In the Matter of WORCESTER COUNTY SHERIFF'S DEPARTMENT

and

MASSACHUSETTS CORRECTION OFFICERS FEDERATED UNION

Case No. SUP-4531

| | |
|---|---|
| *54.591* | *method of paying* |
| *54.8* | *mandatory subjects* |
| *67.42* | *reneging on prior agreements* |
| *67.8* | *unilateral change by employer* |
| *82.111* | *interest* |

*June 13, 2001*
*Helen A. Moreschi, Commissioner*
*Mark A. Preble, Commissioner*

| | |
|---|---|
| *Marc L. Terry, Esq.* | *Representing Worcester County Sheriff's Department* |
| *Joseph S. Fair, Esq.* | *Representing M.C.O.F.U.* |

**DECISION**[1]

## Statement of the Case

The Massachusetts Correction Officers Federated Union (the Union) filed a charge of prohibited practice with the Labor Relations Commission (the Commission) on December 24, 1998, alleging that the Worcester County Sheriff's Department (the Respondent)[2] had engaged in a prohibited practice within the meaning of Sections 10(a) (1) and (a)(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 of prohibited practice on June 4, 1999. The complaint alleged that the Respondent had: 1) repudiated the parties' collective bargaining agreement by converting its payroll system to a monthly system on July 1, 1998 (Count I), and 2) unilaterally changed the payroll system without giving the Union prior notice and an opportunity to bargain to resolution or impasse (Count II). The Respondent filed an answer to the complaint on June 22, 1999.

Susan Atwater, a duly-designated hearing officer of the Commission, conducted a hearing on February 8, 2000 at which both parties had an opportunity to examine and cross-examine witnesses and to introduce evidence. Both parties filed post-hearing briefs and the hearing officer issued Recommended Findings of Fact on May 9, 2000. The Respondent filed a challenge to the hearing officer's recommended findings on May 22, 2000. The Union filed no challenges.

## Stipulations of Fact

1. Per chapter 48 of the Acts and Resolves of 1997, as amended by chapter 55 of the Acts and Resolves of 1998, the Sheriff of Worcester County (hereinafter, "Respondent" or "Jail") is a public employer within the meaning of Section 1 of G.L.c. 150E (hereinafter, "Law").

2. The Massachusetts Correction Officers Federated Union (hereinafter, "Union") is an employee organization within the meaning of Section 1 of the Law.

3. At all times relevant, D.M. Moschos, Esq. was labor counsel for Respondent.

4. At all times relevant, Deputy Marianne Blanchet was employed by Respondent and was in charge of Respondent's Personnel and Finance Department.

5. At all times relevant, Matthew E. Dwyer, Esq. was counsel for the Union.

6. The Union is the exclusive collective bargaining representative for all permanent correction officers employed by Respondent who are of the rank of sergeant or below as certified in MCR-4413 on March 14, 1997.

7. Prior to July 1, 1998, the unit members referred to in paragraph six (6) were paid weekly and historically had been paid in such fashion.

8. Under the weekly payroll system, the pay period ran from Sunday through Saturday with unit members being paid for a given period on the Thursday that followed the Saturday of the given pay period.

9. Under the weekly payroll system, unit members would receive a check each week for all of their regular earnings for the preceding pay period plus any holiday, shift differential or overtime pay that had been earned during the preceding pay period.

10. In order to receive the overtime pay referenced in paragraph ten (10) though, a properly completed overtime voucher had to be submitted to and processed by the Personnel Department by the Tuesday of the given pay period.

11. In order to be considered properly completed, overtime vouchers must be signed by the following: Assistant Deputy Superintendent who supervises the given unit member, First Assistant Deputy Superintendent John Gabriel and Deputy Superintendent William Frisch.

12. In June 1997, the parties began negotiations for a collective bargaining agreement – the first between these parties.[3] Respondent's lead representative throughout negotiations was Attorney Moschos. The Union's lead representative throughout negotiations was Attorney Dwyer.

---

1. Pursuant to 456 CMR 13.02 (1), the Commission has designated this case as one in which the Commission shall issue a decision in the first instance. Therefore, these recommended findings of fact are issued pursuant to 456 CMR 13.02 (2).

2. Section 1 of Chapter 48 of the Acts of 1997 abolished the government of Worcester County as of July 1, 1998. Section 14 states that the sheriff of an abolished county shall be considered an employer for the purposes of G.L. c. 150E.

3. [See next page.]

13. In or around July 1997, the parties exchanged initial bargaining proposals.

14. Respondent's initial proposal did not contain any language or provision that would alter the frequency with which unit members were to be paid.

