

STATE OF CONNECTICUT
LABOR DEPARTMENT

CONNECTICUT STATE BOARD OF LABOR RELATIONS

IN THE MATTER OF

STATE OF CONNECTICUT

DECISION NO. 4573

-AND-

JANUARY 31, 2012

NEW ENGLAND HEALTH CARE EMPLOYEES
UNION – DISTRICT 1199NE

Case No. SPP-28,010

A P P E A R A N C E S:

Attorney Ellen M. Carter
For the State

Attorney Kevin A. Creane
For the Union

DECISION AND ORDER

On July 17, 2009, the New England Health Care Employees Union – District 1199NE (the Union) filed a complaint with the Connecticut State Board of Labor Relations (the Labor Board) alleging that the State of Connecticut (the State) violated Section 5-272 of the State Employee Relations Act (SERA or the Act) by making a unilateral change in the terms and conditions of employment when it discontinued meal allowance payments to employees working partial shifts and/or voluntary overtime shifts.

After the requisite preliminary steps had been taken, the parties entered into a partial stipulation of facts and exhibits and the matter came before the Labor Board for hearings on September 27, 2010, November 29, 2010, December 20, 2010, and January 13, 2011. Both parties appeared, were represented, and were allowed to introduce evidence, examine and cross-examine witnesses, and make argument. Both parties filed briefs on May 20, 2011. Based on the entire record before us, we make the following findings of fact and conclusions of law and we issue the following order.

FINDINGS OF FACT

1. The State is an employer within the meaning of the Act.
2. The Union is an employee organization within the meaning of the Act and since December 1, 2000 and at all relevant times has represented the Health Care Paraprofessional (NP-6) and Professional (P-1) bargaining units.
3. Members of the NP-6 and P-1 bargaining units include nurses, x-ray technicians, physicians, and social workers who are employed through Corrections Managed Health Care (CMHC), a division of the UConn Health Center (UConn) which provides inpatient and outpatient medical care to Department of Correction (DOC) inmates. The great majority of these employees work at twenty-six DOC facilities throughout Connecticut.
4. Bargaining unit members assigned to DOC facilities historically do not leave for meal breaks during work shifts as DOC entry/exit security procedures make such impractical or impossible. Bargaining unit members decline food prepared by inmates as a concern over inmate food tampering has long existed among employees assigned to DOC facilities. (Ex. 29).
5. Prior to November 7, 1997 members of the Union's bargaining units providing medical care to DOC inmates were employed through the DOC. Correction Officers and other correctional job titles in the DOC are in the Correction (NP-4) bargaining unit which is represented by the American Federation of State, County, and Municipal Employees (AFSCME).
6. The State and the Union were parties to a collective bargaining agreement (Ex. 25) with effective dates of July 1, 1993 through June 30, 1997 that provided, in relevant part:

Memorandum of Agreement Correctional Meal Allowance

Effective July 1, 1994, P-1 and NP-6 employees assigned to a Department of Corrections facility shall receive either the meal or the meal allowance currently in effect at that facility, consistent with the terms and conditions of the current NP-4 collective bargaining agreement.

7. The NP-4 collective bargaining agreement (Ex. 29) in effect at that time provided, in relevant part:

Stipulated Agreement Issue: Staff (NP-4) Meals

In full and complete resolution of all the issues arising from food tampering by inmates the Department of Correction and AFSCME Council 4 agree to the following:

1. The NP-4 bargaining unit staff at each correctional facility will be given an opportunity to vote on a proposal to receive either a monetary meal reimbursement or to keep the system as it now exists. . . .
- . . .
3. The monetary meal reimbursement shall be three dollars (\$3.00) per meal

for each shift actually worked. The minimum time for eligibility for such reimbursement shall be equal to one-half (1/2) of the shift, except as provided in number six below.

4. The effective date for implementation will be as soon as administratively possible, in no event later than October 24, 1986.

. . .

