

COMMONWEALTH OF MASSACHUSETTS  
DEPARTMENT OF LABOR RELATIONS

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In the Matter of: \*

Case Number: SUP-19-7297

COMMONWEALTH OF MASSACHUSETTS \*

and \*

Date Issued: December 1, 2020

COALITION OF PUBLIC SAFETY \*

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Hearing Officer:

Meghan Ventrella, Esq.

Appearances:

Patrick Butler, Esq. – Representing the Commonwealth of Massachusetts

Jennifer Smith, Esq. – Representing the Coalition of Public Safety

HEARING OFFICER’S DECISION

SUMMARY

1 The issue in this case is whether the Commonwealth of Massachusetts  
2 (Commonwealth) acting through the Executive Office of Environmental Affairs (EEA)  
3 violated Section 10 (a)(5), and derivatively, Section 10(a)(1) of Massachusetts General  
4 Law Chapter 150E (the Law) by failing and refusing to provide the Coalition of Public  
5 Safety (Union) with information that was relevant and reasonably necessary to the  
6 Union’s performance of its duties as the exclusive bargaining representative. I find that  
7 the Commonwealth violated the Law as alleged.

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STATEMENT OF CASE

On April 26, 2019, the Union filed a charge of prohibited practice (Charge) with the Department of Labor Relations (DLR) alleging that the Commonwealth had violated Section 10(a)(5) and, derivatively, Section 10(a)(1) of the Law. On January 9, 2020, a DLR Investigator investigated the Charge. On January 21, 2020, the Investigator issued a one-count Complaint of Prohibited Practice (Complaint) alleging that the Commonwealth violated Section 10(a)(5) and, derivatively, Section 10(a)(1) of the Law. Thereafter, the Commonwealth filed its Answer to the Complaint.<sup>1</sup> On August 5, 2020, I conducted a hearing by video conference during which the parties received a full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence. On October 16, 2020, the parties filed post-hearing briefs. Based on my review of the record, including my observation of the demeanor of the witnesses, I make the following findings of fact and render the following opinion.

STIPULATIONS OF FACT

- 1.) The Commonwealth, acting through the Secretary of Administration and Finance, is a public employer within the meaning of Section 1 of M.G.L.c. 150E, Section 1.
- 2.) The Executive Office of Energy and Environmental Affairs (EEA) is the office charged with protection of the Commonwealth’s natural resources, and oversees several agencies, including the Massachusetts Environmental Police (MEP).
- 3.) The Coalition of Public Safety is an employee organization within the meaning of M.G.L.c. 150E, Section 1 and represents employees of the MEP.
- 4.) The Union serves as the exclusive collective bargaining representative for employees in statewide bargaining unit 5, including environmental police officers.

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<sup>1</sup> The DLR received the Commonwealth’s answer on June 26, 2020.

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FINDINGS OF FACT

2           The Union serves as the exclusive collective bargaining representative for  
3 employees in statewide bargaining unit 5, including environmental police officers in the  
4 rank of patrol officer, sergeant, and lieutenant. The Union and the Commonwealth are  
5 parties to a collective bargaining agreement dated July 1, 2018 to June 30, 2021. In  
6 addition to the ranks of patrol officer, sergeant, and lieutenant, the Massachusetts  
7 Environmental Police Department (Department) contains the non-bargaining unit ranks  
8 of captions, majors, lieutenant colonels, and a colonel who acts as the Director of the  
9 Department.<sup>2</sup>

10           Prior to the fall of 2018, the Director of the Department was Colonel James McGinn  
11 (McGinn). As Director, McGinn was the commanding officer for the Department, and  
12 reported directly to the Commonwealth's Secretary of Energy and Environmental Affairs.  
13 McGinn was terminated in the fall of 2018.

