

COMMONWEALTH OF MASSACHUSETTS  
COMMISSION AGAINST DISCRIMINATION

MASSACHUSETTS COMMISSION  
AGAINST DISCRIMINATION and  
SHIRLEY J. ESLINGER,

Complainants

v.

DOCKET NO. 10-BEM-02076

MASSACHUSETTS DEPARTMENT  
OF TRANSPORTATION,

Respondent

Appearances: Caitlin A. Sheehan, Esq., Commission Counsel for Complainant  
Maria C. Rota, Esq. and Peter M. Mimmo, Esq. for Respondent

DECISION OF THE HEARING OFFICER

I. PROCEDURAL HISTORY

On August 12, 2010, Complainant, Shirley J. Eslinger, filed a complaint with this Commission charging Respondent, Massachusetts Department of Transportation (MassDOT) with discrimination in employment on the basis of her gender in violation of M.G.L. c. 151B, s. 4(1) and Title VII. The Investigating Commissioner issued a Finding of Probable Cause to credit the allegations of the complaint. Conciliation efforts were unsuccessful and the case was certified for a public hearing. A hearing was held before me on May 9, 10, and 11, 2016. Complainant, who was one of three Deputy Chief Engineers at MassHighway, alleged that her employment was terminated after she refused to accept a different position in the newly created Massachusetts Department of Transportation, a position she characterized as a demotion.

Respondent asserts that Complainant's reassignment was the result of a consolidation and reorganization in 2009 of the Commonwealth's transportation agencies into the agency known as MassDOT. Respondent denies the allegations of gender discrimination and states that the new position Complainant was offered at MassDOT was not a demotion and that Complainant's position at MassHighway was eliminated. It also asserts that it had legitimate non-discriminatory reasons for offering a male colleague of Complainant's a newly created position at MassDOT that encompassed Complainant's prior duties.

Complainant testified on her behalf and Respondent called four witnesses to testify. The parties submitted 79 joint exhibits, Complainant offered an additional 11 exhibits, and Respondent an additional 7 exhibits. Administrative notice was taken of two documents, consisting of the legislation authorizing the Accelerated Bridge Program and the 2009 Transportation Reform Act. A transcript of the digital recording of the Hearing was generated by a vendor contacted by Respondent subsequent to the Hearing and copies were provided to Complainant and the Commission. In the absence of any objections, this transcript is deemed to be the official record of the proceedings. The parties submitted post-hearing briefs in September of 2016. Having reviewed the record and post-hearing submissions of the parties, I make the following findings of fact and conclusions of law.

## II. FINDINGS OF FACT

1. Complainant, Shirley Eslinger, is a female who has a Bachelor of Science degree in Engineering from Southern Illinois University. She has received a wide variety of training on engineering, management and technical subjects and is a Registered Professional Engineer (P.E.) in Massachusetts, Missouri and Colorado. Complainant is also a Registered Structural Engineer

in Illinois. (Tr. 1, pp. 5-14; Jt. Exs. 1, 45, 48, 51) Complainant has over 30 years of experience working as an engineer, in both the private and public sectors, including the Missouri Department of Transportation. (Tr. 1, pp. 14-18; Jt. Ex. 1, 52) In 1994 she received an award for outstanding achievement from the National Society of Professional Engineers. (Tr. 1, p.10; Jt. Ex. 52)

2. Respondent, MassDOT, is a state agency within the executive branch of state government that is responsible for the oversight, operations, and management of the Commonwealth's highways, transit systems, motor vehicle registry, and aeronautics. It is an employer within the meaning of G.L. c. 151B. MassDOT was created following the passage of the Transportation Reform Act of 2009, in which several state transportation agencies, including the former MassHighway and the Massachusetts Turnpike Authority (MTA), were merged and reorganized into a single entity. The merger was effective on November 1, 2009. (Administrative Notice, Tab1)

3. At all times relevant to this matter, Luisa Paiewonsky was the Commissioner of MassHighway. Following MassHighway's consolidation into MassDOT, Paiewonsky was named Administrator of the Highway Division within MassDOT. In both positions, she was head of the agency. (Jt. Ex. 32, 33) Paiewonsky began her career at MassHighway in 1989 as an intern, was promoted through the organization several times, and was named Deputy Commissioner in 2002 and Commissioner of MassHighway in 2005. (Tr. 3, pp.6- 7) Since the 1990's, Paiewonsky has been an active member of the Women's Transportation Seminar (WTS), an international organization whose mission is to advance women in transportation related careers, and which provides training, networking opportunities, and mentoring. (Tr. 3, pp. 4-6) She also serves on an Advisory Board at the University of Massachusetts-Lowell Center for

