Massachusetts Department of Revenue
Division of Local Services

Dealing with Employee Health Insurance

2006

Workshop C

Alan LeBovidge, Commissioner
Gerard D. Perry, Deputy Commissioner

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Workshop C

Dealing With Employee Health Insurance

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Workshop C – Biographies of Guest Panelists

Lisa Boodman is General Counsel to the Group Insurance Commission, providing advice and counsel to the Commissioners, Commission staff and all agency divisions and units throughout state government about legal matters relating to the Commission's work. Ms. Boodman is the Commission's advisor on Mass. General Laws chapter 32B, Massachusetts municipal group insurance law, and handles the agency's legal and legislative matters involving municipal group insurance coverage. As part of the Metro Mayors' Health Care Task Force, she helped draft recent legislation (yet to be filed) that would enable municipalities to join the Commission's health coverage, and drafted emergency regulations to permit municipal entities in fiscal crisis to enroll in the Commission's health coverage (effective at the end of September, 2006).

Sean Caron is the Policy and Planning Counsel for the Metropolitan Area Planning Council, the regional planning agency for 101 cities and towns in the Greater Boston area. In addition to many other planning and municipal services initiatives, MAPC facilitated the establishment and serves as the staff to the Metropolitan Mayors Coalition, a group of urban core mayors and city managers interested in finding regional solution to common problems. Sean focuses on legislative and policy initiatives to increase interlocal collaboration, improve municipal efficiency, and promote sustainable development. He graduated *cum laude* from Suffolk University Law School and holds a degree in political science from the George Washington University.

Paul Mulkern practices labor and employment law from his office in Milton. He is a graduate of Boston College and Columbia Law School. Of relevance to the instant Conference, his practice includes a focus on the legal and collective bargaining issues relating to the provision of health coverage to public sector employees. In addition to representing individual municipalities and school districts, Mr. Mulkern serves as general counsel to several consortiums of public sector entities that have joined together for the provision of health coverage to their employees and retirees. Prior to entering private practice, he served as an attorney with the National Labor Relations Board.

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MAJOR CASES IMPACTING HEALTH INSURANCE AND COLLECTIVE BARGAINING

A. Health Insurance Contribution As A Mandatory Subject of Bargaining

Anderson v. Board of Selectmen of Wrentham, 406 Mass. 508 (1990)

The setting of a governmental unit's rate of contribution toward health insurance premium expense is entrusted to the unit's "appropriate public authority" (which, in the case of a town, is the board of selectmen) and is a mandatory subject of collective bargaining. Rate-setting authority may not be usurped by the town meeting.

B. Changes to Plan Design As Mandatory Subjects of Bargaining

Town of Dennis, 28 MLC 297 (2002)

The terms and costs of health insurance benefits, including co-payments, are conditions of employment that constitute mandatory subjects of bargaining.

C. Plan Design Changes By Joint Purchase Group

Town of Dennis, 28 MLC 297 (2002)

Governmental units participating in joint purchasing groups under M.G.L. c. 32B, § 12 are not relieved of their obligation to bargain over the decision to change features of their health insurance plans.

Unresolved issue: When does the bargaining obligation attach?

> Must the governmental units bargain with their unions before the joint purchase group votes to make a change or does the bargaining obligation attach only after the joint purchase group has voted the change?

D. Changes To Contribution For Retirees

Yeretsky v. City of Attleboro, 424 Mass. 315 (1997)

M.G.L. c. 32B does not preclude a governmental unit from changing its contribution rate toward insurance coverage for retirees.

E. Obligation To Bargain Over Changes To Retiree Benefits

MLRC Complaint in Weston School Committee, Case No. MUP-04-4148

MLRC Complaint in Town of Southborough and Southborough School Committee, Case Nos. MUP-04-4141, MUP-04-4164

The rate of contribution toward future insurance premium costs for current, active employees is a mandatory subject of bargaining.

F. General Bargaining Constraints

City of Leominster, 23 MLC 62 (1996)

A party to a collective bargaining agreement need not bargain, mid-term, over subjects that were part of the bargain when the parties negotiated their existing collective bargaining agreement. What constitutes "part of the bargain" are those matters embodied in the agreement, and those that were consciously explored and consciously yielded during bargaining.

Town of Brookline, 20 MLC 1570 (1994)

Even if a particular matter is not covered by the parties' collective bargaining agreement ("part of the bargain"), an employer may not insist upon mid-term bargaining during the time that the parties historically engage in bargaining for a successor contract or during the time that the parties are actually engaged in bargaining for a successor agreement. While during those periods a party may propose that bargaining over a particular matter be conducted apart from the parties' successor negotiations (so-called "side-table negotiations") a party may not insist upon "side-table negotiations" during those periods.

UNRESOLVED ISSUES

1. Section 7A of Chapter 32B, the local option section that allows a governmental unit to contribute more than 50% of the premium cost of indemnity-type insurance, prohibits a governmental unit from contributing at different rates for

different groups (toward the premium cost of indemnity-type coverage). Section 16, the section of Chapter 32B that controls contribution toward HMO premium cost, does not contain an explicit requirement of uniformity. Nevertheless, some attorneys have contended that the Appeals Court's decision in Middleborough Gas & Electric Department v. Town of Middleborough, 48 Mass. App. Ct. 427 (2000) suggests that the concept of uniformity should also apply to Section 16. To date, there is no appellate decision that has addressed that issue.

2. In McDonald v. Town Manager of Southbridge, 39 Mass App. Ct. 479 (1995) aff.'d 423 Mass. 1018 (1996), the Appeals Court held that, at least in the absence of a regulation that limited the right of a retiree to enroll in a governmental unit's health plan, a retiree could not be prevented from enrolling in the health plan after his/her retirement. However, the Court noted that it was withholding judgement on whether, by a properly drafted regulation, a governmental unit could limit eligibility to persons who were participating in the governmental unit's health plan at the time of retirement. Thus, the issue remains unclear whether, and to what extent, a governmental unit by regulation may prevent or limit the enrollment of a retiree who was not participating in its health plan immediately prior to the effective date of his/her retirement.

JAMES A. ANDERSON & others n1 v. BOARD OF SELECTMEN OF WRENTHAM & another n2

n1 Two other Wrentham police officers, the town's fire chief and superintendent of public works, and the Wrentham Police Association, an "employee organization" within the meaning of G. L. c. 150E, § 1 (1988 ed.).

n2 The town of Wrentham.

No. N-5116

Supreme Judicial Court of Massachusetts, Norfolk

406 Mass. 508; 548 N.E.2d 1230; 1990 Mass. LEXIS 50

November 9, 1989 January 18, 1990

PRIOR HISTORY: [*1]**

CIVIL ACTION commenced in the Superior Court Department on March 9, 1988.

The case was heard by *William H. Welch*, J.

The Supreme Judicial Court on its own initiative transferred the case from the Appeals Court.

DISPOSITION:

So ordered.

HEADNOTES:

Municipal Corporations, Collective bargaining, Town meeting, Selectmen, Group insurance, Officers and employees.

SYLLABUS:

General Laws, c. 32B, § 7A, a local option statute which permits municipalities to contribute more than 50% of their employees' group insurance premiums, did not empower a town meeting to set unilaterally the town's rate of contribution. [511-514]

COUNSEL:

Paul V. Mulkern, Jr., for the defendants.

Charles J. Maguire, Jr., for the plaintiffs.

Margery E. Williams, for Massachusetts Teachers Association, amicus curiae, submitted a brief.

JUDGES:

Liacos, C.J., Wilkins, Abrams, O'Connor, & Greaney, JJ.

OPINION BY:

GREANEY

OPINION:

[*508] **[**1231]** We are asked in this case to interpret *G. L. c. 32B, § 7A*, a local option statute which permits municipalities to contribute more than 50% of their employees' group insurance premiums. n3 In particular, we must decide **[*509]** whether § 7A empowered the Wrentham town meeting to set unilaterally the town's rate of contribution toward **[***2]** the group health and life insurance provided to the town's employees. We conclude that § 7A did not authorize the town meeting's action and reverse a Superior Court judgment that made a contrary determination.

n3 Section 7A (1988 ed.) reads, in pertinent part, as follows:

"A governmental unit which has accepted the provisions of section ten [of c. 32B] and which accepts the provisions of this section may, as a part of the total monthly cost of contracts of insurance authorized by sections three and eleven C [of c. 32B], with contributions as required by section seven [of c. 32B], make payment of a subsidiary or additional rate which may be lower or higher than a premium determined by the governmental unit to be paid by the insured, the combination of which shall result in the governmental unit making payment of more, but not

less, than fifty per cent of the total monthly cost for such insurance. No governmental unit, however, shall provide different subsidiary or additional rates to any group or class within that unit."

[*3]**

The background of the case is as follows. On December 14, 1987, a special town meeting was convened in Wrentham. At the meeting, the voters agreed to accept *G. L. c. 32B, § 7A*. n4 The meeting then voted to pay 99% of the premium of the group life and health insurance for all the town's employees and their dependents and to transfer $ 150,000 from the town's treasury to pay for the costs of the additional contribution percentage. Approximately two weeks later, the board of selectmen (board) refused to comply with the special town meeting vote to pay 99% of the group life and health insurance premiums, but, rather stated that it would continue to fund only 50% of the insurance premium costs, the minimum amount required by § 7A. The board's refusal to pay the additional 49% represents a net weekly loss to each participating town employee of $ 14.58 for individual coverage and $ 34.54 for family coverage.

n4 Sometime prior to this meeting, the town had voted to accept G. L. c. 32B in accordance with the provisions of § 10 thereof.

[*4]**

The plaintiffs, five town employees, and the Wrentham Police Association, commenced an action in the Superior Court seeking a declaration pursuant to G. L. c. 231A, that the town meeting had the authority to set unilaterally the 99% **[*510]** contribution rate. n5 The plaintiffs also sought an order directing the board to implement the town meeting vote on the rate. After the defendants filed their answer, the plaintiffs moved for summary judgment **[**1232]** pursuant to *Mass. R. Civ. P. 56 (a), 365 Mass. 824 (1974),* essentially on the undisputed facts set forth above. A judge in the Superior Court allowed the plaintiffs' motion, concluding in his memorandum that "it is the town meeting . . . which sets the rate under *G. L. c. 32B, § 7A*." A judgment entered declaring that the board was obligated to abide by the town meeting vote of December 14, 1987, that established the contribution rate at 99%. The judgment also stated that the relief ordered would operate prospectively with the 99% contribution rate to be used by the selectmen in negotiating the next insurance contract or contracts. The plaintiffs filed a motion seeking reconsideration of the determination that the new **[***5]** rate should not apply retroactively. That motion was denied. The defendants appealed from the entire judgment. The plaintiffs appealed from the portions of the judgment concerning the retroactivity of the new contribution rate. We transferred the case to this court on our own motion.

n5 There is no dispute that the town meeting properly accepted § 7A in accordance with *G. L. c. 32B, § 7A (d)*.

In controversy is the interpretation of the language in § 7A, which refers to "a premium determined by the governmental unit to be paid by the insured." The term "[g]overnmental unit" is defined in *G. L. c. 32B, § 2 (f)*, as "any political subdivision of the commonwealth," while "[p]olitical subdivision" is defined in § 2 (*g*), as including a "town." The plaintiffs contend that the reference in § 7A to the town (as "the governmental unit") can mean only the town meeting, and thus excludes the board. The plaintiffs maintain that this conclusion is supported by the separate definition in § 2 (*a*) of "[a]ppropriate **[***6]** public authority," as including the board of selectmen, and the reference in other parts of G. L. c. 32B to the "appropriate public authority" (board) as performing other duties with respect to insurance **[*511]** coverages for town employees. See, e.g., *G. L. c. 32B, § § 3, 5, & 8A* (1988 ed.). The defendants, on the other hand, argue that the reference to the town in § 7A is meant to be a more general reference to the municipality as a whole, not exclusively to the town meeting. The defendants point to numerous other provisions of G. L. c. 32B (which we need not detail here), that they maintain will have a strained and illogical meaning if "governmental unit" is rigidly construed to mean only "town meeting." n6

n6 A brief has been filed by the Massachusetts Teachers Association as amicus curiae which supports the result sought by the defendants on this issue.

We agree with the defendants' position that the reference in § 7A to the "town" is a general reference to the municipality as a whole and not a specific reference **[***7]** to the town meeting. In substance, § 7A requires that any premium contribution above the 50% minimum be "determined by the governmental unit." That determination requires several distinct steps. First, the town must vote to accept § 7A under the procedure set forth in *G. L. c. 32B, § 7A (d)*. Second, a particular contribution percentage must be selected. Third, the town must fund the resulting contribution percentage. It is clear that the town meeting is the only branch of town government empowered to take the first and third steps. See (with

respect to the first step) *Jenkin v. Medford, 380 Mass. 124, 126-127 (1980);* and (with respect to the third step) *G. L. c. 40, § 5* (1988 ed.); *G. L. c. 150E, § 7* (1988 ed.). The second step, however, involves the chief executive officer of the town, in this case the board of selectmen, in a mandatory task. Under State law, the contribution percentage to be paid on behalf of unionized employees must be collectively bargained by the employer. See *G. L. c. 150E, § 6*; *School Comm. of Medford v. Labor Relations Comm'n, 380 Mass. 932 (1980).* In that collective bargaining process, the town **[***8]** manager or board of selectmen is the exclusive bargaining representative of a town; the town meeting has no direct **[*512]** role in the process of negotiations. See *G. L. c. 150E, § 1*; n7 *Labor Relations Comm'n v. Natick, 369 Mass. 431, 438 (1976); Weymouth School Comm.*, 9 M.L.C. 1091, 1094 (1982).

n7 With respect to unionized school employees, the town's bargaining agent is the school committee or its representative. See *G. L. c. 150E, § 1* (1988 ed.).

[1233]** The role of the town manager or board of selectmen in the collective bargaining process is an essentially executive function mandated by statute. We have held that, when a board of selectmen is acting in furtherance of a statutory duty, the town meeting may not command or control the board in the exercise of that duty. See *Russell v. Canton, 361 Mass. 727 (1972); Breault v. Auburn, 303 Mass. 424 (1939); Lead Lined Iron Pipe Co. v. Wakefield, 223 Mass. 485 (1916).* **[***9]** These decisions reflect an application of the more general principle that "[a] municipality can exercise no direction or control over one whose duties have been defined by the Legislature." *Breault v. Auburn, supra at 428,* quoting *Daddario v. Pittsfield, 301 Mass. 552, 558 (1938).*

We think it follows from these considerations that the essence of good faith bargaining would be thwarted if the parties entered negotiations at a point where the very subject of those negotiations -- the insurance premium contribution rate -- had already been inflexibly established by the town meeting. Good faith bargaining requires "an open and fair mind as well as a sincere effort to reach a common ground." *School Comm. of Newton v. Labor Relations Comm'n, 388 Mass. 557, 572 (1983).* It would be antithetical to this notion to permit a party to the bargaining process to come to the table with a fait accompli. n8

n8 Furthermore, permitting resort to the town meeting on a subject of mandatory collective bargaining would enable a party to the negotiations to circumvent the bargaining process altogether. If a party was unable to achieve the desired contribution rate through collective bargaining, it could simply put the issue before the town meeting and pack the meeting with voters who supported its position. Such a practice would render the bargaining process an empty formality. "We do not attribute to the Legislature an intention to pass a largely ineffective collective bargaining statute . . . ." *School Comm. of Newton, supra at 566.* See *Weymouth School Comm.*, 9 M.L.C. 1091, 1095 (1982) (noting that, if a benefit can be obtained through collective bargaining, it would "undermine the purposes of Chapter 150E" to permit an end run around that process).

[*10]**

[*513] In a situation where two or more statutes relate to a common subject matter, they should be construed together to constitute an harmonious whole consistent with the legislative purpose. *Board of Educ. v. Assessor of Worcester, 368 Mass. 511, 513-514 (1975).* Consistent with this principle, we doubt the Legislature intended in *G. L. c. 32B, § 7A*, to undermine the well-established collective bargaining requirement that exists in this area. n9 Rather, § 7A, read together with the pertinent provisions of G. L. c. 150E, preserves, as to unionized employees, traditional functions. Negotiation of any contribution rate over 50% is handled by the town manager or board of selectmen. Negotiations would then be followed by a request for an appropriation necessary to fund the costs of any agreed upon contribution **[**1234]** rate. n10 By passing on **[*514]** the latter, the town meeting will have its say on the subject. Nothing further argued by the plaintiffs dissuades us from this view. n11 Our conclusion renders it unnecessary to consider the issue raised in the cross appeal by the plaintiffs with respect to the retroactive payment of the benefits voted by the town **[***11]** meeting.

n9 In fact, the procedure proposed by the plaintiffs in this case has been found to be impermissible on several occasions. In *Town of Provincetown*, 9 M.L.C. 1315 (1982), the town and its employees' union were engaged in collective bargaining for a new contract. The union presented a list of demands, which did not include an increase in the contribution to its members' insurance premiums. After negotiations stalled, the union put before the town meeting a proposal to authorize an additional 30% contribu-

tion under § 7A. The town meeting adopted the proposal. Subsequently, the town filed a charge with the Labor Relations Commission alleging that the union had bargained in bad faith in violation of *G. L. c. 150E, § 10 (b)*(1) & (2). Reasoning that "bypassing the employer's or employees' representative on mandatory subjects subverts collective bargaining," 9 M.L.C. at 1320, the commission held that the union's attempt to use § 7A rather than collective bargaining to obtain the additional 30% contribution constituted illegal bad faith bargaining. See *id.* at 1321. Similar results have been reached in *Commonwealth v. Labor Relations Comm'n, 404 Mass. 124 (1989)* (unilateral executive action on mandatory subject of collective bargaining prior to impasse constitutes illegal bad faith bargaining); *School Comm. of Newton v. Labor Relations Comm'n, 388 Mass. 557 (1983)* (same); *Weymouth School Comm.*, 9 M.L.C. 1091 (1982) (recourse to town's legislative branch to obtain job benefit available through collective bargaining constitutes illegal bad faith bargaining).

