



COMMONWEALTH OF MASSACHUSETTS  
 DIVISION OF LABOR RELATIONS  
 CHARGE OF PROHIBITED PRACTICE  
 M.G.L.c.150E

DO NOT WRITE IN THIS  
 SPACE

Case No. \_\_\_\_\_ Date Filed \_\_\_\_\_

50P-11-1362 | 11-16-11

INSTRUCTION: Answer all applicable questions. Failing to provide information may result in the dismissal of the charge. File an original and two (2) copies of this form with the Division.

|  |   |                                     |
|--|---|-------------------------------------|
| 1. Employer<br>Comm. of Mass. ANF/DDS and DMH  | 2. Representative to Contact<br>Atty. John Marra, ANF/HRD | 4. Telephone Number<br>617 878 9787 |
| 3. Address (street and No., city/town, state, and ZIP code)<br>One Ashburton Place, Boston, MA 02108 |   | 5. Fax Number<br>617 727 1477       |
| 6. Employee Organization (if any)<br>Alliance/AFSCME Concil 93                                       | 7. Representative to contract<br>Atty. Joseph L. DeLorey  | 9. Telephone Number<br>617 367 6024 |
| 8. Address (street and No., city/town, state, and ZIP code)<br>8 Beacon St., Boston, MA 02108        |   | 10. Fax Number<br>617 742 7666      |

11. This charge is filed against (check one)  
 Employer  Employee Organization

12. The above named employer or employee organization has engaged or is engaging in a prohibited practice within the meaning of Massachusetts General Law, Chapter 150E, Section(s) (enter all appropriate sections/subsections) 10 (a) (5) and (1)

*Failing to specify an appropriate section/subsection may result in the dismissal of the charge*

13. Summary of basis of Charge (be specific as to names, dates, addresses, etc)  
 see attached

By these and other acts, the party complained of has interfered with, restrained, and/or coerced rights guaranteed by the Law.

14. Have you filed a charge concerning the same allegation with the National Labor Relations Board?  Yes  No

15. (a) Is there a collective bargaining agreement that may apply to the conduct that is alleged to violate the Law? YES  NO

(b) If you checked "Yes" in question 15 (a), please list all of the clauses alleged to apply and attach a copy of each.

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(c) Is there a grievance concerning this matter pending? YES  NO

16. Without limiting your rights to later amend your remedial request, please explain what remedy you seek. Include the amount of any financial remedy to which you claim entitlement:  
see attached

17. Have you attempted to settle this case? YES  NO   
If not, why not? see attached

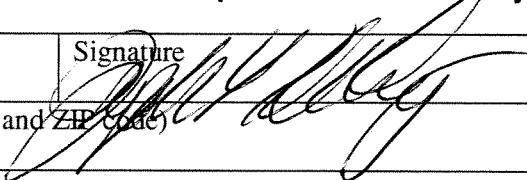
*Note: The Division may decline to issue a complaint unless reasonable settlement efforts have been made by the charging party. 456 CMR 15.04 (1)*

### INFORMATION ON CHARGING PARTY

|   |  |                                      |
|---|--|--------------------------------------|
| 18. Name<br>Alliance, AFSCME-SEIU   | 19. Representative to contact<br>Atty. Joseph L. DeLorey | 21. Telephone Number<br>617 367 6024 |
| 20. Address (street and No., city/town, state, and ZIP code)<br>8 Beacon St., Boston, MA 02108  |  | 22. Fax Number<br>617 742 7666       |
| 23. The Charging Party is an :<br><input type="checkbox"/> Individual <input checked="" type="checkbox"/> Employee Organization <input type="checkbox"/> Employer |  |                                      |