Women and Work, which conducts research and seeks to end gender inequality for women in the workplace. (Tr. 3, p. 60) Paiewonsky testified that she undertook efforts to expand the reach of personnel postings to places like WTS Boston to increase diversity in the industry and to enhance awareness of job opportunities for qualified women and minorities at MassHighway. (Tr. 3, p. 114; Jt. Ex. 62 p.2)

4. At all times relevant to Complainant's employment, Frank Tramontozzi was the Chief Engineer at MassHighway and was Complainant's direct supervisor. He later became the Chief Engineer at MassDOT. Tramontozzi was hired by Paiewonsky to be Chief Engineer at MassHighway in 2008 and he reported to her. (Tr. 2, p. 21; Jt. Exs. 14, 32, 33) Complainant had applied for the Chief Engineer job at MassHighway when Tramontozzi was selected as the successful candidate. She was interviewed by Paiewonsky, who was impressed with her experience and credentials. (Tr. 3, pp. 8, 16)

5. As a result of their prior interaction, Paiewonsky had Complainant in mind when she sought approval for creation of a new Deputy Chief position at MassHighway to oversee the agency's bridge and asset management staff. After securing approval and consulting with Tramontozzi, she recruited Complainant for the position. The position was not posted and no other candidates were considered. Paiewonsky testified that she was seeking a fresh perspective and new leadership in the MassHighway organization. (Tr. 3, pp. 9-11, 16)

6. In or about April of 2008, Complainant was hired by MassHighway as Deputy Chief Engineer of Bridges and Asset Management. (Tr. 1, pp. 20-22; Jt. Ex. 5) Registration as a Professional Engineer in Massachusetts was a "preferred qualification" for the position. (Tr. 1, p. 30; Tr. 2, p. 38) Complainant began working in the position on or about May 5, 2008. (Jt. Ex. 5) She was the first female Deputy Chief Engineer in MassHighway's history. (Tr. 2, p. 9; Ex.

R-6) Paiewonsky testified credibly that she was proud of having recruited the first female Deputy Chief Engineer and was invested in Complainant's success. (Tr. 3, p. 48) She reached out to the two male Deputy Chief Engineers who were both long-term employees of the agency, asking them to be a support and a resource for Complainant. She testified that both had excellent interpersonal skills and had been very welcoming to her. (Tr. 3, pp. 14-15)

7. At all times during her employment, Complainant earned \$114,718.08 per year, the same compensation as the two male Deputy Chief Engineers. (Tr. 3, p. 13; Jt. Exs. 1, 35) Complainant's duties were focused on developing and implementing "a long term strategy for preserving and maintaining critical elements of the state's infrastructure." (Jt. Ex. 5) The position holder was responsible for "ensuring that the agency" would continue to improve its "Asset Management system," by evaluating and identifying "the most cost effective ways to replace, rehabilitate, or maintain" the state's "infrastructure," and by identifying potential savings." Priority was to be given to the oversight of design, construction, inspection and preservation of MassHighway system bridges which were considered the most critical asset. (See Jt. Ex. 3, Management Questionnaire; Tr. 3, 9-10)

8. In her sole written performance review from MassHighway, dated May 19, 2009, Complainant received a rating of "Successful Performer," a level above "Satisfactory." (Tr. 1, pp. 26-27; Jt. Ex. 1) Complainant did not receive any negative feedback with regard to her employment and received positive verbal feedback from Tramontozzi. (Tr. 1, pp. 27-28) Paiewonsky testified that she received feedback from the two male Deputy Chief Engineers that they had each reached out to Complainant, but she was disinterested in their help or support. (Tr. 3, pp. 14-15) Paiewonsky characterized Complainant's performance as a "mixed review." Paiewonsky testified that she sought to create a collaborative work environment since the

creation and design of highway and bridges is multi-disciplinary and “it is not possible to work solo.” (Tr. 3, p. 46-47) To that end, she encouraged Complainant to view her colleagues as resources but testified that Complainant was oftentimes not communicative or “silent” during staff meetings and did not interact or accept assistance from her colleagues. (Id.) Paiewonsky believed Complainant had the technical skills to do the job, but thought her communication skills and ability to work with colleagues were a drawback. (Id; Tr. 80-82) Tramontozzi also received reports from some of Complainant’s peers that they had difficulty communicating with her. (Tr. 2, p. 104-105) Paiewonsky testified that Complainant also relied on Tramontozzi more than was expected to resolve conflicts. (Tr. 80-82)

