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1 On November 1, 2016, the Massachusetts Organization of State Engineers and  
2 Scientists (MOSES) filed a charge of prohibited practice (Charge) with the Department of  
3 Labor Relations (DLR) alleging that the Commonwealth had violated Section 10(a)(5)  
4 and, derivatively, Section 10(a)(1) of the Law. On March 7, 2017, a DLR Investigator  
5 conducted an in-person investigation of these allegations. On April 12, 2017, the  
6 Investigator issued a Complaint of Prohibited Practice and Partial Dismissal (Complaint)  
7 alleging that the Commonwealth had violated Section 10(a)(5) and derivatively, Section  
8 10(a)(1) of the Law by unilaterally changing a practice related to employee mileage  
9 reimbursement and by refusing to provide MOSES with information that was relevant and  
10 reasonably necessary to the execution of MOSES' duties as the exclusive bargaining  
11 representative. On April 14, 2017, the Commonwealth filed its Answer to the Complaint.

12 On October 25, 2018, and March 6, 2019, I conducted a hearing during which the  
13 parties received a full opportunity to be heard, to examine and cross-examine witnesses,  
14 and to introduce evidence.<sup>1</sup> On June 5, 2019, the parties filed post-hearing briefs.

#### 15 STIPULATIONS OF FACT

- 16 a. Commonwealth Bargaining Unit 9 is a professional unit representing engineering,  
17 science and related technical and professional titles.  
18  
19 b. The Department of Public Safety was a regulatory, licensing and inspection  
20 agency. The Department was the employer of the positions in question at all times  
21 relevant to this complaint.  
22  
23 c. Since 1977, MOSES and the Commonwealth have been subject to the Unit 9  
24 collective bargaining agreement and successor agreement.  
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<sup>1</sup> At the hearing on October 25, 2018, MOSES withdrew Count II of the Complaint pertaining to the Commonwealth's alleged refusal to provide relevant and reasonably necessary information.

- 1 d. The Department was led by the Commissioner and divided into various units.  
2 Inspectors in the Elevator Division are represented in Commonwealth Bargaining  
3 Unit 2 and, as such, [are] not a subject of this complaint.  
4
- 5 e. Both State Building Inspectors and District Engineering Inspectors are Bargaining  
6 Unit 9 members.  
7
- 8 f. In early April of 2016, the Department drafted a letter regarding mileage  
9 reimbursement and shared it with the Union.  
10
- 11 g. On or about April 21, 2016, DPS issued written notice to all Unit 9 represented  
12 Inspectors of their assignment to district offices. The notice also cited Article  
13 11.1.C and stated that "Employees shall not be reimbursed for commuting between  
14 their home and office or regular work location."  
15
- 16 h. On May 13, 2016, MOSES and DPS met regarding this matter.  
17
- 18 i. On May 26, 2016, O'Reilly requested a follow-up meeting with MOSES. The  
19 parties met on August 30, 2016. On that day, MOSES presented DPS with a  
20 request for information that was a subject matter of this complaint. This information  
21 request was answered in full by the Department on March 7, 2017.  
22
- 23 j. On November 1, 2016, MOSES filed the instant complaint with the Department of  
24 Labor Relations  
25
- 26 k. Effective July 1, 2017, DPS was eliminated in accordance with House Bill #68, filed  
27 on January 25, 2017.  
28

### 29 FINDINGS OF FACT

#### 30 Relevant Provisions of July 1, 2014 – June 30, 2017 Collective Bargaining Agreement

##### 31 Article 11 Employee Expenses

##### 32 Section 11.1

- 33 A. When an employee is authorized to use his/her personal automobile for travel  
34 related to his/her employment he/she shall be reimbursed at the rate of forty  
35 cents per mile.  
36

37 Employees on authorized travel will be reimbursed for parking and tolls.  
38

- 39 B. An employee who travels from his/her home to a temporary assignment  
40 rather than to his/her regularly assigned office shall be allowed transportation  
41 expenses for the distance between his/her home and his/her temporary  
42  
43  
44  
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1 assignment or between his/her regularly assigned office and his/her temporary  
2 assignment whichever is less.

3  
4 C. Employees shall not be reimbursed for commuting between their home and  
5 office or other regular work location. With the approval of the Chief Human  
6 Resources Officer an employee's home may be designated as his/her regular  
7 office by his/her appointing authority for the purposes of allowed transportation  
8 expenses in cases where the employee has no regular office or other work  
9 location.

