NAGE AND HERBERT MOSHKOVITZ, SUPL-2522 (8/9/93).

72.22	duty to investigate and process grievances
82.11	back pay
82.12	other affirmative action
82.13	reinstatement
82.3	status quo ante

Commissioners participating:

Maria C. Walsh, Chairperson
William G. Hayward, Jr., Commissioner

Appearances:

Mark Dalton, Esq.	- On behalf of the National Association of Government Employees
Herbert Moshkovitz	- Pro se
Patricia Gatto-Hechavarria	- On behalf of the Commonwealth of Massachusetts/Department of Revenue

COMMISSION DECISION

Statement of the Case

On July 2, 1991, Herbert Moshkovitz (Moshkovitz) filed a prohibited labor practice charge with the Labor Relations Commission (Commission) alleging that the National Association of Government Employees (NAGE or Union) had violated its duty of fair representation towards him in its handling of certain grievance matters that had arisen in connection with his employment at the Commonwealth of Massachusetts, Department of Revenue (DOR). Following an investigation, the Commission issued a complaint of Prohibited Practice on November 27, 1991. The Commission's complaint alleged that NAGE had breached its duty of fair representation towards Moshkovitz by failing to respond to and failing to process two grievances filed by Moshkovitz in violation of Section 10(b)(1) of G.L. c.150E (the Law).

NAGE and Herbert Moshkovitz, 20 MLC 1105

On October 6, 1992, Commission Hearing Officer Judith Newmann issued Recommended Findings of Fact.[1] By letter accompanying those Findings, the Commission redesignated this case for a Commission decision in the first instance, in accoredance with 456 CMR 13.02(1) and (2). Neither party filed any challenge to the Hearing Officer's proposed Findings of Fact, therefore, we adopt the findings in their entirety.

Findings of Fact

The Commonwealth of Massachusetts, DOR, is a public employer within the meaning of Section 1 of the Law and the Union is an employee organization as defined in that section. Moshkovitz is a public employee within the meaning of Section 1 of the Law. At all times relevant to this case, the DOR and the Union were parties to a collective bargaining agreement that contains a grievance and arbitration procedure.[2] This agreement

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1 An evidentiary hearing was conducted by the hearing officer on August 24, 1992, at which the parties had a full opportunity to be heard, to examine and cross-examine witnesses, and to introduce documentary evidence. Both parties, as well as the DOR, appeared at this hearing and entered into a Partial Stipulation of Facts. Moshkovitz testified on his own behalf; neither NAGE nor DOR presented witnesses. At the conclusion of the hearing, all parties were advised of their right to file a post-hearing brief. NAGE filed a post-hearing brief on September 25, 1992; the other parties did not file briefs.

2 Steps 1 and 2 of the grievance procedure consist of the following:

> Step 1: An employee and/or the Union shall submit a grievance in writing to the person designated by the agency head for such purposes not later than twenty-one calendar days after the date on which the alleged act or omission giving rise to the grievance occurred or after the date on which there was reasonable basis for knowledge of the occurrence. The person so designated by the agency head shall reply in writing by the end of ten calendar days following the date of submission.
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> Step 2: In the event the employee or the Union wishes to appeal an unsatisfactory decision at Step 1, the appeal shall be presented in writing to the person designated by the agency head of such purpose within ten calendar days of the receipt of the

(continued)

recognized the Union as the exclusive representative of Commonwealth employees in "job titles in Unit 6."

On July 10, 1988, Moshkovitz began his employment at the DOR as a Civil Service provisional Tax Examiner I, a Unit 6 position. Numerous other provisional Tax Examiner I's were also hired on that same date. At all relevant times, Moshkovitz was a member of state-wide bargaining Unit 6.

The applicable collective bargaining agreement between NAGE and the Commonwealth of Massachusetts included a provision requiring employees to be laid off within a job title in order of seniority, and provided laid off employees the right to "bump" less senior employees holding other job titles for which the laid off employees were qualified. The contract did not, however, contain any provision regarding the manner in which employees with the same seniority date would be selected for layoff.

