In the Matter of COMMONWEALTH OF MASSACHUSETTS, COMMISSIONER OF ADMINISTRATION AND FINANCE

and

MASSACHUSETTS ORGANIZATION OF STATE ENGINEERS AND SCIENTISTS

Case No. SUP-4740

54.236	*on-call time*
54.589	*bargaining unit work*
67.13	*economic justification*
67.14	*management rights*
67.15	*union waiver of bargaining rights*

April 11, 2002
Helen A. Moreschi, Chairwoman
Peter G. Torkildsen, Commissioner

Elizabeth Sullivan Khan, Esq.	*Representing the Commonwealth of Massachusetts*
Michelle Gates, Esq.	*Representing the Massachusetts Organization of State Engineers and Scientists*

DECISION[1]

Statement of the Case

On August 1, 2000, the Massachusetts Organization of State Engineers and Scientists (the Union) filed a charge with the Labor Relations Commission (Commission) alleging that the Commonwealth of Massachusetts, Commissioner of Administration (Commonwealth) had engaged in a prohibited practice within the meaning of Sections 10(a)(1), and (5) of Massachusetts General Laws Chapter 150E (the Law). Pursuant to Section 11 of the Law and Section 15.04 of the Commission's Rules, the Commission investigated the Union's charge and issued a complaint on September 18, 2001. The Commission's complaint alleged that the Commonwealth had violated Sections 10(a)(5) and derivatively, 10(a)(1) by failing to bargain in good faith with the Union by unilaterally transferring the duties of investigating clandestine labs and answering telephone calls for assistance from the Drug Enforcement Agency (DEA) from bargaining unit members to non-unit personnel. The Commonwealth filed its answer to the Commission's complaint on September 27, 2001.

On December 4 and 13, 2001, Joseph A. DeTraglia, Esq., a duly designated hearing officer of the Commission, conducted a hearing at which both parties had an opportunity to examine and cross-examine witnesses and introduce documentary exhibits. Both parties filed post-hearing briefs on or about January 16, 2002. The Commonwealth challenged portions of the Hearing Officer's Recommended Findings of Fact. The Union filed a timely response to the Commonwealth's challenges to the Recommended Findings of Fact. After reviewing those challenges and the record, we adopt the Hearing Officer's Recommended Findings of Fact, as modified where noted, and summarize the relevant portions below.

Findings of Fact[2]

Stipulations of Fact

1. The Commonwealth of Massachusetts is the employer within the meaning of Section 1 of the Law.

2. The Massachusetts Department of State Police (DSP) Crime Laboratory (Crime Lab) serves law enforcement agencies and District Attorneys throughout the Commonwealth, providing a wide array of support to facilitate effective investigations and criminal prosecutions. The Crime Lab examines evidence that can be used to help tie criminals to their crimes, victims to their assailants and exonerate innocent suspects.

3. The Charging Party, Massachusetts Organization of State Engineers and Scientists (MOSES) is the exclusive collective bargaining representative of the DSP employees in statewide bargaining Unit 9. This includes employees in the position of Chemist, grades I through III.

4. The State Police Crime Lab consists of several specialized units including the Drug Unit.

5. The Drug Unit analyzes all contraband seized by State Police Agencies and some local and Federal agencies in Massachusetts.

6. Since approximately 1989, the DSP has had an on-going relationship with the United States Drug Enforcement Agency (DEA). This is a voluntary, cooperative arrangement whereby the DEA trains DSP Chemists on how to perform a clandestine lab investigation, and in return, the DSP loans out these DEA-qualified chemists to perform clandestine lab "entries" when needed.

7. A "clandestine lab" is typically a makeshift laboratory where chemical syntheses are performed to produce illegal substances, such as Ecstasy and LSD.

8. An "entry" is a DEA raid into a suspected clandestine laboratory.

9. Jane McLaughlin, a DSP chemist, was trained by the DEA to assist in clandestine lab investigations in 1989 and was re-certified through January 2000.