[*12]**

n10 The last sentence of the first paragraph of § 7A extends the benefits of any increase in the contribution rate obtained by unionized employees to nonunionized employees. However, a municipal employer may pay a higher premium percentage for certain employees pursuant to *G. L. c. 32B, § 15*, as appearing in St. 1988, c. 82. See also St. 1989, c. 653, § 37, amending *G. L. c. 32B, § 16*.

n11 In particular, we reject the plaintiffs' argument that the definition of the term "appropriate public authority" in *G. L. c. 32B, § 2 (a)*, settles the issue because the Legislature, if it had intended to include the board of selectmen in the process outlined in § 7A, would have used "appropriate public authority" in place of "governmental unit." The Legislature's choice not to use the term "appropriate public authority" merely indicates that the Legislature did not intend to confer the authority stated in § 7A solely on the board of selectmen. The choice by no means implies exclusion of the board from a proper role in the statutory process. Indeed, if the plaintiffs' argument is accepted, the school committee of a town or its representative would have no role to play establishing § 7A benefits. This result also is not contemplated by G. L. c. 150E.

[*13]**

The judgment is reversed. A new judgment is to enter which declares that the defendant board is not obligated to abide by the December 14, 1987, vote of the special town meeting which purported to establish under *G. L. c. 32B, § 7A*, the town's rate of contribution on group insurance benefits paid the town's employees at 99%.

So ordered.

MIDDLEBOROUGH GAS & ELECTRIC DEPARTMENT vs. TOWN OF MIDDLEBOROUGH & another. n1

n1 AFSCME Council 93, AFL-CIO Local 1729.

No. 97-P-1525

APPEALS COURT OF MASSACHUSETTS

48 Mass. App. Ct. 427; 721 N.E.2d 936; 2000 Mass. App. LEXIS 16; 164 L.R.R.M. 2427

February 22, 1999, Argued
January 11, 2000, Decided

PRIOR HISTORY: **[***1]** Plymouth. Civil action commenced in the Superior Court Department on January 19, 1995. The case was heard by Patrick F. Brady, J., on motions for summary judgment.

DISPOSITION: Judgment affirmed.

HEADNOTES: Municipal Corporations, Collective bargaining, Group insurance. Middleborough. Arbitration, Judicial review, Authority of arbitrator, Collective bargaining. Statute, Construction. Words, "Medical benefits."

COUNSEL: Steven A. Torres for AFSCME Council 93, AFL-CIO Local 1729.

Daniel F. Murray for town of Middleborough.

JUDGES: Present: Greenberg, Laurence, & Beck, JJ.

OPINION BY: BECK

OPINION: **[**938]** **[*427]**

BECK, J. There are three parties to this dispute: the town of Middleborough, the Middleborough Gas and Electric Department (department), and AFSCME Council 93 (union). The issue concerns an article of the collective bargaining agreement between the department and the union. The town claims that the article violates certain provisions of G. L. c. 32B, the statute governing municipal health care plans. The town therefore refused to process payments under the article, which provides for reimbursement for eye examinations and eyeglasses. An **[*428]** arbitrator ordered the department to abide by the agreement. A Superior **[***2]** Court judge vacated the arbitrator's order, ruling that under *G. L. c. 32B, § 7A*, the department could not offer these benefits to department employees because the benefits were not available to other town employees. The union appeals from the Superior Court judgment. We affirm.

Factual and procedural background. The Middleborough Gas and Electric Department is a municipal utility company organized and operated pursuant to G. L. c. 164. Its revenues are deposited in a special account in the town treasury. The town pays the department's bills from this account by the warrant process. See *Middleborough v. Middleborough Gas & Elec. Dept., 422 Mass. 583, 587, 664 N.E.2d 25 (1996).* "[The department's] employees are town employees paid through the town treasurer's office by town-issued checks." *Id. at 587.* The collective bargaining agreement, however, refers to the department as the employer, and apparently the department's manager conducts the collective bargaining with the union.

At issue here is art. 36 of the most recent collective bargaining agreement between the department and the union representing department employees. **[***3]** Captioned "eyeglasses," the article provides reimbursement for eye examinations and prescription eyeglasses "based upon the net amount left after payments made under any applicable insurance . . . ." Article 36 also provides reimbursement for safety eyeglasses for employees unable to wear department safety glasses and for prescription eyeglasses that are broken or damaged due to a work-related incident.

Article 30 of the same agreement, captioned "health insurance," provides department employees with health insurance through the town's health insurance program. The town's health plan includes eye examination benefits. Discounts for the **[**939]** purchase of "eyewear" are available to employees participating in the town's health insurance plan, but these discounts "are not a covered benefit" under the plan.

It appears that the town had been paying the vision benefits set out in art. 36 from the department's account for three or more years. However, shortly after the collective bargaining agreement at issue here became effective in January, 1994, the town accountant, on advice of the associate general counsel of the State Group Insurance Commission, see *G. L. c. 32A, § 3*, **[***4]** refused to approve a warrant requesting reimbursement on the **[*429]** ground that such payments were in violation of G. L. c. 32B. See *G. L. c. 32B, § § 7A & 15*.

The union filed a grievance against the department claiming violation of the collective bargaining agreement. After a hearing, an arbitrator concluded that the failure to make the reimbursement violated the parties' collective bargaining agreement. He noted that "whereas the expression 'hospital, surgical, medical, dental and other health care coverage' is mentioned specifically in various parts of [G. L. c. 32B], 'vision' is nowhere to be found." From that observation he concluded that "vision is not included under this statute[,] . . . [and] the parties [were] free to negotiate a separate vision provision." He therefore ordered the department to abide by art. 36 of the collective bargaining agreement.

The department, caught between the town (which was not a party to the arbitration) and the union, filed a complaint in Superior Court against the town and the union seeking a declaration of the department's authority to offer the benefits and review of the arbitration award. The town answered and **[***5]** filed a counterclaim against the department and a cross-claim against the union. Upon cross-motions for summary judgment, a Superior Court judge allowed the town's motion and denied the motions of the union and the department. He declared that the vision benefits in art. 36 of the collective bargaining agreement are within the scope of the medical coverage included in the various provisions of G. L. c. 32B and that the department did not have authority under either its enabling statute, G. L. c. 164, or the collective bargaining statute, *G. L. c. 150E, § 7*(d), to provide the benefits to department employees in violation of c. 32B. He therefore vacated the arbitrator's award as being in excess of the arbitrator's powers. The union appealed.

General Laws c. 32B. "General Laws c. 32B is 'a comprehensive statute empowering municipalities to provide group insurance (medical and certain other coverages) to their employees and their employees' dependents.'" *Connors v. Boston, 430 Mass. 31, 37, 714 N.E.2d 335 (1999)*, quoting from *Watertown Firefighters, Local 1347 v. Watertown, 376 Mass. 706, 710, 383 N.E.2d 494 (1978)*. It **[***6]** is "a 'local option' statute: it does not take effect until a governmental unit accepts it. . . . Once accepted, however, it provides the exclusive mechanisms by which and to whom the city may provide group health insurance." *Connors v. Boston, 430 Mass. at 37*. The "purpose of [c. 32B] is to provide local governments **[*430]** with a volume of purchasing power sufficient to assure that their employees will receive the highest possible level of benefits at the lowest possible net cost." *430 Mass. at 39*. "Uniformity of coverage (persons and risks) was one mechanism selected by the Legislature to control escalating cost disparities among governmental units." *430 Mass. at 41*. Consistent with this purpose, the last sentence of the first paragraph of c. 32B, § 7A, as inserted by St. 1973, c. 789, § 1, provides: "No governmental unit [which accepts this section] shall provide different subsidiary or additional rates to any group or class within that unit."

Scope of review of arbitrator's decision. "A matter submitted to arbitration is subject to a very narrow scope of review. . . . Courts inquire into an arbitration **[**940]** award only to determine if the arbitrator **[***7]** has exceeded the scope of his authority, or decided the matter based on 'fraud, arbitrary conduct, or procedural irregularity in the hearings.'" *Everett v. International Bhd. of Police Officers, Locals 633 & 634, 44 Mass. App. Ct. 671, 676, 693 N.E.2d 1042 (1998)*, quoting from *Plymouth-Carver Regional Sch. Dist. v. J. Farmer & Co., 407 Mass. 1006, 1007, 553 N.E.2d 1284 (1990)*. However, "arbitration . . . may not 'award relief of a nature which offends public policy or which directs or requires a result contrary to express statutory provision' . . . ." *Everett v. International Bhd. of Police Officers, Locals 633 & 634, 44 Mass. App. Ct. at 676* (considering whether an arbitrator's award was contrary to the provisions of *G. L. c. 32B, § 16*). Under *G. L. c. 150E, § 7*(d), if there is a conflict between a collective bargaining agreement and c. 32B, the statute prevails. See *Broderick v. Mayor of Boston, 375 Mass. 98, 103, 374 N.E.2d 1347 (1978)*. § § 3 or 15, at the time art. 36 was negotiated. The union also claims that because the payments are reimbursements rather **[***8]** than for insurance premiums they are outside c. 32B, § § 7A and 15, and therefore permissible. The union also makes a cursory argument that the benefits in question are safety benefits, not health care benefits. The town argues that eye examinations and eyeglasses constitute "medical . . . benefits" included in *G. L. c. 32B, § 3*, and therefore c. 32B, § 7A, prohibits the department from offering department employees additional vision benefits not provided to other town employees.

[*431] Discussion. As the Superior Court judge succinctly recognized, "the dispute between the parties boils down to a question of statutory interpretation: does the term 'medical coverage' in G. L. c. 32B encompass vision-related insurance?" There is no disagreement that this issue is appropriate for summary judgment. See *Mass.R.Civ.P. 56, 365 Mass. 824 (1974)*. See also

Cassesso v. Commissioner of Correction, 390 Mass. 419, 422, 456 N.E.2d 1123 (1983).

The Superior Court's order does not undermine the union's authority to bargain on behalf of its members. However, if the union agrees that members who are department employees will participate in the town's **[***9]** health insurance plan established under c. 32B, then § 7A requires that department employees participate on the same terms as other town employees, see *Connors v. Boston, 430 Mass. at 41,* unless the parties establish special terms through a health and welfare trust fund agreement. See *G. L. c. 32B, § 15*. There is nothing in the record to suggest that there is such an agreement here. (Nor does either party consider whether the department could have established its own separate health plan.)

"The reasons for [§ 7A] can be readily discerned. A single rate of deduction for all employees of a municipality, joined with a single rate of contribution by the municipality, presents a simpler and hence a less expensive picture for practical management than the fragmented structure that would result from rates varying among the several employee-groups. The more significant consideration, however, is the inexpedience (as a Legislature could view it) of encouraging a competitive scramble in collective bargaining among employee-groups to procure increased municipal contributions to the insurance premiums." *Watertown Firefighters, Local 1347 v. Watertown, 376 Mass. at 711.* **[***10]**

The union attempts to overcome these statutory limits by arguing that the vision benefits were not within c. 32B at the time of the collective bargaining contract. Their argument focuses on a 1996 **[**941]** amendment to *G. L. c. 32B, § 15* -- St. 1996, c. 288, § 1. This amendment added subsection (a) to § 15 and provides as follows:

> "Upon acceptance of this subsection by its appropriate public authority and subject to any necessary appropriation, a governmental unit, acting by and through its appropriate **[*432]** public authority, may offer its employees a policy or policies of group long-term disability insurance, group dental insurance or group vision care insurance. A governmental unit may contract for such insurance coverage individually or through its membership in a trust or joint purchase group as provided in section twelve of this chapter. A governmental unit may elect to pay any part or none of the premium cost for such insurance coverage for its employees, and may bargain for such insurance coverage collectively."

(Emphasis supplied.)

The union argues that the 1996 amendment "added three types of group insurance to 32B's coverage" and contends **[***11]** that the appearance of the words "vision care" in § 15(a), when those words had not previously appeared in either § 15 or any other provision of c. 32B, means that vision care benefits were not available under G. L. c. 32B at the time of the collective bargaining contract. We find this argument unpersuasive.

First, the amendment did not add either dental insurance or disability insurance. Dental insurance coverage was added in 1975. See St. 1975, c. 806. Disability insurance has been included in c. 32B as § 11F since 1971. See St. 1971, c. 203, § 2. Instead, the effect of the new subsection was to authorize governmental units to provide three kinds of insurance without making the fifty percent contribution toward the premium that § 7 otherwise requires. See *G. L. c. 32B, § 7*, first sentence, as appearing in St. 1975, c. 841, § 4 ("There shall be withheld from each payment of . . . [each employee's] compensation . . . fifty per cent of the premium for insurance of the employee . . . and the governmental unit shall contribute the remaining fifty percent"); *Watertown Firefighters, Local 1347 v. Watertown, 376 Mass. at 710* ("Watertown **[***12]** undertook . . . to contribute to the premiums at the required level of 50% . . .").

If vision care had been a new benefit not previously available, the 1996 amendment would have added vision care to other sections of c. 32B listing the kinds of group insurance coverage available under the statute. See, e.g., § 1, as appearing in St. 1982, c. 615, § 3 ("The purpose of this chapter is to provide a plan of group life insurance, group accidental death and dismemberment insurance and group general or blanket hospital, surgical, medical, dental and other health insurance . . ."). **[*433]** That is precisely the approach the Legislature adopted in adding dental care to the plans available under c. 32B. See St. 1975, c. 806, amending § § 1, 2(i), 3, 4, 5, 9, 9A, 9B, 9C, 9D, 9E, 9G, 10, 11, and 11B of c. 32B, and inserting § 10A. Not only did the Legislature not include such amendments in the 1996 bill, it did not even add vision care to the original § 15, essentially retained as § 15(b), which sets out the scope of c. 32B as including "group life insurance, group accidental death and dismemberment insurance and group general or blanket hospital, surgical, medical, dental, and other health **[***13]** insurance . . . ." See *G. L. c. 32B, § 15*, as appearing in St. 1988, c. 82; *G. L. c. 32B, § 15*(b), as appearing in St. 1996, c. 288, § 1.

The union's argument, which the arbitrator apparently accepted, is essentially a resort to the maxim of statutory interpretation traditionally known as "expressio unius est exclusio alterius," defined in the latest edition of Black's Law Dictionary as "[a] canon of construction holding that to express or include one thing implies the exclusion of the other, or of the alternative." Black's Law Dictionary 602 (7th ed. 1999) (also addressing the limitations inherent in the maxim). See 2A Singer, Sutherland Statutory Construction § 47.23 **[**942]** (5th ed. 1992). However, there is nothing in c. 32B suggesting a legislative intent to exclude vision benefits. Compare the abortion restrictions in § 3, as amended through St. 1993, c. 110, § 100, prior to the 1996 amendment, St. 1996, c. 366, § 7, that eliminated them. Indeed, the town was already offering eye examination coverage in its health plan established pursuant to c. 32B. Moreover, including vision care is consistent with the purpose of c. 32B **[***14]** to "assure that . . . employees will receive the highest possible level of benefits at the lowest possible cost." *Connors v. Boston, 430 Mass. at 39.* The 1996 amendment to § 15 furthered this purpose by increasing the types of insurance options available for negotiation.

Nor are we persuaded by the union's argument that because art. 36 calls for reimbursement, rather than payment toward insurance premiums, the benefits are not covered by *G. L. c. 32B, § § 7A* and *15*, and are therefore permissible. This argument ignores the essential concerns behind c. 32B: to assure that participants receive equal benefits and, by volume membership, to achieve cost control. See *Connors v. Boston, 430 Mass. at 41.* Allowing the union to evade the requirements of c. 32B **[*434]** by providing for direct reimbursement rather than premium contributions would violate the principles at issue here. See *Watertown Firefighters, Local 1347 v. Watertown, 376 Mass. at 713-714 & n.15,* citing *Kerrigan v. Boston, 361 Mass. 24, 31 n.3, 278 N.E.2d 387 (1972),* on the use of arbitration or collective bargaining to evade "a well defined **[***15]** statutory policy."

