

STATE OF MAINE

MAINE LABOR RELATIONS BOARD

Case No. 24-PPC-15

Issued: February 26, 2025

\_\_\_\_\_  
UNIVERSITY OF MAINE  
GRADUATE WORKERS  
UNION, UAW,

Complainant,

v.

UNIVERSITY OF MAINE SYSTEM,

Respondent.  
\_\_\_\_\_

DECISION AND ORDER

**I. Statement of the Case**

The University of Maine Graduate Workers Union, UAW, (Union) alleges the University of Maine System (UMS or System) violated the University Employees Labor Relations Act (Act) by responding to its request for information in an untimely and incomplete manner in violation of 26 M.R.S.A. § 1027(1)(E).

**II. Procedural History**

The Union filed its complaint with the Maine Labor Relations Board (Board or MLRB) on March 18, 2024. After a sufficiency determination issued by Neil P. Daly, Esq., Executive Director, two prehearing conferences were conducted, the first by Sheila Mayberry, Esq., Board Chair, on June 21, 2024, and the second by the Executive Director on September 13, 2024. At both conferences, Jeffrey Neil Young, Esq., represented the Union and Ann M. Freeman, Esq., represented UMS. During the course of the prehearing conferences, the parties agreed to certain stipulations of fact that were memorialized in a Prehearing Conference Memorandum and Order issued by the Executive Director on September 19, 2024. A hearing was held for this matter via videoconference on September 26, 2024, and was presided over by a Board panel made up of Rebekah Smith, Esq., Alternate Chair; Alyssa Tibbetts, Esq., Alternate Employer Representative; and Jessica Maher, Esq., Alternate Employee Representative. The parties were given a full opportunity to examine and cross-examine witnesses, introduce evidence and make their arguments. At the close of the hearing, the parties agreed to confer with the Board's Executive Director and Counsel regarding the scope of the issue at hearing and the potential need for additional evidence. The parties met with Board staff on September 30, 2024, and subsequently, on October 23, 2024, submitted to the Board additional stipulations and an additional exhibit.

The parties were permitted to file post-hearing briefs, which they submitted on December 11, 2024.

### **III. Stipulations**

#### **Parties' Statement of the Issue:<sup>1</sup>**

Whether the University of Maine System violated 26 MRSA Section 1026(E) when it failed to timely provide information, in whole or in part, requested by the University of Maine Graduate Workers Union-UAW on November 6, 2023, as of the date the Parties commenced discussions with Maine Labor Relations Board Executive Director Neil Daly on or around June 20, 2024, as detailed in the concise statement appended to the UMGWU-UAW's prohibited practice charge dated March 18, 2024; UMS's response dated April 16, 2024; the evidence adduced at the hearing on September 26, 2024; and the Parties' subsequent stipulation dated October 21, 2024?

#### **Pre-Hearing Stipulations:<sup>2</sup>**

1. Following a card check conducted by Rebekah Smith demonstrating that the Union represented a majority of its graduate student workers, UMS recognized the Union as the exclusive bargaining representative of such employees.
2. Of the nearly 1000 graduate student workers in the System, roughly 99% of them are at the University of Maine and the University of Southern Maine.
3. The System has eight campuses, including the law school.
4. There are a total of seven unions within the System, including the graduate student workers.
5. RFI was submitted to UMS Labor Relations on November 6, 2023.
6. UMS and Union commenced negotiations on November 10, 2023.
7. On March 18, 2024, the Union filed a prohibited practice charge with the Maine Labor Relations Board alleging that UMS had violated 26 M.R.S.A. Section 979C(1)(E) by failing to provide it with information in response to the RFI.
8. On April 16, 2024, UMS filed its response to the Union's prohibited practice charge.

#### **Post-Hearing Stipulations:<sup>3</sup>**

1. The following requests for information are not in issue for purposes of this hearing because they relate to information which is protected by the Family Educational Rights and Privacy Act (FERPA) and is subject to a separate process entered into by the Parties:
  - a. 1(a)-(v)
  - b. 2(b)(i)-(v)

- c. 6(a)-(c)
- d. 44(a)-(j)

2. The attached System Exhibit [R-9] shall be admitted into evidence as the System's response referenced in the Union's Complaint in paragraph 4(b).

3. On or around June 20, 2024, the Parties commenced discussions with Maine Labor Relations Board Executive Director Neil Daly to attempt to avoid the necessity of a hearing over the PPC.

4. The evidence presented at the hearing on September 26, 2024, along with the exhibits and stipulations, is the only evidence for the Panel's consideration.

#### **IV. Findings of Fact**

Upon review of the entire record, the Board further finds the following.

The Union submitted a request for information (RFI) to UMS on November 6, 2023. The request consisted of 50 numbered items with multiple subparts. Including the subparts, the request encompassed 160 items. The Union requested the information be provided no later than November 21, 2023, and requested that UMS provide the information as it became available rather than waiting to provide a comprehensive response. UMS's initial response to the Union was that it would take approximately six months to satisfy the request.

