
13 Union’s information request described in Stipulations 5(c) and 5(e).

14 Stipulation 5(d)

15 The Employer also argues that it responded to the Union’s information request
16 described in Stipulation 5(d) by providing the Union with seven redacted DPPC intake
17 forms. In its August 29, 2014 response to the Union’s information request, the Employer
18 stated in part, “With respect to the balance of your requests, please be advised that
19 information concerning other pending investigations...is still being reviewed.” However,
20 the Employer did not provide the Union with the seven redacted DPPC intake forms
21 related to other pending investigations until July 21, 2015, the day before the hearing
22 and almost one year after the Union’s initial information request. Further, it is unclear
23 whether the Employer’s response to the Union’s information request described in

1 Stipulation 5(d) was complete. The Employer states that it provided all of the intake
2 forms it received from the DPPC relating to investigations conducted by the DPPC for
3 calendar year 2014. However, the Employer did not allege or provide any evidence that
4 the seven intake forms were the only documents provided by the DPPC to the DOC in
5 advance of ongoing investigations at facilities in Massachusetts where members of
6 Bargaining Unit 4 are employed. For these reasons, I reject the Employer's argument
7 that it provided a complete response to the Union's information request as described in
8 Stipulation 5(d). Accordingly, I find that the Employer violated Section 10(a)(5) and,
9 derivatively, Section 10(a)(1) of the Law when it failed to provide the information
10 described in Stipulation 5(d).

11 Stipulations 5(f) and 5(g)

12 Next, the Employer argues that the information request described in Stipulations
13 5(f) and 5(g) is not relevant and reasonably necessary to the Union's execution of its
14 duties as the collective bargaining representative. However, as described above, I find
15 that the information described in Stipulation 5(f) and 5(g) is relevant and reasonably
16 necessary to the Union in the performance of its duties as the exclusive collective
17 bargaining representative. In any event, at the time of the Union's information request,
18 the Employer did not explain to the Union why it would not provide the requested
19 information described in Stipulations 5(f) and 5(g). Rather, in its August 29, 2014
20 response to the Union's information request, the Employer stated in relevant part, "With
21 respect to the balance of your requests, please be advised that information
22 concerning...completed investigations and any discipline of Unit 4 members resulting
23 from same is still being reviewed." It was not until after the hearing on July 22, 2015 that

1 the Employer alleged that the information request described in Stipulations 5(f) and 5(g)
2 was not relevant and reasonably necessary to the Union's execution of its duties as the
3 collective bargaining representative. Furthermore, the Employer did not raise any
4 concerns that the information sought was overly broad or confidential. Accordingly, I find
5 that the Employer violated Section 10(a)(5) and, derivatively, Section 10(a)(1) of the
6 Law when it failed to provide the information described in Stipulations 5(f) and 5(g).

7 Stipulations 5(h) and 5(i)

8 Similarly, with regard to the Union's information request described in Stipulations
9 5(h) and 5(i), the Employer did not provide any of the requested information and failed
10 to provide any arguments or evidence as to why it did not respond to the Union's
11 request. See Bristol County Sheriff's Department, 32 MLC 76, 81, MUP-01-3086
12 (August 3, 2005) (where employer failed to establish that it did not possess or control
13 certain requested information, or that the information did not exist, the Board could not
14 conclude that it acted lawfully by failing to respond to the union's information request).
15 Therefore, I find that the Employer violated Section 10(a)(5) and, derivatively, Section
16 10(a)(1) of the Law when it failed to provide the information described in Stipulations
17 5(h) and 5(i).