Finally, the union makes a passing reference to safety, asserting that "the record unequivocally establishes that the eyeglass benefits contained in Article 36 . . . were negotiated as a safety item . . . ." The citation to the record in support of the "unequivocal" point is to a single sentence in the arbitrator's opinion and award: "At the hearing there was testimony that when the eyeglass provision was negotiated, it was not considered a health insurance benefit, was not paid through insurance but through individual invoices, and the logic behind including eyeglasses in the agreement was for safety and job performance reasons." This single sentence with its reference merely to the arbitrator's summary of the evidence, and no further analysis or citation to authority does not "rise to the level of acceptable appellate argument within the meaning of Mass.R.A.P.16(a)(4), as amended, *367 Mass. 921 (1975)." Powers v. H.B. Smith Co., 42 Mass. App. Ct. 657, 664-665, 679 N.E.2d 252 (1997).* Moreover, nowhere in its brief does the union argue that we should consider the eyeglasses benefit separately from the eye examinations, which we have **[***16]** already determined are within G. L. c. 32B. We therefore do not consider this issue. "The right of a party to have [an appellate] court consider a point entails a duty; that duty is to assist the court with argument and appropriate citation of authority." *Lolos v. Berlin, 338 Mass. 10, 14, 153 N.E.2d 636 (1958).*

In sum, our analysis of G. L. c. 32B, including a "common sense interpretation" of the statute, *Brockton Educ. Assn. v. Sch. Comm. of Brockton, 47 Mass. App. Ct. 36, 40, 710 N.E.2d 632 (1999),* leads us to conclude that eye examinations and related benefits are medical benefits under c. 32B. The 1996 amendment of § 15 did not signal a change in services covered. Because c. 32B, § 7A, forbids unequal treatment of employees in the provision of health care benefits, the Superior Court judge correctly vacated the arbitrator's award as in excess of the arbitrator's authority under *G. L. c. 150C, § 11.*

Judgment affirmed.

MILDRED YERETSKY & another n1 vs. CITY OF ATTLEBORO.

n1 Mathew Savastano.

SJC-07249

SUPREME JUDICIAL COURT OF MASSACHUSETTS

424 Mass. 315; 676 N.E.2d 1118; 1997 Mass. LEXIS 52

January 6, 1997, Argued
February 28, 1997, Decided

PRIOR HISTORY: [*1]**

Bristol. Civil action commenced in the Superior Court Department on August 14, 1991. The case was heard by John A. Tierney, J., on a motion for summary judgment. The Supreme Judicial Court on its own initiative transferred the case from the Appeals Court.

DISPOSITION:

Paragraphs of the judgment that made the declarations and orders just stated vacated and entry of new declarations directed.

HEADNOTES:

Municipal Corporations, Group insurance, Home rule. Statute, Construction. Insurance, Group.

COUNSEL:

Philip Collins (John P. Lee with him) for the defendant.

William G. Rehrey for the plaintiffs.

David P. Rome for Professional Firefighters of Massachusetts, amicus curiae, submitted a brief.

Philip Collins for Massachusetts Municipal Association, amicus curiae, submitted a brief.

JUDGES: Present: Wilkins, C.J., O'Connor, Greaney, Fried, & Marshall, JJ.

OPINION BY: GREANEY

OPINION: [*315]

[1118] GREANEY, J.** The plaintiffs are two retired employees of the defendant, the city of Attleboro (city). They are members of the city's retirement system and not members of any collective bargaining unit. The plaintiffs brought a complaint in the Superior Court seeking declaratory and injunctive relief in connection **[***2]** with a claim that, under the third paragraph of **[*316]** *G. L. c. 32B, § 16*, which concerns the allocation of premium costs for health maintenance organization (HMO) coverage (see note 6, infra), the city was obligated to pay 90% of their HMO premium costs from July **[**1119]** 1, 1990, and continuing. It was agreed that, since at least August, 1985, the city has offered its retired employees health insurance coverage under a Blue Cross/Blue Shield group indemnity plan and has paid 50% of the premium costs. During the same period, the city has offered several HMO plans to retired employees and has contributed toward the premium cost of these plans at rates varying between 50% and 81.3%. n2 Based on these facts and a stipulation as to damages, the plaintiffs moved for summary judgment, and their motion was allowed. Judgment entered declaring that, from July 1, 1990, and continuing, the city was obligated to pay 90% of the plaintiffs' premium costs for HMO coverage. The judgment also directed the city to repay to the plaintiffs, any overpayments of premiums made by them for HMO coverage, with interest. n3 The city appealed, and we transferred the appeal from the Appeals Court to this court on our motion. **[***3]** We vacate the paragraphs of the judgment that made the declarations and orders just stated and direct the entry of new declarations.

n2 Since July 1, 1995, the city has paid 75% of the premium costs for both indemnity plans and HMOs for retirees.

n3 The judgment also declared and ordered that, from July 1, 1989, to September 30, 1989, the city was obligated to pay the same dollar contribution toward premiums for HMO coverage as it paid toward premiums for Blue Cross/Blue Shield indemnity coverage. (Payments for the period from October 1, 1989, to June 30, 1990,

were not at issue.) The city does not challenge this part of the judgment on appeal.

The plaintiffs' claims involve G. L. c. 32B, a local-option statute that governs the provision of health insurance to active and retired employees of municipalities and other State political subdivisions. n4 Under the home rule amendment (art. 89 of the Amendments to the Massachusetts Constitution), a local-option statute becomes effective in a city and town only **[***4]** **[*317]** when the municipality votes to adopt its provisions. n5 See D. Randall & D. Franklin, Municipal Law and Practice § § 1, 8 (1993). Before a municipality offers a group health insurance plan to its employees, it evaluates the options offered in the various provisions of the statute. The municipality then adopts only those provisions of the statute that best accommodate its needs and budget. See id. at § 295; *G. L. c. 32B, § 3*. The statutory language governing the local options available for traditional indemnity group health insurance programs differs from that governing HMO programs. See *G. L. c. 32B, § § 7, 7A, 9, 9A, 9E,* and *16*. As the landscape of group health insurance has changed, the language of the statutory provisions governing these two types of health insurance plans has sometimes created unanticipated fiscal challenges for municipalities, one of which is before us in this case.

n4 The statute also covers the dependents of these employees. For the purpose of simplicity, we use the term "municipal" throughout this decision in reference to the coverage of G. L. c. 32B, but our statements and conclusions apply to all political units covered by this chapter.

[*5]**

n5 For a city, the vote is by the city council; in a town, by vote of the inhabitants at a town meeting; and in a municipality with a town council form of government, by the town council. *G. L. c. 32B, § 10*.

Traditional group health insurance plans are governed by *G. L. c. 32B, § § 7, 7A, 9,* and *9E*. For active employees, c. 32B, § 7, establishes a public contribution of 50% toward the cost of such plans. If the municipality instead opts for § 7A, it may then choose to contribute more than 50%. For retirees, the chapter's "default" provision is § 9, according to which retirees are required to pay the entire cost of such health insurance. As an alternative, a municipality may opt to pay 50% of the retirees' indemnity plan costs by adopting § 9A, or a higher percentage by adopting § 9E.

Municipalities may make HMO plans available to active and retired employees by accepting § 16 of c. 32B, which was inserted by St. 1971, c. 946, § 5. n6 An HMO option was also provided to State employees by the same act. See *G. L. c. 32A, § 14*, inserted by St. 1971, c. 946, § 2. The third paragraph of **[***6]** § 16, as amended through St. 1989, c. 653, **[**1120]** § 37 (effective July 1, 1990; id. at § 242), now reads as follows:

> "All persons eligible for the insurance provided under section five shall have the option to be insured for the services of a health care organization under this section **[*318]** but shall not be insured for both. Eligible persons, having elected coverage under this section by making application as provided in section six, shall pay a minimum of ten percent of the total monthly premium cost or rate for coverage under this section, and the governmental unit shall pay the remainder of the total monthly premium cost or rate; provided, however, that nothing in this chapter shall preclude the parties to a collective bargaining agreement under chapter one hundred and fifty E from agreeing that such eligible persons shall pay a percent share of such total monthly premium cost or rate which is higher than said ten percent; provided, further, that such eligible persons shall in no event be required to pay more than fifty percent of such total monthly premium cost or rate. Such payment by the insured shall be made to the governmental unit as provided in sections seven, seven A, nine **[***7]** A, nine B, nine C, nine D and nine E, as may be applicable."

n6 The statute uses the term "health care organization," as defined in *G. L. c. 32B, § 2* (j). We use the now more common term "health maintenance organization" (HMO) throughout this opinion.

At issue is the meaning of the second sentence in this paragraph. The sentence states that "eligible persons . . . shall pay a minimum of ten percent" of the HMO premium with the remainder to be paid by the governmental unit, and then goes on to add two provisos: first, that parties to a collective bargaining agreement may agree that "such eligible persons" shall pay more than

10% of the premium, and second, that "such eligible persons" shall in no case pay more than 50%. The parties in this case offer contrasting interpretations of this second sentence.

(a) The plaintiffs contend that the two provisos operate together to modify the general statement in the first part of the sentence. Under this reading, unionized employees may, through collective bargaining, **[***8]** agree to pay more than 10%, but no more than 50%, of the premium. Other eligible persons (including retirees and nonunionized employees) are to pay exactly 10%. n7

> n7 The plaintiffs face the problem of explaining why "a minimum" of 10% means "no more than" 10% for retirees and nonunionized employees. See note 14, infra.

(b) The city argues that the second proviso is independent of the first. Under the city's construction, all eligible persons are to pay no less than 10% and no more than 50%. Unionized employees may only be charged more than the minimum **[*319]** if so provided in the governing bargaining agreement. For other eligible persons, the payment rate (within the 10% to 50% range) is to be determined through the local political process, as is the case with contributions to indemnity plans. n8

> n8 There is a third possible interpretation: that unionized employees are to pay from 10% to 50%, based on collective bargaining agreements, while other eligible persons must pay from 10% to 100%, as determined by the municipality. Although this alternative is the most favorable to the city, it is not the one that they have advocated. As we shall subsequently discuss, the interpretation actually advocated by the city more closely addresses the purposes of the statute than either the plaintiffs' interpretation or this third alternative.

[*9]**

As a general rule, "a statute must be interpreted according to the intent of the Legislature ascertained from all its words construed by the ordinary and approved usage of the language, considered in connection with the cause of its enactment, the mischief or imperfection to be remedied and the main object to be accomplished, to the end that the purpose of its framers may be effectuated." *Board of Educ. v. Assessor of Worcester, 368 Mass. 511, 513, 333 N.E.2d 450 (1975),* quoting *Industrial Fin. Corp. v. State Tax Comm'n, 367 Mass. 360, 364, 326 N.E.2d 1 (1975),* and cases cited. Here, the meaning of the provision is ambiguous. It is appropriate to consider the history of *G. L. c. 32B, § 16*, and the reasons why the third paragraph on HMO contributions was amended through St. 1989, c. 653, § 37, to its current wording. Furthermore, we keep in mind that two or more statutes that relate to the same subject matter should be construed together "so as to constitute a harmonious **[**1121]** whole consistent with the legislative purpose." *Board of Educ., 368 Mass. at 513-514.* Hence, we may consider the relationship of § 16, governing municipal premium contributions for HMOs, to other statutory provisions governing **[***10]** both municipal premium contributions for indemnity plans and the State's premium contributions for HMOs. Based on these considerations, we conclude that the city's interpretation of the disputed paragraph is the one that best corresponds to the Legislature's intent.

According to the wording of c. 32B, § 16, in effect before the disputed language was inserted, the municipal contribution toward an HMO premium for an employee was to be the "same amount" as would have been contributed to an **[*320]** indemnity plan for that person. n9 In 1984, the Appeals Court ruled that the "same amount" meant the same dollar amount, not the same percentage of the total premium due. *Hemman v. Harvard Community Health Plan. Inc., 18 Mass. App. Ct. 70, 72-73, 463 N.E.2d 361 (1984).* The court noted that the title to St. 1971, c. 946, indicated that the option to elect HMO coverage was to involve "no additional premium charge" to a governmental unit over the cost of indemnity insurance, and that this would only be achieved, whatever the relative prices of the two plans, with a "same dollar amount" interpretation. *Id. at 73-74.*

> n9 As originally worded, § 16 provided that the municipality's HMO contribution was to be "the same as and shall not exceed" the contribution to an indemnity plan. By St. 1976, c. 454, § 2, the word "amount" was inserted after "same." This amendment only emphasized, and did not alter, the original legislative intent. *Hemman v. Harvard Community Health Plan, Inc., 18 Mass. App. Ct. 70, 73, 463 N.E.2d 361 (1984).* The provision on State contributions to HMOs, *G. L. c. 32A, § 14*, inserted by St. 1971, c. 946, § 2, read "same as and shall not exceed," until it was amended through St. 1989, c. 653, § 36.

[*11]**

During the 1980's, the cost of indemnity plan coverage began to exceed the cost of HMO coverage. See *Ludlow Educ. Ass'n v. Ludlow, 31 Mass. App. Ct. 110, 113, 644 N.E.2d 227 (1991).* By a process of adverse selec-

tion, younger and healthier employees tended to shift into HMOs, and indemnity plan premiums rose for those remaining in the traditional plans, resulting in increased governmental costs. Id. *Hemman, supra at 70, 74 n.7.* This shift to HMOs was exacerbated by the "same dollar" rule, which made it possible for some employees to belong to an HMO for free. n10 See *Everett v. Local 1656, Int'l Ass'n of Firefighters, 411 Mass. 361, 362-363, 582 N.E.2d 532 (1991); School Comm. of Brockton v. Brockton Educ. Ass'n, 36 Mass. App. Ct. 171, 172, 629 N.E.2d 341 (1994).* Besides facing higher health benefit costs, municipalities risked losing access to indemnity plan coverage altogether if the groups covered by such plans shrank to a point where insurers would refuse coverage. See, e.g., *Kusy v. Millbury, 417 Mass. 765, 766, 632 N.E.2d 1227 (1994).*

n10 For example, if the total cost of an indemnity plan was $ 500, and that of an HMO was $ 400, and the municipality had committed itself to paying 80% of the cost of the indemnity plan, it was required to pay $ 400 toward either the indemnity plan or the HMO, making the HMO free to the employee.

[*12]**

The Legislature responded to these problems by including provisions in St. 1989, c. 653, that amended the payment **[*321]** formulas for both State and municipal HMOs to eliminate the "same dollar amount" rule. Chapter 653, which was titled "An Act establishing the budget control and reform act of 1989," was passed at a time of critical fiscal problems at both the State and local levels of government. n11 The statute reduced appropriations in the State budget and contained over 200 other provisions. In contrast to the 1971 legislation that had created the State and municipal HMO options, c. 653 established different payment formulas for each. The State contribution to its HMOs was changed to "the same percent share" as for indemnity plans. *G. L. c. 32A, § 14*, as **[**1122]** amended through St. 1989, c. 653, § 36. The Legislature considered, but rejected, proposals to apply this "same percent" formula to municipal HMOs as well. Instead, the Legislature enacted, as § 37 of c. 653, the new language for *G. L. c. 32B, § 16*, that is the subject of this dispute. n12 Although the enacted provisions were different, the Legislature's purposes in amending both c. 32B, § 16, and c. 32A, § 14, were the same: **[***13]** to enable government employers to gain control over health care costs and to reduce the financial incentives that had favored HMO enrollment and had led to adverse selection. n13

n11 See, e.g., Report of the Senate Committee on Post Audit and Oversight, Analysis of the State's Fiscal Crisis, 1989 Senate Doc. No. 2125; Report of the Senate Committee on Post Audit and Oversight, "Local Government Finance in 1990: An Unfolding Crisis," 1989 Senate Doc. No. 2130. These reports were issued in November and December, 1989, respectively, while the Legislature was considering the proposals that were incorporated into St. 1989, c. 653, which was ultimately approved on January 4, 1990.

n12 The Senate adopted the percentage formula for municipal HMOs in its version of the budget-control measure, 1989 Senate Doc. No. 2136, § 205, but the Senate proposal was replaced with the current wording in a conference committee report, 1989 House Doc. No. 6565, § 37. The conference report was then approved by both branches and enacted into law as St. 1989, c. 653.

n13 One reason for the Legislature to adopt different provisions for State and municipal HMO contributions was the variation in health insurance benefit terms at the local level, resulting from the collective bargaining process. This variation made it necessary to establish protections for existing municipal collective bargaining agreements that called for "equal dollar" contributions. See *Everett v. Local 1656, Int'l Ass'n of Firefighters, 411 Mass. 361, 366, 582 N.E.2d 532 (1991).* See also *National Ass'n of Gov't Employees v. Commonwealth, 419 Mass. 448, 454-455 n.12, 646 N.E.2d 106,* cert. denied, *515 U.S. 1161, 132 L. Ed. 2d 858, 115 S. Ct. 2615, 63 U.S.L.W. 3906 (1995)* (*G. L. c. 32A, § 8*, which provides for State's contribution to employee health insurance premiums, does not distinguish between employees who do and do not have collective bargaining agreements).