9. As part of her duties, Complainant was expected to bring about changes to increase efficiencies and streamline processes. (Tr. 3, p. 160) These efforts were met by some resistance from the staff, but both Paiewonsky and Tramontozzi supported Complainant’s efforts to implement changes. (Tr. 3, p. 16; Jt. Ex. 57; Tr. 2, pp. 30, 31; Jt. Ex. 55) They convened a meeting of the Bridge staff to convey support for Complainant’s authority and to support her efforts to implement changes to processes and to increase efficiencies. (Tr. 3, p. 16)

Paiewonsky proposed the Complainant be the “point person” for MassHighway on Bridge Project Development.<sup>1</sup> (Tr. 3, pp. 25- 27; Jt. Ex. 8) As such, Complainant had a “key role” in assisting MassHighway to identify which projects would be part of a new Accelerated Bridge Program. (Tr. 3, pp. 27-28)

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<sup>1</sup> Complainant contended that she was made the temporary director of this project, but Paiewonsky stated that this was not her intent, and that she inadvertently referred to Complainant in an email as “Project Director (temp.)” (Tr. 3, pp. 25- 26; Jt. Ex. 8) Secretary of Transportation Bernard Cohen also testified that he did not publicly introduce Complainant as the Acting Director of the ABP program. (Tr. 2, pp. 6-7; Ex. R-6)

10. The Accelerated Bridge program came about as the result of an infusion of Federal funds in the amount of approximately \$3 billion over eight years designated for the rapid improvement of bridges in the Commonwealth. (Tr. 3, p. 17) By June of 2008, the planning process for what would be the Accelerated Bridge Program (ABP) had begun in earnest. This included identifying bridges to be targeted by the program, determining the highest priorities, setting goals for the program, and determining appropriate staffing. (Tr. 3, p. 19) There were discussions about the whether the program would be run separately or as part of the state-wide bridge program. (Tr. 3, pp. 19-20)

11. The then Secretary of Transportation, Bernard Cohen, wanted the Accelerated Bridge Program to be a “stand-alone” entity, separate from the state-wide bridge program. He was concerned that the current bridge section structure could not handle the demands of the ABP and he wanted the ABP staff to be focused 100% on the program projects. Paiewonsky and Tramontozzi preferred to keep the ABP within the existing state-wide bridge program. Secretary Cohen’s view prevailed and the ABP was structured as a stand-alone entity with its own staff and management separate from the bridge section. (Tr. 2, pp. 6-7; Tr. 3, pp.19-21)

12. In July of 2008, sometime after the legislation creating the ABP program was signed, Stephen O’Donnell was appointed as the interim director of the ABP program. (Tr. 3, p. 21; Jt. Ex. 58) In an email discussing his appointment, Complainant was identified as “Director of Bridge Project Development.” (Jt. Ex. 58; Tr. 3, pp. 23-25) O’Donnell had previously served as the District Highway Director for MassHighway’s District 4, which was then the largest and most complex District within MassHighway. He was also the Director of Maintenance and, according to Paiewonsky, was someone who could “hit the ground running,” and pull resources together quickly. (Tr. 3, pp. 23-25) Paiewonsky testified that Complainant was not chosen as

Interim Director of ABP because she was a relatively new employee who had been on the job only a few months and already had a huge job dealing with the state-wide bridge program. (Tr. 3, p. 25) According to Paiewonsky, there was some misunderstanding or confusion in communications with other agencies about whether Complainant was the interim director of the ABP, because she was the “point person for MassHighway, but that Complainant’s position was always the Deputy Chief engineer of the state-wide bridge program, and not the interim director of the ABP. (Tr. 3, pp. 26-30; Jt. Ex. 59)