On February 23, 2024, UMS reiterated its six-month timeline in an email to Union representatives and asked the Union to narrow its request to only information pertaining to the University of Maine and University of Southern Maine campuses, which represent approximately 99% of the bargaining unit. After the filing of the prohibited practice complaint on March 18, 2024, the Union eventually did agree to narrow the scope of its RFI to these two campuses.

The System provided responsive information to portions of the RFI on December 13 and 14, 2023, on January 3 and 26, 2024 and on March 12 and 13, 2024. However, at the time the Union filed its complaint with the Board on March 18, 2024, UMS had still not provided any response for 34 of the 50 RFI items,<sup>4</sup> and of the information that was provided, the Union considered several responses to be incomplete. After the Union's filing of the prohibited practice complaint, the parties were able to negotiate a special process for release of requested information that implicated confidentiality issues under the federal Family Educational Rights and Privacy Act (FERPA), which UMS provided to the Union on April 12, 2024.<sup>5</sup> It appears that UMS provided little to no additional information until after discussions between the parties and the Board's Executive Director in June of 2024. From then until the September 26, 2024, hearing, UMS provided the majority of outstanding information. At the hearing, six items from the original request remained in dispute, as will be discussed more thoroughly below.

The parties began negotiations for their initial contract on November 10, 2023, four days after submission of the RFI in question. As of the hearing, they had met to negotiate approximately 26

times and had reached a tentative agreement regarding job postings. Despite some progress with negotiations, the Union representatives testified at the hearing that the delay in receiving requested information had negatively impacted the Union's ability to bargain, which the Union had directly expressed to UMS at the bargaining table on at least on two occasions. Prior to filing its prohibited practice complaint, the Union had attempted several times to get status updates regarding its information request during the bargaining sessions with UMS.

### **Disputed RFI Items**

The following items from the November 6, 2023, RFI remained in dispute as of the day of hearing.

#### **1. RFI #2(d)(viii)<sup>6</sup>**

“Regarding health insurance covering bargaining unit employees, please provide the following information for all coverage, including mental health, dental and vision for the previous three full plan years:

...

d. For the three most recent plan years and current year to date:

...

viii. Benefit consultant reports or other related vendor or internal reports”

UMS provided the Union with internal reports and vendor consultant reports that specifically addressed other sub-items in RFI #2. Either the night before or the day of the hearing, UMS also provided a vendor consultant report, dated September 1, 2024, providing health insurance usage information from 2023-2024. Based on testimony at the hearing, it appears that UMS made an inquiry with its risk management department for additional consultant reports involved in its decision to switch health insurance providers, but as of the hearing had not received any additional information.

#### **2. RFI #19**

“For each department/hiring unit offering a class for which there was a graduate worker engaged in instruction in the last three years (including Winter and Summer sessions), the enrollment for each lab or section and the number of graduate workers assigned to each lab or section;”

While the Union acknowledges it has received a comprehensive response from UMS for this RFI with respect to the University of Maine campus, there was a discrepancy in the information provided for the University of Southern Maine campus. Based on the information provided for RFI #1, there should have been 19 graduate student workers at this campus, versus the information provided, which included only two. The parties are in agreement regarding the discrepancy and as of the hearing UMS was working to resolve the issue.

### **3. RFI #20**

“For each department or hiring unit, the process, including hiring criteria, used to appoint graduate workers in all job titles in any given term;”

With respect to this request, UMS has provided the Union information regarding salaried and stipended bargaining unit employees. It has also provided some information regarding hiring criteria with respect to hourly employees at the University of Maine campus, though apparently not for the University of Southern Maine campus. It has not provided information regarding the hiring process for hourly employees, which it claims vary from department to department. To obtain this information, a UMS representative testified that the System would need to reach out to each individual hiring department. UMS has not provided any further information.

It is not established in the record how many different UMS departments employ graduate students. Testimony from the Union estimated near 100, though UMS asserts in its brief that there are approximately 250.<sup>7</sup> The Union has asserted that a much smaller number of departments employ graduate students on an hourly basis.

### **4. RFI #21**

“Copies of documents providing job descriptions/postings, application forms, offer/appointment letters from each department/hiring unit from the last three years;”

In response to this request, UMS provided the Union with template documents. The Union did not consider this response sufficient, as it did not include the actual appointment letters or job descriptions, and thus no specifics regarding, for example, compensation. A UMS representative testified at the hearing that the actual job postings and appointment letters are not maintained centrally, and so this information must be sought from each individual department at the two campuses. At some point, UMS informed the Union that this would be an overly burdensome request. In an attempt to resolve the issue, the Union narrowed its request from the last three years to the prior calendar year.