15. Throughout the course of negotiations, Respondent was responsible for generating and distributing to all Union and Respondent bargaining committee members the various drafts of the Agreement that the bargaining sessions between the parties were producing.

16. Throughout the course of negotiations, Attorney Moschos would periodically generate and distribute documents to the Union which listed the items that Respondent believed the parties had yet to reach agreement on and thus, remained open for further discussion. Joint Exhibits 2 and 3 (JX-2 and JX-3)[4] are representative examples of such documents.

17. JX-2 was distributed to all in attendance at the January 29, 1998 bargaining session.

18. As of January 29, 1998, Respondent had not made any proposal to alter the weekly payroll system.

19. In February 1998, Respondent generated JX-4 which introduced to the Union for the first time via Article 12, s.4-6 a proposal that called for the future alteration of the payroll system from a weekly to a bi-weekly system.

20. At the negotiations session held in February 1998, Attorney Moschos explained that Respondent's bi-weekly payroll proposal was being made at the behest of the Commonwealth and that he had been informed by the Commonwealth that it would not approve any agreement reached by the parties unless the Union agreed to accept the bi-weekly payroll language. In light of this, the parties ultimately agreed to sign a memorandum of agreement in which the parties would agree to amend the collective bargaining agreement in the future to include the bi-weekly payroll language.

21. With respect to this bi-weekly payroll issue, the Union believed it had agreed to sign a memorandum of agreement in which it would agree to amend the collective bargaining agreement to include the bi-weekly payroll system language if and when said language had been accepted by statewide bargaining Unit 4. *See* JX-7 and JX-8. However, Respondent's recollection of the results of the parties' discussions regarding the bi-weekly pay issue did not call for any language to be included in the memorandum of agreement which conditioned the implementation of the bi-weekly payroll system at the Jail upon statewide bargaining Unit 4's implementation of same and thus, Attorney Moschos suggested the parties continue discussions on the issue at the next session. *See* JX-9.

22. At the next bargaining session which was held March 31, 1998, the Union agreed that it would accept the bi-weekly payroll language in a memorandum of agreement without reference to Unit 4 subject to an agreement by Respondent to bargain over the impact of the change prior to implementing the bi-weekly system. Respondent agreed and with that, an agreement on a collective bargaining agreement was reached by the parties at the March 31st meeting. Respondent, however, stated that it could not sign the agreement until the agreement had been approved by the Secretary of Administration and Finance for the Commonwealth. *See* JX-10, JX-11.

23. By letter dated April 1, 1998, the Union reiterated its understanding to Respondent that an agreement had been reached on a collective bargaining agreement. The Union also enclosed therewith the memorandum of agreement that had also been agreed to by the parties regarding the bi-weekly payroll system. *See* JX-10.

24. By letter dated April 23, 1998, Attorney Moschos informed Attorney Dwyer that the Commonwealth had rejected the agreement on the Commonwealth's stated ground that the economic terms of the agreement were excessive in its view. *See* JX-13.

25. After a series of communications regarding the status of the agreement and the identity of persons authorized to enter into same, a negotiation session was scheduled between the parties for May 7, 1998. *See* JX-12, JX-14, through JX-19.

26. At that bargaining session, Respondent presented a new proposal to the Union which reduced the total monetary offering to the Union from approximately twenty-seven (27) percent to approximately eighteen (18) percent. Respondent also informed the Union that the economic package of eighteen (18) percent was only available if the Union agreed to include the bi-weekly payroll language in the contract itself, as opposed to in a side agreement as had been previously agreed to by the parties.

27. With respect to the change to the bi-weekly system, Respondent also stated at the May 7th meeting that said change would not occur until on or after July 1, 1999.

28. The Union accepted the lower monetary package and inclusion of the bi-weekly payroll language into the contract at that May 7th meeting and with that, agreement on a collective bargaining agreement with the effective dates of July 1, 1997 through June 30, 2000 (hereinafter, "Agreement") was reached. The Agreement was executed at that meeting on behalf of the Union by Attorney Dwyer and on behalf of Respondent by Attorney Moschos. It was later ratified by the Sheriff, the Worcester County Commissioners and the Union. *See* JX-1.

29. Under Article 12 Section 5 of the Agreement, a committee was to be set up between the Union and the Commonwealth prior to the conversion from a weekly to bi-weekly payroll system taking place. According to Respondent, the notion of this committee originated from the Commonwealth.

30. The Agreement having been ratified by all parties and having been approved by the Executive Office of Administration and Finance, by letter dated June 2, 1998, Respondent requested that the monies to fund the Agreement for fiscal year 1998 be disbursed to Respondent. *See* JX-21.

