In the Matter of COMMONWEALTH OF MASSACHUSETTS, COMMISSIONER OF ADMINISTRATION AND FINANCE/DEPARTMENT OF SOCIAL SERVICES

and

ALLIANCE, AFSCME/SEIU, LOCAL 509

Case No. SUP-4075

54.31	*impact of management rights decisions*
54.5841	*workload*
54.7	*permissive subjects*
67.8	*unilateral change by employer*
82.3	*status quo ante*

June 4, 1999
Robert C. Dumont, Chairman
Helen A. Moreschi, Commissioner
Mark A. Preble, Commissioner

Susan Jacobson, Esq.	*Representing SEIU Local 509*
Susannah Scannell, Esq.	*Representing the Commonwealth of Massachusetts*

DECISION

Statement of the Case

The Alliance, AFSCME/SEIU, Local 509 (Union) filed a charge with the Labor Relations Commission (Commission) on June 16, 1994 alleging that the Commonwealth of Massachusetts/ Commissioner of Administration and Finance/ Department of Social Services (Employer) had engaged in prohibited practices in violation of Sections 10(a)(5) and (1) of Massachusetts General Laws, Chapter 150E (the Law). The Commission investigated the Union's charge and issued a Complaint of Prohibited Practice on January 4, 1995 alleging that the Employer violated the Law by unilaterally implementing a "Progress/Supervisory Review Policy" (PSR) without bargaining to resolution or impasse with the Union. The Employer subsequently filed a timely answer to the Commission's Complaint.

The hearing was conducted on July 17 and 18, 1995, and the parties subsequently filed post-hearing briefs. Hearing Officer Susan Atwater issued Recommended Findings of Fact on June 25, 1998.[1] Both parties filed objections to the Recommended Findings of Fact, and responses to the other party's objections. We adopt the Hearing Officer's findings of fact, except where modified, and summarize them below.[2]

Stipulated Facts

1. The Commonwealth of Massachusetts, acting through the Commissioner of Administration and Finance ("Employer"), is a public employer within the meaning of Section 1 of Massachusetts General Laws, Chapter 150E.

2. Local 509, Service Employees International Union, AFL-CIO, CLC("Union") is an employee organization within the meaning of the Law, and is a member of the Alliance, AFL-CIO ("Alliance").

3. The Alliance/AFSCME-SEIU is the exclusive collective bargaining representative of employees in Statewide bargaining units 8 and 10, including certain employees in the Department of Social Service.

4. "Social Worker I" and "Social Worker III" are bargaining unit positions at DSS.

5. "Supervisor" is also a bargaining unit position at DSS. The official state title of this position is "Social Worker IV". Since at least 1986, one of a supervisor's job duties is to perform periodic reviews of social workers' casework.

6. DSS's policy titled "Area Based Case Review" and connected forms, which were in effect as of February 1, 1986, and revised as of July 1, 1989 applies to children who are not in placement. The ABCR policy contained (1) a two page form which asked social workers to briefly summarize in narrative form the progress of their cases (the "ABCR form") ; and (2) a separate ASSIST form. A Social Worker was required to complete an ABCR form every six months. As part of the ABCR policy, supervisors reviewed each written ABCR form every six months. Supervisors used no additional specific form in connection with their reviews of the social workers' completed ABCR forms.

7. The DSS policy entitled "Ongoing Casework Policy, Procedures and Documentation" was in effect as of April 1, 1986 and revised as of July 1, 1989. In part, this policy set forth supervisors' responsibility for review of social workers, cases and maintenance of consultation records as part of a process known as "regular supervision". Regular supervision meetings occurred between a social worker and his/her supervisor on a weekly basis. Supervisors were required to review social workers cases, although supervisors were not required to utilize any specific review form in connection with this policy. Instead, supervisors were free to utilize their own formats.

8. In 1991, DSS and the Union met to discuss a DSS proposal to implement a new pilot program regarding supervisory review of social workers' cases. That program was known as Progress Supervisory Review and required supervisors to utilize a specific

1. Administrative Law Judge Leigh Panettiere conducted the hearing, but left the Commission's employ prior to issuing recommended findings of fact. The parties subsequently waived their rights to have her make credibility determinations and issue recommended findings of fact.