14           Daniel Fogarty (Fogarty), an attorney from the law firm of Sandulli Grace,  
15 represents the Union, and in this capacity, helps the Union represent the EPOs in the  
16 bargaining unit. Fogarty learned from various news outlets that McGinn had been  
17 terminated in part for allegedly commissioning a private investigator to follow and  
18 investigate EPOs, and for installing surveillance equipment at the Department's  
19 Westborough Office.<sup>3</sup> On or about November 1, 2018, Fogarty called Tom Costello

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<sup>2</sup> The Department has several offices throughout the Commonwealth, including an office in Westborough. The EPOs work throughout the Commonwealth, typically, on roads within a specific District. However, an EPO may go into the Westborough, or other offices, to complete paperwork.

<sup>3</sup> The unauthorized McGinn investigation involved surveillance of a bargaining unit member. However, the parties did not provide any information as to which bargaining unit

1 (Costello), the Director of Labor Relations for the Office of Energy and Environmental  
2 Affairs.<sup>4</sup> During the telephone conversation, Fogarty requested that the Commonwealth  
3 provide any information that was related to the investigation, including who conducted the  
4 investigation, who was the target of the investigation, any documents produced in the  
5 investigation, the investigation report, and a copy of the bill for the investigation. Costello  
6 informed Fogarty that he would look into the matter.

7 Fogarty requested the information because many bargaining unit members were  
8 concerned with what they perceived to be a lack of transparency in the execution of this  
9 investigation and installation of surveillance equipment. Due to the lack of transparency,  
10 the Union did not know if the investigation was part of the Employer's attempt to surveil  
11 Union activity; or whether the investigation was a change in working conditions, the  
12 manner in which the Employer surveils or reviews employees, or the disciplinary internal  
13 affairs procedures. The Union wanted the requested information to ensure that members'  
14 rights were not violated and to evaluate whether to file any grievances or unfair labor  
15 practice charges against the Employer. Also, the Union requested the information to  
16 evaluate whether the investigation and installation of surveillance equipment should  
17 cause it to prepare a bargaining position for negotiations over the impacts of new  
18 technology, surveillance of employees, disciplinary procedures, and any other changes  
19 in the working conditions of the bargaining unit members.

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member or the circumstances that lead to the surveillance. Nor did they provide any  
information on the subject matter or parameters of McGinn's unauthorized investigation.

<sup>4</sup> The Union regularly met with Costello to discuss labor and management issues, as well  
as successor contract negotiations.

1 By email dated November 9, 2018, Fogarty followed up with Costello on their  
2 phone conversation. In the email, Fogarty asked Costello if he was able to pass along the  
3 information that they discussed on November 1, 2018. Costello did not provide any  
4 information to the Union in response to the November 9 email or the November 1 verbal  
5 request.

6 During 2019, the parties met in person regularly at the Department of Wildlife and  
7 Fishery for labor management meetings. At these routine labor management meetings,  
8 Fogarty, T.J. Connors (Connors) and Danny McGonagle, newly elected Union officers,  
9 represented the Union, and Costello and Major David Loos (Loos) represented the  
10 Employer. During a February 28, 2019 labor management meeting, Fogarty asked for the  
11 information that he had previously requested on November 1 and 9, 2018. Costello  
12 informed Fogarty that the Department was still looking into the matter and he was not  
13 prepared to provide the Union with a response. The Employer did not provide any of the  
14 requested information to the Union at the February 28, 2019 meeting.

15 On March 20, 2019, the parties met for another labor management meeting.<sup>5</sup> The  
16 Union renewed its information request. In response to the renewed request, Costello  
17 stated that the Employer would not provide any of the requested information or  
18 documents. Fogarty asked Costello why the Employer would not be providing the  
19 requested information, and Costello did not provide an explanation.

20 By letter dated April 18, 2019, Fogarty memorialized the Union's requests for  
21 information. In the April 18 letter, Fogarty reminded Costello that the Union had, on  
22 November 1, 2018, November 9, 2018, February 28, 2019, and March 20, 2019,

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<sup>5</sup> Costello, Loos, Connors and Fogarty were all present at the March 20, 2019 meeting.