10. Melissa O'Meara, a DSP chemist, was trained by the DEA to assist in clandestine lab investigations in approximately December 1996 and has been re-certified to the present.

11. Barbara O'Brien, a DSP chemist, was trained by the DEA to assist in clandestine lab investigations in approximately December 1996 and has been re-certified to the present.

1. Pursuant to 456 CMR 13.02(1), the Commission has designated this case as one in which the Commission issues a decision in the first instance. 456 CMR 13.02(2).

2. The Commission's jurisdiction is uncontested.

12. Jane McLaughlin voluntarily resigned her position effective January 3, 2000.

13. Barbara O'Brien transferred from the Drug Unit to the Alcohol Testing Unit in early July 2000.

14. Melissa O'Meara transferred from the Drug Unit to the Bombs and Arson Unit on January 1, 2001 and is currently out on maternity leave since November 5, 2001.

15. On or about July 7, 1998, Dr. Carl Selavka became the Director of the DSP Crime Lab.

16. Jane McLaughlin, Melissa O'Meara, and Barbara O'Brien were the only DEA certified chemists in the DSP Crime Lab.

17. DEA certified chemists in the DSP Crime Lab were scheduled to be on-call on a monthly basis.

18. On February 1, 2000, Dr. Selavka (Selavka) sent an e-mail message to the chemists in the Drug Unit informing them that the on-call list was revoked and established management as the proper contact for future DEA clandestine lab requests.

19. No member of management has performed the duties of the DEA trained chemists at a clandestine lab.

20. Gary Murphy is the Director of Employee Relations for the Massachusetts State Police.

Additional Findings of Fact

The Commonwealth and the Union are parties to a collective bargaining agreement dated January 1, 2000 through December 31, 2002. Article 7, § 7.6 addresses "Stand-by Duty."[3] That Section provides:

> A. An employee who is required by the department head to leave instructions as to where he/she may be reached in order to report to work when necessary shall be reimbursed at a rate of ten dollars pay for such period.
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> B. The stand-by period shall be fifteen hours in duration for any night stand-by duty including Saturdays, Sundays, and holidays, and shall be nine hours in duration for any daytime stand-by duty including Saturday, Sunday or holiday.
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> C. Stand-by duty shall mean that a department head has ordered any employee to be immediately available for duty upon receipt of a message to report to work. If any employee assigned to stand-by duty is not available to report to duty when called, no stand-by pay shall be paid to the employee for the period.
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> D. Should a department head require coverage of a work location on a 24-hour basis, such department head will establish a list of employees to be available for duty. The least senior employee in the work location shall be first on the list. Having once been put on stand-by duty, the next junior employee will be placed on stand-by duty, etc. With the approval of the department, employees may substitute for one another under this Section.
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> E. Stand-by duty shall be voluntary except in the case of an emergency. There shall be no discrimination or discipline taken against any employee who declines stand-by in a non-emergency situation. Should no volunteer be available and the department head determines that an emergency exists, the department head will assign an employee to such stand-by duty.
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> F. When the practice has been for the Employer to provide the employees on stand-by with a beeper, this practice shall continue.

In October 1998, the DSP Crime Lab established an on-call list[4] of DEA certified chemists for the purpose of responding to requests for assistance from the DEA. DEA representatives made requests for assistance by placing telephone calls to the DSP Crime Lab either indirectly through a centralized DSP communications center or directly to individuals via pager or at telephone extensions located within the DSP Crime Lab's offices.