10  
11 General Background

12 DPS was a regulatory, licensing and inspection agency within the  
13 Commonwealth's Executive Office of Public Safety and Security whose employees within  
14 its Division of Inspection included State Building Inspectors and District Engineering  
15 Inspectors (collectively Inspectors).<sup>2</sup> Every Inspector is assigned to a geographical  
16 district within the Commonwealth. Additionally, every Inspector has an assigned office.<sup>3</sup>  
17 The job duties of both positions, however, require regular, often daily travel between job  
18 sites within, and sometimes outside of, the Inspector's assigned geographical district.  
19 When Inspectors are not on the road, they are expected to be at their assigned office.

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<sup>2</sup> Effective March 27, 2017, the State Building Inspectors were transferred to the Division of Professional Licensure and the District Engineering Inspectors were transferred to the Department of Fire Services. The transfers are not relevant to resolving this dispute because, pursuant to a Memorandum of Understanding, both categories of Inspectors remained covered by the parties' collective bargaining agreement.

<sup>3</sup> Gordon Bailey (Bailey), a State Building Inspector assigned to District 1, which includes sixty-three towns in western Massachusetts, began working at DPS in 1996. A current MOSES steward, he has also previously served stints as a MOSES steward and trustee. Bailey testified on direct examination that the State Building Inspectors have assigned offices. Bailey's assigned office is in Springfield, which is outside his geographical district, and he does not go there "until I really have to." Further, Penny O'Reilly, DPS' HR Director during the events at issue in this matter, testified without contradiction that Inspectors are notified of their assigned office at their time of hire.

1       Some Inspectors use a state vehicle for travel; others use a personal vehicle.  
2       Inspectors who use their personal vehicle for travel receive mileage reimbursement  
3       pursuant to the parties' collective bargaining agreement (CBA). To claim mileage, an  
4       Inspector fills out and signs a mileage reimbursement form. A supervisor then approves  
5       the form. After the supervisor approves the form, it is reviewed for fiscal verification before  
6       going to upper management for a third level of review. During the events at issue in this  
7       matter, Brenda Newman (Newman), who started at DPS in January 2016, was an  
8       Accountant III responsible for the fiscal verification of the Inspectors' mileage  
9       reimbursement forms.

10       Penny O'Reilly (O'Reilly) became Director of Human Resources for DPS in  
11       January 2016. Early in her tenure at DPS, O'Reilly learned that inconsistencies existed  
12       regarding how some Inspectors were calculating the mileage they claimed for  
13       reimbursement.<sup>4</sup> Some Inspectors claimed all daily mileage that they put on their vehicle  
14       from leaving home in the morning to returning home at the end of the day and others  
15       claimed mileage pursuant to Article 11, Section 11.1 of the CBA. Colloquially, that is  
16       "door to door" in the case of the former and "lesser of" in the case of the latter. For years,  
17       DPS had been approving, and paying, mileage both ways.

#### 18       Claimed Mileage Expenses

##### 19       State Building Inspectors

20       Ralph Cirelli III (Cirelli) was a Supervisor of State Building Inspectors for  
21       approximately ten years until he retired in or around March 2015. Cirelli reported to the

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<sup>4</sup> Newman discovered this issue in early 2016. She brought it to the attention of DPS' Chief Financial Officer, who informed O'Reilly.

1 Chief of Inspections, who reported to the Commissioner. As a supervisor, Cirelli signed  
2 monthly travel reimbursement forms for State Building Inspectors who used their personal  
3 vehicles for travel. For the approximately ten years that he was a supervisor, he signed  
4 travel reimbursement forms that listed the State Building Inspector's home as the start  
5 and end point for each day of travel, i.e. door to door. In January 2016, Jeffrey Putnam  
6 (Putman) became the Supervisor of State Building Inspectors.