By notice dated March 22, 1991, DOR informed Moshkovitz and approximately 87 other employees that they were being laid off effective April 5, 1991. Prior to April 5, DOR officials held a meeting for the laid off employees, which Moshkovitz attended, to inform these employees of the procedures and benefits applicable to their layoffs. At that hearing, Walter McCarthy, a DOR manager, informed the employees that, of the 88 provisional Tax Examiner I's being laid off, 23 had the most senior hire date of July 10, 1988. However, only 13 of the employees with the July 10, 1988 seniority date were being laid off. In selecting those 13 employees from the 23 with same seniority date, McCarthy stated, DOR had considered the following factors: affirmative action, the employees' EPRS evaluations, employees' attendance records, and "other variables." The record contains no evidence that NAGE had been consulted about these criteria prior to their application by DOR or that NAGE had agreed to such criteria.

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2 (continued)

Step 1 decision. The agency head or his designee shall meet with the employee and/or the Union for review of the grievance and shall issue a written decision to the employee and/or the union within fourteen calendar days following the day the grievance is filed.

Until his layoff on April 5, Moshkovitz was the NAGE steward for one portion of the DOR's bargaining Unit 6 employees. Article 23 of the parties' collective bargaining agreement requires that all grievances must be filed within twenty-one calendar days after the date of the alleged act or after the date on which there was a reasonable basis for knowledge of the alleged act. According to the past practice between DOR and NAGE, grievances were generally processed by the union steward at the first two steps of the grievance procedure. In his steward capacity, Moshkovitz sent a letter, dated March 22, 1991, to John Bent, NAGE representative for Unit 6. In this letter, Moshkovitz asked eight specific questions on behalf of the employees who were about to be laid off, including "confirmation that the list for layoffs was created in accordance with the contract," and otherwise inquiring about layoffs and recall rights and benefits. Moshkovitz received no response to this letter.

On or about March 25, 1991, Moshkovitz sent a grievance to NAGE and DOR, on behalf of himself and any other affected bargaining unit member, challenging DOR's decision to promote two employees. Moshkovitz claimed that the promotion had been accomplished without adherence to the posting provision of the collective bargaining agreement. According to Article 14 of the parties' collective bargaining agreement, all vacancies anticipated to last for more than one year were to be posted, although the Employer was not obligated to hire from within the bargaining unit. The crux of Moshkovitz's grievance was that, had the promotion been posted, Moshkovitz or other qualified Tax Examiner I's may have been promoted to a job title that would have insulted them from lay off. Also on March 25, 1991, Moshkovitz filed a form expressing his desire to exercise his bumping and transfer rights.

On or about March 29, 1991, Moshkovitz sent a grievance to NAGE and DOR, which stated inter alia, that "I would like to know how the list was determined for those hired on July 11, 1988," and "I believe that my EPRS, attendance, and other variables are sufficiently acceptable as to warrant continued employment. I believe this could have been done in either a discriminatory fashion or quite subjectively."

During the week of April 5, 1991, Moshkovitz initiated one or two telephone conversations with NAGE representative Bent. These contacts represented Moshkovitz's initial efforts to obtain employment, during which Moshkovitz informed Bent of his (Moshkovitz's) background in labor relations and inquired about employment opportunities with NAGE. Moshkovitz did not discuss his grievance with Bent at this time since the

grievances had just been filed a few days earlier and Moshkovitz assumed NAGE would be processing them in due course. However, on May 10, 1991, having heard nothing further form NAGE regarding the grievances, Moshkovitz wrote to Bent, stating that he had not received any response to his two grievances, or to his request for transfer and bumping rights. In this letter, Moshkovitz reiterated the criteria that DOR had employed and his belief that, "Based upon these factors I should have been retained notwithstanding the fact that it was not per the contract." He also wrote:

> To this date I have not been informed as to the status of any of these grievances. It is my firm belief that each of these issues have merit and should have been pursued. I am writing you with full expectation that the union will be representing me, and any others who may have similar concerns.

NAGE has never responded in any way to Moshkovitz's grievances, letters, or requests for representation. NAGE has not grieved any of the layoffs implemented by DOR effective April 5, 1991.

DISCUSSION

A union certified or recognized as the exclusive collective bargaining representative of a unit of public employees has a duty to fairly represent the employees in the bargaining unit in matters concerning collective bargaining. Robert W. Kreps & AFSCME, 7 MLC 2145 (1981); Framingham School Committee, 2 MLC 1292 (1976). See also Vaca v. Sipes, 386 U.S. 171 (1969). The duty of fair representation under G.L. c.150E encompasses a duty to represent employees and to process their grievances in a manner that is not arbitrary, perfunctory, unlawfully motivated, or the result of inexcusable negligence. Teamsters, Local 437, 10 MLC 1467 (1984); Boston Association of School Administrators, 8 MLC 1741, 1744 (1982); Robert W. Kreps & AFSCME, 7 MLC at 1247. Although ordinary negligence does not amount to a denial of fair representation, gross inexcusable negligence, arbitrary treatment, unlawful discrimination, or perfunctory processing of a grievance deny employees the representation that the Law requires their exclusive collective bargaining representative to provide. See generally Graham v. Quincy Food Service Employees, et al., 407 Mass. 601, 606 (1990).