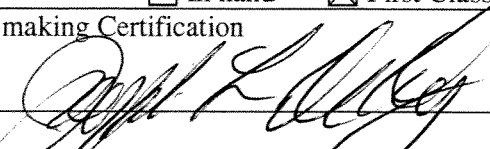
### DECLARATION

**I have read the above charge of prohibited practice and swear under the pains and penalties of perjury that the information contained in it is true and complete to the best of my knowledge and belief.**

|  |   |                                   |
|--|---|-----------------------------------|
| Name (print)<br>Atty. Joseph L. DeLorey  | Signature<br> | Title (if any)<br>General Counsel |
| Address (street and no., city/town, state, and ZIP code)<br>8 Beacon St., Boston, MA 02108 |   | Telephone Number<br>617 367 6024  |

### CERTIFICATE OF SERVICE

**I hereby certify that I have served a copy of this Charge of Prohibited Practice on the following representative of the opposing party:**

|  |   |                                  |
|--|---|----------------------------------|
| Name<br>Atty. John Marra, ANF/HRD  | Address (street and no., city/town, state, and ZIP code)<br>1 Ashburton Place, Boston, MA 02108 | Telephone Number<br>617 878 9787 |
| Method of Service<br><input type="checkbox"/> In hand <input checked="" type="checkbox"/> First Class Mail <input type="checkbox"/> Other (specify): |   |                                  |
| Signature of Person making Certification<br>                      |   | Telephone Number<br>617 367 6024 |

The Division does not discriminate on the basis of disability in access to its services. Inquiries, complaints or requests, including requests for auxiliary aids and information regarding access features should be directed to the ADA Coordinator (617) 626-7132. This document is available in alternative formats.

Box. 13

1. The Charging Party and the Employer are parties to a collective bargaining Agreement that provides, in Article 30, Section 2 that the parties agree to reopen negotiations as a reflection of the parties' shared interest of recognizing the value of the MAP (Medication Administration Program) certification program.

2. The agreement also provides the negotiations shall be conducted for the sole purpose of determining whether and how additional compensation for MAP practitioners shall be made available, and if such compensation shall be made available, the effective date of any increase.

3. At a May 20, 2011 bargaining session conducted pursuant to that language, the Chief Spokesperson for the Commonwealth was Ms Cheryl Malone of the OER. Among the other members of her management team was Mr. Jon Platt, representing the EOHHS, the secretariat within which the departments that employ MAP practitioners are contained.

4. In response to the interest expressed by the Union in reaching agreement on a dollar amount for additional compensation for MAP practitioners, the management representatives presented a rough idea of the costs of certain adjustments (\$.50 per hours, \$. 75 per hour, and \$1.00 per hour), and stated there was no ability on the part of the employer to meet those fiscal obligations.

5. In response to a question for the undersigned as to whether there were any added factors or concerns that would prevent the Employer from agreeing to additional compensation for MAP practitioners, Mr. Platt stated the employer was concerned that an increase to the MAP practitioners would enlarge the gap between the state employed MAP practitioners and those who performed similar service for the employer as employees of vendors with whom the Employer contracts.

The Charging Party alleges that by having engaged in the conduct described in paragraphs 4 and 5 above, the Employer has violated Section 10 (a) (5) and (1) of the Act and has bargained in bad faith.

Count 1 - The Commonwealth does not suffer from an inability to absorb the cost of additional compensation for MAP practitioners (see par. 4). In a recent agreement to revise and extend the above referenced CBA, the Charging Party agreed to forego approximately \$4.5 million worth of retroactive salary adjustments for Fiscal Year 2011 and another \$4.5 million worth of retroactive salary adjustments for Fiscal year 2012. These unexpended funds would have certainly provided and could certainly provide sufficient source of additional compensation for MAP practitioners. The Commonwealth's lack of ability to pay position is unfounded and indicative of bad faith.

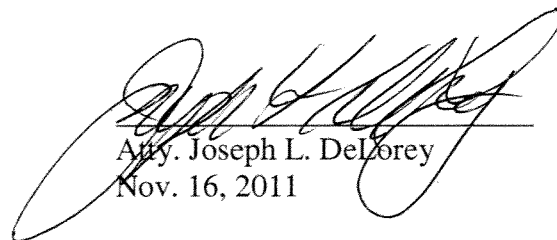
Count 2 – The Employer's introduction of its concerns about whether additional compensation for MAP practitioners would "enlarge the gap" places illegitimate pressure upon the collective bargaining process by forcing both parties to take into account the compensation requirements of persons other than those in the instant unit. Such a position is indicative of bad faith.