7 On March 8, 2016, Putnam signed off on the February 2016 travel reimbursement  
8 form of John Jarvis (Jarvis), a State Building Inspector. On March 9, 2016, Newman  
9 approved this form. In February 2016, Jarvis claimed mileage door to door.<sup>5</sup>

10 On February 9, 2016, Putnam signed off on the January 2016 travel  
11 reimbursement form of Paul Di Chiara (Di Chiara), a State Building Inspector. On  
12 February 10, 2016, Newman approved this form. In January 2016, Di Chiara's assigned  
13 office was in Milford.<sup>6</sup> In January 2016, Di Chiara claimed mileage door to door, including  
14 his regular commute to and from his home to his office in Milford.<sup>7</sup>

15 District Engineering Inspectors

16 Daniel Kilburn (Kilburn) began working at DPS in 2012 as a District Engineering  
17 Inspector, and he has been a Supervisor of District Engineering Inspectors since 2013.

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<sup>5</sup> MOSES also submitted Jarvis' March 2016 travel reimbursement form. The record does not identify the location of Jarvis' assigned office, but he regularly claimed mileage to and from his home to the Tewksbury DPS office.

<sup>6</sup> Putnam, the Supervisor of State Building Inspectors, testified to this fact.

<sup>7</sup> MOSES also submitted Di Chiara's November and December 2015 travel reimbursement forms, which Putnam's predecessor signed off on, and his February 2016 travel reimbursement form, which Putnam signed.

1 Henry Geryk (Geryk) began working at DPS in 1985, worked as a District Engineering  
2 Inspector, and has been a Supervisor of District Engineering Inspectors since 2015.<sup>8</sup> As  
3 supervisors, both have responsibility for reviewing and signing off on District Engineering  
4 Inspectors' travel reimbursement forms.

5 On February 5, 2016, Kilburn signed off on the January 2016 travel reimbursement  
6 form of Francis Bucchiere (Bucchiere), a District Engineering Inspector. On February 5,  
7 2016, Newman approved this form. In January 2016, Bucchiere claimed mileage door to  
8 door.<sup>9</sup>

9 On March 4, 2016, Kilburn signed off on the February 2016 travel reimbursement  
10 form of Brian E. Logan (Logan), a District Engineering Inspector. On March 7, 2016,  
11 Newman approved this form. In February 2016, Logan claimed mileage door to door.<sup>10</sup>

12 On January 30, 2016, Kilburn signed off on the January 2016 travel reimbursement  
13 form of Allen Boston (Boston), a District Engineering Inspector. In January 2016, Boston  
14 claimed mileage door to door.<sup>11</sup>

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<sup>8</sup> While a District Engineering Inspector, Geryk had an assigned office and he always claimed mileage according to the lesser of formula.

<sup>9</sup> MOSES also submitted Bucchiere's February and March 2016 travel reimbursement forms. The record does not identify the location of Bucchiere's assigned office.

<sup>10</sup> MOSES also submitted Logan's March 2016 travel reimbursement form. The record does not identify the location of Logan's assigned office, but he claimed mileage to and from his home to both the Tewksbury DPS office and the Milford DPS office.

<sup>11</sup> Newman's signature is missing from this form because the first page is not in the record. MOSES also submitted Boston's February and March 2016 travel reimbursement forms. The record does not identify the location of Boston's assigned office, but he regularly claimed mileage to and from his home to the Tewksbury DPS office. He also claimed mileage to the Milford DPS office.

1 In March and April 2016, Craig Kimball (Kimball), a District Engineering Inspector  
2 assigned to the Tewksbury DPS office, claimed mileage according to the lesser of  
3 formula, using his office rather than his home address for his starting and ending location.  
4 Geryk signed off on these forms and Newman approved them. Additionally, in February  
5 and April 2016, Geoffrey Winn (Winn), a District Engineering Inspector assigned to the  
6 Tewksbury DPS office, claimed mileage according to the lesser of formula. Kilburn signed  
7 off on these forms and Newman approved them.

8 April and May 2016

9 After meeting internally between the end of February and the beginning of March,  
10 management at DPS determined to correct what it perceived to be a failure to comply  
11 with the applicable contract language regarding mileage reimbursement. In or around  
12 mid-April, MOSES and DPS met to discuss the mileage reimbursement issue. At this  
13 meeting, DPS informed MOSES that it intended to comply with Article 11, Section 11.1 of  
14 the CBA; but the parties interpreted that article differently.<sup>12</sup> Additionally, MOSES took  
15 the position that Article 11, Section 11.1 did not apply to the Inspectors because they did  
16 not have assigned offices. The parties did not reach any agreement.