[*14]**

The plaintiffs argue that their interpretation of the disputed language in the third paragraph of § 16 accords with the **[*322]** legislative purpose by requiring those persons who previously had paid nothing towards their HMO membership to begin paying 10% of the cost. n14 However, in many communities, including the city, setting the retiree (and nonunionized employee) HMO contribution rate at 10% would reduce the current levels of participant contributions, causing increases in municipal costs and providing further incentives to enroll in HMOs. The city's interpretation of this section of the statute pro-

vides much greater likelihood of reduced costs and increased controls by giving municipalities the flexibility to set rates in order to eliminate the impact of cost differentials on plan selection. In the case of unionized employees, rates will be set as part of a collective bargaining process. n15

n14 The impact of the amendment to *G. L. c. 32B, § 16*, was lessened by § 218 of St. 1989, c. 653, which "froze" contribution rates for unionized employees at current levels so long as existing collective bargaining agreements remained in effect unless the parties agreed otherwise.

The plaintiffs rely on § 218 to explain why the phrase "a minimum of ten percent" appears in *G. L. c. 32B, § 16*. They argue that this phrase was needed to account for unionized employees who were paying more than 10% at the time of enactment and who were, under the provisions of St. 1989, c. 653, § 218, to continue doing so during the life of their contract, without having bargained to that effect under the first proviso of § 16. Our explanation of "minimum" is more straightforward: it establishes a floor, not a ceiling.

[*15]**

n15 The plaintiffs contend that, because the term "such eligible persons" is used in both provisos, it must refer in each case only to unionized employees. We instead read the two provisos independently, with "such eligible persons" referring back, in each case, to the group of persons eligible for health benefits. Compare the use of the phrase "such eligible persons" in *G. L. c. 32A, § 14* (as amended through St. 1989, c. 653, § 36), rewritten in the same act as c. 32B, § 16. Either explanation is grammatically plausible, but the one we favor is more logical in the context of the legislative purpose.

Although the amendment to § 16 disconnects the prior link between municipal contributions to indemnity plans and HMOs, our interpretation maintains a degree of congruence between the two types of coverage that is absent from the plaintiffs' interpretation. n16 The gap between payments for **[*323]** **[**1123]** indemnity plans and HMOs is likely to be much smaller under our interpretation, particularly for retirees and nonunionized employees, than under the plaintiffs' interpretation. Under our construction of the **[***16]** language, municipalities will pay at least 50% and up to 90% of HMO premium costs. By comparison, for indemnity plans, municipalities pay 50% for active employees if *G. L. c. 32B, § 7*, is the governing provision, and a greater amount if § 7A has been adopted. For retirees, the municipality is not required to pay anything toward the premium cost of indemnity plans but most have adopted *G. L. c. 32B, § 9A* or *§ 9E*, and pay 50% or more. n17 Under the interpretation argued for by the plaintiffs, municipal contributions to HMO costs would range from 50% to 90% for unionized employees (depending on the outcome of negotiations), and would be fixed at 90% for retirees and nonunionized employees. This simply is not a logical result.

n16 It is now impossible to achieve complete consistency between the contribution schemes for persons covered by indemnity plans and those who belong to HMOs, because the new wording of § 16, however it is interpreted, breaks down the set of eligible persons into different categories than exist in the case of indemnity plans. The rules governing indemnity plans categorize eligible persons as either retirees (who are covered by § § 9, 9A, or 9E) or active employees (covered by § § 7 or 7A). Active employees include both unionized and nonunionized personnel. The rules in § 16 for HMO contributions, however, group the eligible persons differently, by establishing a rule that applies only to unionized employees.

n17 The amicus brief filed by the Massachusetts Municipal Association on behalf of he city reprints survey results from the May, 1993, newsletter of the Retired State, County and Municipal Employees Association, indicating that all cities and all but fifty-seven towns pay at least 50% of retirees' health insurance premiums.

----------End Footnotes----------

[*17]**

The judge offered an additional rationale for the plaintiffs' interpretation based on his view of legislative intent. In the judge's opinion, § 16 "exhibits a special legislative concern" for governmental employees and retirees, and "prohibits a unilateral increase by employers in the percentage contribution" required from those persons, by allowing changes to the 10% contribution rate only through union approval or (in the case of retirees and nonunionized employees) through an act of the Legislature. It has been suggested that this restriction was intended to protect retirees and nonunionized employees,

who lack the bargaining power of workers represented by a union. We find this argument unconvincing, considering that no such restriction applies, and no such protection is offered, to retirees enrolled in indemnity plans. For indemnity plan retirees, the municipal contribution rate, whatever its amount, is determined in all instances by decisions made at the local **[*324]** governmental level. It is more plausible to us that the Legislature intended to allow the contribution rates for HMOs to be determined through the local political process, as is the case with indemnity plans. Our interpretation **[***18]** allows that to occur.

The second and third paragraphs of the judgment are vacated. These paragraphs are to be replaced by a new paragraph declaring that, because the city has paid at least 50% of the cost of the plaintiffs' HMO premium costs from July 1, 1990, and continuing, the city has satisfied the requirements of *G. L. c. 32B, § 16*, and therefore, the plaintiffs are not entitled to recover anything from the city for alleged overpayments of premium costs since July 1, 1990. The fourth paragraph is vacated, and is to be replaced by a new paragraph declaring that the plaintiff Mathew Savastano is to recover of the city the sum of $ 175.98, together with interest at the rate of 12% as **[***19]** provided by law, for overpayments made by him for his HMO coverage during the period from July 1, 1989, to September 30, 1989.

So ordered.

COMMONWEALTH OF MASSACHUSETTS
BEFORE THE LABOR RELATIONS COMMISSION

In the Matter of	
WESTON SCHOOL COMMITTEE	Case Nos. MUP-04-4148
and	
AFSCME, COUNCIL 93, AFL-CIO	Date Issued: December 2, 2005

COMPLAINT OF PROHIBITED PRACTICE AND DISMISSAL

BACKGROUND

AFSCME, Council 93, AFL-CIO (Union) filed a charge with the Labor Relations Commission (Commission) on May 14, 2004, alleging that the Weston School Committee (School Committee) had engaged in prohibited practices within the meaning of Sections 10(a)(5) and 10(a)(1) of Massachusetts General Laws, Chapter 150E (the Law).

Pursuant to Section 11 of the Law and Section 15.04 of the Commission's Rules, on the facts alleged, the Commission has found probable cause to believe that violations have occurred and, for the reasons stated below, dismisses other allegations.

COMPLAINT

This Complaint of Prohibited Practice shall issue and the parties will be given an opportunity to be heard in accordance with the attached notice of hearing for the purpose of determining the following allegations:

1. The Town of Weston is a public employer within the meaning of Section 1 of the Law.

2. The School Committee is the representative of the Town for the purposes of dealing with employees in the Weston schools.

3. The Union is an employee organization within the meaning of Section 1 of the Law.

4. The Union is the exclusive bargaining representative for certain custodial and cafeteria employees in the Weston schools.

Count I

5. In or about 2003, the Town voted to accept M.G.L. c. 32B, §18.

6. Prior to July 1, 2004, the School Committee did not require active employees in the bargaining unit referred to in paragraph 4, above, to enroll in Medicare Part B and a Medicare Supplement Plan when they retired and became eligible for Medicare.

7. On or about July 1, 2004, the School Committee began to require active employees in the bargaining unit referred to in paragraph 4, above, to enroll in Medicare Part B and a Medicare Supplement Plan when they retired and became eligible for Medicare.

8. Prior to July 1, 2001, the School Committee offered active employees in the bargaining unit referred to in paragraph 4, above, the option to enroll in several health insurance plans, including Blue Cross/Blue Shield Care Elect, Blue Cross/Blue Shield Choice and Harvard Pilgrim Health Plan when they retired.

9. On or about July 1, 2004, the School Committee ceased to offer the health insurance plans referred to in paragraph 8, above, to active employees in the bargaining unit referred to in paragraph 4, above, when they retired and became eligible for Medicare.

10. The School Committee took the action referred to in paragraphs 7 and 9, above, without giving the Union prior notice and an opportunity to bargain to resolution or impasse.

11. The future Medicare enrollment requirements that affect currently active employees are a mandatory subject of bargaining.

12. By the conduct described in paragraphs 7, 9 and 10, above, the School Committee has failed to bargain in good faith in violation of Section 10(a)(5) of the Law by failing to give the Union prior notice and an opportunity to bargain to

resolution or impasse over the impacts of the decision to require active employees in the bargaining unit referred to in paragraph 4, above, to enroll in Medicare Part B and a Medicare Supplement Plan when they retired and became eligible for Medicare.

13. By the conduct described in paragraphs 7, 9 and 10, above, the School Committee has derivatively interfered with, restrained, and coerced employees in the exercise of their rights guaranteed under Section 2 of the Law in violation of Section 10(a)(1) of the Law.

Count II

14. The allegations in paragraphs 1 through 4, above, are re-alleged.

15. Prior to July 1, 2004, active employees in the bargaining unit referred to in paragraph 4, above, contributed 15% of the total monthly premium cost or rate for coverage from health care organizations when they retired.

16. In or around July 1, 2004, the School Committee began to require active employees to contribute 20% of the cost of the total monthly premium cost or rate for coverage from health care organizations when they retired.

17. The percentage of the future total monthly premium cost or rate for coverage from health care organizations that affects currently active employees is a mandatory subject of bargaining.

18. The School Committee took the action referred to in paragraph 16, above, without giving the Union prior notice and an opportunity to bargain to resolution or impasse.

19. By the conduct described in paragraphs 16 and 18, above, the School Committee has failed to bargain in good faith with the Union in violation of Section 10(a)(5) of the Law by changing the future total monthly premium cost or rate for coverage from health care organizations affecting currently active employees in the bargaining unit referred to in paragraph 4, above, without giving the Union prior notice or an opportunity to bargain to resolution or impasse.

20. By the conduct described in paragraphs 16 and 18, above, the School Committee has derivatively interfered with, restrained, and coerced employees in the exercise of their rights guaranteed under Section 2 of the Law in violation of Section 10(a)(1) of the Law.

REASONS FOR DISMISSAL

The Commission, for the following reasons, has decided to dismiss the allegation in the Union's charge that the School Committee violated Sections 10(a)(5) and 10(a)(1) of the Law by unilaterally requiring Medicare-eligible retirees to enroll in Medicare Part B and Medicare Supplement Plans.

A public employer violates Section 10(a)(5) and, derivatively, Section 10(a)(1) of the Law when it unilaterally changes an existing condition of employment or implements a new condition of employment involving a mandatory subject of bargaining without first giving its employees' exclusive collective bargaining representative notice and an opportunity to bargain to resolution or impasse. Commonwealth of Massachusetts v. Labor Relations Commission, 404 Mass. 124 (1989); School Committee of Newton v. Labor Relations Commission, 388 Mass. 557 (1983); City of Boston, 16 MLC 1429 (1989). To establish a violation, the charging party must demonstrate that: 1) the employer altered an existing practice or instituted a new one; 2) the change affected a mandatory subject of bargaining; and 3) the change was established without prior notice or an opportunity to bargain. City of Boston, 26 MLC 177, 181 (2000).

Section 5 of the Law obligates public employers to negotiate in good faith with respect to wages, hours and terms and conditions of employment of public employees. However, an employer's bargaining obligation is limited to currently active employees and does not extend to retirees. Chemical Workers v. Pittsburgh Plate Glass Co., 404 U.S. 157 (1971). Consequently, a public employer need not bargain with the union

representing active employees prior to changing health insurance terms, costs and benefits for employees who have already retired. Id.

Although the Court in Pittsburgh Plate Glass narrowed the scope of the employer's bargaining obligation regarding retiree health insurance benefits, it distinguished the benefits of current retirees from the future retirement benefits of active workers. Finding the future retirement benefits of active workers to be part of their overall compensation, the Court noted that those benefits constitute a mandatory subject of bargaining. Pittsburgh, 404 U.S. at 180.

The written submissions show that on or about July 1, 2004, the School Committee unilaterally required Medicare-eligible retirees to enroll in Medicare Part B and a Medicare Supplement Plan, and eliminated certain health plans formerly available to Medicare-eligible retirees. However, the School Committee was not obligated to bargain over the decision to impose the new requirements, because the action was taken pursuant to M.G.L. c. 32B, §18, a statute not listed in Section 7(d) of the Law. See generally, City of Lynn v. Labor Relations Commission, 43 Mass. App. Ct. 172 (1997); Town of South Hadley, 27 MLC 161 (2001). M.G.L. c. 32B, §18 specifically requires all Medicare-eligible retirees, in a municipality that has accepted the provisions of that statute, to transfer to a Medicare extension plan offered by the municipality. Accordingly, the decision to require Medicare-eligible retirees to comply with the statute is beyond the scope of negotiations, and the School Committee's bargaining obligation is limited to the impact of the statutory requirements. See City of Springfield, 12 MLC 1021 (1985). Further, as noted above, the School Committee need not bargain with the

Complaint (cont'd) MUP-04-4148

Union over the impact of the statute on current retirees, but only over the impact of the statutory Medicare enrollment requirements on currently active employees. See Pittsburgh Plate Glass, 404 U.S. at 180. Thus, the Commission does not find probable cause to believe that the School Committee violated Section 10(a)(5) of the Law in the manner alleged by the Union, and that portion of its charge is dismissed.

COMMONWEALTH OF MASSACHUSETTS
LABOR RELATIONS COMMISSION

ALLAN J. DRACHMAN, CHAIRMAN

HELEN A. MORESCHI, COMMISSIONER

HUGH L. REILLY, COMMISSIONER**

*The charging party may, within ten (10) days of receipt of this notice seek a review of this determination by the Commission, pursuant to MLRC rule 456 CMR 15.04(3). The request shall contain a complete statement setting forth the facts and reasons upon which such request is based. The charging party shall include a certificate of service indicating that it has served a copy of its request for review on the opposing party or its counsel. **Within seven (7) days of receipt of the charging party's request for review, any other party to the proceeding may file a response to the charging party's request with the Commission.**

**Commissioner Reilly only joins in the Commission's decision to issue Count II of the complaint and to dismiss other allegations for the reasons stated.

COMMONWEALTH OF MASSACHUSETTS
BEFORE THE LABOR RELATIONS COMMISSION

In the Matter of	
TOWN OF SOUTHBOROUGH and SOUTHBOROUGH SCHOOL COMMITTEE	Case Nos. MUP-04-4141 and MUP-04-4164
and	Date Issued:
SOUTHBOROUGH TEACHERS ASSOCIATION	December 21, 2005

COMPLAINT OF PROHIBITED PRACTICE AND DISMISSAL

BACKGROUND

The Southborough Teachers Association (Association) filed charges with the Labor Relations Commission (Commission) on May 10, 2004 (Case No. MUP-04-4141) and June 8, 2004 (Case No. MUP-04-4164),[1] alleging that the Southborough School Committee (School Committee) and the Town of Southborough (Town), respectively, had engaged in prohibited practices within the meaning of Sections 10(a)(5) and 10(a)(1) of Massachusetts General Laws, Chapter 150E (the Law).

Pursuant to Section 11 of the Law and Section 15.04 of the Commission's Rules, on the facts presented, the Commission has found probable cause to be-

[1] The School Committee has requested to be removed as a party in Case No. MUP-04-4164, Town of Southborough and Southborough Teachers Association. As the School Committee is not a party to that case, no action by the Commission is needed on this request.

lieve that a violation has occurred and, for the reasons stated below, dismisses other allegations.

COMPLAINT

This Complaint of Prohibited Practice shall issue and the parties will be given an opportunity to be heard in accordance with the attached notice of hearing for the purpose of determining the following allegations:

Count I

1. The Town is a public employer within the meaning of Section 1 of the Law.

2. The School Committee is the representative of the Town for the purpose of dealing with employees in the Southborough public schools.

3. The Association is an employee organization within the meaning of Section 1 of the Law.

4. The Association is the exclusive collective bargaining representative for all professional employees of the School Committee including teachers, tutors, guidance and adjustment counselors, and school nurses, excluding the School Committee's collective bargaining representatives.

5. Prior to July 1, 2004, active employees in the bargaining unit referred to in paragraph 4, above, contributed 10% of the total monthly premium cost or rate for coverage from health care organizations when they retired.

6. Prior to March 23, 2004, the Town adopted M.G.L. c.32B, § 16.

7. On or about March 23, 2004, the School Committee and the Town, pursuant to M.G.L. c.32B, § 16, increased from 10% to 20%, effective July 1, 2004, the percentage of the total monthly premium cost or rate that current and active employees are required to contribute for coverage from health care organizations for benefits when they retire.

8. The Town and the School Committee took the action referred to in paragraph 7, above, without giving the Association prior notice and an opportunity to bargain to resolution or impasse.

9. The percentage of the total monthly premium cost or rate that current and active employees are required to contribute for coverage from health care organizations for benefits when they retire is a mandatory subject of bargaining.

10. By the conduct described in paragraphs 7 and 8, above, the Town and the School Committee have failed to bargain in good faith with the Association in violation of Section 10(a)(5) of the Law by increasing, as of July 1, 2004, the percentage of the total monthly premium cost or rate that current and active employees are required to contribute for coverage from health care organizations for benefits when they retire and without giving the Association prior notice and an opportunity to bargain to resolution or impasse.