Box. 16 and 17

The Charging Party reserves the right to amend this remedial request, and at present, seeks a declaration that the complained of conduct violated the Act as alleged. It is further requested the Division issue such added relief as would be meet and just and would further the purposes of the Act.

The Charging Party suggests this matter may well lend itself to the assignment of a mediator at this juncture, and requests same.

Signed under the penalties of perjury,

  
Atty. Joseph L. DeLorey  
Nov. 16, 2011

COMMONWEALTH OF MASSACHUSETTS  
DEPARTMENT OF LABOR RELATIONS

Case No.: SUP-11-1362

AFSCME, COUNCIL 93,

Charging Party,

and

COMMONWEALTH OF MASSACHUSETTS,  
Department of Developmental Services  
Department of Mental Health

Respondent.

**RESPONDENT'S RESPONSE**

The American Federation of State, County, and Municipal Employees (hereinafter "Union") has alleged that the Commonwealth of Massachusetts (hereinafter "Respondent") has violated Massachusetts General Laws Ch. 150E, §§ 10(a)(1) and 10(a)(5) (hereinafter "Law") by allegedly bargaining in bad faith regarding the Medication Administration Program ("MAP") on May 20, 2011. Specifically, the Union alleges that the Commonwealth bargained in bad faith when, during a negotiation session, it expressed one department's concern regarding the increased compensation disparity between Commonwealth employees and service provider community employees that do the same work if additional compensation was given to Commonwealth employees who are MAP certified. The Respondent denies the Charging Party's allegations and respectfully requests that the present Charge be dismissed. The Respondent submits the following Response in support of the dismissal of the above-captioned Charge:

## STATEMENT OF FACTS

1. The Charging Party is an employee organization within the meaning of Section 1 of the Law and is the bargaining agent and representative of employees of the Commonwealth in job titles in Unit 2 certified by the Department of Labor Relations.
2. The Respondent is the public employer of the employees described at Paragraph 1, *supra*, within the meaning of Section 1 of the Law.
3. The Union and the Respondent are covered by a collective bargaining agreement (“Agreement”) for the period of July 1, 2009 to June 30, 2012. A true and correct copy of which is attached hereto and incorporated herein as Exhibit A.
4. The Medication Administration Program (MAP) is regulated and overseen by the Department of Public Health and provides training and certification to non-nursing direct service staff of the Department of Developmental Services and Department of Mental Health who work in community residences to dispense medication to individuals residing in these homes. See Affidavit of Cheryl Malone, ¶ 4 attached hereto and incorporated as Exhibit B.
5. Individuals in the Developmental Service Worker (DSW) job series employed for the Department of Developmental Services who work in the community homes and individuals in the Mental Health Worker (MHW) job series employed for the Department of Mental Health in the community participate in the MAP program. Id. at ¶ 5.
6. Article 30, Section 2 of the parties’ collective bargaining agreement provides in full,

In the course of bargaining for this successor agreement, the parties have acknowledged a shared interest in recognizing the value of the MAP certification program to Commonwealth agencies, clients, and consumers. The parties have also recognized that extremely difficult fiscal circumstances have precluded the prospect for applying specific additional compensation to employees administering medication under the MAP program. In this light, the parties agree to reopen negotiations concerning this specific matter on or after November 15, 2010. Such negotiations will focus only on the MAP program, and will be conducted with the sole purpose of determining whether and how additional compensation for MAP practitioners shall be made available, and if such compensation shall be made available, the effective date of increase.

See Exhibit 1.