### **5. RFI #23**

“Number of claims for Workers Compensation insurance coverage filed by employees in the bargaining unit and the following for each individual for the last three years, including:

- a. University;
- b. School;
- c. Department;
- d. reason for the claim;
- e. outcome or current status of the claim;
- f. any other benefit or support graduate worker received;”

UMS provided the Union with aggregate claims information pertaining to the entire University System, including all staff and graduate student workers. The Union did not find this information to be responsive because it did not pertain specifically to bargaining unit members. UMS contends that neither it nor its workers' compensation insurance provider track claims data in a way that isolates this data for bargaining unit employees.

## **6. RFI #45**

"A list of all offices and workspaces designated for bargaining unit member use on all campuses, by department and school;"

UMS has provided the Union with no information pertaining to this request. This information is not tracked by the System centrally. UMS reached out to facilities management personnel at its campuses to ask if this information was available and learned that the information is not tracked and is therefore unavailable. The Union contends that the information could be obtained by an email to all the departments.

## **V. Analysis**

### **A. Jurisdiction**

At all times relevant, the Union was a bargaining agent within the meaning of 26 M.R.S.A. § 1022(1-B) and UMS was a covered employer within the meaning of 26 M.R.S.A. § 1022(10). The Board's jurisdiction to hear this case and to issue a decision and order derives from 26 M.R.S.A. § 1029.

### **B. Failure to Collectively Bargain**

The University of Maine System, its representatives and agents are prohibited from "[r]efusing to bargain collectively with the bargaining agent of its employees as required by section 1026." 26 M.R.S.A. § 1027(1)(E). Section 1026 requires employers and unions to collectively bargain over mandatory subjects of bargaining, that is, wages, hours, working conditions and contract grievance arbitration. 26 M.R.S.A. § 1026. The duty to collectively bargain includes the employer's duty to provide relevant information requested by the union for the performance of its duties. *AFT Local 3711 v. Sanford School Committee*, No. [01-24](#), slip op. at 14 (Jan. 31, 2002). This includes information relevant to the bargaining process. *Local 1373, AFSCME, Council 93 v. City of Portland*, No. [12-13](#), slip op. at 5 (November 13, 2012). The standard of relevance applied is a "broad discovery-type standard." *Sanford School Committee*, No. [01-24](#) at 13, citing *NLRB v. Acme Indust. Co.*, 385 U.S. 432, 437 (1967). A union is not required to inform the employer of the specific purpose for requested information, as long as the request is reasonably related to the performance of its duties as a bargaining agent. *Orono Firefighters Association v. Town of Orono*, No. [89-18](#), slip op. at 12-13 (Sept. 1, 1989). Even when the requested information is reasonably related to the union's duties, where there are competing interests, the interests of both parties should be accommodated if possible. *Sanford School Committee*, No. [01-24](#) at 14. If it is not possible to accommodate both parties' interests, the Board will weigh the competing interests

of the parties and determine which interest should prevail. *Portland School Committee v. Portland Teachers Assoc.*, No. [93-27](#), slip op. at 18 (Feb. 17, 1994). Relevant requested information must also be supplied in a timely manner. *Maine Association of Police v. Town of Pittsfield*, No. [20-PPC-07](#), slip op. at 5 (December 31, 2020); See also, *Town of Orono*, No. [89-18](#), at 13 (“Unless the Union is provided with the information it requests in a timely manner, the right to information is a hollow one indeed.”).

## **1. Duty to Provide Additional Information**

We will first analyze whether UMS has satisfied its duty regarding the six requests for information that the Union considers outstanding. In so doing, an initial question will be whether the requested information is relevant to the Union’s duties as a collective bargaining agent, specifically here in relation to the bargaining process. See *Sanford School Committee*, No. [01-24](#) at 14. Citing extensively to federal law, the Union has argued in its brief that a union’s requests for information regarding certain subjects are presumptively relevant. It is true that, when facing an issue of first impression, the Board will “look for guidance to parallel federal law, found in the National Labor Relations Act [NLRA] and decisions thereunder” in reaching its conclusion. *Local 1373, AFSCME, Council 93 v. City of Portland*, No. [12-13](#), slip op. at 5 (November 13, 2012), citing *Teamsters Local Union No 48 v. Eastport School Department*, No. [85-18](#), slip op. at 5 (Oct. 10, 1985), quoting *Baker Bus Service v. Keith*, [428 A.2d 55](#) n.3 (Me. 1981). However, given the broad scope of relevance already established by Board precedent,<sup>8</sup> and the facts and circumstance of the present case, the Board need not address the concept of presumptive relevance at this time. Without adopting any presumptive relevance standards per se, the Board finds it worth noting that, in the context of a union’s collective bargaining duties, information pertaining to the mandatory subjects of bargaining is generally relevant. See *Murray Am. Energy, Inc.*, 370 NLRB No. 55 (Dec. 15, 2020), citing *Southern California Gas Co.*, 344 NLRB 231, 235 (2005) (Finding that generally, information concerning wages, hours, and other terms and conditions of employment of unit employees is presumptively relevant to the union’s role as exclusive collective-bargaining representative.)