11. By the conduct described in paragraphs 7 and 8, above, the Town and the School Committee have derivatively interfered with, restrained, and coerced their employees in the exercise of their rights guaranteed under Section 2 of the Law in violation of Section 10(a)(1) of the Law.

Count II

12. The allegations in paragraphs 1 to 7, above, are re-alleged.

13. The collective bargaining agreement between the Association and the School Committee provides in Article XXXII, Section B that: "Insurance benefits available to bargaining unit members under provisions of Massachusetts General Laws Chapter 32B as currently provided (FY 1990) would not be diminished unless agreed upon through collective bargaining."

14. By the conduct described in paragraph 7, above, the Town and the School Committee have refused to bargain in good faith in violation of Section 10(a)(5) of the Law by repudiating the terms of the collective bargaining agreement described in paragraph 13, above.

15. By the conduct described in paragraph 7, above, the Town and the School Committee have derivatively interfered with, restrained and coerced their employees in the exercise of their rights in violation of Section 10(a)(1) of the Law.

REASONS FOR DISMISSAL*

The Commission, for the following reasons, has decided to dismiss the remaining allegations in the Association's charge which allege that the Town and

the School Committee violated Sections 10(a)(5) and 10(a)(1) of the Law by unilaterally changing health care benefits for retired persons.

A public employer violates Section 10(a)(5) and, derivatively, Section 10(a)(1) of the Law when it unilaterally changes an existing condition of employment or implements a new condition of employment involving a mandatory subject of bargaining without first giving its employees' exclusive collective bargaining representative notice and an opportunity to bargain to resolution or impasse. Commonwealth of Massachusetts v. Labor Relations Commission, 404 Mass. 124 (1989); School Committee of Newton v. Labor Relations Commission, 388 Mass. 557 (1983); City of Boston, 16 MLC 1429 (1989). To establish a violation, the charging party must demonstrate that: 1) the employer altered an existing practice or instituted a new one; 2) the change affected a mandatory subject of bargaining; and 3) the change was established without prior notice or an opportunity to bargain. City of Boston, 26 MLC 177, 181 (2000).

Section 5 of the Law obligates public employers to negotiate in good faith with respect to wages, hours and terms and conditions of employment of public employees. However, an employer's bargaining obligation is limited to currently active employees and does not extend to retirees. Chemical Workers v. Pittsburgh Plate Glass Co., 404 U.S. 157, 172 (1971). Consequently, a public employer need not bargain with the union representing active employees prior to changing health insurance terms, costs and benefits for employees who have already retired. Id.

Although the Court in Pittsburgh Plate Glass narrowed the scope of the employer's bargaining obligation regarding retiree health insurance benefits, it distinguished the benefits of current retirees from the future retirement benefits of active workers. Concluding that future retirement benefits of currently active workers were part of their present compensation, the Court noted that those benefits constitute a mandatory subject of bargaining. Pittsburgh, 404 U.S. at 180.

Here, the Town and the School Committee were not required to bargain with the Association prior to changing health insurance terms, costs and benefits for employees who had already retired by July 1, 2004, because retirees are not employees under Section 1 of the Law[2] and are not part of the bargaining unit represented by the Association.[3] Accordingly, the Commission does not find probable cause to believe the School Committee and the Town violated Sections

[2] Section 1 of the Law defines employee or public employee as "any person in the executive or judicial branch of a government unit employed by a public employer except elected officials, appointed officials, members of any board or commission, representatives of any public employer, including the heads, directors and executive and administrative officers of departments and agencies of any public employer, and other managerial employees or confidential employees "

[3] The recognition clause in the parties' collective bargaining agreement states that the Association is the recognized bargaining representative for "all professional employees of the [School] Committee including teachers, tutors, guidance and adjustment counselors, and school nurses (such employees as defined in Section 1 of Chapter 150E of the General Laws of Massachusetts) excepting however, every employee who, on the effective date of the contract is, or thereafter shall be designated by the [School] Committee as a representative of it for the purposes of such bargaining."

10(a)(5) and 10(a)(1) of the Law in the manner alleged by the Association and dismisses that portion of the Association's charge.[4]

COMMONWEALTH OF MASSACHUSETTS
LABOR RELATIONS COMMISSION

ALLAN W. DRACHMAN, CHAIRMAN

HELEN A. MORESCHI, COMMISSIONER

HUGH L. REILLY, COMMISSIONER

*The charging party may, within ten (10) days of receipt of this notice seek a review of this determination by the Commission, pursuant to MLRC rule 456 CMR 15.04(3). The request shall contain a complete statement setting forth the facts and reasons upon which such request is based. The charging party shall include a certificate of service indicating that it has served a copy of its request for review on the opposing party or its counsel. **Within seven (7) days of receipt of the charging party's request for review, the respondent may file a response to the charging party's request.**

[4] Given the Commission's dismissal of the allegations about changing the HMO premium contribution rates for retirees, the Commission does not reach the Town's motion to dismiss the charges in Case Nos. MUP-04-4141 and MUP-04-4164. The motion is made on the grounds that: (1) the Association does not have standing to pursue a charge on behalf of retirees; and (2) the Commission does not have jurisdiction as retirees are not employees and retirees' health insurance benefits are governed by M.G.L. c.32B, § 9A.

Municipal Health Insurance Working Group

an initiative facilitated by the Metropolitan Area Planning Council

Proposal Fact Sheet

As an outgrowth of the Municipal Finance Task Force, leaders of municipal organizations, municipal public employee unions, retired municipal employee organizations, designated state legislators, and executives from the Group Insurance Commission have been meeting since September 2005 to try to find common ground related to municipal health insurance reform. The Municipal Health Insurance Working Group is staffed by the Metropolitan Area Planning Council (MAPC).

Most of the stakeholder organizations have reached agreement on the details of creating a new, local option for municipalities to join the Group Insurance Commission. However, the group continues to work with other partners, including the Professional Firefighters of Massachusetts, who have not yet reached agreement on the language of the proposal. GIC administrators and attorneys have been intensely involved in crafting the proposal and the legislation.

Current Situation

Municipal health insurance costs are growing at unsustainable rates, and the cost of health insurance is impacting employees, retirees, municipalities, and taxpayers. In addition, since the costs of health insurance have escalated dramatically at the same time that municipal revenues have been relatively flat, these rising costs constrain municipalities from hiring and retaining firefighters, police officers, teachers, and other public servants.

The Group Insurance Commission (GIC), which provides health insurance and other benefits for state employees and select other groups, pays significantly less for high quality health insurance plans and offers substantially more diverse plans than most cities and towns can offer their employees and retirees. In addition, the rate of growth for health insurance plan costs for the state has been approximately half the rate of growth experienced by many municipalities over the past several years.

Creating a new, local option to join the GIC has the potential to generate significant savings while offering employees and retirees high quality health insurance options. Employees may benefit from lowered premiums, access to a broad range of high quality health plans, and a negotiated sharing of savings through collective bargaining. Retirees would gain a voice in decisions affecting their health insurance plans, get long-term protection for their members, and enjoy an excellent set of health insurance options through the GIC. Municipalities could save hundreds of thousands or millions of dollars annually and there will be additional flexibility in plan design through the GIC. Finally, taxpayers would benefit because this reform creates an opportunity for more efficient government administration and allows scarce public resources to be used to improve public services.

Key Points of Municipal Health Insurance Proposal

- Legislation would create a new *local option* for municipalities to purchase their health insurance plans through the Group Insurance Commission (GIC). Analysis shows that these high quality plans are generally less expensive, and the GIC offers a broader range of health insurance options than municipalities currently offer. No community is mandated to take any action under the proposal.
- Decisions to join the GIC would be made collectively between municipal leaders, public employee labor representatives, and retiree representatives. The proposal uses the existing mechanism of coalition bargaining, part of Section 19 of MGL Chapter 32B, to bring together stakeholders to make health care decisions. The proposed process respects the role of collective bargaining and the principle of allowing employees a voice in these important decisions.
- All negotiations and decisions about contributions ratios – i.e., what percentage of health insurance costs are borne by employees or retirees – will continue to be made at the local level. Municipalities will not be required to adopt state contribution ratios.
- Employees will benefit through coalition bargaining because all employees and retirees of a municipality would be assured of a uniform contribution ratio and uniform health insurance options. Moreover, major changes to health insurance will require a vote of 70% of the a Public Employee Committee, made up of representatives of employees and retirees. Finally, most municipal employees pay a significant portion of total premium costs, so there will be direct, and potentially substantial, savings to employees if premiums are reduced.
- Retirees will benefit because – for the first time – they will have an official seat at the bargaining table when decisions about health insurance are made. Currently, municipal retirees have no official role in those decisions. In addition, many retirees will find that they have better health insurance options, including access to high quality indemnity plans that they can access anywhere in the country. Finally, the proposal offers long-term protection for retirees as the impact of new auditing standards affecting post-retirement benefits begin to impact municipal health insurance decisions.
- Although this option will not be appropriate for every community, many municipalities stand to save a great deal of money by purchasing health insurance through the state's largest employee pool. Once adopted locally through coalition bargaining, communities will accept the health insurance options and plan design set by the commission.
- Municipalities that choose to purchase health insurance through the GIC must do so in three-year cycles. Depending on how the local written agreement is drafted, a decision to leave the GIC can be made either jointly between management and the public employee committee or unilaterally under certain conditions.
- Municipalities will pay all costs associated with purchasing health insurance through the GIC, including payment of a small administrative fee to the Commission. The proposal is structured to be self-financing and start up costs for the Commonwealth are nominal.
- The proposal calls for municipal representatives to be added to the Group Insurance Commission, two seats automatically and another two after more than 25,000 municipal subscribers have been added through this proposed new law. Both management and labor will be represented.
- The proposal only relates to health insurance and not to other benefits, such as life, dental, or vision insurance.

For more information, contact Joel Barrera, Project Director for the Municipal Health Insurance Working Group, at either 617-451-2770 x 2019 or jbarrera@mapc.org.

Municipal Health Insurance Working Group

an initiative facilitated by the Metropolitan Area Planning Council

John Hamill, Chairman

July 31, 2006

Dear Legislator:

As an outgrowth of the work of the Municipal Finance Task Force, leaders of municipal organizations, municipal public employee unions, retired municipal employee organizations, designated state legislators, and executives from the Group Insurance Commission have been meeting for the past 10 months to try to find common ground related to municipal health insurance reform. Our efforts have been staffed by the Metropolitan Area Planning Council (MAPC).

As public leaders who care deeply about our cities and towns, we recognize that the time has come to find creative solutions regarding municipal health insurance. Skyrocketing health insurance costs affect employees, retirees, employers, and taxpayers. Annual, double digit increases for health insurance constrain the ability of municipalities and their dedicated workforce to provide quality public services and to attract and retain the teachers, firefighters, police officers, and other municipal employees that we need.

Our working group has drafted legislation that would create a *local option* for municipalities to join the Group Insurance Commission (GIC). Under this proposal no community would be mandated to join the GIC. Instead, municipal managers, public employee unions, and retired employees would negotiate through coalition bargaining to join the GIC, and all decisions about contribution ratios would remain at the local level.

This idea has the potential to generate significant savings for employees and municipalities, to provide employees and retirees across the state with a diverse set of high quality health insurance choices, and to offer long-term protection to retired municipal employees. We worked closely with GIC administrators and attorneys in crafting the proposal. The program is designed to be completely self-financing and the start-up costs to the state are nominal.

We are asking the Legislature to consider and pass this critical health insurance reform during the next few months, and would welcome a public discussion of our proposal. We should expedite passage of this legislation because it will take a great deal of education and time for local negotiations before a decision can be made to join the GIC. Unless we pass this bill soon, communities would not be able to consider joining the GIC until FY2009. The signing organizations are ready to move forward with this proposal as substantially embodied in the attached fact sheet; however, we also continue to work with non-signatory partners, including the Professional Firefighters of Massachusetts, who have not yet reached agreement on the language of the proposal. At the latest, we will forward final legislative language to you by the beginning of September.

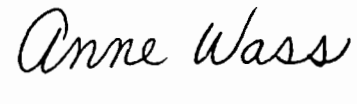
We offer this proposal in the spirit of goodwill, collaboration, and commitment to public service that has been central to our working group. We look forward to working together on this enormously important reform.

Sincerely,

John Hamill
Chairman

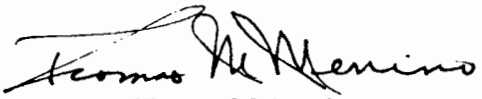
Mayor Thomas G. Ambrosino
Chairman, Metro Mayors Coalition

60 Temple Place, Boston, Massachusetts 02111 617-451-2770 Fax 617-482-7185



Anne Wass
President, Massachusetts Teachers Association

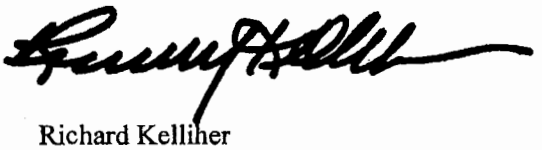
Mayor Mary Clare Higgins
President, Massachusetts Municipal Association



Mayor Thomas M. Menino
City of Boston

Thomas Gosnell
President, AFT-Massachusetts

Ralph White
President, Retired State, County Municipal Employees of Mass

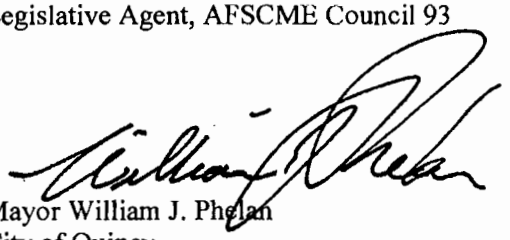


Richard Kelliher
Immediate Past President, Massachusetts & Municipal Association

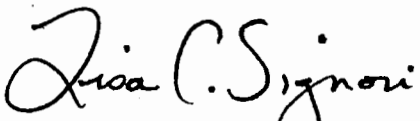
Marc Draisen
Executive Director, MAPC

Andi Mullin
Legislative Agent, AFSCME Council 93

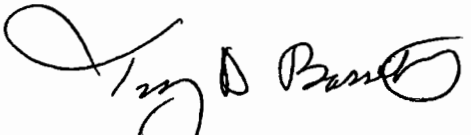
Jay Ash
City Manager, City of Chelsea



Mayor William J. Phelan
City of Quincy



Lisa Signori
Chief Financial Officer, City of Boston



Timothy Bassett
Chairman and Executive Director, Essex Regional Retirement Board

Municipal Health Insurance Working Group

an initiative facilitated by the Metropolitan Area Planning Council

John Hamill, Chairman

Contact: Andrea Hurwitz, Metropolitan Area Planning Council
(617) 451-2770 X2030

FOR IMMEDIATE RELEASE: August 1, 2006

MUNICIPAL ORGANIZATIONS, PUBLIC EMPLOYEE UNIONS, AND RETIREE GROUPS ANNOUNCE LANDMARK HEALTH CARE REFORM PROPOSAL

Coalition announces proposal to create local option for municipalities to join Group Insurance Commission

BOSTON – Today, major municipal organizations, public employee unions, and municipal retiree groups announced a proposal that would create a local option for municipalities to join the Group Insurance Commission (GIC). The coalition of organizations is asking the Legislature to consider and pass this critical reform in the next several months, during the current legislative session.

"This proposal represents months of hard work and goodwill from major stakeholders in municipal government," said John Hamill, Chairman of Sovereign Bank and the convener of the Municipal Health Insurance Working Group. The group has been meeting since September 2005 to try to find common ground on municipal health insurance reform. "We believe the proposal can reduce the direct costs of health insurance for municipalities and their employees, provide high quality health care options, and protect retirees in the future. This reform is a win-win situation for everyone, including taxpayers."

A group of organizations signed a letter that was delivered to legislators today, asking that they take up their proposal. The organizations include the Metro Mayors Coalition, Massachusetts Municipal Association, Metropolitan Area Planning Council (MAPC), Massachusetts Teachers Association, AFT-Massachusetts, AFSCME Council 93, the Retired State, County & Municipal Employees of Massachusetts, and the Essex County Retirement Board. MAPC, the regional planning agency for Greater Boston, provided staff support for the coalition.

"This collaborative approach gives us a tool to help bring skyrocketing health care costs under control while also maintaining the quality of coverage," said Anne Wass, president of the 102,000 Massachusetts Teachers Association. "It provides us with an excellent way to preserve – or potentially even enhance – health benefits, while also preserving collective bargaining, which we consider essential."

"This is a great opportunity for cities and towns to get help with their budget-busting municipal health insurance costs," said Ralph White, President of the Retired State, County & Municipal Employees Association.

Health insurance premiums have risen in double digits for most of the past decade, threatening the ability of many cities and towns to provide quality public services, eroding their ability to increase wages, and leading to lay-offs of municipal staff. Members of the Municipal Health Insurance Working Group recognized that the time had come to find creative solutions to these skyrocketing costs.