1 requested the following information: 1) the name of the private investigator (PI) and the  
2 name of any company with which they associate; 2) the names of any and all unit  
3 members surveilled or investigated by the PI; 3) an explanation of the scope of the PI's  
4 investigation; and 4) a copy of any report, notes, photographs, or other documents  
5 generated as a result of the PI's actions.<sup>6</sup> Additionally, Fogarty stated that at the March  
6 20 meeting, Costello informed the Union that the investigation was not complete.

7 The April 18 letter stated in pertinent part that Costello had indicated that the  
8 Commonwealth would not provide the Union with information in response to its request  
9 even after it completed its own review. Additionally, the letter stated that Costello informed  
10 the Union that:

11 the Commonwealth will not provide the Union with the identity of any unit  
12 member surveilled or investigated by the PI, and you stated that the  
13 Commonwealth will not provide the Union with a copy of any report or other  
14 documents generated because of the investigation. To date, the  
15 Commonwealth has not provided any information that is responsive to the  
16 Union's information request, or a reasonable explanation for its failure to do  
17 so.

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19 Costello did not respond to Fogarty's April 18, 2019 letter.

20 Between November 9, 2018 to April 26, 2019, the EEA was in the process of  
21 investigating what should be done with the PI's report, what action the EEA should take  
22 next, whether the EEA should refer the issue to another agency, and if the agency should  
23 take disciplinary action against the individual who was surveilled. On April 26, 2019, the  
24 EEA determined it would not take disciplinary action against the individual who was

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<sup>6</sup> The Commonwealth received a copy of the PI's two investigation reports in October of 2018. However, the EEA performed its own investigation of the PI's report that was completed on April 26, 2019.

1 surveilled or refer the matter to an outside agency, i.e. the State Ethics Commission, for  
2 further investigation.<sup>78</sup> After the EEA determined that the individual who was surveilled  
3 would not be disciplined, the Employer still did not provide the Union with the requested  
4 information.

5 As of the date of the hearing, the Employer had not provided the Union with any of  
6 the information requested on November 1, 2018, November 9, 2018, February 28, 2019,  
7 March 20, 2019, and April 18, 2019. Benjamin Goldberger (Goldberger), who began  
8 working as the General Counsel for the Executive Office of Energy and Environmental  
9 Affairs in January 2020, explained that the Employer had not provided the requested  
10 information to the Union, and would not do so, because at the time of the requests, the  
11 investigation into the individual being surveilled was still on going. Additionally, the  
12 Employer will not provide the information to the Union because it believes that the  
13 information is not relevant to the Union's role as the exclusive bargaining representative  
14 as no one was disciplined as a result of the investigation. Furthermore, the Employer is  
15 concerned that providing the information to the Union will reveal the surveilled employee's  
16 identity, and cause their<sup>9</sup> supervisors and colleagues to have a lower opinion of them or

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<sup>7</sup> Fogarty testified that the Commonwealth informed the Union that the unauthorized investigation would not be used for discipline of any members. However, the Union is uncertain where the unauthorized investigation report is kept or whether the report could be used against a member in future disciplinary or promotional matters.

<sup>8</sup> The Commonwealth alleges that Tori Kim (Kim), the General Counsel for the EEA in 2018 and 2019, investigated this matter and presented her findings to the EEA on April 26, 2019. However, the Commonwealth only presented evidence through Goldberger, who became General Counsel of EEA after Kim departed.

<sup>9</sup> Gender neutral pronoun.

1 lose trust in them based on the fact that they were the subject of an investigation that did  
2 not result in discipline.