The DEA-certified chemists worked Monday through Friday on a day shift or an evening shift. A day shift is eight hours, from 8:00 a.m. to 4:00 p.m. The evening shift is from 4:00 p.m. to 12:00 a.m. The chemists' shifts for the on-call list were as follows: the day shift was from 8:00 a.m. to 4:00 p.m., the evening shift was from 4:01 p.m. to 11:59 p.m., and the overnight shift was from 12:01 a.m. to 7:59 a.m. In addition, there were two (2) on-call shifts of twelve hours each on the weekends, beginning at 12:01 a.m. Saturday and ending at 11:59 p.m. Sunday. If a chemist worked her regular shift, she would not receive on-call pay. However, a chemist would receive on-call pay if she worked the overnight shift during week-days, the two shifts on the weekend, or provided on-call duty coverage for another chemist. On-call pay consisted of ten dollars ($10.00) per shift.[5]

Prior to February 2000, calls from DEA representatives would either be answered by a DEA certified chemist herself or the person who answered the telephone would connect the caller to a DEA certified chemist. Not every call for assistance from a DEA representative was answered directly by a DEA chemist prior to February 2000.[6]

In February 2000, Dr. Selavka changed the method for requesting assistance from DEA certified chemists by requiring the individual making the request to call the Crime Lab Director, Technical Manager of Forensic Chemistry, or Assistant Manager of Forensic Chemistry, in that order,[7] who would then be responsible for

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3. Although neither party requested that these facts be added to the hearing officer's Recommended Findings of Fact, because we find that Article 7 § 7.6 of the parties' collective bargaining agreement is relevant to the instant dispute, we have supplemented the facts accordingly.

4. Individuals designated as "on-call" were typically on-call for a shift duration of approximately eight hours, with three on-call shifts covering each 24 hour period.

5. The Commonwealth requests that a finding be made that the Department only paid on-call pay for one shift per weekend on the overnight shift, and that the other two shifts took place during regular work hours and therefore did not necessitate on-call pay. However, the record does not support this finding. Documentary exhibits as well as Selavka's testimony support the detailed findings set forth above.

6. Jane McLaughlin testified that calls placed to the DSP Crime Lab from DEA representatives were answered by one of three DEA certified chemists themselves or by members of Crime Lab management, who then referred the call to one of the DEA certified chemists. Barbara O'Brien testified that calls "pretty much" went to the telephone extension of Jane McLaughlin during the latter's employment at the DSP Crime Lab.

7. The Assistant Manager of Forensic Chemistry is a bargaining unit 9 position.

notifying a DEA certified chemist that a call had been received from the DEA requesting assistance with a clandestine lab investigation.[8]

Dr. Selavka did not notify the Union of the changed method for requesting assistance from DEA certified chemists until after the change had taken effect.[9] Dr. Selavka changed the method because Jane McLaughlin resigned her position effective January 3, 2000 and the DSP Crime Lab had received only two requests for assistance in the almost 18 months that the on-call list had been in existence.[10] After the Commonwealth revoked the on-call list, management personnel provided 24-hour a day, 7-day per week coverage for the purpose of answering calls from the DEA requesting assistance in clandestine lab investigations.[11]

From September 26, 1998 through January 29, 2000, DSP paid over $7,000 in standby pay to DEA certified chemists for working on-call shifts. DEA certified chemists began receiving less standby pay after Dr. Selavka changed the method for requesting assistance from Crime Lab personnel in February 2000. After Selavka revoked the on-call list, chemist Barbara O'Brien lost approximately $140.00 per week in on-call pay.[12]

DECISION

Section 10(a)(5) of the Law requires a public employer to give the exclusive bargaining representative notice and an opportunity to bargain with the union before transferring work traditionally performed by bargaining unit employees to personnel outside the unit. *Commonwealth of Massachusetts*, 24 MLC 116, 119 (1998) citing *City of Quincy*, 15 MLC 1239 (1988); *Town of Danvers*, 3 MLC 1559, 1576 (1977). To prove that the Commonwealth has failed to fulfill its bargaining obligation before transferring bargaining unit work, the Union must demonstrate the following elements: (1) the employer transferred bargaining unit work to non-unit personnel; (2) the transfer of work had an adverse impact on individual employees or the bargaining unit; and (3) the employer did not provide the exclusive bargaining representative with notice and an opportunity to bargain prior to making the decision. *Commonwealth of Massachusetts and AFSCME, Council 93*, 21 MLC 1029, 1039 (1994); *Board of Regents of Higher Education*, 19 MLC 1485, 1488 (1992).