2. The Union filed numerous challenges to the hearing officer's findings of fact concerning the pilot programs, discussions concerning the pilot programs, meetings held on May 5, May 26, September 21, September 26, October 20, November 3, November 24, December 10, 1993, pre-PSR casework policies and practices, the PSR form and PSR training. Many of these challenges are requests for supplemental facts. We have not resolved these challenges because the underlying factual details are not material to our analysis or our decision.

form for review of social workers' cases. This particular pilot was in effect statewide.

9. With respect to use of the Progress/Supervisory Review Form and project for April 1, 1991 - June 30, 1991, the Employer and the Union agreed that social workers would no longer be required to fill out the ABCR form; instead, the Progress/Supervisory Review form would substitute for the ABCR form process because supervisors would fill out the Progress/Supervisory Review form during regular supervision with the social worker, thereby obtaining the social workers' input and rendering the ABCR form unnecessary. The Union also agreed that supervisors would conduct the reviews on a quarterly basis for the period of the project, with the understanding that no disciplinary action would be taken against workers and supervisors who might be unable to review all their cases during that initial quarter period. DSS and the Union agreed that the supervisors would conduct the reviews during regular supervision.

10. During the 1991 negotiations regarding the pilot PSR program, DSS and the Union agreed to meet at the end of the pilot to review findings and negotiate any changes which DSS might want to implement based on the pilot project findings.

11. State wide labor/management meetings were held on August 4, 1993 and August 25, 1993. DSS did not raise PSR issues at these meetings. Accordingly, such issues were not discussed by the parties at either meeting.

12. At the September 15, 1993 statewide labor/management meeting, DSS distributed results of a survey regarding the PSR program.

13. On or about September 22 or 26, 1993, DSS distributed a draft of the proposed PSR policy and notified the Union that the project was now on the "front burner". DSS also notified the Union that training for the PSR project would take place statewide.

14. On November 3, 1993, the parties held a meeting at which the proposed PSR policies were discussed.

15. On or about November 24, 1993, the parties held a meeting regarding the PSR program, including changes that the PSR program would necessarily have on the policies titled "Service Planning" and "Ongoing Casework Policy". DSS responded to some questions raised at the November 3rd meeting. The Union presented proposals regarding workload issues, and DSS presented no counterproposals. The parties agreed to meet again on December 10, 1993.

16. At the December 10, 1993 negotiation session regarding the PSR program, DSS provided the Union with a revised copy of the PSR which DSS initially represented was a "final draft" of the PSR policy. When asked by the Union about the meaning of the term "final draft", DSS informed the Union that it would still have input into the process and that this "final draft" did not constitute DSS's last best offer. The parties agreed to meet again on January 18, 1994.

17. On or about December 21, 1993 and continuing through January 1994, DSS distributed a memorandum to all DSS offices outlining a training schedule for the new PSR policy. Training sessions were held in January 1994 and employees were informed that the new PSR policy would go into effect on February 1, 1994.

18. At the January 1994 training sessions, the policies on "PSR", "Service Planning", and "Ongoing Periodic Review of Cases" were distributed by the Employer. The policies distributed at training are the policies now in effect.

19. On or about January 18, 1994, the Union and DSS met to negotiate, but no agreement was reached.

20. Specifically, at the January 18, 1994 negotiation session, the Union raised issues regarding why employees were already being trained on the new policy when the parties were still negotiating about the topic. Then the parties proceeded to discuss the PSR policy itself. The Union asked for the Employer's responses to the Union's suggestions from the last meeting. In addition the Union requested specific reasons for the rejections.

21. At the end of the January 18, 1994 negotiation session, the parties agreed to discuss additional dates for negotiating regarding the PSR policy when they met at a regularly-scheduled labor/management meeting on January 19, 1994, the next day.

22. At the January 19, 1994 labor management meeting, the Union requested that DSS schedule additional dates to negotiate the implementation of PSR policy.

23. At the January 19, 1994 labor management meeting, after the Union requested that DSS schedule additional dates as referred to above, DSS responded that they did not believe it was a workload issue.

24. DSS officially adopted the new "PSR" policy, along with the new "Service Planning" and "Ongoing Periodic Review of Cases" policies, on a statewide basis effective February 1, 1994.