If the Board determines an RFI is relevant, we will next analyze whether the System’s response was sufficient to satisfy its duty to provide relevant requested information pursuant to 26 M.R.S.A. § 1026, or whether instead its response constituted a violation of 26 M.R.S.A. § 1027(1)(E). For these six items in dispute, UMS basically claims that it has met its duty to provide information because either 1) the information requested is unavailable or 2) gathering the information would be unduly burdensome. Board case law provides some guidance regarding such claims, but reference to federal labor relations law is instructive.

Regarding the availability of information, an employer must make reasonable efforts to obtain and provide relevant information requested by the Union. *Sanford School Committee*, No. [01-24](#) at 14; See *Pub. Serv. Co. of Colorado*, 301 NLRB 238, 247 (1991). This includes the obligation to provide “information that can reasonably be obtained from a third party with whom the party has a

relevant business relationship.” *Portland School Committee v. Portland Teachers Assoc.*, No. [93-27](#), slip op. at 19 (Feb. 17, 1994), citing *Congreso de Uniones Industriales de Puerto Rico v. NLRB*, 966 F.2d 36 (1st Cir. 1992); See also, *Pub. Serv. Co. of Colorado*, 301 NLRB at 247 (Finding a violation where the employer could have, but did not, request the requested information from a subcontractor). Federal precedent is clear that an employer cannot be held liable for not providing information that it does not have. See *Sara Lee Bakery Grp., Inc. v. N.L.R.B.*, 514 F.3d 422, 429 (5th Cir. 2008), citing *Vanguard Fire & Supply Co., Inc.*, 345 NLRB No. 77, 42–43 (2005), enforced 468 F.3d 952 (6th Cir. 2006); *In Re Kathleen’s Bakeshop, LLC*, 337 NLRB 1081, 1082 (2002) (Where the National Labor Relations Board (NLRB) found no violation of the duty to provide information when there was no evidence that an employer knew the day that it would cease operations at the time the information was requested by the union.). However, “employers do have an obligation to make reasonable efforts to secure any unavailable information.” *Sara Lee Bakery Grp., Inc.*, 514 F.3d at 429–430 (Finding an unlawful failure to provide requested information where the employer, while not in possession of the information, “utterly failed to conduct a good faith inquiry” to determine whether the information was available from any other sources.); See also, *Pub. Serv. Co. of Colorado*, 301 NLRB at 246 (“Respondent has failed to meet its burden of demonstrating the information is unavailable for it has not indicated it asked ... for the information.”); *Arch of W. Virginia, Inc., A Wholly-Owned Subsidiary of Arch Mins. Corp. & United Mine Workers of Am., Dist. 17*, 304 NLRB 1089, 1089, n.1 (1991) (Finding the employer had not sufficiently demonstrated that requested information not in its possession was unavailable, when it had not shown that it had requested the information from its parent corporation and a subsidiary and that they had in turn refused to provide the information.); *United Graphics*, 281 NLRB 463, 466 (1986) (Rejecting an employer’s claim that information was unavailable when there was no evidence that the employer had requested a third-party employment agency provide it with the information that the union was seeking.).

With respect to an employer’s claim that an information request is unduly burdensome, such claim must be made in a timely manner, so that the parties can attempt to seek an accommodation of the employer’s concerns. *Salem Hosp. Corp. a/k/a the Mem’l Hosp. of Salem Cnty. & Health Pros. & Allied Emps. (Hpae)*, 359 NLRB 695, 697–98 (2013) (Decision set aside on other grounds by 200 L.R.R.M. (BNA) ¶ 1398 (N.L.R.B. June 27, 2014)). The claim should be made at the time the information is requested and not for the first time during the unfair labor practice proceeding, otherwise the defense is undermined. *Land-O-Sun Dairies*, 345 NLRB 1222, 1223 (2005); *Anthony Motor Co., Inc.*, 314 NLRB 443, 450–51 (1994), citing *Oil Workers Local 6-418 v. NLRB*, 711 F.2d 348, 353 fn. 6 (D.C. Cir. 1983), quoting Gorman, “BASIC TEXT ON LABOR LAW 417” (1976). When an employer claims that furnishing relevant information would impose an undue burden, “the onus is on the employer to show that production of the data would be unduly burdensome.” *Murray Am. Energy, Inc.*, 370 NLRB No. 55, quoting *Mission Foods*, 345 NLRB 788, 789 (2005).



**a. RFI #2(d)(viii)**

The Union's request for consultant, vendor and internal reports related to health insurance is information pertaining to a mandatory subject of bargaining<sup>9</sup> that is relevant to its bargaining duties. UMS does not dispute this relevance. The Union argues that given the consultant report already provided, covering 2023-2024, there are likely similar reports for the two prior years. UMS appears to not be aware of whether it has or can otherwise acquire this information, and it is unclear from the record whether UMS has made any specific request for this information. The Union also believes there are other reports that the System used in making past decisions regarding changes in health insurance providers. With respect to these reports, the record reflects that UMS has attempted to locate them, though as of the hearing had not yet provided them to the Union.