7. On November 16, 2010, the Joseph DeLorey, AFSCME, Council 93 General Counsel and Human Services Coordinator, requested that the parties commence negotiations pursuant to Article 30, Section 2. See November 16, 2010 letter attached hereto and incorporated as Exhibit C.
8. Due to matters related to the commencement of the legislative session, the parties' delayed negotiations regarding MAP. See Exhibit B, ¶ 8.
9. On February 7, 2011, Attorney DeLorey requested that the parties commence negotiations pursuant to Article 30, Section 2. See February 7, 2011 letter attached hereto and incorporated as Exhibit D.
10. On May 20, 2011, the parties conducted a bargaining session pursuant to Article 30, Section 2. Assistant Director of the Office of Employee Relations, Cheryl Malone, served as the chief spokesperson for the Commonwealth. Members of management representing the Department of Mental Health and Department of Developmental Services also attended, including but not limited to Jonathan Platt, Director of Labor Relations for the Executive Office of Health and Human Services, Office of Disabilities and Community Services and Marianne Dill, Director of Labor Relations for the Executive Office of Health and Human Services, Office of Health Services. Attorney DeLorey served as the chief spokesperson for the Union. See Exhibit B, ¶ 10.
11. The bargaining session on May 20, 2011 began with an opening statement by Attorney DeLorey explaining that the Union was seeking a differential for MAP-certified employees for actual hours worked. Id. at ¶ 11.
12. Ms. Malone replied that the Article 30, Section 2 contract language indicated that the parties would be negotiating not only how additional compensation would be made available to MAP-certified employees but whether such employees would be compensated for performing MAP duties. Ms. Malone further stated that that the Senate budget had just been filed and that the budget did not look good for DDS and DMH for the next fiscal year. Id.
13. During the May 20, 2011 bargaining session, Ms. Malone also asserted that there were approximately 2,609 MAP-certified employees working at DDS and approximately 172 MAP-certified employees working at DMH. She illustrated the rough costs of a differential for the 2,781 employees who are MAP certified if the Commonwealth were to entertain compensating such employees using a differential method of compensation. Id.
14. Prior to the conclusion of the bargaining session, Mr. DeLorey asked if, aside from money, there were any other concerns with regard to providing compensation for MAP. Ms. Malone stated that DDS was also concerned about the increased compensation disparity between the state employees and service provider community employees that do the same work. Id.

15. Neither Ms. Malone, nor anyone from the Commonwealth ever stated that DDS' concern precluded or prevented meaningful negotiations. Id. at ¶ 12.
16. In fact, the parties scheduled and held a second bargaining session for August 11, 2011. Id. at ¶ 13.

## **LEGAL ARGUMENT**

### **A. THE PRESENT CHARGE SHOULD BE DISMISSED BECAUSE THE RESPONDENT DID NOT ENGAGE IN PARITY BARGAINING.**

The Union's Charge should be dismissed because there is no evidence that the Respondent violated the Law. The Union's alleges that the Respondent engaged in parity bargaining by stating that DDS had a concern about the potential increased compensation disparity between the state employees and service provider community employees that do the same work.<sup>1</sup> A parity clause is a clause in a collective bargaining agreement that directly links the wages and/or benefits of one bargaining unit to those of another bargaining unit. Medford School Committee, 3 MLC 1413 (1977). The Commission has previously found that parity clauses are a violation of Section 10(a)(5) under the Law. Town of Mashpee, 19 MLC 1572, 1574 (1992). The effect of a parity clause or parity bargaining precludes effective and meaningful negotiations. The facts clearly establish that the Commonwealth did not engage in parity bargaining.

The Commonwealth engaged in good faith bargaining with the Union regarding whether and how additional compensation for MAP practitioners shall be made available. On May 20, 2011, the parties held their first bargaining session. At the conclusion of the first day, the Union asked if the Commonwealth had any concerns other than funding.

The Commonwealth responded that DDS was concerned about the potential increased

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<sup>1</sup> Upon discussions with Union counsel, the Commonwealth learned that the Union's theory of law is that the Commonwealth engaged in parity bargaining. The Commonwealth reserves the right to respond to additional theories if and when the Union presents them.

compensation disparity between the Commonwealth employees and the service provider community employees that do the same work. The Commonwealth never stated that DDS' concern precluded or prevented meaningful negotiations. Moreover, DDS' concern did not preclude further meaningful negotiations. In fact, the parties held a second bargaining session on August 11, 2011. The Commonwealth's actions did not constitute bad faith bargaining in violation of the Law. Therefore, the present Charge should be dismissed.