6. Should a NP-4 bargaining unit staff member work unanticipated overtime after their regularly scheduled shift a sandwich and a beverage will be arranged for those individuals, prepared by a staff member.

. . .

7. The meal allowance benefit afforded the Union's bargaining units existed prior to the 1993 – 1997 agreement. On or around July 1, 1994 the parties engaged in a practice whereby an employee who worked at least fifty percent of a shift, including any overtime shifts, was paid a meal allowance.

8. The State and the Union were parties to a collective bargaining agreement (Ex. 11) with effective dates of July 1, 1997 through June 30, 2001 and which provided, in relevant part:

**Memorandum of Agreement
Correctional Meal Allowance**

P-1 and NP-6 employees assigned to a Department of Correction facility shall receive either the meal or the meal allowance currently in effect at that facility. The monetary meal reimbursement shall be five dollars (\$5.00) per meal for each shift actually worked. In the event an employee is required to work unanticipated overtime after his/her regularly scheduled shift a sandwich and a beverage, prepared by a staff member, will be arranged in lieu of the meal allowance.

9 An identical meal allowance provision was in the June 30, 2001 through July 1, 2005 collective bargaining agreement between the State and the Union. (Ex. 10).

10. The State and the Union were parties to a collective bargaining agreement (Ex. 4) with effective dates of July 1, 2005 through June 30, 2009 that provided, in relevant part:

Article 13
Hours of Work, Work Schedules and Overtime

. . .

Section Two. Meal periods shall be scheduled close to the middle of the shift, consistent with the operating needs of the agency. . . . Part-time employees under twenty (20) hours who worked a full shift shall be granted an unpaid meal period. However, facilities that granted an unpaid meal period to under twenty (20) hour employees working less than a full shift as of February 13, 1985, shall continue to do so as long as agency needs permit.

. . .

Article 19
Shift Assignments and Differentials

...

Section Five. Weekend differential shall be paid only for hours worked and not on leave time. Shift Differential shall be included in pay for vacation, holiday, sick leave, and personal leave days, but not in pay for compensatory time taken in lieu of overtime payment.

...

Article 39
Past Practices

Section One. Practices Consistent with the Contract. Any changes in or discontinuation of an unwritten past practice concerning wages, hours or other conditions of employment not covered by this Agreement shall be subject to a test of reasonableness. The questions of:

(A) whether or not there is in fact a valid, current past practice in effect, and

(B) the reasonableness of the change or discontinuation may be submitted to arbitration in accordance with the provisions of Article 32 (Grievance Procedure).

Section Two. Other Practices. A practice that violates the contract may be discontinued by the Employer with notice to the Union and the affected bargaining unit employee(s). The Employer will meet and discuss the practice with the Union, upon written request, prior to discontinuation.

...

Article 43
Entire Agreement

This Agreement, upon ratification, supersedes and cancels all prior practices and agreements, whether written or oral, unless expressly stated to the contrary herein, and constitutes an entire agreement between the parties and concludes collective bargaining for its term.

...

The 2005-2009 agreement also contained a meal allowance provision identical to the provisions in the 1997-2001 and 2001-2005 agreements except that the provision was entitled "Memorandum of Agreement 3" and allowed for payment of eight dollars per meal.

11. In January of 2008 UConn's Director of Labor Relations, Karen Duffy Wallace (Wallace), became aware of the details of the meal allowance practice and the significant costs involved. Wallace contacted the Office of Labor Relations (OLR) seeking direction as to whether she should change the practice through the procedure set forth in Article 39 of the collective bargaining agreement or wait for upcoming negotiations for a successor agreement. OLR Director Linda Yelmini instructed Wallace to wait and to address the issue in negotiations.

12. The parties commenced negotiations for a successor contract in September of 2008. On September 23, 2008 the Union proposed eliminating the title “Memorandum of Agreement 3” and moving the meal allowance provision to Article 40 (Meals and Housing) as a new section. (Ex. 20).