18 Failure to Provide Information in a Timely Manner

19 I next consider whether the Employer failed to provide certain requested
20 information in a timely manner. The facts before me establish the following time line. On
21 August 11, 2014, the Union requested that the Employer provide certain information
22 regarding DPPC investigations. On August 29, 2014, the Employer provided the Union
23 with three redacted DPPC intake forms regarding three pending investigations at

1 Bridgewater State Hospital and a copy of the MOU between the DPPC and the DOC.
2 On September 26, 2014, the Union reiterated its request for the remainder of the
3 information request. On October 28, 2014, the Union filed a prohibited practice charge
4 alleging that the Employer had failed to provide certain requested information that was
5 relevant and reasonably necessary to the Union in its role as exclusive bargaining
6 representative in violation of Section 10(a)(5) of the Law. A DLR investigator conducted
7 an in-person investigation on December 1, 2014 and issued a complaint on January 8,
8 2015. On July 21, 2015, the day before the hearing, the Employer provided the Union
9 with seven more redacted DPPC intake forms.

10 An employer may not unreasonably delay furnishing requested information that is
11 relevant and reasonably necessary. Boston School Committee, 24 MLC 8, 11, MUP-
12 1410, 1412 (August 26, 1997). In determining whether a delay in the production of
13 information is unreasonable, the Board considers a variety of factors including: 1)
14 whether the delay diminishes the employee organization's ability to fulfill its role as the
15 exclusive representative; Id.; 2) the extensive nature of the request, UMass Medical
16 Center, 26 MLC 149, 158, SUP-4392, 4400 (March 10, 2000); 3) the difficulty of
17 gathering the information, Id.; 4) the period of time between the request and the receipt
18 of the information, Higher Education Coordinating Council, 23 MLC at 269; and 5)
19 whether the employee organization was forced to file a prohibited practice charge to
20 retrieve the information. Board of Higher Education, 26 MLC at 93.

21 Here, the Employer provided some of the requested information on August 29,
22 2014. On September 26, 2014, the Union reiterated its request for the remaining
23 information before filing a prohibited practice charge on October 28, 2014. On July 21,

1 2015, the Employer provided more of the requested information but, as described
2 above, still did not respond fully to the Union's August 11, 2014 information request. In
3 Higher Education Coordinating Council, 25 MLC 37, 41, SUP-4225 (August 24, 1998),
4 the Board determined that one to five month delays were unlawful where the information
5 requested was readily available and only produced in response to a charge of prohibited
6 practice. Similarly here, the Employer gave no indication that the requested information
7 was not available and produced additional requested information only after the Union
8 filed a charge and the DLR issued a complaint of prohibited practice. See Boston
9 School Committee, 24 MLC 8, 11, MUP-1410, MUP-1412 (August 26, 1997); Trustees
10 of the University of Massachusetts Medical Center, 28 MLC 102, 108, SUP-4331
11 (September 14, 2001) (compelling an exclusive bargaining representative to file charges
12 to obtain information to which it is legally entitled does not effectuate the purposes of
13 the Law or enhance the spirit of labor relations). Even after the DLR issued a complaint
14 of prohibited practice, the Employer still did not fully respond to the Union's information
15 request.

16 Although the Employer provided three DPPC intake forms on August 29, 2014 in
17 response to the Union's information request described in Stipulation 5(b), as discussed
18 above, it is not clear from the Employer's response that those three DPPC intake forms
19 were the only intake forms that it possessed with respect to pending investigations at
20 Bridgewater State Hospital. Additionally, the Employer did not provide additional
21 redacted DPPC intake forms to the Union until one day before the hearing, which was
22 nearly a year after it first provided information to the Union. See Higher Education
23 Coordinating Council, 25 MLC 37, SUP-4225 (August 24, 1998) (an employer's belated

1 providing of information does not bring it into compliance with the Law). Further, the
2 Employer placed no information on the record showing that the delay was reasonable
3 because of time and personnel needed to compile the information. See UMass Medical
4 Center, 26 MLC 149, 158, SUP-4392, SUP-4400 (March 10, 2000) (finding delay in
5 providing information reasonable because of the extensive nature of the request and the
6 difficulty in calculating the information). Except for the information described in
7 Stipulation 5(c) and 5(e), the Employer never informed the Union that it did not possess
8 the requested information, or give the Union any reasons for failing to produce the
9 remainder of the requested information.