**CONCLUSION**

For the reasons set forth above, the Respondent respectfully requests that the Department dismiss the present Charge.

I swear or affirm that the facts alleged in this Submission are true and correct to the best of my knowledge and belief.



Martha Lipchitz O'Connor, Esq.  
Labor Counsel  
Human Resources Division  
One Ashburton Place, Room 207  
Boston, MA 02108  
(617) 878-9766

Date: January 4, 2011

### **RESPONDENT'S AFFIRMATIVE DEFENSES**

1. The Union's claims are barred to the extent that they fail to establish a violation of M.G.L. c. 150E.
2. The Union's charge is barred by the applicable statute of limitations.
3. The Respondent has not engaged in bad faith bargaining in violation of M.G.L. c. 150E.
4. The Union fails to state a claim upon which relief may be granted.
5. The Respondent has complied with all laws and regulations and otherwise satisfied its statutory obligations toward the Union under M.G.L. c. 150E.
6. The Union waived its right to bargain due to its own inaction.
7. The Respondent has complied with all laws and regulations and otherwise satisfied its statutory obligations toward the Union under M.G.L. c. 150E.
8. The Respondent maintains that it does not have a legal obligation to bargain regarding the present issue(s).
9. The Respondent has bargained to resolution or impasse regarding the present issue(s).

Certificate of Service

I, Martha Lipchitz O'Connor, certify that a true copy of the Respondent's Response and Affirmative Defenses was served upon the following via first class mail, postage pre-paid on January 4, 2012:

Joseph DeLorey, Esq.  
AFSCME, Council 93  
8 Beacon Street  
Boston, MA 02108

  
\_\_\_\_\_  
Martha Lipchitz O'Connor

# EXHIBIT B

COMMONWEALTH OF MASSACHUSETTS  
DEPARTMENT OF LABOR RELATIONS

Case No.: SUP-11-1362

AMERICAN FEDERATION OF STATE,  
COUNTY, AND MUNICIPAL EMPLOYEES

Charging Party,

and

COMMONWEALTH OF MASSACHUSETTS,  
Department of Developmental Services  
Department of Mental Health

Respondent.

**AFFIDAVIT OF CHERYL A. MALONE**

I, Cheryl A. Malone, depose and state best to my knowledge and belief the following:

1. From January 8, 2006 to September 30, 2011 I was employed as the Assistant Director for the Commonwealth of Massachusetts Human Resources Division (HRD)/Office of Employee Relations (OER).<sup>1</sup> As Assistant Director, my job duties included but were not limited to, bargain and administer the Unit 2 collective bargaining agreement, provide guidance and technical assistance regarding the terms and conditions of the Unit 2 collective bargaining agreement to applicable agencies as well as the Union. I also served as a hearing officer for Step three grievance hearings and management member for the parties' tripartite panel for alternative dispute resolution for Unit 2. Outside of the Unit 2 collective bargaining agreement, I provided guidance and assistance regarding policies and guidelines of the Commonwealth, as well as the terms and conditions of other bargaining units' collective bargaining agreements.
2. The Office of Employee Relations is the sole office authorized to bargaining regarding terms and conditions of employment for bargaining unit employees within executive departments.
3. As previous Assistant Director, I have specific and personal knowledge and information regarding the present issue.

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<sup>1</sup> Since October 3, 2011, I have served as Director of Human Resources for the Commonwealth of Massachusetts, Department of Housing and Community Development.