The Commonwealth argues that the Union has not satisfied the first prong of the transfer of bargaining unit work analysis because it has not shown that the Commonwealth transferred bargaining unit work to management personnel. The Commonwealth asserts that the focus of the dispute in the present case is who is designated to receive a telephone call from the DEA requesting assistance with a clandestine lab investigation. In that regard, the Commonwealth argues that answering a telephone call is not exclusive bargaining unit work. In the alternative, the Commonwealth argues that the responsibility of receiving calls from the DEA requesting assistance with clandestine lab investigations was shared among unit and non-unit members, and that the Union has not shown that the alleged transfer was a calculated displacement of unit work. *See City of Boston*, 26 MLC 144 (2000).

We disagree. The issue in this matter is not who actually answers the DEA's call, but who is paid to be on-call for the purpose of responding to the DEA's request for assistance in investigating clandestine labs.[13] Here, until February 2000, the chemists were assigned to be on-call for that purpose and were paid on-call compensation accordingly. Moreover, we find that on-call duty was exclusively assigned to bargaining unit members. The record demonstrates that Unit 9 chemists were exclusively trained to be DEA certified, and that the Commonwealth's reason for establishing the on-call list was to have a DEA certified chemist available at any time to assist the DEA in clandestine lab investigations. Further, the record establishes that only Unit 9 members could earn on-call pay for this purpose.[14] Therefore, we find that on-call duty for the purpose of receiving calls from the DEA to assist in clandestine lab investigations was exclusively bargaining unit work.

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8. Although neither party requested this finding, we determine that this fact is material to this case.

9. The Commonwealth contends that the record does not support this finding, arguing that Selavka testified that he spoke to the Union shop steward, Robert Pino, in January 2000 and informed him during a general conversation concerning several topics that the on-call list would be rescinded. However, the Union's rebuttal witnesses, Robert Pino and Albert Elian contradicted Selavka's testimony on this point. While the hearing officer did not specifically make a credibility finding concerning the conflicting testimony of Selavka and the Union's rebuttal witnesses, the hearing officer's finding was not erroneous. The Commission will not disturb a hearing officer's findings unless they are clearly wrong. *See Vinal v. Contributory Retirement Appeal Board*, 13 Mass. App. Ct. 85 (1982) *citing Selectmen of Dartmouth v. Third District Court of Bristol*, 359 Mass. 400, 403 (1971) (findings based on oral testimony will not be reversed unless plainly wrong). Therefore, we decline to amend the hearing officer's finding on this point.

10. From February 2000 until December 2001, DSP Crime Lab personnel have received only one request for assistance from DEA representatives.

11. While neither party requested that the facts be supplemented with this finding, we determine that it is material to this case.

12. Although neither party requested this finding, we have determined that this fact is relevant to this case and have supplemented the findings accordingly.

13. The Commission's complaint specifically alleges that the Commonwealth violated Sections 10(a)(5) and (1) of the Law by assigning the duties of investigating clandestine labs and answering telephone calls for assistance from the DEA to members of management. However, because answering the DEA's telephone calls pursuant to the Crime Lab's on-call system necessarily involves the Unit 9 chemists being on-call and receiving the attendant pay for on-call duty, it is clear that the subject of on-call duty and on-call pay directly relates to the allegations in the Commission's complaint. The Commission has long held that conduct that has not been specifically pleaded in a complaint may still form the basis for an unfair labor practice finding when the conduct relates to the general subject matter of the complaint and when the issue has been fully litigated. *Town of Norwell*, 18 MLC 1263, 1264 (1992) citing *Woods Hole, Martha's Vineyard and Nantucket Steamship Authority*, 14 MLC 1518, 1536 (1988); *Whitman-Hanson Regional School Committee*, 10 MLC 1606, 1607-08 (1984). Here, both parties presented evidence and argued in their post-hearing briefs that bargaining unit members were assigned to on-call duty for assisting in clandestine lab investigations, that they were paid for on-call duty, that the Commonwealth rescinded the on-call list, and that management personnel are now assigned to handle calls from the DEA requesting assistance with clandestine lab investigations. Therefore, we determine that the issues of on-call duty and on-call pay were fully litigated by the parties.