13. Paiewonsky officially announced O’Donnell’s appointment as Interim Director of the ABP on August 18, 2008 in an agency-wide email. Paiewonsky wrote that O’Donnell was “responsible for overseeing all aspects of the Accelerated Bridge Program, working closely with District Directors and Deputy Chief Engineers, Shirley Eslinger,” and her two peers. (Jt. Ex. 61) Respondent posted the position for a permanent ABP Director as an M10 Manager position on August 15, 2008 and recruited nationwide for the position. (Tr. 3, pp. 30-31; Jt. Exs. 34, 64) The job posting outlined the duties, the minimum requirements for the position and the preferred qualifications. A Professional Engineering (P.E.) license was listed as a preferred qualification, but not a requirement of the job. (Jt. Ex. 34; Tr. 3, pp.33-34)

14. Complainant did not apply for the ABP Director position and did not express any interest in the position. (Tr. 3, p. 32; Tr. 2, p. 62) She participated in the first round of interviews on a panel that was responsible for narrowing the field of twelve candidates down to three finalists. (Tr. 1, pp. 41-42; Tr. 3, p. 32; Jt. Ex. 66) One of the three finalists, Shoukry A. Elnahal, was the successful candidate for the position. (Jt. Ex. 2) Complainant testified that she had some reservations about Elnahal, but she did not communicate them to Paiewonsky. (Tr. 1, pp. 42, 125-126, Tr. 3, p. 33) Elnahal was then employed by the Federal Highway



Administration Resource Center, had more than 30 years of experience in the engineering field, and had led major national Federal Highway Administration Engineering Programs. He had experience in structural design, construction, accelerated bridge construction and Pre-fabricated Bridge Systems. (See Jt. Ex. 12) Paiewonsky and Tramontozzi gave due consideration to his experience with federally funded projects and his extensive work with the Federal Highway Administration, particularly with bridges and structures, because half the ABP was federally funded.

15. Elnahal, who was not a registered professional engineer (P.E.) in Massachusetts, was hired at a salary of \$120,000, some \$18,000 less that he was earning at the Federal Highway Administration, and approximately \$5000 more than Complainant and the other two male Deputy Chief Engineers. Elnahal reported to Chief Engineer, Tramontozzi. (See Jt. Exs. 2, 14; Tr. 3, p. 33; Tr. 2, pp. 62-63) He successfully managed the ABP and advanced innovative ideas for bridge rehabilitation and replacement. Highlights of his initiatives included the “Fast 14” (the rapid bridge replacement project on I-93) and the rehabilitation of several other major bridges, employing innovative replacement techniques such as using pre-casted decks and “bridge in a backpack.” During his tenure, the program received national recognition and awards. (Jt. Ex. 78, pp. 32-34; Tr. 3, p. 43) Elnahal continued to manage the ABP when he was appointed Deputy Chief of Bridges and Tunnels at MassDOT in March of 2010 until his resignation in April of 2013.

16. Pursuant to the Transportation Reform Act which became effective on November 1, 2009, MassHighway, the Mass Turnpike Authority (MTA) and elements of the Department of Conservation and Recreation (DCR) were abolished and their operations merged into the Highway Division of the newly formed Massachusetts Department of Transportation known as

MassDOT. (Administrative Notice, Tab #2) The new agency grew in size and scope both in terms of assets and projects to be managed and increased personnel. (Tr. 3, pp. 49-51) Jeffrey Mullen, who had been the Chairperson of the Turnpike Authority, was named as the Secretary of Transportation responsible for MassDOT. Paiewonsky was named as the Chief Administrator of the Highway Division within MassDOT. Paiewonsky was given a clear directive by the Secretary of Transportation to form a management team that encompassed staff from both MTA and MassHighway, that built on and emphasized the strengths of the former organizations, and that avoided duplication or redundancy in management. (Tr. 3, pp. 50-51) To comply with these directives, Paiewonsky had to confront the challenges of duplication of management positions in the predecessor agencies and she was required to restructure and to eliminate some management positions. She testified that this was a very turbulent time with great anxiety among employees about the possible loss of their jobs. (Tr. 3, pp. 48-49, 52-53)