The obligation to investigate an employee's claims to determine whether to pursue a grievance is incorporated in the duty of fair representation. Local 509, SEIU (Charles

deLlano), 8 MLC 1173, 1176 (1981). Although the exact nature of the required investigation will vary according to the facts of each case, Local 285, SEIU (Vicki Stultz), 9 MLC at 1765, the investigation must be sufficient to permit the Union to make a reasoned judgment about the merits of the grievance, rather than an arbitrary choice. Teamsters, Local 437 (James L. Serratore), 10 MLC 1467 (1984).

Here, NAGE failed to respond either to the promotional or layoff grievances, as well as to the March 22 and May 10, 1991 letters of inquiry. NAGE has not offered any evidence to demonstrate that it investigated these grievances, nor has it offered any reason for its inaction.[3] In fact, NAGE does not contend that it ever investigated or evaluated Moshkovitz's grievances, nor does it contend that it ever made a decision not to proceed to arbitration with them. Instead NAGE advances the following three defenses to the complaint: (1) as Union steward, it was Moshkovitz's obligation to process the grievances at steps 1 and 2 of the grievance procedure in conformity with the parties' past practice and he failed to do so; (2) Moshkovitz's grievances lacked merit; and (3) NAGE's failure to take action concerning Moshkovitz's grievances caused him no harm. We consider each defense in seriatim.

A. Moshkovitz's duty as a Union Steward

NAGE argues that it was Moshkovitz's duty to file the grievances with DOR and to process them. Moshkovitz does not dispute that the union stewards had a past practice of filing grievances at steps 1 and 2 of the grievance procedure and that he served as steward for a portion of unit six employees. Contrary to NAGE's assertions, however, we find that Moshkovitz fulfilled his duties as union steward at steps 1 and 2 of the grievance procedure when he simultaneously mailed his March 25, 1991, layoff grievance both to Union President John Bent, and also to DOR Deputy commissioner Bernard Crowley on March 26, 1991, three days after learning of DOR's layoff plans and well within the twenty-one day

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3 We note that NAGE has offered no evidence that it ever made a decision not to investigate, not to evaluate the merits of, or not to process Moshkovitz's grievances. In particular, NAGE offered no evidence that it failed to investigate, evaluate, or process the grievances because Moshkovitz was a steward, because NAGE thought Moshkovitz had no interest in pursuing the grievances, or because NAGE through the grievances lacked merit.

time period specified in the parties' agreement. Moreover, the layoff grievance filed by Moshkovitz on March 29, 1991, was timely sent by registered mail to Bent, Crowley, and Walter McCarthy, a DOR manager, in apparent fulfillment of Moshkovitz's duties as a union steward. The Union has failed to indicate what further action was required of Moshkovitz to comply with the parties' collective bargaining agreement and their past practice. There is no evidence that Moshkovitz had an obligation to monitor or to further process these grievances once they were filed.

In its brief, NAGE concedes that Moshkovitz properly filed the grievances with the appropriate agency heads. It contends, however, that after March 29, 1991, Moshkovitz failed to process the grievances further by his failure to press DOR officials for a ruling on the grievances he filed. The hearing officer found that Moshkovitz was a steward only until April 5, 1991, when he was laid off. NAGE had the burden of proving that Moshkovitz could have continued to process the grievances further despite his layoff. NAGE offered no evidence which would establish that Moshkovitz continued to serve as union steward after April 5, 1991. We therefore conclude that Moshkovitz had no further responsibility to process these grievances after the date of his layoff. Instead, NAGE remained responsible for ensuring the proper handling of the grievance.

The Union also argues that Moshkovitz failed to inquire into the status of his grievances during his telephone calls to Bent during the week of April 5, 1991. However, Moshkovitz's testimony reveals that he did not question Bent about the status of his grievances at that time because of the short duration between the filing of his grievances and their telephone conversation. Therefore, the Union has not established that Moshkovitz failed to take any action required of him to process the grievances.