17 On or around April 21, 2016, O'Reilly issued letters to the Inspectors. A  
18 representative letter states:<sup>13</sup>

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<sup>12</sup> Michelle Gates (Gates), then MOSES' Associate Counsel, testified that at this meeting DPS took the position that for Inspectors who travelled from their home to their first inspection, DPS planned to deduct the mileage from the Inspector's home to his or her assigned office. Gates did not testify that DPS informed her of any implementation date at this meeting.

<sup>13</sup> The parties jointly submitted a letter from April 21, 2016, and the Union submitted an additional, nearly identical letter from April 22, 2016. The parties agreed that these letters accurately represent the letter that each Inspector received, except that each letter



1 RE: Confirmation of District Office Assignment, Approved Work Hours and  
2 Commuting Reimbursement.

3  
4 Dear Mr. [Redacted]

5  
6 This is to notify you that effective May 9, 2016 you are assigned to the Springfield  
7 District Office. Your approved work hours are 7:00am – 3:30pm (Monday through  
8 Friday).

9  
10 In addition, please be advised that effective May 9, 2016, the Department will  
11 process mileage reimbursement requests in accordance with the language agreed  
12 upon in Article 11, Section 1 C of the Collective Bargaining Agreement. Article 11,  
13 Section 1 C states in part, "Employees shall not be reimbursed for commuting  
14 between their home and office or other regular work location."

15  
16 O'Reilly believed that due to lingering confusion related to mileage reimbursement,  
17 the issue required further clarification. Accordingly, by email to the Inspectors on May 5,  
18 2016, regarding "Clarification for Monday, May 9, 2016," O'Reilly wrote:

19 For clarification purposes, effective Monday, May 9, 2016 inspectors are not  
20 required to report to their assigned work locations if their first inspection/work  
21 assignment is closer to their home, rather than their assigned work location.

22  
23 Calculation of mileage reimbursement will begin from their assigned work location  
24 or their first inspection/work assignment.

25  
26 We understand there are several concerns regarding work locations, schedules  
27 and vehicles, we will be dealing with these issues on individual bases.<sup>14</sup>

28  
29 On or around May 13, 2016, the parties met for a second time to attempt to resolve  
30 their dispute.<sup>15</sup> At this meeting, DPS informed MOSES that it was moving forward with

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identified the individual recipient's assigned office and work schedule. O'Reilly testified that some of the Inspectors either did not know, or claimed not to know, the location of their assigned office. DPS did not change the location of any assigned offices.

<sup>14</sup> In its brief, the Commonwealth acknowledges that implementation did in fact occur on May 9, 2016, by stating that on this date the Commonwealth "brought everyone in line with the contractual language."

<sup>15</sup> Either at this meeting, or the day prior to this meeting, Gates filed two grievances, dated May 12, 2016, on behalf of MOSES. One alleged a violation of Article 11 of the parties'

1 calculating mileage in accordance with its interpretation of the CBA, and MOSES again  
2 took the position that Article 11, Section 11.1 did not apply to the Inspectors because they  
3 did not have assigned offices. The parties reached no agreement at this meeting.  
4 Additionally, by letter hand-delivered to DPS at a third meeting and dated August 29,  
5 2016, Gates requested certain information related to the two May 12, 2016 grievances.<sup>16</sup>

6 By email to Gates on September 2, 2016, O'Reilly forwarded a draft Memorandum  
7 of Understanding (Draft MOU) regarding mileage reimbursement. This Draft MOU states,  
8 at Paragraph 3:

9 If an Inspector opts to report directly to their first work assignment from their home  
10 instead of leaving from their office, the Inspector will deduct their regular  
11 commuting miles from their home to their office and will be reimbursed the  
12 difference.<sup>17</sup>  
13

14 By email to O'Reilly on September 6, 2016, Gates responded:

15 I received the recall notices on this draft MOU and so am assuming (especially  
16 since this policy change was already implemented and grieved approximately four  
17 months ago), that you sent this MOU in error. If that is not the case, I will just  
18 reiterate my statement from the meeting last week that MOSES cannot and will not  
19 amend article 11 of the collective bargaining agreement in mid-term bargaining

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CBA related to "failing to properly reimburse grievants for mileage expenses;" and a second alleged violations of Article 7 and 11 of the parties' CBA related to improper changes to work hours and schedules. The record does not establish the status of these grievances.

<sup>16</sup> The parties stipulated that this meeting occurred on August 30, 2016.