UMS argues that it has provided all reports responsive to the Union's request. It is unclear if the reports described by the Union exist, but if they do, UMS has presumably failed to satisfy its duty under the Act to provide the Union with relevant requested information. Therefore, if the reports do exist, UMS must provide them. If, after a thorough search of its records and after requesting the information from the relevant consultants it turns out the reports do not exist, UMS must notify the Union of this fact.

**b. RFI #19**

The Union's request for information regarding the number of bargaining unit employees for each lab or section and the corresponding enrollment is information pertaining to working conditions that is relevant to its bargaining duties. UMS does not dispute this relevance. The issue here involves a discrepancy in the information provided by UMS pursuant to this request, indicating there were two bargaining unit employees employed at the University of Southern Maine campus in the spring of 2024, and information provided pursuant to RFI #1, indicating there were 19 such employees.

UMS did provide information in response to this request, but that information, as it turns out, was incorrect. UMS has acknowledged this information is incorrect and was, as of the hearing, working to resolve the issue. It is not clear why, given the small number of individuals involved, it has taken UMS so long to resolve the discrepancy with accurate information. Providing incorrect information in this case does not satisfy UMS's duty to provide information under the Act. Accordingly, UMS must provide accurate information with respect to this request.

**c. RFI #20**

The Union's request for information from each department or hiring unit regarding the process to appoint graduate workers is information pertaining to wages that is relevant to its bargaining duties, and UMS has not disputed this relevance. While UMS provided the Union with information regarding salaried and stipended positions, it has not provided complete information with respect to hourly workers. Pointing to the tentative agreement the parties made with respect to job postings, UMS insists the Union has not been prejudiced by this lack of information.

However, the fact that the Union bargained without the information does not relieve UMS from its duty to provide this relevant requested information. The lack of this information may well have impaired the Union's ability to bargain with UMS, as Union representatives testified to generally at the hearing. Besides its relevance regarding negotiations involving job postings, a Union representative testified that the lack of this information has hampered negotiations regarding compensation.

UMS also argues that to provide this information would be unduly burdensome. Because it is not centrally tracked, UMS would have to contact all of the relevant hiring departments in order to compile this information. It is unclear exactly how many departments are involved, but based on the record it is safe to assume that it is a fairly large number.<sup>10</sup> While UMS does not have a duty to provide information that it does not have, it must make reasonable efforts to secure requested information that is available from its own campuses. See *Sara Lee Bakery Grp., Inc.*, 514 F.3d at 429-430. It is not the case here that UMS has requested the information and found it to be unavailable—rather, there is no evidence that UMS reached out to request the information at the department level at all.

It is unclear when, or if, UMS informed the Union that this would be an unduly burdensome request, but given that its response to the RFI appears to have not been until September 17, 2024, nine days before the hearing, it cannot be said that this claim was timely. UMS has not established that the burdensomeness of the request outweighs the Union's right to this relevant information and, as such, UMS must provide the information. However, under the circumstances, with the goal of finding a way to accommodate both parties' interests, the Board finds it would be a reasonable response for UMS to reach out to its hiring departments by email and then forward the emailed responsive information to the Union as it is received. See *Sanford School Committee*, No. [01-24](#) at 14 (Where there are competing interests, the interests of both parties should be accommodated if possible).

#### **d. RFI #21**

In response to the Union's request for information regarding job descriptions and postings, and appointment and offer letters, UMS provided the Union with template documents, but not the actual letters or job descriptions. UMS has disputed that this information is relevant to negotiations for an initial collective bargaining agreement. Union representatives testified at the hearing that specific information is needed, not just templates, in order to evaluate wages and terms and conditions of appointments and testified generally as to the difficulty in negotiating without the requested information. The Board finds the outstanding information in this RFI pertains to working conditions and wages and is information that is relevant to the Union's collective bargaining duties.

UMS also argues that to provide this information would be unduly burdensome, again, because it can only be retrieved by requesting the information from many different departments. As was the case for RFI #20, the information is available, but UMS has not reached out to request it. UMS must make reasonable efforts to secure the available requested information. The record reflects that at some point UMS did inform the Union that this would be an unduly burdensome request,

but given the date of the System's response to this RFI, this would have been just prior to the hearing and thus untimely. In a move towards accommodation, the Union modified its request to only include the last calendar year, which should significantly ease the System's burden to provide the information. UMS has not established that the burdensomeness of this request outweighs the Union's right to this relevant information, and as such UMS must provide the information. However, as with RFI #20, under the circumstances and with the goal of finding a way to accommodate both parties' interests, the Board finds it would be a reasonable response for UMS to reach out to its hiring departments by email and then forward the emailed responsive information to the Union as it is received. See *Sanford School Committee*, No. [01-24](#) at 14 (Where there are competing interests, the interests of both parties should be accommodated if possible).