B. The Merits of Moshkovitz's Grievances

The Union also contends that Moshkovitz was not harmed by its inaction because his promotional and layoff grievances lacked merit. Moshkovitz bears a burden to prove that his grievances were not clearly frivolous. Quincy City Employees Union, H.L.P.E. (Nina Pattison), 15 MLC 1340, 1375 (1989). Here, the evidence presented by Moshkovitz was sufficient to demonstrate that a reasonable arbitrator could find that the grievances had merit.

Article 14 of the parties' collective bargaining agreement required the posting of all vacancies anticipated to last for more than one year, and the Union does not contend that the position in question was not anticipated to last for more than one year, nor does it offer any other justification for the DOR's failure to post the positions in conformity with the parties' collective bargaining agreement.

The parties collective bargaining agreement also requires that the layoff of employees within a job title be by strict seniority. Because there were twenty-three employees with the same hire date of July 10, 1988, the record indicates that DOR apparently unilaterally implemented certain criteria when deciding which of those twenty-three employees would be laid off. Moshkovitz presented evidence that his EPRS, attendance, and other variables were sufficiently acceptable to warrant his continued employment under the standards enunciated by DOR. At this point, the burden of proof shifted to the Union to contradict Moshkovitz's assertions. The Union failed to present any evidence to illustrate that Moshkovitz's EPRS evaluations, attendance record, or "other variables" did not warrant continued employment. We therefore find that the layoff grievance filed by Moshkovitz was arguably meritorious. Moreover, the Union offered no evidence that it considered the merits of Moshkovitz's grievances at the time that it failed to take action on them.

We conclude that the charging Party has fulfilled his prima facie burden by adducing evidence sufficient to establish that his grievances were not "clearly frivolous." The Union failed to rebut the Charging Party's prima facie showing by adducing persuasive evidence that the grievances would not have succeeded at arbitration. Moshkovitz presented evidence that could lead an arbitrator to conclude that the DOR criteria established for the layoff, when applied to him, warranted his continued employment, and that the promotions in question were not posted in conformity with the parties' collective bargaining agreement.

Thus, NAGE provided no response to Moshkovitz's grievances or letter. NAGE explains that it failed to process the grievances because Moshkovitz was a steward, and therefore was responsible for processing them himself. But, as discussed above, we have concluded that Moshkovitz took all action reasonably required of him as steward. We are left with the conclusion that NAGE did nothing -- it failed completely to inform Moshkovitz of the status of his grievance, it failed to investigate the grievances, it failed to consider whether to process the grievances further, and, of course, it failed to actually process the

grievances. By its failure to respond to, investigate, evaluate or act on Moshkovitz's grievances NAGE acted in an inexcusably negligent manner. The Commission has attempted to enforce the duty of fair representation in a manner that recognizes that unions operate often without professional staff or guidance, and that the duty of fair representation does not impose on unions an obligation to be perfect, always right, or always convincing. But, when a union fails to respond to a grievance that is not clearly frivolous, after having failed to investigate it, and after having failed to consider whether to proceed further with it, the union has breached the duty of fair representation by its gross negligence.

C. Harm Caused by NAGE's Inaction

The Union contends that its failure to respond to Moshkovitz's March 22, 1991, letter of inquiry to Mr. Bent did not cause Moshkovitz any harm. It argues that Moshkovitz had a full opportunity to address all of his concerns with top DOR officials at the meeting held prior to his layoff. As the Union acknowledged, however, Moshkovitz was most concerned with whether the criteria enunciated by DOR for layoffs were in conformity with the collective bargaining agreement. If DOR's criteria violated the contract, the DOR would not likely acknowledge this to the employees facing layoff. Therefore, the employees were in need of the Union's assistance in determining the validity of these criteria. Cf. Massachusetts Organization of Scientists and Engineers (John Maguire), 7 MLC 2020, 2021 (1981) (the Union's failure to respond to a letter of inquiry did not rise to the level of a breach of the duty of fair representation because the letter in question did not request a response). Moshkovitz clearly requested assistance in his March 22, 1991, letter to Bent and provided the address to which a response should have been directed. NAGE, however, did not respond. Had NAGE pursued the grievance Moshkovitz might not have been laid off at that time. Thus, NAGE's failure to pursue the grievance deprived Moshkovitz of some potential protection against layoff.