13. On October 2, 2008 the State submitted counterproposals (Ex. 16) to the Union which included the following:

**Memorandum of Agreement 3
Correctional Meal Allowance**

. . . Effective July 1, 2005, the monetary meal reimbursement shall be eight dollars (\$8.00) per meal for each full shift actually worked. . . .

Move into the body of the contract language under compensation. (emphasis in original).

14. On October 30, 2008 the State submitted the following to the Union:

ADDITIONAL STATE PROPOSALS EXACT LANGUAGE TO BE PROVIDED

. . .

Need to eliminate practices such as . . . Paying the correctional meal allowance when employees work 4 hours of a shift.

. . .

(Ex. 30).

15. The parties discussed the meal allowance practice several times during negotiations. The Union claimed that the State’s proposals would unfairly deny the allowance to an employee who was late or unable to work a full shift due to a doctor appointment. The State claimed that the practice conflicted with the MOU which did not provide for meal allowance payment for partial shifts or voluntary overtime shifts. The parties agreed to discuss the matter outside negotiations and on January 14, 2009 the issue was discussed at a scheduled labor-management meeting. (Ex. 28).

16. On January 15, 2009 the parties tentatively agreed that the language of Article 39 (“Past Practices”) would continue unchanged in the successor collective bargaining agreement. (Ex. 36).

17. On February 26, 2009 at a scheduled negotiations session the Union made a proposal which it claimed would expressly incorporate the existing practice into the successor agreement:

**MEMORANDUM OF AGREEMENT 3
CORRECTIONAL MEAL ALLOWANCE**

P-1 and NP-6 Employees assigned to a Department of Correction facility shall receive either the meal or the meal allowance currently in effect at that facility. Effective July 1, 2005 [2009] the monetary meal reimbursement shall be eight dollars (\$8.00) per meal for each shift actually worked **provided**

the Employee works at least fifty percent (50%) of the shift. In the event an Employee is required to work unanticipated overtime after his/her regularly scheduled shift ~~a sandwich and a beverage~~ **the Employee shall receive eight dollars (\$8.00) per meal for each shift actually worked provided the Employee works at least fifty percent (50%) of the shift.** ~~prepared by a staff member, will be arranged in lieu of the meal allowance.~~

(Ex. 21). (emphasis in original). After heated discussion of the Union’s proposal the State’s chief negotiator, OLR Assistant Director Fae Brown Brewton (Brewton) withdrew the State’s meal allowance proposal. Union chief negotiator Paul Fortier (Fortier) inquired as to the reason for the withdrawal and Brewton responded that the existing language of Memorandum of Agreement 3 should remain unchanged or “*status quo*” and the Union agreed. (Ex. 33).

18. In February and March of 2009 the State and the State Employee Bargaining Agent Coalition (SEBAC)¹ engaged in discussions to address a widespread economic crisis. On April 21, 2009 the State and SEBAC entered into a written tentative (the SEBAC Agreement) agreement as to certain retirement and health and welfare benefits and which also provided, in relevant part:

IV. JOB SECURITY

A. Job Security for OLR-Covered Units.

1. The following job security provisions shall apply to all OLR Covered² Units which agree or have agreed to contracts or modified contracts in accordance with the April 6, 2009 Recommended Agreement on Financial Issues – And Framework for Job Security including the provisions for wages and furlough days which are summarized in Attachment A.

...

ATTACHMENT A

PROVISIONS OF THE APRIL 6, 2009 RECOMMENDED AGREEMENT ON FINANCIAL ISSUES – AND FRAMEWORK FOR JOB SECURITY CONCERNING WAGES AND FURLOUGH DAYS

The State and SEBAC recognize that wages and furlough days are negotiated on a

¹ SEBAC exists pursuant to General Statutes § 5-278(f) which mandates coalition bargaining as to retirement and health benefits for all organized employees. Section 5-278(f) provides, in relevant part:

“(1) . . . collective bargaining negotiations concerning changes to the state employees retirement system . . . and collective bargaining negotiations concerning health and welfare benefits . . . shall be conducted between the employer and a coalition committee which represents all state employees who are members of any designated employee organization. . . . (3) The provisions of subdivision (1) of this subsection shall not be construed to prevent the employer and representatives of employee organizations from dealing with any statewide issue using the procedure established in said subdivision.”