UMS indicated that there may be confidentiality concerns under FERPA regarding some of the outstanding information. Confidentiality concerns do not automatically relieve a party of its duty to provide information under the Act. See, e.g., *Maine Service Employees Association v. State of Maine, Executive Branch*, No. [24-PPC-01](#) (January 24, 2024). The parties have successfully navigated this issue of confidentiality with respect to other parts of the Union's November 6, 2023, request for information, and the parties should work together again to accommodate any potential concerns with this particular RFI item.

#### **e. RFI #23**

UMS provided the Union with workers' compensation claims information, but in an aggregated form from which the Union is unable to isolate the relevant information pertinent to its bargaining unit. UMS has claimed this information is not relevant to negotiations for an initial collective bargaining agreement. The Union claims this information is relevant to negotiations regarding health and safety. The Board finds that this information pertains to working conditions and is information that is relevant to the Union's collective bargaining duties.

UMS claims this information is not available in the form the Union is requesting, because neither it nor its workers' compensation insurance provider currently track claims by graduate student workers, and therefore it is under no obligation to provide it. The Board has held that an employer is not required to provide relevant requested information in the exact form that is requested, provided the information is transmitted in a form that will be useful to the union without due burden. *City of Portland*, No. [12-13](#) at 7. This holding permits an employer under certain circumstances to provide responsive information in a different form than that requested; however, it does not provide a basis for an employer to refuse to provide the requested information. In *City of Portland*, a union had requested that the employer provide an explanation for a certain employment practice and that it be provided in writing. No. [12-13](#). The Board in that case found that under the circumstances the employer could still meet its obligation under the Act by providing the information verbally instead of in writing. *Id.* In the NLRB case the Board relied on for that decision, *Cincinnati Steel Castings Co.*, the NLRB found no violation of the NLRA where the employer refused to provide the union with a written list of the employees in the bargaining unit, but did verbally provide the information sought by the union. 86 NLRB 592 (1949). It is not the case here, as in *City of Portland* and *Cincinnati Steel Castings Co.*, that UMS has provided the requested information, just in a different form. Without the disaggregation of

bargaining unit member data, the information UMS has provided is not what the Union requested and likely not very useful for its bargaining purposes.

In its brief the Union argues that even though workers' compensation claim information is not tracked by graduate student workers, UMS could take the list of graduate student workers from the last three years that it already has in its possession and request claims information regarding these individuals from its workers' compensation insurance provider.<sup>11</sup> UMS has a duty to make reasonable efforts to obtain the relevant information that the Union is seeking, even if that means requesting the information from a third party. *Portland School Committee*, No. [93-27](#) at 19. While UMS presumably did initially contact its workers' compensation insurance provider to find out that it did not track this information at the level requested, there is no evidence in the record that UMS ever requested the information based on its lists of graduate student workers, as the Union suggests. It may well be that the System's workers' compensation insurance provider is unable or unwilling to provide it with the information the Union is seeking, but UMS must at least make a good faith attempt to obtain this information.

#### **f. RFI #45**

Regarding the Union's request for information concerning offices and workspaces designated for bargaining unit member use, UMS has argued that this information is not relevant to negotiations for an initial collective bargaining agreement. The Board finds that this information pertains to working conditions and is information that is relevant to the Union's collective bargaining duties.

UMS does not centrally track the requested information, so it reached out to its facilities management personnel at the University of Maine and University of Southern Maine campuses, at which point it realized that the information is not tracked at all. A UMS representative testified at the hearing that this lack of tracking regarding designated offices and workspaces is due to the fluid nature of graduate student work, which varies by semester, as well as to changes in the uses of certain spaces. Unlike RFIs #20 and #21, with this RFI the System has made reasonable efforts to obtain the requested information from its campuses and has found the information to be unavailable. Having made this inquiry, establishing that the requested information does not exist and communicating this fact to the Union, UMS has dispatched its duties under the Act with respect to this RFI. Although the Board's Order will not strictly require it, given the Union's interest and need for this relevant information, it would be reasonable for UMS to devise some manner of tracking this information and making it available going forward.

## **2. Timeliness**

As it has done in its evaluations of failure to bargain claims in other contexts,<sup>12</sup> it is reasonable for the Board to consider the totality of the circumstances when assessing whether the timeliness of an employer's response to an information request is consistent with the employer's duties under the Act. See *House of the Good Samaritan dba Samaritan Med. Ctr.*, 319 NLRB 392, 398 (1995) (In evaluating a party's promptness in providing requested information, "the [NLRB] will consider the complexity and extent of the information sought, its availability, and the difficulty in retrieving the

information.”); *West Penn Power Co. dba Allegheny Power*, 339 NLRB 585, 587 (2003) (The promptness of an employer’s provided information is decided on a case-by-case basis.).