<sup>17</sup> At the hearing, the Commonwealth, after requesting a recess to consider its position on this document, did not object to this proposed offer of settlement entering into evidence. Both Gates and O'Reilly testified that this proposed offer of settlement did not materially differ from DPS' position at the parties' first meeting on how to calculate mileage under Article 11, Section 11.1 of the CBA. Accordingly, I rely on it as evidence of the change that DPS implemented, not as evidence of a potential settlement.

1 with DPS. Any such revisions must be negotiated at Main Table bargaining with  
2 HRD.<sup>18</sup>

3  
4 Upon being transferred to the Department of Fire Services, some District  
5 Engineering Inspectors still used private vehicles. Those that used their private vehicles  
6 received reimbursement from their office or their first inspection site and did not receive  
7 compensation according to the lesser of formula.<sup>19</sup> As of January 2018, all District  
8 Engineering Inspectors have access to a state vehicle.

9 OPINION

10 The issue is whether the Commonwealth, acting through DPS, violated the Law by  
11 unilaterally changing employee mileage reimbursement for transportation related  
12 expenses. For the following reasons, I find that the Commonwealth violated the Law.

13 Timeliness

14 Preliminarily, I address the Commonwealth's argument that the Charge is untimely.  
15 Section 15.04 of the DLR's Rules and Regulations, 456 CMR 15.04, states: "Except for  
16 good cause shown, no charge shall be entertained by the Department based upon any  
17 prohibited practice occurring more than six months prior to the filing of a charge with the  
18 Department." A charge of prohibited practice must be filed with the DLR within six months  
19 of the alleged violation or within six months from the date that the violation became known  
20 or should have become known to the charging party. Felton v. Labor Relations  
21 Commission, 33 Mass. App. Ct. 926 (1992); Town of Lenox, 29 MLC 51, MUP-01-3214,  
22 MUP-01-3215 (September 5, 2002) (citing Town of Dennis, 26 MLC 203, MUP-1868 (April

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<sup>18</sup> O'Reilly testified on cross-examination that she did not intend to recall this proposed MOU.

<sup>19</sup> Geryk, a Commonwealth witness, testified to this fact.

21, 2000)). It is well-established that the six-month limitation period begins to run when the party adversely affected receives actual or constructive notice of the conduct alleged to be an unfair labor practice. Id. (citing Wakefield School Committee, 27 MLC 9, MUP-2441 (August 16, 2000)). In unilateral change cases, the timeliness of a charge turns on when the union knew or should have known that the employer would implement a change affecting a mandatory subject of bargaining without satisfying its Section 6 bargaining obligation. Town of East Bridgewater, 38 MLC 164, 166, MUP-07D-5095, MUP-07D-5115 (January 13, 2012).

Here, on May 5, 2016, DPS notified every Inspector that implementation of a change would occur on May 9, 2016.<sup>20</sup> MOSES filed the Charge on November 1, 2016, within six months of both the notice and the implementation date. The Charge is therefore timely.

### Unilateral Change

A public employer violates Section 10(a)(5) of the Law when it implements a change in a mandatory subject of bargaining without first providing its employees' exclusive collective bargaining representative with notice and an opportunity to bargain. School Committee of Newton v. Labor Relations Commission, 388 Mass. 557, 572 (1983). The duty to bargain extends to both conditions of employment established through past practice and to conditions of employment established through a collective bargaining agreement. Commonwealth of Massachusetts, 27 MLC 1, 5, SUP-4304 (June 30, 2000). To establish a unilateral change violation, the charging party must show that:

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<sup>20</sup> Although the April 21 and 22 letters reference the May 9, 2016 date, they do not contain any language to indicate that DPS will implement a method of calculating mileage reimbursement that deviates from and conflicts with Article 11, Section 11.1 of the CBA.

1 1) the employer altered an existing practice or implemented a new one; 2) the change  
2 affected a mandatory subject of bargaining; and 3) the change was implemented without  
3 prior notice and an opportunity to bargain. Town of Lexington, 37 MLC 115, 119, MUP-  
4 08-5313 (December 9, 2010); Commonwealth of Massachusetts, 20 MLC 1545, 1552,  
5 SUP-3460 (May 13, 1994).