Findings of Fact

The Department of Social Services (DSS or Department) is an agency of the Commonwealth whose mission is to investigate reports of abuse and neglect of children and to work with families to resolve issues and protect children. DSS has twenty-four area offices, each containing between twelve to fourteen different "units". Each area office has units for screening initial reports of abuse and neglect, conducting initial assessments, and processing post-assessment on-going cases. In addition, some area offices contain specialty units such as permanency planning units, Children In Need of Services (CHINS), adolescent planning, family resource placement, and adoption.

In an attempt to address the diminishing resources available to them in 1991, DSS hired Public Consulting Group, Inc. (PCG) to review their administrative systems and advise them on ways to manage case loads and use limited resources more effectively. Initially, DSS reviewed the case closure aspect of case management, and in the process, developed what became known as the Progress/Supervisory Review policy (PSR). The goal of PSR was to structure existing supervisory review sessions between social workers and their supervisors in order to ensure that the family

progress in each case was reviewed every three months. The key component of the PSR policy was the review form, a supervisory tool designed to capture pertinent information measuring case progress, like the number of visits to the home and family members, case goals, significant family developments, and necessary changes to the service plan.

DSS first implemented PSR in a pilot program in April, May, and June 1991. Phase I of the pilot PSR program applied only to non-placement children (children outside of foster care) and did not use the automated system. DSS implemented the policy statewide but collected feedback from only four area offices. In early 1992, DSS implemented Phase II of the pilot program which included placement cases and addressed the on-going phase of case management as well as case closure. At that time, two more offices began using the automated system, and DSS began collecting feedback and information from two additional offices. In September 1993, DSS gave the Union a report compiled by PCG containing statistics gleaned from Phase II of the pilot program. In November 1993, DSS representatives told Union negotiators that they were prepared to move forward and implement the PSR program. DSS implemented PSR in February 1994.[3]

Prior to the implementation of PSR and the adoption of the PSR review form, supervisors and social workers participated in what was known as "regular supervision". Regular supervision facilitated information sharing and joint decision-making between social workers and supervisors to enable supervisors to respond to client emergencies in the social worker's absence. Supervision included both regularly-scheduled discussions of each case and case consultations on an as-needed basis. Regular supervision sessions lasted between one and two hours. Supervisors and social workers were required to review cases of children not in placement twice per year, however, they were not required to review cases of children in placement within a preset time frame.[4] DSS expected social workers and supervisors to eventually review an entire case load. Supervisors were not required to document their discussions with social workers on any particular form or format; supervisors were expected to keep notes on the progress of cases but were free to use any format they preferred.[5] Social workers were required to visit children in placement on a monthly basis, but no DSS policy required home visits, or required social workers to visit non-placement children within a particular time frame.[6] At times, supervisors and social workers only reviewed cases in crisis during regular supervision.

The PSR review form is a three-four page form that supervisors are expected to complete for each case once every three months.[7] Although the PSR review form uses a multiple choice format, supervisors are expected to thoroughly discuss the issues prompted by its questions, and then record the answers on the form, rather than simply checking off the correct responses. Completing the form takes approximately 30-45 minutes per case.[8] The information written on the PSR form after the first review is subsequently entered into an automated system and preprinted in future forms, eliminating the need to record the same information repeatedly.[9] The PSR form contains a section where supervisors record the number of home visits a social worker has made within specified time frames: 0-30 days, 31-60 days, and 61-90 days. DSS did not intend for the PSR program to impose any new requirements concerning home visits; however, DSS representative Jacqueline Gervais (Gervais) told Union negotiators at a November 3, 1993 policy meeting that the reason the PSR form contained questions regarding home visits was to see that "we" meet with the family monthly.[10] DSS forwarded to area offices, the recorded information regarding the number of home visits made. If a social worker did not visit a home for two months, those cases would be identified for follow-up to determine why the family had not been seen for that period of time.

DSS discussed the PSR policy and form with the Union at PSR negotiation sessions, policy meetings, and statewide labor/ management meetings. These meetings occurred at various times between 1991 and 1994, both before and after DSS implemented

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3. The Employer asks us to supplement the hearing officer's findings of fact with two additional findings: 1) the Department notified the Union as early as September 1993 that it was prepared to move forward with implementation of the PSR policy, and 2) the parties held discussions in November 1993 regarding implementation of the policy. We decline to supplement the findings because the proposed facts are subsumed within the stipulated facts and need not be repeated.