Board precedent provides some guidance with respect to timeliness. For example, in *Orono Firefighters Association v. Town of Orono*, the Board found an employer’s delay of 37 days from the date of a written request for information, after previously refusing six different requests for the information orally, evinced a lack of bargaining in good faith and thus violated the Act. No. [89-18](#). Notably, the information requested required analysis and compilation by the employer: the base weekly wage of each fire department employee (before overtime payments), the number of hours used to figure overtime payment, hourly rates for each employee including straight time and overtime rates and the standard work schedules and hours of work for employees in a normal week before overtime. *Id.* In *Maine Association of Police v. Town of Pittsfield*, the Board found a failure to bargain where the union requested information from the employer when, even though the employer had the information in its possession, it did not provide the information until nearly six months later. No. [20-PPC-07](#) at 6.

While these cases provide some examples of untimely responses, it should be taken into account that the information request involved in the present case is significantly larger and more complex. The Board is understanding of the Union’s good-faith need for the requested information as it negotiates an initial collective bargaining agreement for a newly established bargaining unit. The pressure of an active bargaining process made obtaining the information in a timely manner of significant importance. The Board is also understanding of UMS’s situation, given the size and breadth of the Union’s request, the difficulty of gathering non-centralized information and the limited personnel resources available in coordinating the Sytem’s response, exacerbated by staff turnover.<sup>13</sup>

Weighing the totality of the circumstances with respect to the information request items that the Union agrees have been satisfied, the Board finds UMS’s response to be untimely and therefore a failure to collectively bargain in violation of 26 M.R.S.A. § 1027(1)(E). Prior to the filing of its prohibited practice complaint, and not counting the items UMS claimed to be implicated by FERPA, the Union had received nothing with respect to 34 out of 50 requests after nearly four and a half months. Although UMS notified the Union at the outset of the request that it would take six months to fully respond, its rate of response could have reasonably created an expectation with the Union that UMS was not going to be forthcoming or timely with the requested information. It appears that it was not until after the Union had filed its prohibited practice complaint that UMS was motivated to make a more meaningful effort to provide the requested information. And it was also not until after the prohibited practice complaint was filed that the parties engaged in meaningful discussions about UMS providing the requested information. Even assuming a six-month timeframe for compliance, as UMS estimated was reasonable, UMS did not come close to complying with this estimate or even appear to be attempting to do so. UMS essentially stopped providing information after the filing of the Union’s prohibited practice complaint and did not meaningfully resume until well into June of 2024, nearly eight months after the Union’s request. Indeed, some information was not provided until just prior to the hearing, over 10 months from the date of the original request. This conduct represents an untimely response on behalf of UMS.

Similarly, with respect to the RFI items in dispute, UMS's failure to provide the requested information in a timely manner also constitutes a failure to collectively bargain in violation of 26 M.R.S.A. § 1027(1)(E). Over 10 months passed from the Union's initial request and UMS providing only partial information. This represents an untimely response on behalf of UMS. The record is not clear with respect to when exactly UMS communicated the lack of availability of the information requested by RFI #45, but it was not until sometime after the Union's filing of the complaint. Even though there was no responsive information available, looking at the totality of the circumstances, the Board finds the Sytem's notification of this fact to the Union to be untimely.

## **VI. Conclusion**

UMS has failed to sufficiently provide the Union with relevant requested information with respect to RFI #2(d)(viii), 19, 20, 21 and 23. The Union is entitled to receive this information for the purpose of dispatching its duties as a bargaining agent engaged in collective bargaining negotiations. Even considering the totality of the circumstances, including a highly complex request for information pertaining to a newly formed bargaining unit, UMS has not responded to the Union's requests for information in a timely manner, in violation of 26 M.R.S.A. § 1027(1)(E).

Despite the violations described above, the parties are commended for their work in negotiating accommodations at various points during the course of the information request at the heart of this dispute, such as the Union narrowing its request to the two main campuses and UMS's willingness to work out a process under which it could disclose otherwise confidential information without violating its obligations under FERPA. The Board hopes that with the resolution of this dispute the parties can move forward with their collective bargaining and other dealings with a similarly collaborative approach.

## **VII. Order**

On the basis of the foregoing stipulations, findings of fact and discussion, and by virtue of and pursuant to the powers granted to the Maine Labor Relations Board by 26 M.R.S.A. § 1029, it is ORDERED:

1. That the University of Maine System, and its representatives and agents, shall cease and desist from failing and refusing to provide information to the Union relevant to the performance of its duties as a bargaining agent, upon request and in a timely manner.
2. That the University of Maine System, and its representatives and agents, shall take the following actions regarding the request for information submitted by the University of Maine Graduate Workers Union, UAW, on November 6, 2023, and as described in the parties' Joint Exhibit and in this Decision and Order:
  - A. With respect to item 2(d)(viii), perform a reasonably diligent search for the requested information in its own records, as well as request the information from the relevant third parties, and provide the information, if it exists, to the University of Maine Graduate Workers Union, UAW, within 90 days. If after performing

such search and inquiries it discovers that the information does not exist, the University of Maine System must so notify the University of Maine Graduate Workers Union, UAW, and certify to the Board within 90 days;