The amount of protection against layoff, however, cannot be determined on the record before us. While we have determined that Moshkovitz's promotional grievance was not clearly frivolous, we cannot determine that he or another similarly situated employee at the time definitely would have been selected for promotion to the positions which the DOR failed to post. The hearing officer found only that he might have been promoted. While the promotional grievance, if successful, would have required the posting of positions, it would not have required Moshkovitz's selection for promotion. Nothing in the record permits the

conclusion that Moshkovitz would have been selected for promotion. Thus, we cannot conclude that he suffered actual harm as a result of the Union's failure to pursue his promotional opportunity posting grievance.

His grievance challenging the DOR's decision to lay him off was predicated on his contention that his EPRS, attendance, and other variables were "sufficiently acceptable" to warrant his retention. The record contains no evidence to contradict Moshkovitz's contentions. Had NAGE investigated and properly pursued this grievance an arbitrator might have agreed with Moshkovitz that he should not have been selected for layoff. Accordingly, the Union's failure to investigate, evaluate, or pursue this grievance potentially caused measurable harm to Moshkovitz.

The failure of a union to respond to a timely filed grievance that is arguably meritorious, coupled with its failure to offer any rationale for its failure to pursue the grievance, establishes a prima facie case of inexcusable negligence. In this case NAGE neglected to investigate, evaluate, or pursue Moshkovitz's timely, arguably meritorious grievance without explanation. Moshkovitz has sustained his burden of proving the NAGE was inexcusably negligent in its representation of his grievance.

We therefore find that the Union's handling of the layoff grievance breached the duty of fair representation, in violation of Section 10(b)(1) of the Law.

REMEDY

We have concluded that the Union breached its duty to fairly represent Moshkovitz when it failed to respond in any way to his layoff grievance.

The Commission previously has imposed liability upon unions that have breached the duty of fair representation by ordering the union to take any and all steps necessary to have the grievance resolved, or, failing that, to make the Charging Party whole for the damage sustained as a result of the union's unlawful conduct. See e.g., Bellingham Teachers Association, 9 MLC 1536, 1550-51 (1982); Local 195, Independent Public Employees Association, 8 MLC 1222 (1981). Such a remedy is appropriate in the instant case as well.

Because the Union has caused the harm to the Charging Party by its inexcusably negligent failure to investigate, evaluate or process the grievance, we shall direct the Union to first attempt to remedy the harm to the charging Party by taking all steps necessary to have Moshkovitz's layoff grievance resolved. This will include, at minimum, a written request from the Union to DOR either to arbitrate the merits of Moshkovitz's grievance, including an offer by the Union to pay the full costs of arbitration, or to provide to the charging Party the grievance remedy that would have been sought by the Charging Party from an arbitrator (i.e. reinstatement to his former, or substantially equivalent, position with full back pay).

If the grievance is arbitrated, it is unrealistic to expect the Union to represent the Charging Party in arbitration. Therefore, the Union will be liable for the full reasonable and necessary costs incurred by the Charging Party to secure independent legal representation in connection with arbitration of the layoff grievance.

If the DOR does not agree to arbitrate or otherwise fully resolve the Charging Party's grievance, the Union shall be liable for the Charging Party's losses resulting from its failure to process his grievance.[4] In the instant case, the remedy will include making Moshkovitz whole for any monetary loss suffered as a direct result of his layoff by the Employer, including lost earnings and benefits from April 5, 1991, date of his layoff, plus interest, until he is reinstated by DOR or obtains substantially equivalent employment.

In addition, the Union shall post the Notice to Employees attached as the Appendix to this Decision in conspicuous places at its business office and meeting hall and in places where Union notices are customarily posted to employees of the Department of Revenue to assure employees that the union will not violate the Law.

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4 If DOR agrees to reinstate the Charging Party without an arbitration hearing, or voluntarily agrees to provide some other partial remedy, the Union will be obligated to make Moshkovitz whole for the remainder of the remedy.

ORDER

WHEREFORE, pursuant to the authority vested in the Commission by Section 11 of the Law, IT IS HEREBY ORDERED in case No. SUPL-2522 that the National Association of Government Employees shall:

1. Cease and desist from:

   a. inexcusably neglecting to investigate, evaluate, or process the grievances of its employees, or

   b. otherwise interfering with, restraining, or coercing any employee in the exercise of any right guaranteed under the Law.