² It is undisputed that the NP-6 and P-1 bargaining units are covered by OLR.

bargaining unit basis by the union designated as the exclusive bargaining representative for that unit. However, the State and SEBAC have agreed that the following parameters shall apply to all units seeking the job security protections of the SEBAC agreement.

A. The following parameters shall apply to wage agreements through June 30, 2012 . . .

(Ex.13).

19. The Union tentatively agreed to the provisions summarized in Attachment A of the SEBAC Agreement and on May 8, 2009 the State and the Union concluded their negotiations for the successor collective bargaining agreement by executing an Agreement (Ex. 14) which provided:

The parties agree to maintain status quo language unless changes are tentatively agreed upon and signed accordingly by both the State and the Union.

20. The NP-6 and P-1 bargaining units ratified the SEBAC Agreement and the tentative successor collective bargaining agreement in early May and on May 14 and 15 the legislature approved both agreements. The said successor collective bargaining (Ex. 5) agreement with effective dates of July 1, 2009 through June 30, 2012 contains Articles 13 § 2, 19 § 5, 39, 43 and a meal allowance Memorandum of Agreement (MOA) that are identical³ to those in the 2005-2009 agreement.

21. By e-mail to Fortier dated June 2, 2009 Wallace stated, in relevant part:

This message is our formal notice that CMHC will be changing our method of paying meal allowances to our employees effective with the beginning of the new contract, 7/1/09. Specifically, we will be adhering to the language in the Memorandum of Agreement 3 . . . and paying a meal allowance for each shift worked (whether it be 7, 8 or 12 hours) and not for partial shifts worked. In addition, we will cease paying meal allowances for anticipated overtime, such as voluntary overtime . . . SOS overtime and ESOS overtime. We will of course continue to pay a meal allowance for unanticipated overtime, i.e. mandatory overtime.

I regret that our discussions on this issue could not resolve the matter.

(Ex. 6).

20. By e-mail to Wallace dated July 10, 2009 Fortier stated in relevant part:

We disagree on your reinterpretation of MOU #3 . . . and we are concerned that the agency is not following the protocol agreed to in the SEBAC negotiations. Both parties had many issues on the table in our recent negotiations. As a result of the SEBAC negotiations any economic issues or language issues not agreed to prior to the SEBAC settlement were to be withdrawn and the parties would agree to maintain status quo with regard to the language and the intent of the language. Both the union and management

³ The correctional meal allowance provision in the 2009-2012 contract is entitled "Memorandum of Agreement 1" whereas the provision is entitled "Memorandum of Agreement 3" in the 2005 2009 contract. (Exs. 4, 5).

withdrew all the proposals which were outstanding as a condition of the SEBAC agreement. It should be the same for your giveback proposal on the CMHC meal allowance. We are not maintaining status quo if you change the practice that has been in effect for years.

...
(Ex. 7).

21. The State implemented the change to the meal allowance payment practice on July 1, 2009 and on July 10, 2009 and August 20, 2009 grievances were filed contesting the change. (Exs. 8, 9).

CONCLUSIONS OF LAW

1. Absent an adequate defense, an employer commits an unlawful refusal to bargain and a prohibited practice when it unilaterally changes a condition of employment that is a mandatory subject of bargaining.
2. To establish a *prima facie* case of unilateral change, the Complainant must show that there existed a fixed practice prior to the alleged change and a clear departure from that practice.
3. The State violated the Act when it unilaterally changed the practice of paying a meal allowance to an employee who has worked more than fifty percent of a shift and/or has worked a voluntary overtime shift.