4. We have modified these findings of fact to more accurately reflect the record evidence.

5. The Employer asks us to supplement this finding to clarify that the policy in effect prior to PSR required supervisors to maintain consultation records documenting their review of social workers' cases. We need not amend this finding because the parties' stipulations detail a supervisor's responsibility to maintain consultation records under the pre-PSR policy.

6. The Employer challenges this finding and cites record evidence demonstrating that social workers were required to visit children in placement on a monthly basis. We have modified this finding accordingly.

7. We have amended this finding to clarify that the PSR form is three-four pages long.

8. The Employer asks us to supplement the hearing officer's findings of fact with findings regarding social workers' and supervisors' joint responsibilities, case records procedures and post-PSR use of the ABCR form. We decline to supplement the findings in this manner because the requested findings are not material to our decision. Also, paragraph nine of the stipulated facts sufficiently explains the demise of the ABCR form.

9. The Employer asks us to add additional detail regarding the ABCR forms. We decline to do so. Differences between the format and requirements of the PSR form and the ABCR form are not relevant to our decision because social workers completed the ABCR forms and supervisors completed the PSR forms.

10. The Employer challenges this finding and asks us to find that the PSR policy did not impose any new visitation requirements. We disagree with the Employer's proposed finding, and its argument that the Department expected monthly visits in non-placement cases prior to PSR. Our review of the record evidence persuades us that PSR imposed new monthly visitation requirements for non-placement children and changed the location requirement for all visits. The Employer did not challenge the hearing officer's finding regarding Gervais's explanation of the home visit questions on the PSR form, nor did it object to her description of the consequences in cases where a social worker failed to visit a home for two months. Gervais did not differentiate between placement and non-placement children when she described the Department's expectations and her statement demonstrates that the Department expected social workers to visit all children monthly. The fact that the Department identified for follow-up cases where children were not visited monthly underscores the mandatory nature of the new requirement.

PSR. Discussions began early in 1991 concerning the pilot program. The Union sought additional information regarding the PSR program, additional training for workers, an extended pilot period, expansion of the study group, exclusion of placement cases, and assurance that no negative repercussions would ensue from a worker's failure to meet the time frames in the PSR pilot program.

On March 19, 1991, DSS and Union representatives held a negotiation session regarding the PSR policy. DSS gave the Union a final draft of the form to be used during the PSR pilot program and reviewed the form and procedures with the Union. The Union requested additional negotiation sessions and raised numerous issues, including the use of overtime and suspension of various types of visitations. The parties met again on January 27, 1992, and the Union reiterated its request to bargain over the workload and caseload impact of the PSR policy.

The parties met numerous times in 1992 to discuss the PSR policy. On February 27, 1992, the Union proposed that the following modifications, and others, be made to the PSR program: 1) eliminating placement cases; 2) conducting a more extensive pilot; 3) substituting target goals for length of service goals; 4) altering and monitoring the frequency of reviews; and 5) ensuring that managers did not complete forms. The parties met again on March 4, 1992 and March 12, 1992. At the March 12 negotiation session, the Employer assured the Union that no action would be taken against social workers concerning compliance with the new program. It also noted areas of agreement such as: adding additional offices to the pilot program; extending the pilot program; the importance of training; and eliminating duplicative work between foster care review and PSR review.

The parties also met frequently in 1993 to discuss the PSR policy. On May 5, 1993, at a statewide labor/management meeting the Union warned the Employer that, while the parties had reached common ground regarding some issues, they needed to discuss outstanding issues well before implementation of the PSR policy. The Employer notified the Union that it would compile and share with the Union statistical information from the pilot PSR project.[11] On September 15, 1993 the Employer gave the Union the draft report prepared by PCG, which compared Holyoke/Westfield with three other pilot offices.[12] At the statewide labor/management meeting on October 20, 1993, DSS distributed the PSR policy to the Union, and the Union expressed concern that increasing case reviews from a semi-annual basis to a quarterly basis would increase employee workloads. The parties continued to discuss the workload issue at a policy meeting on November 3, 1993, at which time the Union reiterated its opposition to conducting quarterly reviews. As an alternative, the Union suggested the following: 1) eliminating the quarterly time frame; 2) conducting the PSR review at the end of the assessment phase of a case; 3) substituting family or collateral contacts for home visits; and 4) changing PSR goals.[13] The parties met again on November 24, 1993, and the Employer responded to the concerns that the Union had previously expressed. The Employer repeated its position that PSR formalized regular supervision, and reiterated that the review was to be completed quarterly. The Employer rejected the Union's proposal to substitute contacts for home visits, explaining that it intended to focus on home visits. The Union proposed numerous changes to the specific language of the policy to address their workload and liability concerns. The Employer expressed appreciation for the Union's suggestions but indicated that it could not respond to the Union's specific proposals at that time. The parties agreed to meet again.