"The Metro Mayors Coalition wants to thank the public employee unions and retiree organizations for their commitment to this dialogue, because the financial viability of municipal government is at stake," said Mayor Tom Ambrosino, Chairman of the Metro Mayors Coalition and a member of the Municipal Health Insurance Working Group. "We have a long way to go in this process, but this landmark proposal gives us hope that we can alleviate our health care crisis with creativity and efficient governance."

The working group emerged from the work of the Municipal Finance Task Force that Hamill previously chaired. For a complete copy of the Task Force report and recommendations, see http://www.mapc.org/Municipal_Finance_Task_Force/Municipal_Finance_Task_Force.html.

"This proposal can save cities and towns millions of dollars, while providing municipal employees and retirees with high quality health insurance," said Marc Draisen, MAPC's Executive Director. "Often, the annual increase in health insurance premiums exceeds the increase in municipal budgets allowed under Prop 2 ½, leading to either lay-offs or overrides. That's bad for everyone: cities and towns, municipal employees, and the public. So unions, mayors, town managers, and retiree leaders had a strong incentive to put this plan together."

Highlights of the proposal:

- It would create a local option for cities and towns to purchase health insurance through the GIC. Analysis shows that the GIC's high quality plans are generally significantly less expensive and provide more choices to employees and retirees than typical municipal options. Under the proposal, no community would be mandated to join the GIC.
- A decision to join the GIC would be made collectively among municipal leaders, public employee labor representatives, and retiree representatives. The proposal uses the existing mechanism called "coalition bargaining" to bring stakeholders together to make health care decisions.
- All decisions about contribution ratios – i.e., the percentage of health insurance costs that are borne by employees or retirees – would continue to be made at the local level. The GIC, however, would have responsibility for contracting with health care insurers and making plan design decisions. Municipal employees would be in the same insurance pool as all state employees, which currently covers more than 215,000 people in the Commonwealth.
- Municipalities would pay all costs associated with purchasing health insurance through the GIC, including a small administrative fee to the Commission. The proposal is structured to be self-financing and start-up costs for the Commonwealth would be nominal.
- As part of the proposal, the coalition seeks to expand the Commission by adding representatives of municipal management and public employee unions. These new additions would not change the balance of the Commission.

"This has been an important process that brought people to the table that don't often talk together except as adversaries," said Northampton Mayor Mary Clare Higgins, President of the Massachusetts Municipal Association. "Collectively, we have come together to propose creating a new tool that will help us contain health care costs on the local level while continuing to provide quality benefits to employees."

The Municipal Health Insurance Working Group worked closely with Dolores Mitchell, Executive Director of the GIC, and her top administrators and attorneys in crafting the proposal. "GIC administrators and staff gave us great support," Draisen stated.

The City of Springfield is on the cusp of becoming the first municipality in Massachusetts to join the GIC. The GIC issued emergency regulations allowing a community under a Financial Control Board to purchase health insurance through the commission. A GIC hearing on those regulations, which are already in effect, will take place on August 2. According to the Springfield Finance Control Board, the City of Springfield and its employees are expected to save more than $5 million annually by entering the GIC.

The Metropolitan Area Planning Council (MAPC), the regional planning agency for 101 Metro Boston communities, promotes inter-local cooperation and advocates for sustainable development across the region. More information about the Municipal Health Insurance Working Group's proposal is available at www.mapc.org. Information about the Municipal Finance Task Force's work is available at http://www.mapc.org/Municipal_Finance_Task_Force/Municipal_Finance_Task_Force.html.

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masslive.com

The Republican.

Union officials say pacts close

Thursday, July 27, 2006

By PETER GOONAN
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SPRINGFIELD - Union representatives for police officers and firefighters said yesterday they are close to settling long-expired contracts with the Finance Control Board.

Also yesterday, Control Board officials and the Massachusetts Teachers Association conducted a negotiating session to review the association's settlement proposal for a contract for city teachers. Control Board Executive Director Philip Puccia said the sides agreed not to discuss the results of the meeting, which lasted for several hours.

The three unions are the largest labor groups in the city still without a contract. The police and fire contracts expired three years ago.

"I'm very optimistic we will have an agreement soon," said David A. Wells, president of Local 648 of the International Association of Fire Fighters. "It has been a very long, difficult road. I'm hoping the end is in sight."

Thomas M. Scanlon, president of Local 364 of the International Brotherhood of Police Officers, said the sides are getting close to an agreement on the police contract.

"Now it's up to the Control Board," he said. "We have pretty much resolved the major issues."

Puccia agreed that the sides are near settlement. Any agreement would need votes of approval from the union membership.

Most city employees, including police officers, firefighters and teachers, have been under a wage freeze since July 2003.

The union representatives for police and firefighters said that one key remaining contractual issue is a proposal to switch all city employees over to the less expensive state health insurance plan.

Gov. W. Mitt Romney, as part of a bill aimed at expanding the powers of the Control Board, is proposing that Springfield be allowed to transfer health insurance for city employees to the state's Group Insurance Commission, which administers insurance for state employees.

Changing to the state insurance plan could save the city about $4 million in the first year, and reduce the employees' insurance costs by $1.25 million, Puccia said.

Scanlon said the union favors switching to the state plan by adopting an existing state law rather than approving the governor's bill. In addition, the union wants to ensure that existing retirees are not hurt by the transfer, said Scanlon and Wells.

Both union presidents said the long unresolved contracts have hurt morale.

"The frustration has been very high among members, and morale very low," Wells noted.

Teachers have been without a contract since 2002.

Both the Control Board and the teachers' union are waiting for mediator Leslie Williamson to present his fact-finding report, which will contain non-binding recommendations to move past the impasse.

The Control Board plans to implement working conditions for teachers in this fiscal year, based on its proposal, if a settlement is not reached soon.

Staff writer Natalia Arbulu contributed to this report.

Coalition targets insurance
Friday, August 04, 2006
By AZELL MURPHY CAVAAN
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A coalition of public employee unions, municipal organizations and retiree groups is endorsing a proposal to create local options for municipalities to join the state's insurance program, the Metropolitan Area Planning Council said yesterday.

Supporters of the proposal include: the Metro Mayors Coalition; the Massachusetts Municipal Association; the Metropolitan Area Planning Council; the Massachusetts Teachers Association; American Federation of Teachers-Massachusetts; American Federation of State, County and Municipal Employees Council 93; Retired State, County and Municipal Employees of Massachusetts; and the Essex County Retirement Board.

The organizations sent a letter to legislators on Tuesday asking them to pass a reform that would create local options for municipalities to join the state's Group Insurance Commission, the planning council reported.

Northampton Mayor Mary Clare Higgins, president of the Massachusetts Municipal Association, said the process of marshaling so many organizations for the common cause brought together people who often only talk as adversaries.

"Collectively, we have come together to propose creating a new tool that will help us contain health care costs on the local level while continuing to provide quality benefits to employees," she said.

Springfield is poised to become the first municipality in Massachusetts to fully join the program, according to Dolores Mitchell, executive director of Group Insurance Commission.

The city and its employees are expected to save more than $5 million annually by entering the program, according to reports by the Springfield Finance Control Board.

Thomas M. Scanlon, president of Local 364 of the International Brotherhood of Police Officers in Springfield, has said the union favors switching to a state plan as long as existing retirees are not hurt by the transfer.

In West Springfield, about 250 retired teachers are signed onto the program in a limited capacity, according to Gwen E. Keough, benefits coordinator for the town.

"For the most part, I've gotten positive feedback," she said.

Members of the commission program pay a 10 percent premium cost while members of the town's program pay 25 percent, Keough said.

The Metropolitan Area Planning Council is a regional planning agency based in Boston.

Communities may join state health group

By Brenda J. Buote, Globe Staff | August 10, 2006

Boston Globe North

Local officials are praising a proposal that would give cities and towns the option of purchasing health insurance through the state Group Insurance Commission, a move they say could generate significant savings for taxpayers while offering municipal employees and retirees high - quality healthcare benefits.

The Municipal Health Insurance Working Group, a coalition of community organizations, public employee unions, and municipal retiree groups, is calling on state lawmakers to pass the measure during the current legislative session. Established by the Legislature in 1955 to provide and administer health insurance and other benefits to the Commonwealth's employees and retirees, their dependents and survivors, the commission provides healthcare coverage to about 266,000 members statewide.

``In general, health insurance costs in Revere have increased an average of 10 percent each year over the past seven years; some years, the costs went up by as much as 15 percent," said Mayor Thomas Ambrosino, who, as chairman of the Metro Mayors Coalition, served on the working group that drafted the health insurance proposal. The coalition is composed of mayors and city managers from 10 communities, including Chelsea, Everett, Malden, Melrose, and Revere.

``Our health insurance costs are rising at nearly twice the rate of the GIC, which has experienced increases of 6 to 7 percent," said Ambrosino. ``Revere is a small city. Our bargaining power is nowhere near that of the GIC. We believe giving communities the option of joining the GIC would benefit cities and towns, and ultimately, taxpayers."

In Revere, joining the GIC could translate into a savings of about $600,000 a year, Ambrosino said, noting that health insurance benefits will cost the city about $11.9 million this fiscal year.

Under the working group's proposal, no community would be mandated to join the GIC. The decision would be made collectively, by municipal leaders, public employee representatives, and retiree representatives, through the coalition bargaining process.

Through that process, unions in a community come together to negotiate with the municipality. Each union at the table gets a weighted vote, based on its membership numbers. If 70 percent of the weighted vote approves the proposal, the municipality would be able to join the GIC.

The net effect of GIC membership: Unions would agree to give up control over the design of their health benefit plans. In exchange, they would have access to the GIC's programs, which are generally significantly less expensive than municipal plans and

provide more choices to employees and retirees. Other benefits, such as life, dental, and vision insurance, would not be affected. The GIC buys health insurance coverage from several companies, including Harvard-Pilgrim, Tufts, and Fallon, giving its members the freedom to choose from more than a dozen plans.

``This collaborative approach provides us with an excellent way to preserve -- or even enhance -- health benefits, while also preserving collective bargaining, which we consider essential," said Anne Wass, president of the 102,000-member Massachusetts Teachers Association.

Wass noted that even if communities opted to join the GIC, contribution rates would remain an issue that municipalities would have to negotiate with their unions; member communities would not be obligated to adopt state contribution ratios. She also noted that joining the GIC would give retirees a voice at the bargaining table, something they don't have at the municipal level.

``We'd have to run the numbers, but it's definitely something we would have to consider," said James J. Fiorentini, mayor of Haverhill, where healthcare costs jumped from $17.5 million last fiscal year to $19.3 million this fiscal year. However, he cautioned that in the past, coalition bargaining has proved to be a ``tremendous problem in Haverhill.

``We may never want to get into that because, in effect, it gives the teachers in our city the power to decide for everyone what will be done, because there are so many more members in their union than in any other," said Fiorentini. ``Despite the obstacles, we may try to push through. The current system is ridiculous: If I want to change copays and deductibles, I have to get every one of our 19 unions to agree. The taxpayers in Haverhill have made it clear that they don't want to pay more, so we have to find ways to save money."

Several organizations have voiced support for the proposal, including the Metro Mayors Coalition; the Massachusetts Municipal Association; the Metropolitan Area Planning Council; the Massachusetts Teachers Association; the American Federation of State, County and Municipal Employees, Council 93; the Retired State, County & Municipal Employees of Massachusetts; and the Essex County Retirement Board, which manages pension funds for 18 local communities, three regional school systems, and 22 special groups, such as water departments and housing authorities. The Metropolitan Area Planning Council, the regional planning agency for Greater Boston, provided staff support for the working group.

``Skyrocketing healthcare costs have placed enormous pressure on local budgets, leading to cuts in programs and escalating property taxes," said Michael J. Widmer, president of the Massachusetts Taxpayers Foundation. ``This legislation has the potential to ease the number one budget-buster at the local level."

The proposal represents months of hard work and good will by major stakeholders in municipal government, said John Hamill, chairman of Sovereign Bank New England and

organizer of the health insurance coalition. The working group has been meeting since September 2005 to try to find common ground on municipal health insurance reform.

Hamill, who has long studied trends in the financial conditions of cities and towns in Massachusetts, formed the coalition last year in an attempt to address soaring healthcare costs.

``At the rate insurance costs were going, any increase in property tax revenues or local aid would go toward healthcare costs," said Hamill. ``We felt it was important to find a creative solution, hence the working group."

Added Marc Draisen, MAPC's executive director: ``Often, the annual increase in health insurance premiums exceeds the increase in municipal budgets allowed under Prop osition 2 1/2 , leading to either layoffs or overrides. That's bad for everyone: cities and towns, municipal employees, and the public. So unions, mayors, town managers, and retiree leaders had a strong incentive to put this plan together."

The Municipal Health Insurance Working Group worked closely with Dolores Mitchell, executive director of the GIC, in crafting the proposal. According to Mitchell, if the proposal is approved by the Legislature, the number of individuals served by the GIC could potentially double. That growth would trigger an expansion of the 11-member GIC board to include at least two municipal representatives, she said, noting that both management and labor would be represented.

``It would give us an awful lot of clout in this market," said Mitchell, noting that the GIC's increased membership would, to some degree, boost the group's ability to take advantage of the economies of scale.

Just as importantly, membership in the GIC would save communities both time and money -- resources that they must now spend to negotiate rates with their insurance carriers, noted Lilli Gilligan, chief operating officer at the Essex Regional Retirement Board, which manages the pensions of 1,598 retirees throughout the northern suburbs. In addition, the proposal has the potential to provide equality in the pensions system in Massachusetts, Gilligan said.

Municipal retirees now pay various amounts for insurance coverage, up to 50 percent of their premium, depending on which community they worked for, what position they held, how long they were in the community's employ, and how much the community can afford to contribute toward their healthcare coverage. Individuals who receive health insurance benefits through the GIC pay just 10 percent of their premiums.

``The way the system works now, if you were an administrative assistant to the principal at Pentucket High, when you retired, you'd be paying 50 percent for your healthcare coverage, while the guy who worked as a math teacher right down the hall from you would be paying just 10 percent for the same coverage when he retired," even if both

employees worked the same number of years, noted Gilligan, because retired Pentucket teachers already are covered by the GIC while municipal retirees are not.

Hamill said he hopes to get the legislation filed on Beacon Hill next month. Ideally, he would like to see the bill passed by Jan. 1, so that community leaders and local union representatives would have time to decide whether they should join the GIC by fiscal 2008, which begins July 1, 2007.

Meanwhile, Springfield is on the verge of becoming the first municipality in Massachusetts to join the GIC, under emergency regulations that allow a community under a Financial Control Board to purchase health insurance through the commission.

Membership in the GIC is expected to save the city and its employees $5 million annually.

Brenda J. Buote may be reached at bbuote@globe.com. ▪

State House News – August 1, 2006

MUNICIPAL MANAGERS, UNIONS UNITE BEHIND HEALTH REFORM PLAN: A coalition of municipal government groups and large unions that represent public employees circulated a proposal Tuesday on Beacon Hill that gives cities and towns the option to enroll their workers in the massive health insurance program run by the state's Group Insurance Commission. The proposal would leave decisions about the percentage of health insurance costs borne by local employees or retirees at the local level, while empowering the commission to make decisions about health insurance contracts and plan design changes. The GIC currently covers more than 215,000 individuals, and the proposal would call for cities and towns that opt into the state system to cover the cost of health insurance for their employees through the GIC and pay the commission an administrative fee of not more than 1 percent of their overall local health insurance costs. The plan calls for the 11-member commission to initially expand to 13 members, with one new member representing municipal management and one representing teachers.

Currently, communities under the oversight of a state fiscal control board are allowed to purchase health insurance through the commission, under emergency regulations. Springfield is on the verge of becoming the first municipality in Massachusetts to join the GIC plan. The proposal grew out of a Municipal Health Insurance Working Group convened in September 2005 to examine municipal health insurance reform. The groups which signed a letter today calling on lawmakers to act on their proposal include the Metro Mayors Coalition, Mass Municipal Association, the Metropolitan Area Planning Council, Mass Teachers Association, AFT-Massachusetts, AFSCME Council 93, the Retired State, County & Municipal Employees of Massachusetts and the Essex County Retirement Board. "The proposal represents months of hard work and goodwill from major stakeholders in municipal government," John Hamill, chairman of Sovereign Bank

and convenor of the working group, said in a statement. "We believe the proposal can reduce the direct costs of health insurance for municipalities and their employees, provide high quality health care options, and protect retirees in the future. This reform is a win-win situation for everyone, including taxpayers."

Boston Globe South
REGION
New way to insure workers
State health plan eyed for localities
By Matt Carroll, Globe Staff | August 6, 2006

A coalition of municipal and employee groups is pushing for legislation that would allow them to join the state's insurance plan -- a move that could bring significant savings in healthcare costs.

The legislation, which addresses what many cities and towns see as their most pressing financial concern, would let municipalities be part of the insurance coverage overseen by a quasi-governmental agency called the Government Insurance Commission. Its rates have been rising only half as fast as municipalities' rates.

State spending on employee health insurance increased 6.6 percent annually between fiscal 2001 and 2005, while it climbed 13 percent for municipalities .