6 Employer Altered a Condition of Employment

7 MOSES argues that a binding past practice existed of DPS allowing Inspectors to  
8 claim mileage door to door. According to MOSES, Article 11, Section 11.1 is ambiguous  
9 and does not apply to Inspectors because they have no assigned offices. The  
10 Commonwealth argues that no change occurred because DPS simply enforced the clear  
11 and unambiguous language of Article 11, Section 11.1, which is binding on the Inspectors.  
12 I disagree with both positions.

13 Article 11, Section 11.1 is clear and unambiguous. Section 11.1(B) clearly and  
14 unambiguously provides for the so-called lesser of rule: An employee who travels from  
15 his/her home to a temporary assignment rather than his/her regularly assigned office shall  
16 receive transportation expenses for the distance between his/her home and his/her  
17 temporary assignment or between his/her regularly assigned office and his/her temporary  
18 assignment, whichever is less. Section 11.1(C) clearly and unambiguously provides that  
19 employees shall not be reimbursed for commuting between their home and office or other  
20 regular work location.

21 Contrary to MOSES' factually unsupported argument, the evidence in the record  
22 unequivocally demonstrates that the Inspectors have assigned offices, and Section 11.1  
23 contains no language that suggests it does not apply to the Inspectors. Even if the

1 Inspectors did not have assigned offices, Section 11.1(C) provides for this possibility by  
2 allowing the employee to seek approval to have the employee's home designated as  
3 his/her regular office. The record contains no evidence that any Inspector ever sought  
4 such a designation.

5 The door to door formula that some Inspectors have used to claim mileage directly  
6 conflicts with Sections 11.1(B) and 11.1(C) because it ignores the lesser of formula and  
7 because it allows for the Inspectors to claim mileage to and from their home to their  
8 assigned office, as occurred repeatedly in the case of, at a minimum, Di Chiara's claimed  
9 expenses. The Commonwealth Employment Relations Board (CERB) has stated that a  
10 past practice cannot overcome explicit contract language. City of Somerville, 44 MLC  
11 123, 125, MUP-16-5023 (January 30, 2018). Accordingly, MOSES' argument that the  
12 door to door formula is binding on the Commonwealth must fail in the face of the clear,  
13 explicit provisions of Section 11.1 that provide to the contrary.

14 In its efforts to correct mileage reimbursements, however, the Commonwealth has  
15 implemented a change that also conflicts with Section 11.1. The May 5, 2016 email  
16 provides that, effective May 9, 2016, "Calculation of mileage reimbursement will begin  
17 from their assigned work location or their first inspection/work assignment." This scheme  
18 deviates from the lesser of formula provided in Section 11.1(B). Under the parties' CBA,  
19 the Inspectors are entitled to expenses either from their assigned office to the first  
20 inspection or their home to the first inspection, whichever is less. By limiting the  
21 calculation of mileage reimbursement to the assigned office or the first inspection, the

1 Commonwealth has deviated from the lesser of formula and implemented a change to a  
2 condition of employment established through the parties' CBA.<sup>21</sup>

3 Mandatory Subject of Bargaining

4 Mileage reimbursement is a wage enhancement and therefore a mandatory  
5 subject of bargaining. See City of Springfield, 11 MLC 1142, 1151, MUP-5448 (H.O.  
6 September 6, 1984).

7 Notice and Opportunity to Bargain to Resolution or Impasse

8 The parties met once to discuss the issue of mileage reimbursement prior to the  
9 Commonwealth notifying the Inspectors on May 5, 2016, that it would implement a mid-  
10 term change on May 9, 2016, to the lesser of formula contained in Article 11, Section 11.1  
11 of the parties' CBA. Accordingly, the Commonwealth implemented a change to a  
12 mandatory subject of bargaining without bargaining to resolution or impasse in violation  
13 of the Law.

14 CONCLUSION

15 The Commonwealth violated Section 10(a)(5) and, derivatively, Section 10(a)(1)  
16 of the Law when it implemented a change to the parties' contractually agreed upon  
17 method of calculating mileage reimbursement.

18 ORDER

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<sup>21</sup> The method of calculation described in the September 2, 2016 Draft MOU, which O'Reilly described as consistent with DPS' initial position, also conflicts with the lesser of formula contained in the parties' CBA. Deducting "their regular commuting miles from their home to their office" outright nullifies any mileage reimbursement for an Inspector travelling to an assignment closer to the Inspector's home than the Inspector's assigned office.