3 **OPINION**

4 If a public employer possesses information that is relevant and reasonably  
5 necessary to an employee organization in the performance of its duties as the exclusive  
6 collective bargaining representative, the employer is generally obligated to provide the  
7 information upon the employee organization's request. City of Boston, 32 MLC 1, MUP-  
8 1687 (June 23, 2005); Higher Education Coordinating Council, 23 MLC 266, 268, SUP-  
9 4142 (June 6, 1997). The employee organization's right to receive relevant information is  
10 derived from the statutory obligation to engage in good faith collective bargaining,  
11 including both grievance processing and contract administration. Boston School  
12 Committee, 24 MLC 8, 11, MUP-1411 and MUP-1412 (August 26, 1997). The  
13 Commonwealth Employment Relations Board's (Board) standard for determining whether  
14 the information requested by an employee organization is relevant is a liberal one, similar  
15 to the standard for determining relevancy in civil litigation proceedings. City of Boston,  
16 32 MLC 1, MUP-1687 (June 23, 2005).

17 Once an employee organization has established that the information it requested  
18 from the public employer is relevant and reasonably necessary to execute its duties as  
19 collective bargaining representative, the burden shifts to the employer to demonstrate that  
20 its concerns about disclosure are legitimate and substantial, and that it has made  
21 reasonable efforts to provide the union with as much of the requested information as  
22 possible, consistent with its expressed concerns. Board of Higher Education, 26 MLC 91,  
23 93, SUP-4506 (January 11, 2000).



1           **Relevancy of the Requested Information<sup>10</sup>**

2           a. Before the Investigation was Complete.

3           The Commonwealth argues that it did not conclude its investigation and determine  
4 that it would not discipline the individual being investigated until April 26, 2020; therefore  
5 the Union's requests for information on November 1 & 9, 2018, February 28, 2019, March  
6 20, 2019, and April 18, 2019 were premature. The Commonwealth argues that it is not  
7 obligated to provide information to the Union about an investigation while it is still on-  
8 going. Therefore, Commonwealth did not violate the Law when Costello refused to  
9 provide the requested information to the Union on November 1, 2018, November 9, 2018,  
10 February 28, 2019, March 20, 2019, and April 18, 2019.

11          Although the Commonwealth may have valid concerns with releasing information  
12 about an investigation while it is still on going, its argument completely ignores the fact  
13 that it concluded its investigation on April 26, 2019. The Commonwealth's argument that  
14 it does not have an obligation to provide the Union information about an ongoing  
15 investigation became moot once it completed its investigation. The Commonwealth's  
16 obligation to provide the Union with requested information that is relevant and reasonably  
17 necessary to the Union's role as the exclusive bargaining representative is not limited to  
18 the date of the Union's information request.

19          Even if the Commonwealth could not have provided the information to the Union prior  
20 to the investigation's completion, it is not excused from providing the information to the  
21 Union after the investigation was complete on April 26, 2019. The Union was not obligated

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<sup>10</sup> The Commonwealth does not dispute that it possesses the requested information.

1 to renew its request for the information after the completion of the investigation on April  
2 26, 2019, because the Commonwealth's obligation to provide relevant and reasonably  
3 necessary information to the Union did not expire on April 18, 2019. Given that the parties  
4 had spent months discussing the outstanding information request at labor management  
5 meetings, and the closeness in time from the Union's last request on April 18 to the  
6 completion of the investigation on April 26, the Commonwealth knew that the Union was  
7 still seeking the requested information when it concluded its investigation. After the  
8 Commonwealth completed its investigation, it was obligated to provide the Union with the  
9 requested information.

10 b. After the Investigation was Complete.

11 The Commonwealth argues that it was not obligated to provide the requested  
12 information to the Union after its investigation was complete because the requested  
13 information was not relevant or reasonably necessary to the Union's role as the exclusive  
14 bargaining representative. Specifically, the information requested was not relevant or  
15 reasonably necessary to the Union because no discipline issued after the investigation  
16 was completed. However, the Union's role as the exclusive bargaining representative is  
17 not limited to responding to discipline; thus, the Employer cannot refuse to provide the  
18 Union with information simply because it did not result in discipline or concern discipline.