The coalition, which has been meeting since September, includes organizations on all sides of the issue, from groups representing
municipal officials to public unions, public employee retirees, and planning agencies.

``We think it's a good deal for municipalities and municipal workers, which is why so many people on both sides support the proposal," said Marc Draisen, executive director of the Metropolitan Area Planning Council, which is also part of the coalition.

Backers of the legislation include the Metro Mayors Coalition , the Massachusetts Municipal Association , and the Massachusetts Teachers Association .

The coalition, called the Municipal Health Insurance Working Group, hopes the legislation, which does not have a bill number yet, can be passed this fall. The wide support evident so far argues in favor of passage, backers say.

Even if the legislation passes, communities cannot automatically join up. Every union in a municipality must first agree to the proposal. Negotiations over healthcare costs are often nettlesome for towns and unions.

In order to make the legislation more appealing to unions, the percentage of healthcare costs paid by employees would still be subject to collective bargaining. State employees do not have that option; the percentage is set by the Legislature.

Rapidly increasing healthcare costs -- which increased by more than half between 2001 and 2005 -- have turned into a major headache for municipal officials.

``It is the number one budget-buster for every city and town in the state," said Quincy Mayor William J. Phelan .

In Quincy , annual healthcare costs have more than doubled in five years, climbing from $18 million in fiscal 2002 to $37.8 million budgeted for fiscal 2007, Phelan said.

Phelan, a member of the coalition committee that helped draw up the legislation, predicted unions would find the proposal attractive because it would help their members reduce costs.

The Government Insurance Commission has done a better job than municipalities in controlling costs because its expertise and size -- more than 215,000 members -- give it the clout to negotiate better rates, coalition members said.

The difference in cost between plans offered by municipalities and the state can be dramatic.

One HMO family plan offered by Quincy last year had monthly premiums of $1,267 , while a similar state plan cost $895 , according to MAPC.

John Hamill, chairman of Sovereign Bank New England and also chairman of the coalition committee that crafted the legislation, said the
bill won't solve what has become a national problem, but it could at least reduce the rate of growth in healthcare costs for municipal employees.

Because of the broad support for the bill, he is optimistic it will pass.

Lieutenant Governor Kerry Healey said she supports the legislation ``100 percent." Neither Senate President Robert E. Travaglini nor House Speaker Salvatore F. DiMasi could be reached for comment.

Anne Wass , president of the 102,000-member Massachusetts Teachers Association and a Hanover teacher , applauded the bill.

It's a ``creative way to try to preserve and maybe even enhance health benefits" for union members, she said, with municipalities getting a better grip on rising costs and unions preserving their collective bargaining. ``It will help everyone."

Most local town administrators knew little about the proposal, but one applauded anything that would help reduce health costs.

``In general, the more options you create, the better it is for everyone," said Richard J. LaFond , the town administrator in Carver .

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Springfield Union News
Coalition targets insurance
Friday, August 04, 2006
By AZELL MURPHY CAVAAN
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A coalition of public employee unions, municipal organizations and retiree groups is endorsing a proposal to create local options for municipalities to join the state's insurance program, the Metropolitan Area Planning Council said yesterday.

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"Collectively, we have come together to propose creating a new tool that will help us contain health care costs on the local level while continuing to provide quality benefits to employees," she said.

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The Metropolitan Area Planning Council is a regional planning agency based in Boston.

Municipalities find novel way to beat back insurance costs

By JIM HAND/SUN CHRONICLE STAFF
August 8, 2006

For years, local city and town leaders have cried for relief from spiraling health insurance costs.

Now a group of municipal, business and union representatives say help is on the way. A group calling itself Municipal Health Insurance Working Group is proposing legislation that would allow cities and towns to join the state government's insurance program.

The switch would allow communities to cut cost by taking advantage of the greater bulk purchasing power of the state.

It would also tap into the state's ability to design more efficient health insurance plans.

The group estimated many communities could save hundreds of thousands of dollars through the change, with Springfield alone reducing costs by $5 million a year.

Local officials have said for years that they cannot long sustain annual double-digit percentage increases in insurance costs.

`` We're going to be extinct if this trend continues," Plainville Selectman Chairman Rob Rose said. `` This is eating us alive."

Rose said the cost of providing health insurance for Plainville's employees jumped from $459,000 six years ago to $1.4 million this year.

He said Plainville will be in serious financial trouble within a few years if costs cannot be controlled.

The group studying the problem said the cost of health insurance alone is increasing at a higher rate than revenue for some communities

Jim Merriam, the mayor's assistant in Attleboro, said he has long advocated for allowing cities and towns to join the state insurance group.

Costs are rising at the state level at about half the rate as among cities and towns.

Merriam emphasized he was stating his personal opinion and not the official position of the city.

He said the state commission, which designs health insurance plans for employees, is more efficient than cities and towns, which must negotiate the make-up of plans with unions.

The state commission is made up of union and state officials and would be expanded to include municipal representatives under the legislation.

The amount of co-pays and deductibles can be changed on a yearly basis by the state commission, whereas cities and towns have a great deal of trouble negotiating those changes.

State Rep. John Lepper, R-Attleboro, said another advantage of joining the state program is that it would spread the risk and costs of catastrophic illnesses over a much larger pool.

He said in small communities, a few catastrophic illnesses can cause rate to skyrocket.

`` I don't see how it can fail to benefit the communities that choose to take advantage of it," he said.

The legislation calls for the percentage of the cost of a plan contributed by a worker and a

municipality to remain the authority of contract negotiations between communities and unions.

State Sen. James Timilty, D-Walpole, said the idea sounds like a great one on the surface.

He said it should be `` fully vetted" with hearings, but he would like to see quick action on it.

Proponents are asking the Legislature to approve it this year, but the legislative formal session has already ended.

Timilty said he would support a call to reconvene in formal session in the fall to consider the health insurance proposal and other priorities, such as a sex offender bill.

The working group that came up with the legislation included representatives for most major unions, along with mayors, business leaders and regional planning authorities.

Lepper said that with powerful, politically-active unions supporting the legislation, it could possible be dealt with in informal session when unanimous approval is needed for passage.

REGION

Working for relief in pooled insurance

Group drafts plan to cut towns' costs

By Emily Shartin, Globe Staff | August 10, 2006

Boston Globe West

A proposal to allow communities to buy employee health insurance through the state's insurance commission could offer municipalities some relief from skyrocketing healthcare costs, officials say.

A coalition of municipal organizations, unions, and retiree groups is working on legislation that would allow communities to join the Group Insurance Commission, which oversees health insurance for about 145,000 state workers. As part of a larger negotiating group, proponents of the plan say, communities would be able to take advantage of lower insurance rates, which would save both towns and their employees money.

``We want to give them the ability to get more control over these finances," said Marc Draisen, executive director of the Metropolitan Area Planning Council. Under the new proposal, communities would still make their own determinations about how the costs would be split between the towns and their workers.

Many communities have faced double-digit increases in healthcare costs. Last year, the Group Insurance Commission saw increases of about 7.5 percent, said executive director Dolores Mitchell.

John Hamill, president and chief executive of Sovereign Bank and chairman of the municipal health insurance working group, believes the savings on insurance would help communities hire more workers.

``You get into these terrible choices," Hamill said. ``Is it new jobs or paying for higher healthcare costs?"

Some communities have already taken steps to band together and negotiate for healthcare. One such consortium, the West Suburban Health Group, includes Ashland, Dover, Holliston, Natick, Needham, Sherborn, Shrewsbury, Wayland, Wellesley, and Wrentham.

Marc Waldman, Wellesley's treasurer and West Suburban's chairman, supports the idea of allowing towns to join the Group Insurance Commission.

``On the surface I would say it's probably a very good thing," he said.

Local officials have said reducing healthcare costs can be difficult because changes have to be negotiated through employee unions. Under the new proposal, communities would subscribe to the state's healthcare plans, and a small coalition of local union representatives would work with the towns to negotiate such elements as employee contribution rates.

Ralph White, president of the Retired State, County and Municipal Employees Association , said he believes the state plan could save communities money. He also believes creating a small coalition of union representatives to negotiate healthcare could save time.

``It would be a lot easier for the employees and the retirees to bargain as one group," White said.

The working group expects the legislation will be filed later this year. While some local communities are unsure whether joining the Group Insurance Commission would benefit them, others are intrigued by the prospect.

``We absolutely would save money," said Joshua Ostroff, a Natick selectman.

Ginger Esty, a Framingham selectwoman, said she is unsure whether the proposal would help Framingham but is following the debate. ``Every community is just overwhelmed with healthcare costs," she said.

Communities are technically allowed to join the Group Insurance Commission now, Mitchell said, but are not able to join the larger insurance pool. She said opening the commission to more members might cause administrative burdens but would especially benefit smaller communities. As part of a larger insurance pool, she said, communities are less vulnerable to higher premiums if one member has a catastrophic illness.

State Representative Rachel Kaprielian, a Watertown Democrat, said reining in healthcare costs has been a recurring topic in legislative discussions on local aid.

``The subject kept coming back to health insurance costs spiraling out of control,'' she said. ▪

Lynn in line for insurance savings
By **Thor Jourgensen**
Monday, August 28, 2006

LYNN - A plan by a major municipal planning agency to reduce employee health insurance costs could benefit Lynn, Mayor Edward J. Clancy, Jr. said.

The Metropolitan Area Planning Council has proposed allowing communities, by a vote of their elected officials, to join the Group Insurance Commission.

The commission seeks to reduce health insurance costs by purchasing insurance for a number of customers in much the same way organizations purchase automobile insurance for drivers.

It currently represents health insurance needs of 265,000 state workers and dependents.

"This proposal can save cities and towns millions of dollars, while providing municipal employees and retirees with high quality health insurance," said Council Executive Director Marc Draisen.

"Often, the annual increase in health insurance premiums exceeds the increase in municipal budgets allowed under Proposition 2 1/2 leading to either layoffs or overrides," Draisen added, referring to the state's property tax limitation law.

Clancy is looking to the council's proposal as a way to reduce a possible 9percent to 12 percent hike in the city's $26 million employee insurance budget.

"This could make it a lot more manageable by buying in bulk and standardizing employee contributions across the board," Clancy said.

Under the Council's proposal, communities would pay all costs associated with purchasing health insurance through the commission, which would charge a small administration fee for member communities.

All decisions about the percentage of health insurance costs borne by employees or retirees would continue to be made at the local level. The commission would be responsible for contracting with health care insurers and help determine insurance plan details.

Hopeful assesses fiscal stability
Saturday, August 26, 2006
By AZELL MURPHY CAVAAN
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SPRINGFIELD - Saying the city's fiscal circumstances are the most challenging statewide, Democratic candidate for lieutenant governor Deborah B. Goldberg, of Brookline, said she would make Springfield a priority, if elected.

"I would need to spend a lot of time here looking at which fiscal policies could be put in place to give the city what it needs to manage itself," Goldberg said during an editorial board meeting at The Republican on Wednesday.

Goldberg, whose family founded the Stop & Shop supermarket chain, said the city requires fiscal policies that rely heavily on "predictability in spending." She said she favors long-term contracts and praised the state's insurance plan known as Group Insurance Commission. Springfield is currently poised to become the first municipality in Massachusetts to fully join the program.

Goldberg, 52, was elected to the Brookline Board of Selectmen in 1998. As chairwoman from 2002 to 2004, she was responsible for the town's $190 million annual budget.

She is one of four candidates for the Democratic nomination for lieutenant governor. The others are: Worcester Mayor Timothy P. Murray; Andrea Silbert of Harwich, co-founder and former CEO of the Center for Women & Enterprise in Boston; and Cohasset psychiatrist Sam Kelley.

Goldberg said her candidacy is being supported locally by state Rep. Cheryl Coakley-Rivera, D-Springfield; state Rep. Stephen Kulik, D-Worthington; state Rep. John W. Scibak, D-South Hadley; and state Rep. Ellen Story, D-Amherst.

Candidates for governor include Republican Lt. Gov. Kerry Healey. Democratic candidates are Deval Patrick, former general counsel for Texaco and Coca-Cola; former venture capitalist Christopher F. Gabrieli; and Attorney General Thomas F. Reilly. Independent Christy P. Mihos, and Green Party candidate Grace Ross are also running.

The primary election is on Sept. 19.

Mass. city ends drug plan that defied US

Springfield joins state, halts Canadian imports

By Christopher Rowland, Globe Staff | August 26, 2006

The Massachusetts city that stood up to federal regulators and inspired a national movement to import less expensive prescription drugs from Canada is calling it quits.

Three years after Springfield became the first city in the United States to buy drugs from Canada for about 1,500 municipal employees and retirees, the city has decided to stop offering its own health insurance coverage, including the Canadian drug importation plan.

Officials say they hope to save the financially troubled city up to $5 million a year by enrolling workers and retirees in the state's health plan, run by the Group Insurance Commission, starting Jan. 1.

Springfield gained national attention when former mayor Michael Albano launched the drug-import plan in 2003 in defiance of the federal government, which said it was illegal and potentially dangerous because of the risk of counterfeit or adulterated products.

The city said that there were no problems with the program during its operation and that it saved $3 million annually by purchasing drugs in Canada that were priced lower than in the United States. The city negotiated price discounts with a Canadian vendor, and employees purchased their drugs directly from the vendor.

Despite a series of warnings, the federal Food and Drug Administration never intervened to stop the practice.

``The Springfield program proved that it can work and work safely," said David MacKay , an international pharmacy consultant in Winnipeg, Manitoba. ``It was a bold move."

Large drug manufacturers sell the same brand-name products in many countries, and they are typically less expensive in Canada and elsewhere because government controls limit profits.

Springfield's action coincided with widespread consumer and political anger nationally over the skyrocketing cost of medicine, and the city became the focus of media attention, including an appearance by Albano on CBS's ``60 Minutes." Governors in other states soon set up websites to help their employees and residents import prescription drugs. Other communities and counties followed suit, including Fall River, Haverhill, and Revere in Massachusetts.

But Canadian drug imports never topped $1 billion a year nationwide, according to industry analysts, and the introduction this year of the federal Medicare Part D prescription drug benefit -- which provided government prescription coverage to seniors for the first time -- has blunted demand for drugs from Canada, they said. About 22.5 million people had enrolled in Medicare drug plans as of June, according to the government.

MacKay estimated that Medicare Part D has reduced sales from Canada by as much as 40 percent so far

this year, although he said pharmacies are now reporting a rebound as spending by some senior citizens on the Medicare plan reaches into the gap in coverage that requires them to pay 100 percent of their prescription costs between $2,250 and $5,100.

Also, declining currency-exchange rates over the past two years have eroded much of the savings Americans once realized by ordering from Canada, making cross-border buys less attractive.

In addition, US Customs and Border Protection this year has stepped up seizures of prescription drugs, and the pharmaceutical industry and the FDA have issued a stream of warnings about the safety of imports.

Drug importation has ``cooled off a little bit,'' Albano said yesterday. ``I think the industry really accomplished something in that they have scared a lot of people.''

The Pharmaceutical Research and Manufacturers of America , the industry's lobbying group in Washington, D.C., said it has logged 7 million visits to an industry website that warns of the dangers of importation and suggests alternatives, including drug makers' programs for free and discounted medicines.

``There are very real dangers to importing foreign medicines, and Americans are beginning to recognize these dangers,'' said senior vice president Ken Johnson.

The Medicare prescription drug program may have reduced demand for imports among individuals, but municipal leaders struggling with ballooning healthcare budgets remain interested, said Anthony Howard , president of CanaRx, the Ontario company that has the Springfield contract.

``We have over 100 municipalities and organizations, and we're growing tremendously,'' Howard said.

A US Senate bill to legalize all importation has 32 sponsors, including Massachusetts Senators Edward M. Kennedy and John F. Kerry . Similar measures have been passed by the House. But the last major push for a vote occurred in 2004. AARP says it expects importation to grow as an issue during this year's midterm campaigns.

After Canadian pharmacists began shipping large volumes of drugs into the United States four years ago, the pharmaceutical industry responded by restricting the supply available for importation into Canada. In response, Canadian suppliers began arranging for shipments through Great Britain, New Zealand, Australia, and Israel, among other countries.

But safety concerns have increased, as the drug sources have become more diversified. Groups that favor drug importation are working to develop programs that would certify various vendors. Nevada recently set up its own program for the licensing and certification of foreign pharmacies.

``If you just go on the Internet and type `prescription drugs' into Google, you don't know which hands you're going to fall into,'' said MacKay , the pharmacy consultant in Winnipeg .

``It really can be a buyer-beware market if you don't have some common-sense strategies.''

Christopher Rowland can be reached at crowland@globe.com. ■

Blau, Gary

From: Blau, Gary on behalf of DOR DLS Law
Sent: Thursday, May 18, 2006 1:49 PM
To: 'Karen Karowski'
Subject: EM2006-451 - Health Insurance 32B

Karen:

Question 1: With respect to eligibility for employee group health insurance benefits, the board of selectmen has been given the authority to make such determinations for the town, as the appropriate public authority. See Mass. GL c. 32B, §2(a) & (d). As treasurer, the official usually charged with administering the plan, you may certainly provide the board of selectmen with information that may help it determine eligibility, but the board has the final authority for the town. The employee, however, may challenge any adverse determination by the board in a civil action in court. See Ramponi v. Board of Selectmen of Weymouth, 26 Mass. App. Ct. 826 (1989) & Shea v. Board of Selectmen of Ware, 34 Mass. App. Ct. 333 (1993).