---

3. A different employee organization represented unit members prior to the Union's becoming the exclusive representative in March 1997.

4. Joint Exhibits will hereinafter be referred to as JX___.

31. By letter dated June 3, 1998, Respondent informed the Union that all unit members were going to be converted to a monthly payroll system with a weekly draw effective July 1, 1998. *See* JX-20. Following this letter, the parties exchanged a number of correspondences stating their respective positions regarding the conversion to a monthly payroll system. *See* JX-22 through JX-27.

32. During the first week of June 1998, a notice was distributed by Respondent to all unit members informing them that informational meetings had been scheduled for June 8, 1998 at the VFW hall in West Boylston regarding the change from the then weekly payroll system to a monthly system.

33. Said notice informed unit members that a packet of forms would be distributed at those meetings which would need to be completed and returned to the personnel department in order for unit members to receive a draw on their monthly salary each week.

34. There were two (2) of these informational meetings held on June 8th – a 1:00 p.m. session and a 3:15 p.m. session.

35. At these meetings, representatives from various organizations and agencies including, but not necessarily limited to, representatives from Bank of Boston and the State Retirement Board, were seated and displaying various informational materials at a long table that had been set up in front of the room facing several rows of chairs.

36. Sheriff Flynn, Deputy Frisch, Deputy Blanchet and other deputies, as well as various administrative personnel, including Ellie Masterson of the Jail's payroll department, were present at these meetings.

37. Upon arrival at these meetings, unit members signed for and received a personalized packet of information from Respondent.

38. Deputy Blanchet reviewed the packet of information aloud with unit members in great detail at these meetings.

39. Respondent instructed unit members to complete the forms contained in their packets and to submit them to Respondent as soon as possible, preferably before leaving the meeting.

40. Unit members were informed by Respondent that if these forms were not competed, Respondent would assume that the unit members wanted to receive a monthly paycheck only and no weekly draw.

41. True and accurate representative copies of the notice that unit members received and the documents they received at the June 8th informational meetings and were asked to complete and submit to the Jail are collectively marked as JX-28.

42. In July 1998, the Jail began paying unit members under a monthly payroll system.[5]

43. Under the monthly system, unit members who opted for a weekly draw received a check in the amount of their chosen draw on all but the last Thursday of each month. Said weekly draw cannot exceed sixty (60) percent of the given unit member's normal weekly rate of pay. On each Thursday of the last full week of a month, unit members receive their monthly checks which includes their full rate of pay for that week plus the difference between that rate and the amount of their weekly draw for each of the prior weeks in that month. In addition, any and all shift differential, overtime and/or holiday pay that is owed unit members for the relevant period is included in that monthly check.

44. Under the monthly system, pay for holidays falling before the first Saturday of a given month is disbursed to unit members in the monthly paycheck that is distributed at the end of that same month, while pay for holidays falling on or subsequent to the first Saturday of a given month is disbursed to unit members in the monthly paycheck that is distributed at the end of next month.

45. Under the monthly system, shift differential pay that is earned prior to the first Saturday of a given month is disbursed to unit members in the monthly paycheck that is distributed at the end of that same month, while shift differential pay that is earned on or after the first Saturday of a given month is disbursed to unit members in the monthly paycheck that is distributed at the end of the next month.

46. Under the monthly system, overtime pay for which a properly completed overtime voucher has been submitted to the Personnel Department prior to the first Saturday of a given month is disbursed to unit members in the monthly paycheck that is distributed at the end of that same month, while overtime pay for which a unit member has failed or has been unable to submit a properly completed voucher to the Personnel Department until on or after the first Saturday of a given month is disbursed to unit members in the monthly paycheck that is distributed at the end of the next month.

47. Unit members who did not opt to receive a weekly draw are paid their regular earnings on a monthly basis. Included in this monthly check is any overtime, shift differential or holiday pay that was earned for the given pay period, subject to the limitations regarding the timing of the payment of such monies identified in paragraphs 44 through 46.

48. In addition to the unit members involved in the instant matter, Respondent also employs approximately 75-100 temporary correction officers who are not members of any collective bargaining unit.

49. Prior to July 1998, temporary correction officers were paid by Respondent under a weekly payroll system.

50. After July 1998, Respondent continued to pay temporary correction officers under that same weekly payroll system and continued to do so as of February 4, 2000.

---

5. The parties' original stipulation provided as follows: In July 1998, the Jail began paying unit members under a monthly payroll system and has continued to do so as of the date of this filing. We have modified this stipulation in view of the parties' subsequent agreement that the bi-weekly payroll system went into effect for bargaining unit employees for the pay period beginning March 26 and ending April 8, 2000.