19 Pertaining to McGinn's unauthorized investigation, the Union has requested the  
20 name of the PI and the name of any company with which they associate, 2) the names of  
21 any and all unit members surveilled or investigated by the PI, 3) an explanation of the  
22 scope of the PI's investigation, and 4) a copy of any report, notes, photographs, or other  
23 documents generated as a result of the PI's actions. The Union asserts that the above

1 referenced information is necessary and relevant for it to determine: 1) the extent of the  
2 employer's surveillance of bargaining unit members, 2) changes in working conditions  
3 that would require bargaining as a result of the investigation, 3) changes to the way pre-  
4 disciplinary matters were handled, 4) any new and continuing methods of employee  
5 review, 5) if there were changes to the internal affairs investigation procedures, 6) if  
6 workplace harassment had occurred, 7) whether bargaining unit members' privacy rights  
7 were violated, 8) where the records of the investigation were stored and who had access  
8 to the records, and 9) whether the information obtained in the investigation would be used  
9 for current or future discipline or promotional proceedings. Also, the Union asserts that  
10 the above referenced information is necessary and relevant for it to evaluate and pursue  
11 any grievance or prohibited practices and to assess the Union's bargaining positions  
12 relevant to the surveillance of members, internal affairs procedures, disciplinary  
13 procedures, and use of technology.

14         The Commonwealth argues that the requested material does not reflect any  
15 changes to employees' terms and conditions of employment. The Commonwealth asserts  
16 that it did not issue discipline, reassign, change job duties or hours of work for any  
17 members as a result of McGinn's unauthorized investigation; therefore, the requested  
18 information is irrelevant. However, the Union has the right to review the information about  
19 McGinn's unauthorized investigation and make its own assessment of whether the  
20 information would be useful in its role as bargaining representative. See City of Boston,  
21 35 MLC 95, 102, MUP-04-4050 (December 10, 2008) (raising the possibility that a union  
22 and an employer could review the same information and draw different conclusions as to  
23 the usefulness of the information). The terms and conditions of employment for a

1 bargaining unit member are not limited only to discipline, job duties, assignment, or hours  
2 of work; therefore, the Union's role as exclusive bargaining representative is not limited  
3 to only responding to discipline and potential changes in job duties, assignment, or hours  
4 of work. The Commonwealth's assertion that it did not issue discipline or change any  
5 members' job duties, assignment, or work hours as a result of McGinn's unauthorized  
6 investigation does not render the requested material unnecessary or irrelevant to the  
7 Union's role as exclusive representative.

8         It is well settled that the relevancy of the requested information is determined by  
9 the totality of the circumstances at the time that the union requested the information. See  
10 City of Lynn, 27 MLC 60, 61, MUP-2236, MUP-2237 (December 1, 2000) (citing,  
11 Providence and Mercy Hospitals v. NLRB, 93 F3d. 1012, 1020 (1st Cir. 1996)); see also  
12 Tenneco Automotive, Inc., 357 NLRB No. 84, slip op. at 2 (2011) (citing Wayne Memorial  
13 Hospital Assn., 322 NLRB 100, 110 (1996)). Here, the totality of the circumstances at the  
14 time of the requests include the fact that McGinn conducted what the Commonwealth  
15 labeled as an unauthorized investigation. Given that the investigation was unauthorized,  
16 it stands to reason that the circumstances and process of this investigation were not  
17 identical to past internal affairs investigations. The Union has established the need to  
18 evaluate if the unauthorized investigation created any changes to the members' terms  
19 and conditions of employment, including but not limited to, surveillance of employees and  
20 disciplinary procedures.

21         Information about terms and conditions of employment of bargaining unit members  
22 is presumptively relevant and necessary to an employee organization to perform its  
23 statutory duties. City of Lynn, 27 MLC 60, 61, MUP-2236 (December 1, 2000). The Union

1 needs the requested information to determine if any changes to members' terms and  
2 conditions of employment were created by the unauthorized investigation, and to evaluate  
3 what, if any, response is required to protect its members and its bargaining position in  
4 future negotiations. Consequently, I find that the information that the Union requested  
5 was relevant and reasonably necessary for the Union to fulfill its duty as the exclusive  
6 representative.