DISCUSSION

The Union contends the State violated Section 5-272(a)(4)⁴ of the Act by unilaterally changing the meal allowance payment practice so as to exclude partial shifts and voluntary overtime shifts. The Union argues that the State's conduct in this case is particularly egregious because the practice was the subject of proposals in recent contract negotiations resulting in an agreement to withdraw the parties' respective proposals and to maintain the *status quo*.

The State denies ever agreeing to maintain the meal allowance payment practice and claims its actions were authorized by the parties' collective bargaining agreement. The State asserts that it expressly reserved its rights under Article 39§2 of the contract to discontinue the practice on the grounds that the practice violated the terms of the correctional meal allowance MOA. The State also argues that the practice at issue was automatically extinguished upon ratification of the current collective bargaining agreement by operation of Article 43. On the basis of the record before us we find that the State has failed to establish adequate defenses to a *prima facie* case of unilateral change.

It is by now well settled that it is a violation of the Act for an employer to unilaterally change an existing condition of employment that is a mandatory subject of bargaining unless the employer provides an adequate defense. *State of Connecticut, Judicial Branch*, Decision 4532

⁴ Section 5-272(a)(4) states, in relevant part: Employers or their representatives or agents are prohibited from: . . . (4) refusing to bargain collectively in good faith with an employee organization which has been designated in accordance with the provisions of said sections as the exclusive representative of employees in an appropriate unit . . .

(2011); *Norwalk Third Taxing District*, Decision No. 3695 (1999); *Bloomfield Board of Education*, Decision No. 3150 (1993); *City of Stamford*, Decision No. 2680 (1988). It is the union's initial burden to make a *prima facie* case establishing that a change in an existing condition of employment has in fact occurred, for if no change is proven, no further inquiry is warranted. *Town of Hamden*, Decision No. 2364 (1985).

The parties do not dispute that the meal allowance payment practice issue had "a material effect on employment" was not "indirectly, incidentally, or remotely related to employment," and would ordinarily be considered a mandatory subject of bargaining. *State of Connecticut, Judicial Branch*, *supra* at p. 5. The State does not contest the alleged details of the practice, namely, that since on or before July 1, 1994 employees who worked at least fifty percent of a shift, including voluntary overtime shifts, were paid the contractual meal allowance. As such, there is no dispute that the Union has met its burden to "establish that the employment practice was 'clearly enunciated and consistent, [that it] endure[d] over a reasonable length of time, and [that it was] an accepted practice . . .'" *Board of Education of Region 16 v. State Board of Labor Relations*, 299 Conn. 63, 73 (2010) (*quoting Honulik v. Greenwich*, 293 Conn. 698, 719 n. 33 (2009)). Therefore we find on the basis of the record before us that the Union has made its *prima facie* case of unilateral change.

We turn now to the State's defenses. The State relies on Article 39 § 2 of the collective bargaining agreement which authorizes unilateral discontinuance of "[a] practice that violates the contract." The State argues that the partial shift payment practice is inconsistent with the MOA requirement that payment be "for each shift actually worked." The State also argues that the MOA provision for a meal when "an Employee is required to work unanticipated overtime after his/her regularly scheduled shift" conflicts with the practice of paying the allowance for voluntary overtime shifts which are scheduled in advance. The Union responds that the MOA expressly incorporates the parties' meal allowance past practices and claims that the language of the MOA is otherwise consistent with the practice at issue.

In addressing these claims we exercise our "limited jurisdiction to interpret a contract where the employer's conduct constitutes a *prima facie* violation of the Act and the employer seeks to justify its conduct on the grounds that the contract permits the change." *Woodbridge Board of Education*, Decision No. 4565 (2011); *New Haven Parking Authority*, Decision No. 3523 p. 8 (1997); *see also Town of Plainville*, Decision No. 1790 (1979). We conclude on the basis of the record before us that the parties' historical meal allowance practice is consistent with the MOA and as such we find the State's contract defense under Article 39 § 2 to be without merit.