51. Temporary correction officers do not gain permanent status or become members of the bargaining unit unless and until they graduate from Respondent's training academy.

52. The length of time an officer remains temporary is contingent upon when he/she completes the training which can take anywhere from a few months to several years, depending on the individual.

53. The bi-weekly payroll system went into effect for bargaining unit employees for the pay period beginning March 26 and ending April 8, 2000. Bargaining unit employees received their first bi-weekly paycheck for this pay period on April 14, 2000.

Supplemental Findings of Fact

The following individuals were present at the May 7, 1998 negotiation session: Union attorney Matthew Dwyer (Dwyer), Union Vice president Steven Donnelly, Union bargaining team members Michael Haley (Haley), Paul Legendre (Legendre) and Steven Benson, Respondent's attorney D. M. Moschos (Moschos) and the Respondent's bargaining team members Deputy O'Malley, Deputy Bouvay, Deputy Gabriel and Susan Hunt. During the course of that bargaining session, the Respondent indicated that in order for the Union to obtain an economic package of 18%, the Union must agree to include the bi-weekly payroll language in the collective bargaining agreement rather than in a side memorandum of agreement. The parties then discussed what would occur prior to the implementation of the bi-weekly payroll system. Dwyer asked Moschos if the payroll would stay status quo in the interim prior to the bi-weekly payroll implementation. Moschos responded that the payroll would remain the same. At no time during the negotiations did the parties discuss converting the payroll system to a monthly system, nor did they discuss the Respondent's conversion to an independent state agency.[6] The parties agreed to include the following language related to the change to the biweekly payroll system in the collective bargaining agreement:

> Article XII Section 4. Effective July 1, 1998, the Union recognizes that the Commonwealth's Human Resources/Compensation Management System (HR/CMS) is the most comprehensive review of business processes regarding payroll, personnel and other processes ever undertaken by the Commonwealth, replacing such current systems such as PMIS and CAPS. Therefore, the Sheriff and the Union agree that HR/CMS shall become the cornerstone of the Commonwealth's payroll and personnel system.
>
> Section 5. Special Payroll Labor-Management Committee. To ensure that any of the changes required under Section 4 are introduced and implemented in the most effective manner, the Union agrees to support the Commonwealth's implementation and accepts such changes to business practices, procedures and functions as are necessary to achieve such implementation (e.g. the change from a weekly to a bi-weekly payroll system). The Commonwealth and the Union will establish a Special Payroll Labor-Management Committee made up of an equal number of Union representatives and Management representatives. This committee shall be the sole forum for the parties to discuss any issues of impact to the bargaining unit arising from the implementation of HR/CMS.
>
> Section 6. Effective July 1, 1999, or on such a later date as may be determined by the Respondent, all employees covered by the terms and conditions of this Collective Bargaining Agreement shall be paid on a bi-weekly basis. Effective July 1, 1999, salary payments shall be electronically forwarded by the Respondent directly to a bank account or accounts selected by the employee for receipt.

Subsequently, by letter dated June 3, 1998, Moschos informed Dwyer that all members of the bargaining unit would be converted to a monthly payroll system with a weekly draw effective July 1, 1998. Moschos's letter stated in pertinent part that:

> This letter is to advise you that effective July 1, 1998, when the County government is taken over by the Commonwealth of Massachusetts, the Jail will become subject to the state rules applicable to the independent state agencies and will be converted to a monthly payroll system, with a weekly draw.

In a memorandum dated June 4, 1998, Deputy Superintendent William E. Frisch advised bargaining unit members that informational meetings had been scheduled for June 8, 1998 regarding the change to a monthly payroll system. At the information sessions on June 8, 1998, employees received a memorandum dated May 1, 1998 from then Secretary of Administration and Finance Charles D. Baker (Baker). Baker's memorandum detailed many aspects of the transition from county to state government and its effect on employees, including the change to the monthly payroll system.

A series of correspondence between Dwyer and Moschos followed Moschos's June 3, 1998 letter. On June 16, 1998, Dwyer wrote to Moschos and explained the Union's position concerning the change to a monthly payroll system:

> This is to acknowledge your letter of June 3, 1998. In light of our lengthy negotiations on the subject of the frequency of employee checks (e.g., weekly to bi-monthly effective after July 1, 1999), in the most recent round of collective bargaining, I am at a loss to understand the import of your letter. The Union has no such agreement to alter the *status quo* until after *July* 1, 1999 and even then, the agreement of payroll for unit employees is to generate checks bi-monthly. Consequently, any alteration of the status quo in employee pay periods and the frequency of payrolls prior to July 1, 1999 is an unlawful unilateral change and a violation of the agreement. I see nothing ... St. 1998 (sic) c. 48 ... governing the abolition of counties that requires this result or otherwise abrogates our agreement. (Emphasis in original)