14. Because the record demonstrates that only three Unit 9 chemists trained in clandestine lab investigations could be assigned to on-call duty and receive on-call pay pursuant to the Crime Lab's clandestine laboratory on-call program, we determine that this work was not shared among unit and non-unit personnel, and therefore no calculated displacement analysis is necessary.

In addressing the second element of the Commission's analysis, the Commonwealth argues that the Union has suffered no adverse impact as a result of the alleged transfer of work, because the affected chemists continue to receive on-call pay and overtime associated with responding to the clandestine lab requests, and because managers do not perform the duties of the DEA-trained chemists at clandestine labs. The Union argues that bargaining unit members have suffered an adverse impact as a result of the transfer of work, as demonstrated by the fact that prior to the elimination of the on-call list, the chemists received a total of $7,000.00, and after the Commonwealth rescinded the list, the chemists have received no standby pay. The hearing officer found that the chemists began receiving less standby pay after the Commonwealth rescinded the on-call list.[15] Chemist Barbara O'Brien specifically testified that she lost approximately $140.00 per week in on-call pay after the Commonwealth revoked the on-call list. A bargaining unit suffers an adverse impact whenever it loses an opportunity to perform work in the future. *See City of New Bedford*, 15 MLC 1732, 1739 (1989). Here, after the Commonwealth rescinded the on-call list, the bargaining unit lost the opportunity to earn on-call pay at the same level as it had prior to the change. Therefore, the evidence establishes that the revocation of the list directly and adversely impacted the bargaining unit's ability to earn on-call pay in the future.

In addressing the third factor in the transfer of bargaining unit work analysis, the Commonwealth argues that it had no obligation to bargain over the alleged transfer of work because the Union contractually waived its right to bargain, maintaining that the parties already negotiated a stand-by provision in the parties' collective bargaining agreement. A contractual waiver must be knowing, conscious, and unequivocal. *Town of Marblehead*, 12 MLC 1667, 1671 (1986). In determining whether a union has contractually waived its right to bargain, the Commission will first examine the language of the contract. *Id.* The Commission has consistently held that an employer asserting the affirmative defense of contract waiver must show that the subject was consciously considered and that the union knowingly and unmistakably waived its rights to bargain. *Board of Trustees of the University of Massachusetts/University Medical Center*, 21 MLC 1795, 1802 (1995).

Here, the parties' collective bargaining agreement contains a stand-by duty provision. However, the record establishes that the on-call program established in October 1998 was different from the stand-by duty provision in the parties' agreement. First, the stand-by duty provision references a nine-hour day shift and a fifteen-hour night shift. However, the chemists' on-call shifts consisted of eight-hour shifts on both weekdays and weeknights and twelve-hour shifts on the weekend. The Commonwealth assigned chemists to on-call duty on a constant, twenty-four hour a day basis. Moreover, chemists received on-call pay on all shifts to which they were assigned, except if the chemist was working her regular shift, whether or not they were actually called to report to duty. The evidence establishes that the Department assigned chemists to on-call duty pursuant to this practice for over a year. Therefore, although the parties negotiated a stand-by duty provision in their collective bargaining agreement, the Commonwealth did not follow that provision when it developed and maintained for over a year a special on-call duty list for chemists to assist in clandestine lab investigations. Therefore, the Commonwealth cannot now rely on the stand-by provision in their collective bargaining agreement to argue that the Union contractually waived its right to bargain over on-call duty.