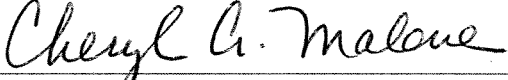
4. The Medication Administration Program (MAP) is regulated and overseen by the Department of Public Health and provides training and certification to non-nursing direct service staff of the Department of Developmental Services and Department of Mental Health who work in community residences to dispense medication to individuals residing in these homes.
5. Individuals in the Developmental Service Worker (DSW) job series employed for the Department of Developmental Services who work in the community homes and individuals in the Mental Health Worker (MHW) job series employed for the Department of Mental Health in the community participate in the MAP program.
6. AFSCME, Council 93 and the Commonwealth are parties to a collective bargaining agreement in effect from July 1, 2009 to June 30, 2012. Article 30, Section 2 of the parties' agreement provides in full,

“In the course of bargaining for this successor agreement, the parties have acknowledged a shared interest in recognizing the value of the MAP certification program to Commonwealth agencies, clients, and consumers. The parties have also recognized that extremely difficult fiscal circumstances have precluded the prospect for applying specific additional compensation to employees administering medication under the MAP program. In this light, the parties agree to reopen negotiations concerning this specific matter on or after November 15, 2010. Such negotiations will focus only on the MAP program, and will be conducted with the sole purpose of determining whether and how additional compensation for MAP practitioners shall be made available, and if such compensation shall be made available, the effective date of increase.”

7. On November 16, 2010, the Joseph DeLorey, AFSCME, Council 93 General Counsel and Human Services Coordinator, requested that the parties commence negotiations pursuant to Article 30, Section 2.
8. Due to matters related to the commencement of the legislative session, the parties' delayed negotiations regarding MAP.
9. On February 7, 2011, Attorney DeLorey requested that the parties commence negotiations pursuant to Article 30, Section 2.
10. On May 20, 2011, the parties conducted a bargaining session pursuant to Article 30, Section 2. I served as the chief spokesperson for the Commonwealth. Members of management representing the Department of Mental Health and Department of Developmental Services also attended, including but not limited to Jonathan Platt, Director of Labor Relations for the Executive Office of Health and Human Services, Office of Disabilities and Community Services and Marianne Dill, Director of Labor Relations for the Executive Office of Health and Human Services, Office of Health Services. Attorney DeLorey served as the chief spokesperson for the Union.

11. The bargaining session on May 20, 2011 began with an opening statement by Attorney DeLorey that highlighted the history of the Article 30, Section 2 language and explained that the Unit 2/AFSCME bargaining committee was seeking a differential for MAP-certified employees for actual hours worked. Through me, the Commonwealth stated that the Article 30, Section 2 contract language indicated that the parties would be negotiating not only how additional compensation would be made available to MAP-certified employees but whether such employees would be compensated for performing MAP duties. I further stated that that the Senate budget had just been filed and that the numbers were not good for DDS and DMH for the next fiscal year. I asserted that there were approximately 2,609 MAP-certified employees working at DDS and approximately 172 MAP-certified employees working at DMH. I illustrated what the rough costs of a \$0.50 per hour, a \$0.75 per hour and a \$1.00 per hour differential would be for the 2,781 employees who are MAP certified if the Commonwealth were to entertain compensating such employees using a differential method of compensation. Prior to the conclusion of the bargaining session, Joe DeLorey asked if aside from money, there were any other concerns with regard to providing compensation for MAP. I stated that DDS was also concerned about the increased compensation disparity between the state employees and service provider community employees that do the same work.
12. Neither myself, nor anyone from the Commonwealth ever stated that the Department's concern precluded or prevented meaningful negotiations.
13. In fact, the parties scheduled and held a second bargaining session for August 11, 2011.

Signed under the pains and penalties of perjury, this 29th day of December 2011.