Moschos responded by letter dated June 19, 1998, reiterating the position that the transition to state government required a monthly payroll, and stating:

---

6. The Respondent asked the Commission to make the following supplemental finding: "The Respondent's bargaining team did not discuss a monthly payroll system with the Union during negotiations because it did not know that the Commonwealth would impose a monthly payroll system upon it when it became an independent state agency." We decline to make this finding. The Respondent's witness testified that there was no discussion of the monthly payroll system at the May 7, 1998 negotiation session because the Respondent's bargaining team was not aware of the possibility of a monthly payroll system. She further testified that the monthly payroll system had never been discussed with the negotiations teams members. However, there is an insufficient foundation to support the proposed finding because this witness did not testify how she knew that other bargaining

> I am writing in response to your letter dated June 16, 1998 regarding the conversion of the County payroll to State monthly payroll system with a weekly draw. As of July 1, 1998, the Jail will be an independent state agency and will be subject to the requirements for an independent state agency, including the monthly payroll system.
>
> Please let me know as soon as possible if MCOFU wants to enter into impact bargaining regarding this payroll change.

Dwyer responded by letter dated June 23, 1998 indicating the Union's unwillingness to renegotiate the agreement: His letter stated in pertinent part that:

> While MCOFU is indeed very interested in impact bargaining, its expression of that interest is limited to *timely* negotiations *if* the employer is free to disregard the current agreement and/or its duty to maintain status quo while we await funding for our collective bargaining agreement. Otherwise not, because we have no desire to renegotiate the agreement.
>
> I have already asked if there is anything contained in St. 1997 c. 48 which you believe requires this conversion but your letter seemingly avoids the question. May I please be advised of the legal basis for your client's position in this matter so that I may evaluate it and respond? I am told that the Sheriff has already convened a meeting with the members where this was presented as a *fait accompli* and we are very concerned about the impacts this will have on employees particularly in light of our discussions on this subject in negotiations for the collective bargaining agreement. (emphasis in original)

By letter dated June 26, 1998, Moschos responded to the Union's request for the legal basis of the Respondent's position that it would become an independent state agency, subject to all applicable rules. His letter stated in pertinent part that:

> Section 5, of Chapter 48 states, "Notwithstanding the provisions of any general or special law to the contrary, all functions, duties and responsibilities of an abolished county pursuant to this act including, but not limited to, the operation and management of the county jail and house of correction, ... are hereby transferred from said county to the commonwealth on the transfer date, subject to the provisions of this act." Thus, in accordance with Chapter 48, effective July 1, 1998, the Jail is an independent state agency and under the rules applicable thereto. This includes operating under the CAPS payroll system which is comprised of a monthly payroll with a weekly draw.
>
> With regard to your concerns relative to the impact this will have on employees, please note that by letter dated June 3, 1998, the Union was notified prior to the employees that the Jail was obligated to convert to a monthly payroll system effective July 1, 1998. The Jail is waiting to negotiate with the Union regarding the impact of this change.

Dwyer responded to Moschos's June 26, 1998 letter disputing the Respondent's interpretation of St.1997 c.48, § 5. By letter dated July 8, 1998, Dwyer stated that:

> While the Sheriff remains an "employer" for the purposes of G.L. c.150E by virtue of Section 14 of C.48 of the Acts of 1997, we have already bargained on this subject and reached an agreement, *viz.*, that the frequency of payrolls/paychecks for unit employees will not be altered until July 1, 1998 at the earliest and even then it will be biweekly, not a monthly payroll system. At no time in our negotiations was a monthly payroll system, or any other system negotiated. I see nothing in C.48 of the Acts of 1997 that allows a "transferor agency" to disregard agreements to which it was bound on the transfer date. On the contrary, the transferor agency's duties to honor existing commitments is restated throughout C.48, including Section 16, which states:
>
> > "Notwithstanding the provisions of any general or special law or rule or regulation to the contrary the Sheriff ... all ... officers and other employees of the Sheriff of an abolished county, employed immediately before the transfer date in the discharge of their responsibilities set forth in ... [G.L. c.37, §16 and C.126] ... shall be transferred to the Commonwealth with no impairment of employment rights held immediately before the transfer date ... Any collective bargaining agreement in effect immediately before the transfer date shall continue in effect and the terms and conditions of employment therein shall continue as if the employee had not been so transferred ..."