Principles of contract law govern interpretation of collective bargaining agreements and it is well established that a contract is to be given effect according to its terms where the language is clear and unambiguous. *Honulik v. Town of Greenwich*, *supra*, 293 Conn. at 710. Since 1994 the collective bargaining agreement has unambiguously described the benefit in question as that "currently in effect at . . . each [DOC] . . . facility" and there is nothing in the record to suggest that the Union's bargaining units have received a meal allowance different than that afforded the NP-4 unit. The State's construction of the MOA would render the MOA language

incorporating DOC facility practice as mere surplusage which is contrary to accepted rules of contract interpretation.⁵

Nor do we find the State's construction of the MOA consistent with other provisions of the collective agreement.⁶ The State contends that the MOA requires shifts of a certain duration and argues that the practice of affording a meal allowance for work in excess of a half shift violates the MOA requirement that reimbursement be "for each shift actually worked." Yet Article 39 §2 also incorporates individual DOC facility practice but uses the phrase "working less than a *full* shift" to differentiate employee benefit eligibility. Presumably similar language could have been used in the MOA had the parties intended to depart from facility practice on the basis of shift duration. We find additional evidence of the parties' intent in Article 9§5 which uses the phrase "only for hours worked" to exclude certain pay differentials from leave pay (e.g., vacation, holiday, sick leave, etc.) This is similar to the "shift actually worked" language in the MOA and supports our conclusion that the MOA expresses an intent to afford a sum certain meal allowance in accordance with individual DOC facility practice except where such DOC practice affords an allowance during leave time.⁷

The State's claim that the MOA's provision of the in-kind⁸ benefit conflicts with the meal allowance payment practice is similarly without merit. The clear intent of the in-kind language is to provide for the employee who, due to "unanticipated overtime after his/her regularly scheduled shift," would otherwise go hungry.⁹ We do not find a mutual intent in this language to deny employees working voluntary overtime shifts a meal allowance and the State has failed to offer any rationale for such denial other than simple cost savings.

Given our construction of the MOA we find the State's reliance on *City of Stamford*, Decision No. 2677 (1988), *Town of East Windsor*, Decision No. 2334 (1984), and *State of Connecticut, Division of Special Revenue*, Decision No. 3351 (1995) to be misplaced. In those cases we found that the changes at issue were expressly consistent with and contemplated by the collective bargaining agreements involved. Since we find here that it is the meal allowance payment past practice rather than the State's unilateral action that is consistent with the

⁵ "[T]he law of contract interpretation . . . militates against interpreting a contract in a way that renders a provision superfluous." (internal quotation marks omitted.) *Ramirez v. Health Net of Northeast, Inc.* 285 Conn. 1, 14 (2008); see Elkouri and Elkouri, *How Arbitration Works*, § 9.3.A. viii.a. (6th ed. 2003)(giving effect to all words and clauses).

⁶ "The individual clauses of a contract . . . cannot be construed by taking them out of context and giving them an interpretation apart from the contract of which they are a part." *FCM Group, Inc. v. Miller*, 300 Conn. 774, 811 (2011) (quoting *Levine v. Advest, Inc.*, 244 Conn. 732, 753 (1998); see also 2 *Restatement (Second), Contracts* § 202 (2) 1981 (written contract to be interpreted as a whole); *Elkouri & Elkouri, How Arbitration Works*, § 9.3/A viii (6th ed. 2003).

⁷ There is nothing in the record to suggest, nor does the State claim, that the practice at issue involved payment of meal allowance to employees absent on leave time.

⁸ e.g. "a sandwich and a beverage, prepared by a staff member . . ."

⁹ "Meal allowance" and "meal reimbursement" are used interchangeably in the MOA and the record reflects that employees assigned to DOC facilities bring their own food as leaving a DOC facility solely for a meal is impractical or impossible.

unambiguous¹⁰ language of the MOA, the State has failed to establish a “violation” within the meaning of Article 39 § 2 and cannot claim its actions were authorized by the parties’ agreement.