The parties met next on December 10, 1993. DSS gave the Union copies of the final PSR draft and explained how they had broadened certain definitions, eliminated duplication between social workers and foster care review, and made other Union-requested language changes and deletions to the PSR form. DSS told the Union that although the Union still had an opportunity for input, DSS considered the PSR policy to be a final draft.[14] DSS explained that their position regarding the quarterly review remained unchanged because they believed the time frame would not increase employee workloads. The Union characterized the Employer's intransigence on the time frame as bad faith bargaining and stated that they could offer ideas, like a caseload decrease, to reduce the impact on workers if DSS was wedded to the quarterly review.

The parties held another negotiation session on January 18, 1994. At that meeting, the Department rejected the proposals regarding workload backoff which the Union suggested at the December 10, 1993 meeting, and gave reasons for some, but not all of the rejected proposals. The Union requested specific reasons for the rejected proposals that the Department had not explained, in order to formulate a new counteroffer. Department spokesperson Michael Crehan (Crehan) was not prepared to respond in detail to the Union's proposals.[15] The parties met again on January 19, 1994. DSS reiterated its view that the PSR program was a new way of adding structure and form to regular supervision, rather than a workload issue. The Union stated that a bigger "backoff" was necessary and proposed another meeting to devise a more creative plan. DSS again stated that PSR would not require additional employee time and declared that the parties were at impasse. DSS implemented the PSR policy effective February 1, 1994.[16]

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11. We have modified this finding of fact to correct the date on which the Employer notified the Union that it would compile and share statistical information from the pilot project.

12. We have modified this finding of fact to correct the date on which the Employer gave the Union the PCG draft report. However, we decline to make the additional findings that the Union proposed because the details it cites regarding the draft report and the September 15 meeting are not material to our decision.

13. The Union also explained the distinction it drew between policy meetings and negotiation sessions and stated that the PSR policy required separate impact bargaining sessions prior to implementation.

14. The Employer asks us to incorporate facts contained in paragraph sixteen of the parties' stipulations into our facts. We decline to do this because it is unnecessary.

15. The Union objected to the omission of certain facts regarding the January 18, 1994 negotiation session. Although paragraphs 19, 20 and 21 of the parties' stipulations describe the parties' communications at that meeting, we have added these facts to provide a more complete description of the meeting.

16. The Employer asks us to incorporate facts contained in paragraph 23 of the parties' stipulations into our facts. As previously noted, this action is unnecessary.

OPINION

Public employers may not change a pre-existing condition of employment, or implement a new condition of employment, affecting a mandatory subject of bargaining without providing the exclusive collective bargaining representative with prior notice and an opportunity to bargain to resolution or impasse. *City of Newton*, 16 MLC 1036,1041-42 (1989); *City of Holyoke*, 13 MLC 1336 (1986); *School Committee of Newton* v. *Labor Relations Commission*, 388 Mass. 557 (1983). To determine whether a matter is a mandatory subject of bargaining, the Commission balances the interests of employees in bargaining over a particular subject with the interest of the public employer in maintaining its managerial prerogatives, and considers factors like the degree to which the topic has a direct impact on terms and conditions of employment, whether the issue concerns a core governmental decision, or whether it is far removed from terms and conditions of employment. *Town of Danvers*, 3 MLC 1559 (1977). Decisions concerning the level of services that a governmental entity will provide lie within the exclusive prerogative of management, and are not mandatory subjects of bargaining. *Town of Dennis*, 12 MLC 1027 (1985). However, before implementing a level of services decision, the Employer must bargain over the impacts of that decision on employees' working conditions. *School Committee of Newton* v. *Labor Relations Commission*, 388 Mass. 557 (1983).