Moschos responded by letter dated July 16, 1998, and disagreed with Dwyer's characterization of the Respondent as a "transferor agency" and reiterated the Respondent's position that it had become an independent state agency effective July 1, 1998. Moschos indicated that maintaining a weekly payroll system for Jail employees would be unreasonable and further noted that:

> As happened with Franklin, Hampden and Middlesex counties, Worcester is now subject to the requirements of an independent state agency, which includes its participation in the State's CAPS payroll system. This was not an action initiated by the Sheriff, but has occurred in conjunction with the abolishment of the County.
>
> I note that, the Sheriff's employees are different from State MCOFU employees, who are under the Department of Corrections, which is not an independent state agency.
>
> It would be unreasonable to expect the State to establish a weekly payroll system exclusively for the Jail's employees. Although it may be an inconvenience to the employees who are accustomed to being paid on a weekly basis, it does provide for a weekly draw, and it is only temporary until the State implement the HR/CMS which is expected sometime in 1999.

By letter dated March 22, 1999, Moschos informed Dwyer that the Commonwealth would implement the HR/CMS biweekly payroll system early in 2000, and that the first bi-weekly payroll would be issued April 13, 2000.

There is no evidence that the parties met after May 7, 1998 to bargain over the implementation of the monthly payroll system or any aspect of the collective bargaining agreement.

## Opinion

### *Mootness*

As a threshold issue, we consider the Respondent's argument that this case is moot. The Respondent contends that we should dismiss the allegations in the complaint because the bi-weekly payroll system was implemented in April 2000. The Union disagrees, and argues that the matter is not moot because the manner of payment is a potential future subject of bargaining and because the Respondent has never acknowledged that its conduct violated the Law.

Although a wrongdoer may render a case moot by correcting its action, it must establish that there is no reasonable expectation that the wrong will not be repeated [sic]. *Boston School Committee*, 15 MLC 1541,1546 (1989). In this case, the Respondent provided no assurance that its conduct would not recur, either by admitting to a violation or by establishing that it could not unlawfully change the

employees' payroll system in the future. Consequently, we find that this case is not moot.

*Alleged Unilateral Change*

Public employers may not change a pre-existing condition of employment affecting a mandatory subject of bargaining without providing the exclusive bargaining representative with prior notice and an opportunity to bargain. *Commonwealth of Massachusetts*, 24 MLC 113 (1998). *School Committee of Newton* v. *Labor Relations Commission*, 388 Mass. 557, 564-67 (1983). The bargaining obligation extends to changes in the manner in which an employee's salary is disbursed. *Commonwealth of Massachusetts*, 13 MLC 1645,1648 (1987); *City of Lawrence School Committee*, 3 MLC 1304,1311 (1976). If a third party over which the employer has no control, exercises its authority to change employees' terms and conditions of employment, the public employer may not be required to bargain over the decision to make that change. *Higher Education Coordinating Council*, 22 MLC 1662 (1996). However, even when a public employer is excused from the obligation to bargain over a decision, that employer still has the obligation to bargain with the union regarding any impacts the decision will have on mandatory subjects of bargaining, before its implements the decision. *Town of Dedham*, 21 MLC 1014, 1023 (1994).

In this case, bargaining unit members were paid on a weekly basis prior to July 1, 1998. During the negotiations for the first collective bargaining agreement, the Respondent proposed and the Union agreed to change the payroll system to the HR/CMS bi-weekly payroll system effective July 1, 1999. At the time this change was discussed, the Union's attorney asked the Respondent attorney if the payroll would stay status quo in the interim prior to the bi-weekly implementation and the Respondent's attorney stated that the payroll would remain the same. At no time during the negotiations did the parties discuss converting the payroll system to a monthly system, nor did they subsequently negotiate the conversion to a monthly system. However, one month after the parties concluded their negotiations, the Respondent advised the Union that the Jail would be converted to the CAPS monthly payroll system on July 1, 1998. The Respondent implemented the monthly payroll system in July, 1998.

These undisputed facts demonstrate that the Respondent unilaterally changed the timing of wage disbursements – a mandatory subject of bargaining. However, the Respondent contends that, when the Worcester County government was taken over by the Commonwealth, the Jail became an independent state agency and became subject to the state rules for independent state agencies – rules that include operating under the CAPS monthly payroll system. The Union does not contend that the Sheriff controlled either the conversion from county government to the Commonwealth or the Commonwealth's payroll systems. However, it argues that the takeover legislation does not require conversion to the CAPS payroll system, but rather, preserves the terms and conditions of employment embodied in collective bargaining agreements.[7]