  
Cheryl A. Malone

# EXHIBIT C



Nov. 16, 2010

Anthony J. Caso  
Executive Director

Donene M. Williams  
President

Kenneth Fanjoy  
Vice President

Natalie Baker  
Recording Secretary

John G. Wagner  
Treasurer

Frank Greco  
Sgt. at Arms

Mr. Mark D'Angelo  
Director  
Office of Employee Relations  
Commonwealth of Massachusetts  
One Ashburton Place  
Boston, MA 02108

Re: Medication Administration Program (MAP)

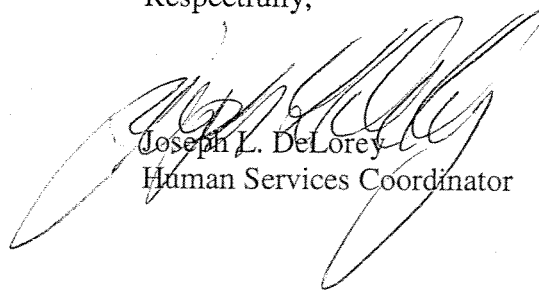
Dear Mr. Director:

In accordance with the provisions of Article 30, s. 2 of our current collective bargaining agreement, the Union requests that the parties commence the negotiations contemplated in that section at our earliest mutual convenience.

I anticipate having identified those local officials who will at least initially comprise our bargaining team by the end of this week, and once I have that information I will forward to you and Assistant Director Cheryl Malone.

We look forward to working with your office in this regard.

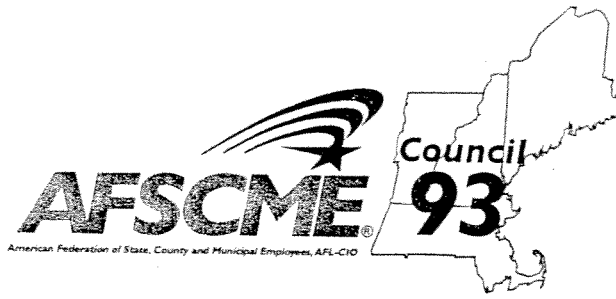
Respectfully,



Joseph L. DeLorey  
Human Services Coordinator

cc: C. Malone  
A. Caso  
SUMMUP

# EXHIBIT D



Feb. 7, 2011

Anthony J. Caso  
Executive Director  
Donene M. Williams  
President

Mr. Mark D'Angelo  
Director  
Office of Employee Relations  
One Ashburton Place  
Boston, MA 02108

Kenneth Fanjoy  
Vice President

Re: MAP Negotiations

Dear Mr. Director:

Natalie Baker  
Recording Secretary

As you and I had discussed over the last couple of months, the union certainly appreciates the demands that the preparation of House 1 and other matters related to the commencement of the legislative session have placed upon your office and all of Administration and Finance. As a reflection of that appreciation, we have delayed submitting this request till this juncture.

John G. Wagner  
Treasurer

Frank Greco  
Sgt. at Arms

As we had also discussed, the issue of compensation for those Unit 2 employees who are required to maintain MAP status remains a prime matter on our agenda.

To that end, we suggest it is timely and in the interest of both parties to formally focus on this matter and commence negotiation in pursuit of the realization of the value of MAP to both the employer and to those who maintain that status.

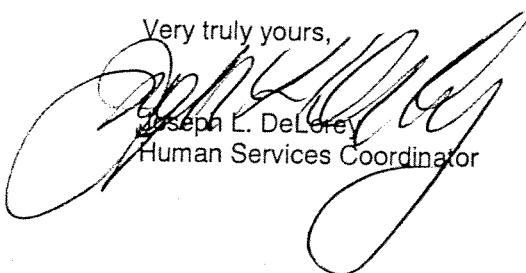
We ask you reach out to those departments that employ Unit 2 members who are required to maintain MAP status and advise them of our desire to commence negotiations, through your office, at the earliest mutual convenience of the parties.

Ms Kathy Daly of our office will be handling coordination of scheduling for our side. Her direct dial is (617) 367-6035, and her e-mail is [kdaly@afscmecouncil93.org](mailto:kdaly@afscmecouncil93.org).

While we are engaged in such discussions over MAP, we suggest the parties may want to take advantage of the opportunity to spend time together to also address continuing budget developments and other topics of mutual concern. Any such supplemental agenda can be developed collaboratively as we meet.

As always, the efforts of your good office are appreciated. I look forward to hearing from you.

Very truly yours,



Joseph L. DeLorey  
Human Services Coordinator

cc: MAP Local leadership