1 WHEREFORE, based upon the foregoing, IT IS HEREBY ORDERED that the  
2 Commonwealth shall:

3 1. Cease and desist from:

- 4  
5 a. Unilaterally imposing a mileage reimbursement policy that deviates from and  
6 conflicts with the "lesser of" mileage reimbursement policy contained in Article  
7 11, Section 11.1(B) of the parties' 2014-2017 CBA.

8  
9 2. Take the following affirmative action that will effectuate the purposes of the Law:

- 10  
11 a. Rescind the unilateral imposition of a mileage reimbursement policy that  
12 deviates from and conflicts with the "lesser of" mileage reimbursement formula  
13 contained in Article 11, Section 11.1(B) of the parties' 2014-2017 CBA.  
14  
15 b. Make whole every State Building Inspector and District Engineering Inspector  
16 who was entitled to, but did not receive, after May 9, 2016, mileage  
17 reimbursement in accordance with the "lesser of" formula contained in Article  
18 11, Section 11.1(B) of the parties' 2014-2017 CBA. The Commonwealth's  
19 obligation to make Inspectors whole includes the obligation to pay interest on  
20 all monies owed at the rate specified in M.G.L. c. 231, Section 6I, compounded  
21 quarterly.  
22  
23 c. Post immediately in all conspicuous places where members of MOSES'  
24 bargaining unit usually congregate, or where notices are usually posted,  
25 including electronically if the Commonwealth customarily communicates with  
26 these members via intranet or email, and display for a period of thirty (30) days  
27 thereafter, signed copies of the attached Notice to Employees.  
28  
29 d. Notify the DLR in writing of steps taken to comply with this Order within ten (10)  
30 days of receipt.  
31

32 SO ORDERED.

COMMONWEALTH OF MASSACHUSETTS  
DEPARTMENT OF LABOR RELATIONS

  
\_\_\_\_\_  
JAMES SUNKENBERG, ESQ.  
HEARING OFFICER



APPEAL RIGHTS

The parties are advised of their right, pursuant to M.G.L. c.150E, Section 11 and 456 CMR 13.19, to request a review of this decision by the Commonwealth Employment Relations Board by filing a Notice of Appeal with the Department of Labor Relations not later than ten days after receiving notice of this decision. If a Notice of Appeal is not filed within ten days, this decision shall become final and binding on the parties.



# NOTICE TO EMPLOYEES

POSTED BY ORDER OF A HEARING OFFICER OF  
THE MASSACHUSETTS DEPARTMENT OF LABOR RELATIONS  
AN AGENCY OF THE COMMONWEALTH OF MASSACHUSETTS

A hearing officer of the Massachusetts Department of Labor Relations (DLR) has held that the Commonwealth of Massachusetts (Commonwealth) violated Section 10(a)(5) and, derivatively, Section 10(a)(1) of Massachusetts General Laws, Chapter 150E (the Law) by unilaterally changing the method of calculating mileage reimbursement contained in the 2014-2017 collective bargaining agreement (CBA) between the Massachusetts Organization of State Engineers and Scientists and the former Department of Public Safety.

Section 2 of the Law gives public employees the right to engage in self-organization; to form, join or assist any union; to bargain collectively through representatives of their choosing; to act together for the purpose of collective bargaining or other mutual aid or protection; and to refrain from all the above.

WE WILL NOT unilaterally implement a mileage reimbursement policy that deviates from and conflicts with the mileage reimbursement policy contained in the 2014- 2017 CBA.

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

WE WILL rescind the unilateral implementation of a mileage reimbursement policy that deviates from and conflicts with the formula contained in Article 11, Section 11.1 of the 2014-2017 CBA.

WE WILL make all State Building Inspectors and District Engineering Inspectors whole for any loss of appropriate mileage reimbursement they suffered on or after May 9, 2016, as a result of the Commonwealth's unlawful implementation of a reimbursement policy that deviates from and conflicts with the 2014-2017 CBA.

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Commonwealth of Massachusetts

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Date

**THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED OR REMOVED**

This notice must remain posted for 30 consecutive days from the date of posting and must not be altered, defaced, or covered by any other material. Any questions concerning this notice or compliance with its provisions may be directed to the Department of Labor Relations, 19 Staniford Street, 1<sup>st</sup> Floor, Boston, MA 02114 (Telephone: (617) 626-7132).