17. Paiewonsky selected Jerry Allen to be MassDOT's Deputy Chief Engineer for Operations and Maintenance. Allen had been the Chief Maintenance Engineer for the MTA, which had the reputation for being successful in the areas of operations and maintenance. This decision required Paiewonsky to eliminate the counterpart position at MassHighway held by Tom Laughlin. Prior to the reorganization, Laughlin was the head of Highway Operations at MassHighway and he and Paiewonsky shared a close working relationship. (Tr. 3, pp. 52-54) It was apparent Paiewonsky's testimony that eliminating Laughlin's position was a very difficult decision for her. Paiewonsky appointed Michael McGrath, who had been Director of Construction at MassHighway, to fill a new position of Deputy Chief Engineer for Construction at MassDOT, reflecting an increase in his role and responsibilities occasioned by the increase in the scope and size of the new agency. (Jt. Ex. 14, Tr. 3, pp. 54-55)

18. Paiewonsky made the decision to retain Tramontozzi as the Chief Engineer for MassDOT. As a consequence of consolidation, the position of Chief Engineer at MTA, held by Helmut Ernst was eliminated. (Tr. 3, pp.77-78) Ernst was notified by Secretary of Transportation on a Friday in November 2009 that he was being assigned to a new role at MassDOT the following Monday as the District Head of a new District 6, reporting to Tramontozzi. (Tr. 2, pp. 116-117, 130; Jt. Ex 27) District 6 was a new highway district comprised of 20 municipalities within the metropolitan Boston area which included the “metropolitan highway system.” (MHS) The MHS is the I-90 system of tunnels and bridges, which includes the Big Dig tunnels, consisting of the Ted Williams Tunnel, the O’Neil Tunnel and the Zakim Bridge. It is the most complicated roadway and bridge network in the state. (Tr. 2, pp. 68-69) Ernst was given no other options for continued employment with MassDOT and he suffered an annual pay cut of some \$20,000 to \$23,000, which he viewed as a demotion. Paiewonsky decided to cut the salary for the position because it did not conform to the pay scale for Ernst’s counterparts at MassHighway. She testified that this was also a very difficult decision. (Tr. 3, pp. 77-78; Tr. 2, p. 117) Ernst was one of several managers at the Turnpike Authority whose positions were re-purposed, re-deployed or even eliminated as a result of the merger. (Tr. 2, pp. 114, 121-122)

19. The merger also required Paiewonsky to address how the State-wide Bridge Programs from MTA and DCR would be consolidated under the new MassDOT. At least two male managers from the former agencies were reassigned from state-wide bridge programs to positions in the newly formed District 6. (Tr. 3, pp. 60-62) Paiewonsky decided to combine the Accelerated Bridge Program Director position held by Elnahal and the Deputy Chief Engineer for Bridges and Asset Management, held by Complainant. Paiewonsky testified that

the decision to merge two state-wide bridge programs resulted from the Secretary's directive in the wake of the merger, to consolidate functions and avoid duplication of positions. (Tr. 3, pp. 59-60)

20. Paiewonsky chose Elnahal to fill this new position because she believed his technical skills and skills as a manager made him the right person for the job. In addition to excellent technical skills, the qualifications she sought for the position included good communication skills, a willingness to take "managed risks," the ability to work well with others, particularly those at different professional levels, and to interface with various other government entities including the Governor's Office, the Secretary of Transportation and the Legislature. She favored a candidate who recognized the necessity of collaboration in managing such a large program to deliver results in a short time period, and one who could communicate well at all levels, motivate individuals to work for a common purpose, and who had demonstrated the ability to get projects done. (Tr. 3, pp. 80-81) Paiewonsky testified that Elnahal possessed these characteristics as demonstrated by his organizing, developing, and executing the "very high profile" Accelerated Bridge Program; interfacing with the Governor's office on that program; demonstrating strategic thinking with respect to reforms and innovations to the bridge program; and taking the initiative in spreading reforms throughout MassHighway. She provided several concrete examples of his innovative approaches to programs. (Tr. 3, pp. 79-80)

21. Paiewonsky testified that Complainant's strengths did not lie in these areas but rather in her technical and engineering skills. Paiewonsky had observed that Complainant did not demonstrate qualities of innovation, leadership, communication and effective collaboration. According to Paiewonsky, Complainant did not play an active role in conflict resolution, problem solving or inspiring staff to think creatively. (Tr. 3, pp. 81-82) Notwithstanding,