10 The Employer also did not present any evidence or arguments to explain why it
11 did not provide the information described in Stipulations 5(f) and 5(g), until
12 approximately 13 months after the Union's request. Further, the Employer failed to
13 present any arguments or evidence to explain why it did not provide the information
14 described in Stipulations 5(h) and 5(i). Therefore, on the facts before me, I find that the
15 Employer's delay in providing the Union with certain requested information was
16 unreasonable. Accordingly, I find that the Employer also violated Section 10(a)(5) and,
17 derivatively, Section 10(a)(1) of the Law by failing to timely provide the Union with
18 certain relevant and reasonably necessary information that the Union had requested.

19 Conclusion

20 Based on the record and for the reasons stated above, the Employer did violate
21 Section 10(a)(5) and, derivatively, Section 10(a)(1) of the Law by failing to provide
22 certain information, and failing to timely provide other information, described in
23 Stipulations 5(b), 5(d), 5(f), 5(g), 5(h), and 5(i), that is relevant and reasonably

1 necessary for the Union to execute its duties as collective bargaining representative.
2 The Employer did not violate Section 10(a)(5) of the Law by failing to provide the
3 requested information described in Stipulations 5(c) and 5(e).

4 ORDER

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

6
7 1. Cease and desist from:

- 8
9 a) Failing and refusing to bargain collectively in good faith with the
10 Union by refusing to provide relevant and reasonably necessary
11 information when requested by the Union;
12
13 b) Failing and refusing to bargain collectively in good faith with the
14 Union by refusing to timely provide relevant and reasonably
15 necessary information when requested by the Union;
16
17 c) In any like or related manner, interfering with, restraining and
18 coercing its employees in the exercise of their rights guaranteed
19 under the Law.

20
21 2. Take the following action that will effectuate the purposes of the Law:

- 22
23 a) Provide the requested information described in Stipulations 5(b),
24 5(d), 5(f), 5(g), 5(h), and 5(i) that is relevant and reasonably
25 necessary to the Union's role as exclusive bargaining
26 representative in a timely manner.²
27
28 b) Sign and post immediately in all conspicuous places where
29 members of the Union's bargaining unit usually congregate, or
30 where notices are usually posted, including electronically, if the
31 Employer customarily communicates with these unit members via
32 intranet or email and display for a period of thirty (30) days
33 thereafter, signed copies of the attached Notice to Employees.
34
35 c) Notify the DLR in writing of steps taken to comply with this decision
36 within thirty (30) days of receipt of this decision.

SO ORDERED.

² If the Employer has already provided all of the requested information or does not possess the requested information, advise the Union of such in writing.

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF LABOR RELATIONS



WHITNEY N. ENG ESQ.
HEARING OFFICER

APPEAL RIGHTS

The parties are advised of their right, pursuant to M.G.L. c. 150E, Section 11, 456 CMR 13.02(1)(j), and 456 CMR 13.15, to request a review of this decision by the Commonwealth Employment Relations Board by filing a Notice of Appeal with the Executive Secretary of the Department of Labor Relations not later than ten days after receiving notice of this decision. If a Notice of Appeal is not filed within the ten days, this decision shall become final and binding on the parties.



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

A Hearing Officer of the Massachusetts Department of Labor Relations (DLR) has held that the Commonwealth of Massachusetts/Commissioner of Administration and Finance, Department of Correction (Employer) violated Section 10(a)(5) and, derivatively, Section 10(a)(1) of Massachusetts General Laws, Chapter 150E by failing to provide certain information, and failing to timely provide other information, that was relevant and reasonably necessary to the Massachusetts Correction Officers Federated Union (Union) in its role as exclusive bargaining representative.

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

The Employer assures its employees that:

WE WILL NOT fail or refuse to bargain collectively in good faith with the Union by refusing to provide relevant and reasonably necessary information when requested by the Union.

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

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

1. Provide the Union with the requested information that the parties described in Stipulations 5(b), 5(d), 5(f), 5(g), 5(h), and 5(i) for the hearing in Case No. SUP-14-4121, that is relevant and reasonably necessary to the Union in its role as exclusive bargaining representative.

For the Commonwealth of Massachusetts

Date

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

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