The State also contends that the practice at issue was abolished when the parties ratified the current collective bargaining agreement by operation of the “Entire Agreement” provision in Article 43. The State relies heavily in this regard on our decision in *State of Connecticut, Department of Mental Retardation*, Decision No. 3107 (1993) which involved the same parties and the same “Entire Agreement” provision which “supersedes and *Cancels all prior practices and agreements*” upon contract ratification. (emphasis added). The State argues that just as the clause “was sufficiently clear to extinguish upon its effective date the prior practice of granting paid leave to delegates attending Worker’s Compensation hearings” at issue in *State of Connecticut, Department of Mental Retardation*, so too it extinguished the meal allowance payment practice at issue in the instant case. *State of Connecticut, Department of Mental Retardation, supra* at p. 14. The “Entire Agreement” clause, however, by its own terms does not impact practices otherwise preserved by the collective bargaining agreement: “This Agreement, upon ratification, supersedes and . . . cancels all prior practices . . . *unless expressly stated to the contrary herein . . .*” Since the MOA provides for “the meal allowance currently in effect at . . . [each DOC] facility” we find that the practice at issue survived ratification of the new collective bargaining agreement.

We conclude on the basis of the record that the Union established its *prima facie* case of a unilateral change concerning a mandatory subject of bargaining under the Act. Based on our construction of the collective bargaining agreement we reject the State’s contention that the meal allowance payment practice conflicted with or was rescinded by that agreement.¹¹ With respect to the issue of remedy we find that make-whole relief and a return to the *status quo ante* would fairly constitute “affirmative action as will effectuate the policies of [the Act].” General Statutes §5-274(6). This will require payment of compensation to impacted employees for lost meal allowance and restoration of the payment practice until or unless negotiated otherwise in accordance with the Act.

¹⁰ To the extent that the MOA is ambiguous, we note that “past practice of the parties is the most widely used standard to interpret ambiguous and unclear contract language.” *Elkouri & Elkouri, How Arbitration Works*, §12.8 (6th ed. 2003). Absent clear conflict between the practice and the contract, ambiguities in the contract would be resolved so as to maintain consistency with the practice.

¹¹ We need not address the Union’s claim that the State should be estopped from asserting these contract defenses due to Union reliance on the State’s representation at the conclusion of contract negotiations that it would maintain the *status quo*. We do note, however, that the parties’ May 8, 2009 agreement “to maintain status quo language” does not support the State’s claim that it had contractual license to unilaterally reject the parties’ interpretation and application of the MOU for the past fifteen years.

ORDER

By virtue of and pursuant to the power vested in the Connecticut State Board of Labor Relations by the State Employee Relations Act, it is hereby

ORDERED that the State of Connecticut shall:

- I. Cease and desist from refusing to afford a meal allowance to employees assigned to a DOC facility and who work in excess of fifty percent of any shift unless or until negotiated otherwise,
- II. Take the following affirmative action, which we find will effectuate the purposes of the Act:
 - A. Pay those employees amounts equal to the meal allowances they would have received but for the change in payment method described by Karen Duffy Wallace to Paul Fortier on June 2, 2009 and implemented on July 1, 2009.
 - B. Post immediately and leave posted for a period of sixty (60) consecutive days from the date of posting, in a conspicuous place where the employees of the bargaining unit customarily assemble, a copy of this Decision and Order in its entirety.
 - C. Notify the Connecticut State Board of Labor Relations at its office in the Labor Department, 38 Wolcott Hill Road, Wethersfield, Connecticut within thirty (30) days of receipt of this Decision and Order of the steps taken by the State of Connecticut to comply herewith.

CONNECTICUT STATE BOARD OF LABOR RELATIONS

Patricia V. Low
Patricia V. Low
Board Member

Wendella Ault Battey
Wendella Ault Battey
Board Member

Robert A. Dellapina
Robert A. Dellapina
Board Member

CERTIFICATION

I hereby certify that a copy of the foregoing was mailed postage prepaid this 31st day of January, 2012 to the following:

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