B. With respect to item 19, provide accurate information to the University of Maine Graduate Workers Union, UAW, within 90 days;

C. With respect to items 20 and 21, provide the requested information to the University of Maine Graduate Workers Union, UAW, as described in this Decision and Order, within 90 days;

D. With respect to item 23, request the information from its workers' compensation insurance provider, providing the relevant lists of graduate student workers if necessary, and as described in this Decision and Order, and provide the information, if available, to the University of Maine Graduate Workers Union, UAW, within 90 days. If after performing such inquiry it discovers that the information is not available, the University of Maine System must so notify the University of Maine Graduate Workers Union, UAW, and certify to the Board within 90 days.

3. That all other allegations of the University of Maine Graduate Workers Union, UAW, are dismissed.

Dated this day, February 26, 2025.

MAINE LABOR RELATIONS BOARD

/s/ \_\_\_\_\_  
Rebekah Smith, Esq.  
Alternate Chair

/s/

Alyssa Tibbetts, Esq.  
Alternate Employer Representative

/s/

Jessica Maher, Esq.  
Alternate Employee Representative

*The parties are advised of their right pursuant to 26 M.R.S.A. § 1029(7) to seek a review of this decision and order by the Superior Court. To initiate such a review, an appealing party must file a complaint with the Superior Court within fifteen (15) days of the date of issuance of this decision and order, and otherwise comply with the requirements of Rule 80C of the Maine Rules of Civil Procedure.*

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<sup>1</sup> As agreed to by the parties in a joint post-hearing filing submitted on October 23, 2024 and amended November 25, 2024.

<sup>2</sup> As agreed to by the parties during the prehearing conferences held on June 21, 2024, and September 13, 2024.

<sup>3</sup> As agreed to by the parties in a joint post-hearing filing submitted on October 23, 2024.

<sup>4</sup> This is excluding items that were implicated by confidentiality requirements under the federal Family Educational Rights and Privacy Act (FERPA) and omitted from the dispute before the Board by stipulation of the parties.

<sup>5</sup> The Union contends that some portions of this information were not directly implicated by FERPA and should have been provided earlier.

<sup>6</sup> This item was mistakenly labeled as 2(d)(vii) instead of 2(d)(viii) in the parties' Joint Exhibit and was sometimes referred to as such during the hearing.

<sup>7</sup> The record includes screenshots of websites for the two campuses showing 152 graduate "programs" at the University of Maine campus and 90 graduate "programs" at the University of Southern Maine campus. It is unclear to what degree these "programs" correspond to the individual "departments" referred to in testimony and argument that are in the sole custody of certain requested documents. For example, it is conceivable that the "Biochemistry" program and the "Biochemistry and Molecular Biology" program could be within the same "department." The record is unclear.

<sup>8</sup> *Sanford School Committee*, No. [01-24](#) at 13.

<sup>9</sup> See *In Re: Petition for Interpretive Ruling of Millinocket School*, [92-IR-01](#), slip op. at 9 (July 13, 1992)("[I]nsurance is a mandatory subject of bargaining under the [Act]").

<sup>10</sup> See Note 7, *supra*.

<sup>11</sup> Although not argued in the Union's brief, the Union in its comments regarding RFI #23 in the Joint Exhibit summarizing the outstanding RFIs, as well as through the testimony of a Union representative during the hearing, implied that UMS could provide at least some information pertinent to this request on its own, without needing to rely on its workers' compensation insurance provider, by cross-checking the graduate student worker names for the past three years with the reports of first injury in its possession covering that same time period. UMS argued in its brief



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that this would be an unduly burdensome request, involving separate electronic databases and thousands of bargaining unit employees. As the Union did not raise this argument in its post-hearing brief, the Board need not address it. See *MSEA v. York County*, No. [04-04](#), slip op. at 31 (Oct. 8, 2004); *Westbrook Police Unit of AFSCME v. City of Westbrook*, No. [81-53](#), slip op. at 5 (August 6, 1981); *Teamsters Local 48 v. University of Maine*, No. [79-37](#), slip op. at 4 (October 17, 1979). Even if the Union had effectively argued that the System's failure to take this particular approach constituted a failure to bargain, weighing the respective interests under the circumstances, and with the goal of finding a way to accommodate both parties' interests, the Board finds it reasonable for UMS to rely on its workers' compensation insurance provider to provide the requested information. See *Sanford School Committee*, No. [01-24](#) at 14.

<sup>12</sup> See e.g., *New England Police Benevolent Association, Local 605 v. City of Caribou*, No. [16-22](#), slip op. at 11 (November 22, 2017).

<sup>13</sup> UMS had a two-person labor relations team at the time of the Union's request, added a new position in February 2024, and then lost its Senior Director of Labor and Employee Relations in August of 2024.