Paiewonsky sought to retain Complainant because of her significant engineering skills. (Tr. 81) Paiewonsky and Tramontozzi met with Complainant on December 7, 2009 and Paiewonsky discussed the new organization and changes that were coming. She informed Complainant that she had a new position for her as “head of structures” for the newly formed District 6. Complainant testified that Paiewonsky asked her if she would be interested in being the “director of tunnels.”<sup>2</sup> Complainant also testified that when she asked about her current position, Paiewonsky informed her it would remain vacant and would have to be posted. Complainant did not respond positively to the information about a new position. (Tr. 3, p. 64-65; Tr. 1, p. 55) After the meeting Complainant sent an email to Paiewonsky indicating that she was not interested in assuming the new position that Paiewonsky had described to her that morning and that she wished to remain in her then current position of Deputy Chief of Bridges and Asset Management. (Jt. Ex. 15) Paiewonsky denied telling Complainant that her then current position would remain vacant and stated that she said nothing to indicate to Complainant that remaining in that position would be an option. (Tr. 3, p. 66) I credit Paiewonsky’s testimony that the new assignment was not presented to Complainant as a choice.

22. On December 10, 2009, Paiewonsky sent an agency-wide email announcing five new appointments to the MassDOT Highway Division management team that included two former MTA employees and three Deputy Chief Engineers. Neither Complainant nor Elnahal were listed in the announcement. Paiewonsky testified that her intent in sending this email was to announce the new management team to date, and to note that it would include managers from both the former MassHighway and MTA, but that her team was not yet finalized. (Jt. Ex. 17; Tr. 69-70) Paiewonsky testified that she was unable to immediately address the concerns that

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<sup>2</sup> There is a dispute about what Respondent called this position. Paiewonsky testified that there was not a firm title for the position at that point, but that it would be managing the structural assets in District 6, including bridges and tunnels. (Tr. 3, p.65)

Complainant had raised in emails or to meet with her due to a serious illness in her immediate family that kept her out of the office for a period of time in late December and early January.

(Tr. 3, p. 68)

23. On January 4 and 5, 2010, Complainant sent an email to Paiewonsky requesting a job title and job description and other details of the new position Paiewonsky had discussed in December. She also indicated that she was not qualified to perform the assignment because she did not have expertise dealing with tunnels and believed that accepting the assignment would put her in violation of her professional license. (Jt. Exs 17& 18) Complainant also asked for clarification about what her position within the new MassDOT would be, and referenced Paiewonsky's email of December 10, 2009 announcing that the two male Deputy Chiefs at MassHighway would become Deputy Chiefs for MassDOT. Complainant also noted that she had not received any further communication about her position within MassDOT. (Jt. Exs. 16 & 17) Respondent noted Complainant had previously been directed by Tramontozzi to develop more structural expertise with respect to tunnels, as they needed to expand their capabilities in that area because the new District 6 would encompass the tunnel system in Boston. Complainant responded that she had already begun to increase her knowledge about the tunnel system in anticipation that the MassHighway tunnels would become her responsibility. (Jt. Ex. 71, Tr.1, pp. 118-119)

24. On January 5, 2010 when Paiewonsky returned to work, she and Tramontozzi met with Complainant to discuss her new assignment to District 6. Paiewonsky clarified that the position was not "Director of Tunnels" but "Director of MHS Infrastructure," within District 6, which included bridges, tunnels, and the systems that supported them. Paiewonsky discussed that there was a need for a very high level engineer with structural expertise to assist with the

management of this very high profile and heavily traveled highway system. In response to Complainant's concerns about her P.E. license, Tramontozzi stressed that Complainant's job would not be designing and constructing tunnels, but ensuring that the maintenance and preservation protocols were developed and implemented by staff. They discussed that everyone in transportation management was experiencing changes due to the MassDOT integration. Paiewonsky's notes of this meeting indicate that Complainant did not refuse to accept the assignment but was very resistant to the change and insisted she would be required to report it to the state licensing authorities. Complainant was informed that she would be reporting to Helmut Ernst and was encouraged to speak with him about the position. Complainant was also informed that she was not being demoted to the position of "District Bridge Engineer," but would be performing significant and complex work and would retain her salary level. (Tr. 3 p. 63; Tr. 2, p. 74, 78; Jt. Ex. 19)