7 Finally, the Commonwealth argues that the requested information is irrelevant and  
8 unnecessary because the Union has not filed a grievance, and therefore, does not need  
9 the information to process a pending grievance. However, the Union is entitled to  
10 information that would permit it to evaluate whether it should file as well as pursue a  
11 grievance. Commonwealth of Massachusetts, 21 MLC 1499, 1504 (1994); City of Boston,  
12 29 MLC 165, MUP-2483 (March 6, 2003).

### 13 **Legitimate and Substantial Concerns**

14 The Commonwealth argues that even if the requested information is relevant and  
15 necessary to the Union, the Commonwealth had legitimate and substantial concerns  
16 about disclosing it to the Union. First, it has substantial and legitimate concerns about  
17 releasing information regarding an on-going investigation. As noted, this argument  
18 ignores the fact that the Commonwealth completed the investigation only days after the  
19 Union's last information request. Thus, its concern about disclosing information about an  
20 on-going investigation is not legitimate.

21 Also, the Commonwealth argues that public employees have a privacy interest in  
22 not having their co-workers learn that they were under investigation when that  
23 investigation does not reveal any wrongdoing. The Commonwealth asserts that it has

1 legitimate and substantial concerns about disclosing the requested information because  
2 revealing the identity of the subject of the investigation would unfairly place that individual  
3 under an unjustified, damaging cloud of suspicion.<sup>11</sup> However, the Union has not  
4 requested that the Commonwealth disperse the requested information throughout the  
5 bargaining unit. The Commonwealth's concerns about widespread disclosure of the  
6 identity of the individual under investigation could be worked out with the Union so that  
7 the person's identity could be protected.

8         Moreover, the individual in question may want the Union involved to protect their  
9 collective bargaining rights. The Commonwealth has not disclosed where the  
10 investigation is stored or who has access to the file, therefore it is possible that the  
11 individual's supervisors may have access to it when considering future discipline or  
12 promotions. Given the possibility that the individual may be unfairly placed under a  
13 damaging cloud of suspicion for future discipline and promotions, it is important for the  
14 Union to have the requested information. The Commonwealth has not demonstrated that  
15 its concern about identifying the individual who was investigated is legitimate or  
16 substantial.

17         Finally, the Commonwealth argues that disclosing the requested information to the  
18 Union may harm labor relations between the parties. Because the Union has argued that  
19 it requires the requested information to evaluate whether it needs to file grievances or

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<sup>11</sup> The Commonwealth cites WBZ-TV4 v. District. Atty. For Suffolk District, 408 Mass. 595, 600 (1990), where a news outlet sought access to a videotape of a lineup in a murder trial. Here, however, the Commonwealth could have worked out an arrangement with the Union so that the identity of the individual who was being investigated was not dispersed to the public or the rest of the bargaining unit. Additionally, the present case does not involve the secrecy of a grand jury.

1 unfair labor practice charges against the Employer, the Commonwealth asserts that  
2 disclosure of the investigation report may result in grievances and charges which force  
3 the Commonwealth to answer to a matter which requires no further action. According to  
4 the Commonwealth, disclosure of the requested information would cause tension and  
5 mistrust where none previously existed. I disagree. The Commonwealth's refusal to  
6 provide the Union with relevant and necessary information regarding an unauthorized  
7 investigation into one of its members is far more likely to create tension and mistrust.  
8 Additionally, the Commonwealth's concern that it may have to defend itself in grievances  
9 and charges relating to its unauthorized investigation is not a legitimate and substantial  
10 reason to withhold the requested information from the Union.

11 Absent a showing of great likelihood of harm flowing from the disclosure, which the  
12 Commonwealth failed to show, the Commonwealth was required to furnish the Union with  
13 the requested information, which was necessary for the Union to carry out its duties as  
14 the exclusive bargaining representative. Greater Lawrence Sanitary District, 28 MLC 317,  
15 MUP-2581 (April 19, 2002).