2. Take the following affirmative action necessary to effectuate the purposes of the Law:

   a. NAGE shall request in writing that the Department of Revenue offer Herbert Moshkovitz reinstatement to his former position, or if that position no longer exists, to a substantially equivalent position, and make him whole for the loss of earnings that he suffered as a direct result of his layoff on April 5, 1991.

   b. If the Department of Revenue declines to reinstate Herbert Moshkovitz, NAGE shall request that the Department of Revenue arbitrate the layoff grievance of Herbert by requesting in writing that the Department of Revenue waive any time limits that may bar further processing and arbitration of Herbert Moshkovitz's layoff grievance; and NAGE shall offer to pay the cost of arbitration. If the Department of Revenue agrees both to waive any applicable time limits and to arbitrate the merits of Moshkovitz's grievance, NAGE shall process that grievance to conclusion in good faith and with all due diligence and shall pay the costs of arbitration if so agreed by the Department. Because NAGE's conduct indicates an inability on the part of the Union to adequately represent Moshkovitz's interests, NAGE shall pay the reasonable and necessary costs

of a private independent attorney selected by Moshkovitz to represent him in the arbitration of the grievance. In addition, NAGE shall pay all of the costs which would otherwise have been incurred by NAGE in processing the case to arbitration.

c. If the Department of Revenue declines to offer Herbert Moshkovitz reinstatement with full back pay, NAGE shall make Moshkovitz whole for the loss of earnings he suffered as a direct result of his layoff from the Department of Revenue effective April 5, 1991. NAGE's liability to make Moshkovitz whole for his loss of earnings will cease upon the earlier of the following: (a) the date when Moshkovitz is offered reinstatement by the Department of Revenue to his former job or a substantially equivalent job; or (b) the date when Moshkovitz obtained, or obtains, other substantially equivalent employment. NAGE's obligation to make Moshkovitz whole includes the obligation to pay Moshkovitz interest on all money due at the rate and pursuant to the formula described in Everett School Committee, 10 MLC 1609 (1984).

d. Immediately post in conspicuous places at its business office and meeting hall, and at all places where notices to bargaining unit employees and NAGE members are customarily posted, including all such places at the Department of Revenue, copies of the attached Notice marked "Appendix." Postings of the Notice, after being signed by the Executive Director of NAGE, shall be maintained for at least thirty (30) consecutive days thereafter. Reasonable steps shall be taken by NAGE to insure that said notices are not altered, defaced, or covered by any other material. If NAGE is unable to post copies of the notice in all places where notices to bargaining unit employees are customarily posted at the Department of Revenue, NAGE shall immediately notify the Executive Secretary of the Commission in writing, so that the Commission can request the Department of Revenue to permit posting.

e. Notify the Commission, in writing, within thirty (30) days from the date of this Order, of the steps taken by NAGE to comply with this Order.

SO ORDERED.

COMMONWEALTH OF MASSACHUSETTS
LABOR RELATIONS COMMISSION

MARIA C. WALSH, CHAIRPERSON

WILLIAM G. HAYWARD, JR.,
COMMISSIONER

NOTICE TO EMPLOYEES
POSTED BY ORDER OF
THE MASSACHUSETTS LABOR RELATIONS COMMISSION
AN AGENCY OF THE COMMONWEALTH OF MASSACHUSETTS

After a hearing at which all parties had the opportunity to present evidence and to make arguments, the Massachusetts Labor Relations Commission has found that we violated M.G.L. c.150E, the public Employee Collective Bargaining Law, and has ordered us to post this notice and to comply with what it says:

The Massachusetts Public Employee Collective Bargaining Law gives all employees the following rights:

> The right to engage in concerted, protected activity, including the right to form, join and assist unions, to improve wages, hours, working conditions, and other terms of employment, without fear of interference, restraint, coercion or discrimination and;
>
> The right to refrain from either engaging in concerted protected activity, or forming, or joining or assisting unions.

WE WILL NOT fail or refuse to fairly represent any employee in a bargaining unit represented by us.

WE WILL NOT in any like or related manner interfere with, restrain or coerce employees in the exercise of right guaranteed by the Law.

WE WILL request the Department of Revenue to offer Herbert Moshkovitz reinstatement to his former position, or, if it no longer exists, to a substantially equivalent position with full back pay. If the Department declines to offer Herbert Moshkovitz reinstatement to his former, or substantially equivalent position, we will ask the Department of Revenue to process the grievance concerning Moshkovitz's layoff, and we will pursue the grievance in good faith and with due diligence.

Because the Commission has decided that we violated the Law by failing and refusing to process two grievances on behalf of Herbert Moshkovitz, WE WILL make him whole for any monetary losses he suffered by reason of our failure to process his grievance.

_____

Executive Director
National Association of
Government Employees

Date Posted: _____