In the alternative, the Commonwealth asserts that if it were required to bargain over rescinding the on-call list, it satisfied any bargaining obligation when it provided notice to the Union steward prior to rescinding the list. The Commonwealth maintains that notice to the Union steward was sufficient to place the Union on notice of the proposed change, arguing that "information about a proposed change acquired by union officers or agents will be imputed to the union." *City of Cambridge*, 23 MLC 28, 37 (1996). Here, however, the hearing officer found that Selavka did not notify the Union of the changed method for requesting assistance from DEA-certified chemists until after the change had taken effect. A public employer must notify the union of a potential change before it is implemented so that the bargaining representative has an opportunity to present arguments and proposals concerning the proposed alternatives. *Town of Hudson*, 25 MLC 143, 148 (1999). An employer's duty to bargain encompasses working conditions established through custom and practice as well as those governed by the provisions of a collective bargaining agreement. *City of Boston*, 16 MLC 1429, 1434 (1989) citing *Town of Wilmington*, 9 MLC 1694, 1699 (1983). Further, notice of a change in terms and conditions of employment is adequate under the Law when it is sufficiently clear to allow the union to make a judgment about an appropriate response and when it is made far enough in advance of implementation to allow effective bargaining to occur. *Boston School Committee*, 4 MLC 1912 (1978).

Here, the Commonwealth failed to provide notice to the Union and an opportunity to bargain prior to its decision to transfer on-call duty to management personnel. Instead, the record demonstrates that the Commonwealth presented the Union with a *fait accompli*. A *fait accompli* exists only where, "under all the attendant circumstances, it can be said that the employer's conduct has progressed to a point that a demand to bargain would be fruitless." *Holliston School Committee*, 23 MLC 211, 212-13 (1997) quoting *Scituate School Committee*, 9 MLC 1010, 1012 (1982). Thus, we find that the Commonwealth failed to bargain in good faith by unilaterally deciding to eliminate the on-call list and transferring on-call opportunities to management without providing notice to the Union and an opportunity to bargain before implementing the transfer of work.

The Commonwealth additionally contends that it had no duty to bargain with the Union because revocation of the on-call list was a managerial decision concerning the provision of services. Decisions concerning the deployment of public services are management prerogatives, not subject to bargaining. *See City of Newton*, 16 MLC 1036 (1989) (City's decision to provide fire prevention inspections at a vacant school building constitutes a level of services decision); *Boston School Committee*, 13 MLC 1444 (1987) *aff'd* 14 MLC 1365 (1987) (the number of custodians assigned to each

15. This fact was not challenged by the Union.

building is a managerial decision); *City of Worcester*, 4 MLC 1378 (1977) (decision concerning whether to require police presence at certain construction details is a core governmental decision impacting the level of services to be offered).

Here, relying on *Town of Dennis*, 12 MLC 1027 (1985), the Commonwealth asserts that due to the extremely low numbers of requests for assistance from the DEA for assistance with clandestine lab investigations, 24-hour on-call duty by chemists was no longer warranted. In *Town of Dennis*, the Commission found that the Town's decision to discontinue providing private police details at liquor service establishments was a level of service decision, and determined that the Town was only required to bargain over any impacts of that decision on bargaining unit members. *Id.* at 1031. However, we determine that this case does not concern a level of services decision because the DSP continues to provide 24-hour, seven day a week coverage for calls from the DEA requesting assistance with clandestine lab investigations. Moreover, the Commission has held that where the same services previously performed by unit employees are to still be used by the employer in its operations, but are to be performed by non-unit employees, the bargaining obligation will arise unless the employer can show a compelling, nondiscriminatory reason why it should be excused from the obligation. *See City of Boston*, 4 MLC 1202, 1210 (1977) (employer had an obligation to bargain over subcontracting bargaining unit work to private employees).