16 REMEDY

17 Using as models the safeguards set forth in Boston Police Superior Officers  
18 Federation v. Boston, 414 Mass. at 461 n. 5 (1993), as implemented in Sheriff's Office of  
19 Middlesex County, 30 MLC 91, MUP-2754 (December 31, 2003). I order the following  
20 safeguards on the release of the identity of the bargaining unit member who was  
21 surveilled in McGinn's unauthorized investigation. The Union's counsel shall take  
22 reasonable measures to ensure that the identity of the bargaining unit member who was  
23 surveilled is not widely distributed to the public or the entirety of the bargaining unit.

1 Reasonable measures shall include, but shall not be restricted to, confining access to the  
2 investigation reports and other documents that disclose the identity of the bargaining unit  
3 member who was surveilled only to his/her client except with the consent of the Employer.  
4 Consistent with Boston Police Superior Officers Federation v. City of Boston, supra, the  
5 term “client” is defined as “the few members of the [union] {such as its officers or executive  
6 board} who are directly involved in the case and not to the [union’s] membership as a  
7 whole. 414 Mass at 467.

### 8 **CONCLUSION**

9 Based on the record, and for the reasons stated above, I conclude that the  
10 Commonwealth has failed to bargain in good faith in violation of Section 10(a)(5), and,  
11 derivatively, 10(a)(1), by refusing to provide the information that the Union requested on  
12 November 1, 2018, November 9, 2018, February 28, 2019, March 20, 2019, and April 18,  
13 2019, which was relevant and reasonably necessary for the Union to execute its duties  
14 as the collective bargaining representative.

### 15 **ORDER**

16 WHEREFORE, based upon the foregoing, IT IS HEREBY ORDERED that the  
17 Commonwealth shall:

18 1. Cease and desist from:

19 a) Refusing to provide relevant and reasonably necessary information when  
20 requested by the Union.

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

22 a) Provide the Union with the following requested information pertaining to  
23 McGinn’s unauthorized investigation: 1) the name of the PI and the name  
24 of any company with which they associate, 2) the names of any and all unit  
25 members surveilled or investigated by the PI, 3) an explanation of the



- 1 scope of the PI's investigation, and 4) a copy of any report, notes,  
2 photographs, or other documents generated as a result of the PI's actions.
- 3 b) Post immediately in all conspicuous places where members of the Union's  
4 bargaining unit usually congregate, or where notices are usually posted,  
5 including electronically, if the Commonwealth customarily communicates  
6 with these unit members via intranet or email and display for a period of  
7 thirty (30) days thereafter, signed copies of the attached Notice to  
8 Employees.
- 9 b) Notify the Department in writing of the steps taken to comply with this  
10 decision within ten (10) days of receipt of this decision.
- 11 3. The Union's counsel shall take reasonable measures to ensure that the identity of  
12 the bargaining unit member who was surveilled is not widely distributed to the  
13 public or the entirety of the bargaining unit. Reasonable measures shall include,  
14 but shall not be restricted to, confining access to the investigation reports and other  
15 documents that disclose the identity of the bargaining unit member who was  
16 surveilled only to his/her client except with the consent of the Employer.

SO ORDERED.

COMMONWEALTH OF MASSACHUSETTS  
DEPARTMENT OF LABOR RELATIONS



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MEGHAN VENTRELLA, ESQ.  
HEARING OFFICER

### **APPEAL RIGHTS**

The parties are advised of their right, pursuant to M.G.L. Chapter 150E, Section 11 and 456 CMR 13.19, to request a review of this decision by the Commonwealth Employment Relations Board by filing a Notice of Appeal with the Department of Labor Relations not later than ten days after receiving notice of this decision. If a Notice of Appeal is not filed within ten days, this decision shall become final and binding on the parties.