DSS serves the public by investigating reports of child abuse and neglect and offering ongoing casework services to individuals and families in need of services. Supervisory review of social workers' cases is a regular component of ongoing casework practice for children in foster care placement, as well as children who are not in placement. Monthly visits between social workers, children in placement, and their parents are also a vital part of the Department's ongoing casework practice. The evidence in this case demonstrates that DSS implemented PSR to structure supervisory review sessions to ensure that supervisors reviewed family progress in each case on a quarterly basis. Consequently, we find that the Department's decision to provide more frequent case reviews and social worker-client visits, to better track the progress of the families that it serves directly involves the level of services it provides and is not a mandatory subject of bargaining. *See City of Newton, supra.* Nevertheless, the Department was obligated to bargain to impasse or agreement over the impact of these decisions on employees' working conditions. *Town of Dennis, supra.*

The Union argues that the PSR policy impacted employee working conditions by increasing workloads and changing job duties. The Department disputes this contention and argues that PSR did not constitute a new practice because it merely provided a framework for discussion during regular supervision meetings. The Department maintains that PSR did not increase employee workload because employees who are familiar with the form have sufficient time to complete the form during regular supervision sessions; partly because the automated system pre-prints certain information. The Department also contends that the PSR policy does not alter the expected number of home visits by social workers.

Before the Department implemented PSR, it required supervisors to review non-placement cases twice per year, in connection with the social workers' semi-annual completion of the ABCR form. It did not require supervisors to review placement cases within any preset time frame. PSR increased the frequency of these case reviews by requiring supervisors to review all cases on a quarterly basis. Although DSS previously required social workers to visit children in placement on a monthly basis, it did not require social workers to visit the children in any particular location or require them to visit non-placement children during any particular time frame. The PSR form tracks the number of home visits that social workers made to children in monthly time frames and, without differentiating between placement and non-placement children, Gervais told Union negotiators that the form contained the home visit questions to ensure that "we" met with the family monthly. The Department identified for follow-up cases in which a social worker failed to visit a home for two months. These facts persuade us that PSR required social workers to visit all children at their homes each month. These facts also demonstrate that the new policy increased the frequency of case reviews for all cases, increased the frequency of visits for children who are not in foster care placement and changed the location of visits for all children. These changes increased the workload and job duties of social workers and supervisors and compelled the Department to impact bargain over these changes.

We next consider whether the Employer bargained to impasse over the PSR policy prior to implementation. The Commission will determine that the parties have reached impasse in negotiations only where both parties have negotiated in good faith on bargainable issues to the point where it is clear that further negotiations would be fruitless because the parties are deadlocked. *Town of Brookline*, 20 MLC 1570,1594 (1994). An analysis of whether the parties are at impasse requires an assessment of the likelihood of further movement by either side and whether they have exhausted all possibility of compromise. *Wood's Hole, Martha's Vineyard and Nantucket Steamship Authority*, 14 MLC 1518,1529-30 (1988). Where one party to the negotiations indicates a desire to continue bargaining, this demonstrates that the parties have not exhausted all possibilities of compromise, and precludes a finding of impasse. In *City of Boston,* 21 MLC 1350 (1994) the union's request to continue negotiations required the employer to delay implementation of a reorganization and continue negotiations. *See also, Marriott Corp.*, 258 NLRB 755, 108 LRRM 1287 (1981)(No impasse where union remained willing to negotiate overtime issue.)

In this case, the Department gave the Union a revised copy of the PSR policy on December 10, 1993 and represented that it was a "final draft." When asked to explain the meaning of "final draft," the Department informed the Union that it would still have input into the process and that the "final draft" did not constitute its last best offer. The Union stated that it could offer ideas like a caseload decrease to reduce the workload impact if DSS would not modify the time frame for reviews. The parties met again on January 18, 1994. The Union asked the Department to explain why it had rejected certain proposals, so the Union could formulate a counteroffer. The parties did not reach agreement on January 18, but agreed to discuss additional dates on which to continue negotiations. On January 19, the Union requested another meeting

to devise a more creative proposal. However, the Department declined to schedule another meeting and declared an impasse.