25. Subsequent to the January 5, 2010 meeting, Complainant sent an email to Paiewonsky and Tramontozzi reiterating her claim that they had referred to the position as "Director of Tunnels," requesting a written job description and reporting structure, and reiterating her belief that she had to report the assignment to the Board of Registration, that she was not qualified to perform the assignment, and that to accept it would violate her professional license. (Jt. Ex. 20) Paiewonsky responded that she and Tramontozzi had given the assignment careful consideration and believed Complainant was fully qualified to carry out the assignment, that the changes occurring with the formation of MassDOT had affected all of them, and that senior managers needed to approach the new environment with flexibility and professionalism. (Jt. Ex. 22) Complainant subsequently sought an opinion from the Board of Registration as to whether MassDOT was violating regulations governing her Professional Engineer License in

Massachusetts, but was advised on January 11, 2010, that the Board did “not have a specific answer” to her question. (Ex. R-7) Complainant continued to rely on the regulation at 250 CMR 4.03 which states in relevant part: “registrants shall undertake assignments only when qualified by education or experience in the specific technical field of engineering or land surveying involved.” (Jt. Ex. 7; Tr. 1, pp. 57-60) Respondent maintained that a Massachusetts P.E. license was not a requirement of the job and that Massachusetts Law exempts from registration requirements those engineers who work for a registered professional engineer. Both Tramontozzi and Ernst had Mass P.E. licenses. (Jt. Ex. 36; Admin. Notice 2 (G.L. c. 112, s. 81R); Tr. 1, pp. 148-149; Tr. 2, pp. 40, 111)

26. Tramontozzi contacted Ernst to discuss Complainant’s anticipated assignment to District 6, and he characterized Complainant’s qualifications and experience in a positive light. (Tr. 2, p. 123) They discussed Complainant’s role as being that of the level of a Deputy Chief at the former MassHighway, a high level management position, involving overseeing engineers, who in turn would be managing teams of employees. (Tr. 2, p. 124) Ernst was not told that Complainant was difficult to get along with or that she had difficulty relating to her peers. (Tr. 2, p. 133) Ernst testified that he envisioned Complainant as a “Director of Bridges and Tunnels” and responsible for managing teams of inspectional units, but not responsible for sealing design plans or designing tunnels. He welcomed the prospect of Complainant being assigned to the District, as he was in need of an engineer to manage its complex structures. (Tr. 2, pp. 124-12, 129-130) On January 6, 2010, Ernst called Complainant to discuss the new position, after being encouraged by Paiewonsky and Tramontozzi to contact her. He sought to discuss the position with Complainant and to settle on a start date, but testified that she refused to discuss anything about the position until she received a written job description and noted her concerns about her



P.E. Ernst described her demeanor during that conversation to Tramontozzi as “extremely difficult,” and “adversarial.” (Tr. 2, pp. 125-127; Jt. Ex. 21) Complainant testified that Ernst told her she would not get anything in writing, not to expect “special treatment,” and to think about the position and call him if she wanted to discuss. (Tr. 1, pp. 62-63; Jt. Ex. 21) I credit both accounts of this conversation and that it did not go well. Given Complainant’s reticence to accept the position, I do not doubt that she appeared to be intransigent and that Ernst, who had also been involuntarily reassigned to a new position at MassDOT, reacted somewhat negatively. Complainant memorialized this conversation in an email to Paiewonsky and Tramontozzi. (Jt. Ex. 21)

27. On January 7, 2010, Complainant informed Paiewonsky and Tramontozzi that she was “not interested in a position that [she] was not qualified to do,” and repeated her request that the new position be “put into writing and more importantly [explain] expectations.” (Joint Ex. 33) On January 11, 2010, Respondent’s Attorney Robert Horacek met with Complainant to “elicit as much information as possible regarding the proposed reassignment of [Complainant] to the new District 6 position, and to help resolve what appeared to be an “impasse,” regarding her resistance to accepting the position. Complainant continued to express to Horacek and others her interest in remaining in her current position as Deputy Chief of the State-wide Bridge program, and re-iterated her belief that her reassignment was a demotion, and that she lacked tunnel engineering expertise. (Tr. 1, 67, 143-144)

28. On January 25, 2010, Tramontozzi sent Complainant an email regarding the position entitled “District Six Manager Structures and Asset Management,” which was developed by Ernst and Tramontozzi and included a job description and the reporting structure. (Tr. 1, 63-64; Tr. 2, pp.74-78, 130; Jt. Ex. 27) The position description included supervising technical and