Section 14 of Chapter 48 of the Acts of 1997 provides that the Sheriff shall be considered an employer for the purposes of Chapter 150E. Section 16 provides in pertinent part that employees of the sheriff of an abolished county employed immediately before the transfer date, shall be transferred to the commonwealth with no impairment of employment rights held immediately before the transfer date. It further provides that any collective bargaining agreement in effect immediately before the transfer date shall continue in effect and the terms and conditions of employment therein shall continue as if the employees had not been so transferred. We read this statute to require the Sheriff to preserve the terms of collectively bargained agreements, as well as the terms and conditions of employment enjoyed by bargaining unit employees prior to the transfer date, including the frequency of wage payments. The Respondent presented no evidence that it could not continue to pay the bargaining unit employees on a weekly basis. Indeed, the parties stipulated that temporary correction officers employed by the Respondent continued to receive weekly payments. We do not interpret the applicable legislation to require conversion to the CAPS payroll system and there was no evidence presented demonstrating that presented. Accordingly, we find that the Respondent violated Section 10(a)(5) of the Law by paying bargaining unit employees on a monthly basis between July 1998 and April 14, 2000 without bargaining with the Union to resolution or impasse over the decision to change the frequency of wage disbursements.[8]

*Alleged Repudiation*

To establish that an employer repudiated an agreement, a union must show that the employer deliberately refused to abide by an unambiguous agreement. *See, Boston School Committee*, 22 MLC 1365, 1375 (1996); *City of Quincy*, 17 MLC 1603,1608 (1991). If the evidence is insufficient to find an agreement underlying the matter in dispute, or if the parties hold differing good faith interpretations of the terms of the agreement, the Commission will not find a repudiation. *City of Everett*, 26 MLC 25 (1999).

The issue in Count I of this case is whether the Respondent repudiated an agreement with the Union to continue to pay employees on a weekly basis prior to the conversion to the bi-weekly payroll system on July 1, 1999. The Union argues that the collective bargaining agreement mandates weekly payments until the bi-weekly conversion. It bases its argument on the language in Section 5 describing changes necessary to convert to the bi-weekly system, specifically citing the language that states

> "...the Union agrees to support the Commonwealth's implementation and accepts such changes to business practices, procedures and functions as are necessary to achieve such implementation (*e.g. the change from a weekly to a biweekly payroll system.*)(emphasis supplied)

7. The Union also argued that the Commonwealth is bound to the terms of the agreement because of its intimate involvement in the negotiations. We do not address this argument because we did not issue a complaint against the Commonwealth.

8. We recognize that the facts in this case are unique and that Section 16 imposes an onerous burden on the Sheriff to maintain terms and conditions of employment for employees who have been simultaneously transferred to the Commonwealth.

The fact that the contract does not contain a detailed description of the current practice of weekly payment is not tantamount to ambiguity or silence, the Union argues, because the Respondent's attorney stated during the negotiations that the status quo regarding payroll would remain until the bi-weekly payroll conversion. Conversely, the Respondent argues that there is no repudiation because the agreement is silent on the issue of the payroll system prior to the bi-weekly conversion. It contends that the practice of weekly payment cannot be read into the agreement because the agreement does not contain a past practice clause.

In this case, the evidence is sufficient to establish that the agreement required weekly payment until the bi-weekly payroll system was implemented. Although the language in the agreement does not explicitly preserve weekly payment until the bi-weekly conversion occurred, the practice of weekly payment clarifies the meaning of contractual language and established that the employees were paid weekly. *See City of Quincy*, 17 MLC 1603 (1991)(Commission analyzed payment practices to interpret wage rates in collective bargaining agreement.) Moreover, Moschos's statement to Dwyer that the payroll would remain status quo can be viewed as part of the agreement, even though the statement was not incorporated into the written document. An agreement negotiated within the context of negotiations is enforceable even if the parties did not formally integrate the agreement into the collective bargaining agreement. *See generally*, *Town of Ipswich*, 11 MLC 1403, 1410 (1985), *aff'd sub nom. Town of Ipswich* v. *Labor Relations Commission*, 21 Mass. App. Ct. 1113 (1986)(During negotiations for a successor collective bargaining agreement, parties reached a meeting of the minds on the content of a side letter; thus, Town was required to execute the side letter.) Also, using a "totality of the circumstances" test, it is clear that the continuation of weekly payments was part of the parties' agreement. In *Commonwealth of Massachusetts*, 26 MLC 212 (2000), the Commission relied on the totality of the circumstances to find that the parties agreed to post a certain position as one full-time position rather than as two part-time positions. In that case, the parties did not specifically discuss whether the vacancy would be posted as a full-time position, but their conduct demonstrated that they agreed to repost the notice as a full-time position. Here, as in *Commonwealth of Massachusetts*, the parties' agreement that the employees would be paid weekly until the conversion to the bi-weekly payroll is not described in the agreement in exhaustive detail. However, it is referenced in the agreement, and any ambiguity can be explained by the Respondent's promise at the bargaining table to preserve the payroll status quo.