There are a number of indications in this exchange that the parties were not deadlocked when the Department declared impasse. First, the Department advised the Union on December 10 that the Union could still have input into the policy, and that the "final draft" was not its last best offer. This statement reflects the Employer's willingness to modify the policy in response to the Union's proposals, and demonstrates that compromise was possible. Second, the Union indicated on January 18 and again on January 19, that it wished to continue negotiations because it still had ideas and wanted to devise a counteroffer or a more creative plan. These statements demonstrate the probability of a compromise because they reveal the Union's efforts to resolve the differences separating the parties. These final communications do not depict parties who are hopelessly deadlocked. Rather, they show that the parties were on the verge of a compromise.

We recognize that these parties discussed PSR many times in many forums and we do not require the Department to bargain endlessly over proposals it has previously considered and rejected. However, the sheer number of meetings alone does not establish that the parties reached impasse; nor does the fact that their discussions spanned several years. Once the Union stated that it still had ideas and wished to devise a new plan or counteroffer, the Department was obligated to postpone implementation and to negotiate about the Union's new ideas. *Commonwealth of Massachusetts*, 22 MLC 1039(1995); *see also*, *City of Lawrence School Committee*, 3 MLC 1309 (1976) (Employer obligated to test union's sincerity by resuming negotiations when the union requested a meeting to discuss the single unresolved issue dividing the parties). The Department's failure to do so violated its duty to bargain to impasse or agreement.

CONCLUSION

The Employer violated Section 10(a)(5) and (a)(1) of the Law by failing to bargain to resolution or impasse over the impact of the new PSR policy on employees' workload and job duties.

REMEDY

When an employer's refusal to negotiate is limited to the impact of a managerial decision, the appropriate remedy must strike a balance between the right of management to carry out its lawful decision and the right of any employee organization to have meaningful input on impact issues while some aspects of the status quo are maintained. *Town of Burlington*, 10 MLC 1387,1388 (1984). In these cases the Commission traditionally orders restoration of the *status quo ante* applicable to those affected mandatory subjects, rather than to the decision itself. *Town of Dennis*, 12 MLC 1027,1033 (1985).

In this case, we do not perceive any way to separate the non-bargainable aspects of the PSR policy from its impact on the employees' workload and job duties. Consequently, to place the Union and affected employees in the position they would have been in absent the Employer's unlawful conduct, we order the Department to discontinue implementation of the PSR policy until it satisfies its impact bargaining obligation. *City of Newton*, 16 MLC at 1044-1045.

ORDER

WHEREFORE, WE HEREBY ORDER THE EMPLOYER TO:

1. Cease and desist from implementing the PSR policy until it has bargained with the Union to impasse or resolution over the impacts of the policy on terms and conditions of employment.

2. Cease and desist from failing and refusing to bargain collectively in good faith with the Union over the impact on employees of the decision to implement the PSR policy.

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

a. Offer to bargain in good faith with the Union over the impacts on employees' working conditions before implementing the PSR policy, and, upon request by the Union, bargain in good faith to impasse or resolution concerning the impacts of the decision.

b. Sign and post the attached Notice to Employees in all places where employees usually congregate and where notices to employees are usually posted, and leave it posted for a period of thirty (30) consecutive days; and,

c. Notify the Commission within thirty (30) days from receipt of this decision of the steps taken to comply with this order.

SO ORDERED.

NOTICE TO EMPLOYEES

The Massachusetts Labor Relations Commission (Commission) has determined that the Commonwealth of Massachusetts/ Commissioner of Administration and Finance/ Department of Social Services has violated Sections 10(a)(5) and (1) of General Laws, Chapter 150E, the Public Employee Collective Bargaining Law when it failed to bargain with the Alliance, AFSCME/SEIU Local 509 (Union) over the impact of the new PSR policy on employees' workloads and job duties.

WE WILL NOT refuse to bargain in good faith with the Union over the impacts of the new PSR policy on employees' workloads and job duties.

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 offer to bargain in good faith with the Union over the impacts of the new PSR policy on employees' workloads and job duties.

WE WILL restore the *status quo ante* by suspending implementation of the PSR policy until we have discharged our duty to bargain as detailed in the Commission's order.

[signed]
DEPARTMENT OF SOCIAL SERVICES

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