Although the Commonwealth alleges that the chemists' on-call duty for clandestine lab investigations was costly and unnecessary given the small number of requests for assistance from the DEA, we do not find that these reasons to be sufficiently compelling to excuse its duty to bargain with the Union over the transfer of that on-call duty to management personnel. Lastly, even if this case concerned a level of services decision, the Commonwealth was still required to bargain with the Union over the impacts of the decision to transfer stand-by duty. *School Committee of Newton* v. *Labor Relations Commission*, 388 Mass. 557 (1983). Here, there is no evidence that the Commonwealth bargained over the impacts of the decision to transfer on-call duty from bargaining unit members to management personnel.

For all of the above reasons, we conclude that the Commonwealth violated Sections 10(a)(5) and, derivatively, 10(a)(1) of the Law by transferring on-call duty from bargaining unit members to non-unit personnel without first giving the Union notice and an opportunity to bargain to resolution or impasse.

ORDER

WHEREFORE, based upon the foregoing, it is hereby ORDERED that the Commonwealth of Massachusetts shall:

1. Cease and desist from:

a) Failing and refusing to bargain in good faith with the Massachusetts Organization of State Engineers and Scientists (the Union) over the transfer of on-call duty for clandestine lab investigations;

b) Assigning bargaining unit work, specifically, on-call duty for clandestine lab investigations from bargaining unit members to non-unit members without giving the Union prior notice and an opportunity to bargain in good faith to resolution or impasse.

c) In any like or related manner, interfering with, restraining, or coercing employees in the exercise of their rights guaranteed under the Law.

2. Take the following affirmative action which will effectuate the policies of the Law:

a) Immediately restore bargaining unit members to the *status quo* prior to February 2000 by allowing them to perform on-call duty for clandestine lab investigations;

b) Upon request by the Union, bargain to resolution or impasse over the decision to transfer on-call duty for clandestine lab investigations;

c) Make whole any employees represented by the Union for any loss of earnings suffered as a result of the Commonwealth's unlawful transfer of on-call duty for clandestine lab investigations plus interest on all sums owed at the rate specified in M.G.L. c. 231, Section 6I, compounded quarterly, up to the date the Commonwealth complies with this part of the order;

d) Post in conspicuous places where employees represented by the Union usually congregate, or where notices are usually posted, and display for a period of thirty (30) days thereafter, signed copies of the attached Notice to Employees;

e) Notify the Commission within ten (10) days of receipt of this decision and order of the steps taken to comply with this order.

SO ORDERED.

NOTICE TO EMPLOYEES

The Labor Relations Commission has issued a decision finding that the Commonwealth of Massachusetts (the Commonwealth) committed a prohibited practice in violation of Sections 10(a)(5) and (1) of the Massachusetts General Laws, Chapter 150E (Chapter 150E), the Public Employee Collective Bargaining Law, by transferring bargaining unit work, specifically, on-call duty for clandestine laboratory investigations, without first giving the Massachusetts Organization of State Engineers and Scientists (the Union) notice and an opportunity to bargain to resolution or impasse. In compliance with the Labor Relations Commission's order,

WE WILL NOT fail and refuse to bargain in good faith with the Union over the decision to transfer on-call duty for clandestine lab investigations from bargaining unit members to non-unit personnel.

WE WILL NOT transfer bargaining unit work to non-unit personnel without giving the Union prior notice and an opportunity to bargain in good faith to resolution or impasse.

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

WE WILL REINSTITUTE the past practice of assigning on-call duty for clandestine lab investigations to members of the bargaining unit.

WE WILL REIMBURSE bargaining unit members for the compensation they would have received for performing on-call duty

had that duty not been unlawfully reassigned, with interest at the rate specified in M.G.L. c. 231 § 6I, compounded quarterly.

[signed]
For the Commonwealth of Massachusetts

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