### Remedy

The parties stipulated that the agreed-upon bi-weekly payroll system went into effect for the payroll period beginning March 26, 2000 and ending April 8, 2000. Although the Union does not seek to have the weekly payroll system reinstated, it does seek interest on the money that was unavailable to unit members on a weekly basis pursuant to the monthly payroll system. Citing *City of Boston*, 17 MLC 1711,1718 (1991) and *Greater New Bedford Infant Toddler Center*, 12 MLC 1131, 1168 (H.O. 1985) *aff'd* 13 MLC 1620 (1987), the Union argues that, because the Respondent's unlawful conduct delayed the employees' receipt of the economic benefits of the new contract, the employees should be made whole for their financial loss by an award of interest. To decline to order an award of interest would allow the Respondent to retain the windfall it has received in the form of interest-free loans on a portion of the employees' pay.

In previous decisions, the Commission has recognized that the requirement to pay interest is an integral part of make whole and *status quo ante* remedies and has noted that to deny interest would give wrongdoers free use of an injured party's finances. *Everett School Committee*, 10 MLC 1069 (1984); *County of Suffolk*, 10 MLC 1102,1103 (1983). The record in this case establishes that, under the monthly payroll system, bargaining unit members were limited to drawing sixty percent of their salary on a weekly basis. In addition, in certain cases, payment of holiday, overtime or shift differential was deferred until the end of the month following the month in which the employee earned the holiday, overtime or shift differential pay. As a result, employees temporarily lost the use of forty percent of their weekly income on each week other than the week they were paid, and temporarily lost the use of earned holiday, overtime and shift differential pay, on weeks where such payment was delayed approximately six weeks. Although the employees eventually received all of the monies to which they were entitled, the Union correctly notes that an interest award is appropriate where the employer's unlawful conduct causes a delay in the employee's receipt of economic benefits. *City of Boston*, 17 MLC 1711 (1991). Accordingly, we hereby order the Respondent to pay interest to the affected employees, at the rate specified in M.G.L. c.231, Section 6B on the money that the Respondent unlawfully withheld pursuant to the monthly payroll system. Specifically, the Respondent must pay interest on forty percent of the employees' weekly pay for all weeks other than the week in which the employees received payment. In addition, we order the Respondent to pay interest on any holiday pay, overtime pay and shift differential paid after the week following the week the employee earned the pay.[9]

### ORDER

WHEREFORE, based on the foregoing, IT IS HEREBY ORDERED that the Worcester County Sheriff's Department shall:

1. Cease and desist from:

   a. Failing and refusing to bargain with the Union over changes in the manner in which bargaining unit members' wages are disbursed.

   b. Repudiating agreements negotiated with the Union regarding the payroll system used to disburse bargaining unit members' wages.

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

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

---

9. The parties are free to negotiate an alternative remedy.

a. Make whole all bargaining unit members represented by the Union who suffered an economic loss as the result of the Respondent's unlawful action by paying interest, at the rate specified in M.G.L. c.231 Section 6B, on whatever portion of employee wages that were not disbursed on a weekly basis.

b. Honor the terms of agreements negotiated with the Union.

c. Upon request, bargain collectively in good faith with the Union, to resolution or impasse, prior to changing any mandatory subject of bargaining, including the frequency of wage disbursements.

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 Worcester County Sheriff's Department (Respondent) has violated Sections 10(a)(5) and (a)(1) of Massachusetts General Laws Chapter 150E, the Public Employee Collective Bargaining Law by repudiating an agreement with the Massachusetts Correction Officers Federated Union (Union) to maintain a weekly payroll system until converting to the HR/CMS bi-weekly payroll system, and by unilaterally changing the frequency of wage disbursements.

WE WILL NOT repudiate agreements negotiated with the Union regarding the payroll system used to disburse bargaining unit members' wages.

WE WILL NOT unilaterally change the frequency of wage disbursements.

WE WILL make whole all bargaining unit members represented by the Union who suffered an economic loss as the result unlawful change in the payroll system by paying interest, at the rate specified in M.G.L. c.231 Section 6B, on whatever portion of employee wages that were not disbursed on a weekly basis.

WE WILL honor the terms of agreements negotiated with the Union.

WE WILL, upon request, bargain collectively in good faith with the Union to resolution or impasse, prior to changing any mandatory subject of bargaining, including the frequency of wage disbursements.

[signed]
For the Worcester County Sheriff's Department

* * * * * *