Question 2: When asked, we have generally opined that providing health insurance contributions and coverage under the town's plan to compensated elected officials who regularly work less than 20 hours per week is discretionary with the board of selectmen, subject to appropriation. However, we have also indicated that the benefit must be made available to all such officials, and that the board does not have the authority to cover some elected officials within that class, but not others. See attached opinion 2001-74. Arguably the board's decision to cover compensated elected officials who work less than 20 hours regularly could continue to apply "...during the entire term for which they are elected..." under GL c. 32B, § 2(d). We think that is limited, at best, to the current term of election, not any subsequent term after the board has eliminated the benefit for such elected officials. Communities seeking to alter group insurance coverage to elected officials and to grandfather town contribution health insurance coverage for previously elected officials have sought special legislation to clarify the matter. See Chapter 76 of the Acts of 2006 (Sandwich), Chapter 156 of the Acts of 2004 (Swansea) and Chapter 480 of the Acts of 1998 (Carver). These bills have also provided that the compensated part-time elected town officials could be covered on the town's plan upon payment of the entire premium and an administrative fee.

This being said, it is the board's decision to make whether a particular town employee is eligible for coverage. Whether it may be a conflict of interest for the board to make that decision is a matter to be addressed to town counsel or the state ethics commission, under GL c. 268A. We point out that it is the general responsibility of the board of selectmen and town accountant to determine whether any purported expense may be authorized under a town appropriation. Treasurer of Rowley v. Town of Rowley, 393 Mass 1 (1984). In that case the treasurer's duty to pay was considered ministerial and the authority to determine legality was given to the town accountant and board of selectmen.

You may seek further advice on this issue from your town counsel or the Group Insurance Commission, which has general oversight authority for municipal group health insurance plans. I hope this addresses your concerns.

Gary A. Blau, Tax Counsel
Bureau of Municipal Finance Law
Division of Local Services
Massachusetts Department of Revenue
(617) 626-2400
blau@dor.state.ma.us

2001-74.doc

February 20, 2001

Brian Connolly, Town Administrator
37 Main Street
Charlton, MA 01507

Re: Health Insurance for Elected Officials
Our File No. 2001-74

Dear Mr. Connolly:

You have asked for an opinion concerning the eligibility of elected officials for group health insurance coverage. In particular you ask:

1. Must elected officials be compensated to be eligible for health insurance?
2. Must elected officials work a certain number of hours to be eligible?

With respect to your first question, elected officials must receive "compensation" in order to be eligible for group health insurance. Massachusetts General Laws Chapter 32B Section 2(d) defines employee for group health insurance coverage eligibility purposes as:

> any person in the service of a governmental unit ... who receives compensation for such service .... whether such person be employed, appointed or elected by popular vote, ... provided the duties of such person require no less than twenty hours, regularly, in the service of the governmental unit during the regular work week of permanent or temporary employment ... ; except persons elected by popular vote **MAY** be considered eligible employees during the entire term for which they are elected regardless of the number of hours devoted to the service of the governmental unit. (emphasis added).

Clearly the statute requires that elected officers receive compensation as a condition of eligibility for coverage. See Ramponi v. Board of Selectmen of Weymouth, 26 Mass. App. Ct. 826 (1989). The amount of compensation is not specified, but must be more than merely reimbursement for out-of-pocket costs. Any stipend or salary paid for rendered service is considered sufficient compensation to qualify.

With respect to your second question, elected officials who receive compensation must be covered, if they so elect, if they work regularly at least 20 hours per week. The hours of work must be over 20 consistently and cannot vary above and below that amount in a sporadic manner. The board of selectmen, as the appropriate public authority, may

determine as a matter of fact whether any such elected official works the required minimum regular hours. G. L. c. 32B, §§2(a) & 2(d).

However, the statute also provides for an element of discretion in eligibility of elected officials, where such officials work less than the regular twenty hours, provided they are compensated. The board of selectmen is given the ability under the statutes above cited to permit such employees to be covered, notwithstanding the number of hours actually worked, and to discontinue such coverage after having so authorized it. Shea v. Board of Selectmen of Ware, 34 Mass. App. Ct. 333 (1993). If the board makes a decision to cover elected officials who do not work the minimum number of hours, in our opinion, they must authorize coverage for all such elected officials, not just a select few persons or positions. In addition, any such decision, at least in the first instance, is subject to an appropriation by town meeting of an amount necessary to cover the additional employees. See Anderson v. Board of Selectmen of Wrentham, 406 Mass. 508 (1990).

The exercise of this discretion by the board of selectmen can be politically charged, especially since the board members themselves may benefit from the decision. This unfortunate circumstance has led to special legislation in some communities requiring such officials to pay 100% of their premiums. See Chapter 383 of the Acts of 1998 (Sterling) and Chapter 480 of the Acts of 1998 (Carver). In another case, a town petitioned the legislature to prohibit elected officials who receive a nominal stipend of $1000 or less from receiving health insurance benefits. Chapter 36 of the Acts of 1996 (Abington).

We hope this addresses your concerns. If we may be of further assistance, please do not hesitate to contact us again.

Very truly yours,

Bruce H. Stanford, Chief
Property Tax Bureau

May 28, 2003

Katie Robey, Vice-Chairman
School Committee
City Hall
140 Main Street
Marlborough, MA 01752

Re: Stipend
Our File No. 2003-121

Dear Ms. Robey:

You report that you receive a stipend as a member of the school committee. Money to pay the stipend is included in the city's budget for the schools and is not included in the school committee's budget. You inquired whether the treasurer acted properly in making deductions from each monthly payment of the stipend.

The issue is whether the stipend should be perceived as compensation. We have advised local officials that a "stipend" would be deemed to be "compensation" provided that it was more than merely a reimbursement for out-of-pocket expenses. Any stipend or salary paid for rendered service is considered compensation. The treasurer then should be making deductions from the monthly checks paid to school committee members.

Chapter 32B Section 2 (d) requires that employees, including elected officials, receive compensation as a condition of eligibility for group health insurance. There is an additional requirement that employees work at least 20 hours per week regularly and are remunerated by the town payroll process. Under the terms of this statute, elected officials who are compensated may be covered by health insurance, at the discretion of the appropriate public authority, even if the elected officials do not satisfy the weekly 20 hour service requirement. Chapter 32B Section 2 (a) defines the mayor, in a city, as the "appropriate public authority." If the mayor decides to extend the coverage, then all compensated elected officials, not just a select few, who work less than 20 hours regularly per week would be covered, subject to appropriation.

We hope this information proves helpful.

Very truly yours,

Daniel J. Murphy, Chief
Property Tax Bureau

Special Acts Relating to Elected Municipal Employee Eligibility for Group Health Insurance

Chapter 115 of the Acts of 2006

AN ACT RESTRICTING CERTAIN INSURANCE BENEFITS FOR PART-TIME ELECTED OFFICIALS OF THE TOWN OF NORWELL.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same as follows:

SECTION 1. Notwithstanding chapter 32B of the General Laws or any other general or special law to the contrary, part-time elected officials of the town of Norwell who receive a stipend shall not be eligible for participation in the town's contributory health and life insurance benefit plan, but part-time elected officials who receive a stipend and who pay the full monthly cost to the town, plus any administrative costs that may be assessed by the board of selectmen, shall be eligible to participate.

SECTION 2. This act shall take effect on July 1, 2006.

Approved June 21, 2006.

Chapter 76 of the Acts of 2006

AN ACT RELATIVE TO HEALTH INSURANCE COVERAGE FOR PAID ELECTED OFFICIALS IN THE TOWN OF SANDWICH.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same as follows:

SECTION 1. Notwithstanding chapter 32B of the General Laws, part-time elected officials of the town of Sandwich who receive a salary or a stipend shall not be eligible for participation in the town's contributory health and life insurance plan, except that those part-time officials who were elected before April 1, 2005 and currently participate in that plan shall be eligible to continue to participate until the

end of their current term. Part-time elected officials who receive a salary or a stipend and who elect to pay 100 per cent of the cost of the official's participation in the town's health and life insurance benefit plan, plus any administrative costs that may be assessed by the board of selectmen, may be considered eligible to participate.

Approved May 4, 2006.

Chapter 156 of the Acts of 2004

AN ACT RELATIVE TO PART-TIME ELECTED OFFICIALS OF THE TOWN OF SWANSEA.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

Notwithstanding chapter 32B of the General Laws or any other general or special law to the contrary, part-time elected officials of the town of Swansea who receive a stipend shall not be eligible for participation in the town's contributory health and life insurance plan. Part-time elected officials elected prior to April 2004 who currently participate in the plan shall be eligible to continue participation until the end of their current terms. Part-time elected officials who receive a stipend and who elect to pay 100 per cent of the cost of such participation plus any administrative costs that may be assessed by the board of selectmen may be eligible to participate in the plan.

Approved July 1, 2004.

Chapter 100 of the Acts of 2004

AN ACT RELATIVE TO THE RETIREMENT AND HEALTH BENEFITS OF CERTAIN ELECTED OFFICIALS OF THE TOWN OF RICHMOND.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

SECTION 1. Notwithstanding chapters 32 and 32B of the General Laws or any other general or special law to the contrary, any elected official of the town of Richmond who receives regular annual compensation from the town that is less than $10,000 annually, adjusted annually according to changes in the United States Consumer Price Index as reported by the Bureau of Labor Statistics as of June 30, shall not be eligible for the benefits provided under said chapters 32 and 32B.

SECTION 2. Section 1 shall not impair the retirement or health benefits of any person serving as an elected official in the town of Richmond as of January 1, 2003, provided, however, if said elected official fails of nomination or re-election and is subsequently elected following such failure said elected official shall be subject to this act.

SECTION 3. This act shall take effect upon its passage.

Approved May 13, 2004.

Chapter 148 of the Acts of 1998

AN ACT RELATIVE TO ELECTED OFFICIALS IN THE TOWN OF SEEKONK.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

SECTION 1. Notwithstanding the provisions of any general or special law to the contrary, the amount of compensation paid to elected officials in the town of Seekonk, excepting the elected position of town clerk, shall not make said officials eligible for medical, dental or life insurance coverage.

SECTION 2. This act shall take effect upon its passage.

Approved June 11, 1998.

Blau, Gary

From: Blau, Gary on behalf of DOR DLS Law
Sent: Wednesday, February 15, 2006 1:22 PM
To: 'Carolyn Manley'
Subject: EM2006-150 - Employee Benefit issue

Carolyn:

Determination of eligibility for group insurance benefits is made by the appropriate public authority, in your case the board of selectmen, under GL c. 32B, §2(d). That statute provides that coverage applies to compensated employees "provided, the duties of such person require no less than twenty hours, regularly, in the service of the governmental unit during the regular work week of permanent or temporary employment, and provided further that no seasonal employee or emergency employees shall be included..." We have interpreted that language as requiring that the hours of the employee consistently are twenty hours or more during the course of the employment, and do not fluctuate or vary above and below those hours in a sporadic manner. In this case the employee would appear to either not qualify because of the regular hour minimum requirement, or during the time when the position requires 35 hours per week, because it is seasonal. That may depend on the length of time the employee works the longer hours. COBRA would only apply if the employee is eligible and becomes covered for group insurance and becomes uncovered by reason of some triggering event.

Since this is a matter for the board of selectmen to determine, you may wish to consult with the board or with town counsel. You may also address your question to the general counsel of the group insurance commission, a state agency with general oversight authority over municipal group health insurance issues. Lisa Boodman is general counsel of that agency and may be reached at 617-727-2310 X7014. If the employee would be considered covered only during the period the employee works the longer hours, you may wish to contact the United States Department of Labor, which we understand has oversight of federal COBRA laws.

I hope this addresses your concerns.

Gary A. Blau, Tax Counsel
Bureau of Municipal Finance Law
Division of Local Services
Massachusetts Department of Revenue
(617) 626-2400
blau@dor.state.ma.us

-----Original Message-----
From: Carolyn Manley [mailto:cman.javanet@rcn.com]
Sent: Friday, February 10, 2006 3:04 PM
To: DLSLAW@dor.state.ma.us
Subject: Employee Benefit issue

Dear Sir or Madame,

If the following question does not fall with in your jurisdiction would you please advise me as to the appropriate authority.

Blau, Gary

From: Blau, Gary on behalf of DOR DLS Law
Sent: Friday, February 03, 2006 3:26 PM
To: 'Amy Lane'
Subject: EM2006-83 - School Budgets

Amy:

Your question involves two distinct aspects. The first aspect is whether the school department must comply with the finance committee's request to provide budgetary information concerning group insurance obligations for its employees for purposes of determining the town's budget appropriations. The second aspect is whether the amounts to be appropriated may be made to the school department's general operating budget. The answer to both questions is clearly YES.

With respect to the first aspect, GL c. 41, §59 requires that:

> The selectmen and **all** boards, **committees**, heads of departments, or other officers **of a town authorized by law to expend money shall furnish to the town accountant, or, if there is no town accountant, to the appropriation, advisory or finance committee, if any**, otherwise to the selectmen, not less than ten days before the end of the calendar year, or not less than ninety days prior to the date of the start of the annual town meeting, whichever is later, **detailed estimates of the amount necessary for the proper maintenance of the departments under their jurisdiction for the ensuing fiscal year, with explanatory statements as to any changes from the amounts appropriated for the same purposes in the then current fiscal year, and an estimate of amounts necessary for outlays or permanent improvements.** ... (emphasis supplied)

GL c. 39, §16 provides that towns with valuations of at least $1,000,000 shall have a finance committee which shall consider and make recommendations on all municipal financial matters. GL c. 41, §60 requires the finance committee to make budget recommendations to the town along with explanations and suggestions "as they may deem desirable for the proper information of the inhabitants." Section 4 of the town's finance committee by-law requires all heads of town departments and committees with expenditure powers to "prepare detailed estimates of amounts deemed by them necessary for the administration of their respective departments ... Such estimates shall be in such form and detail as the [finance committee] shall require." This by-law is consistent with the statutory scheme and would appear to be a prudent means of gathering pertinent information necessary for the finance committee to make its budget recommendations.

Certainly group insurance benefits for school department employees are expense obligations that arise with the employment of teachers and other staff necessary to perform the educational programs within the purview of the school department. Thus, the group insurance costs associated with school employees are part of the expense necessary for the

administration of the school department and the information needed to determine the amount of those expenses is primarily within the records of the school department. In order for the finance committee to make its budget recommendation on group insurance benefits for the town, it must be able to review and consider the group insurance expenses required by the school department.

The second aspect of the question involves the school committee's role in providing educational programs and the relation of those programs to the budget process. In general, the school department is like any other department of a town when it comes to preparing and expending from its budget, with one major exception. The school department has the authority to transfer amounts within its budget from one purpose to another under GL c. 71, §34, unlike other town departments. If the town appropriates school related expenses to the school department budget, payment of those amounts would require the approval of the school committee under GL c. 41, §§41 & 56 before they could be spent. That being said, some expenses that are related to the school department have traditionally been budgeted in other departments or in general budget items. For example, worker's comp appropriations, unemployment insurance and retirement expenses for school and other town department employees or retirees have been traditionally been appropriated to special centralized budget accounts outside the school department. The same may be said for group insurance benefits, which are generally considered to be a town obligation under GL c. 32B, §3.

This general practice has been in place primarily for convenience sake. The payment of these amounts is often triggered by other events or circumstances beyond the mere employment relationship. The expenditures are legal obligations arising out of eligibility qualifications not entirely within the authority of the department heads to control. Placing the expenses in the budgets of each department requires an additional layer of approval for expenditures and requires more precise budgeting to avoid problems of overages in some departments and deficiencies in others, necessitating mid-year transfers at special town meetings.

Nevertheless, towns may legally appropriate town group insurance premium contributions attributable to school employees to the school department's budget. It is hard to say that they are not part of employee compensation and therefore part of the educational expenses of the department. Such budgeting would more accurately reflect the total cost of providing educational programs for the town.

We note that if the amounts are budgeted to the school department the following difficulties may arise: 1. If the amounts are not appropriated in a separate line item, they might be used for other school department purposes under GL c. 71, §34, unless clearly encumbered at the beginning of the school year. Group insurance obligations attributable to the schools may change during the course of the year, if new employees come on, current employees leave or changes in coverage are somehow required, such as when an employee's spouse loses health insurance and the employee may elect to be added to the town's coverage. This may lead to difficulty in determining the amount to be encumbered. 2. If the amounts are appropriated to a separate line item in the school's budget, that does not guarantee that the amount may not be transferred to another school department use under GL c. 71, §34. While we generally consider group insurance to be a town-wide responsibility, amounts attributable to school employees is generally considered part of compensation and it might be difficult to segregate from the school's autonomy if budgeted to the schools. 3. Budgeting in the schools

requires school department specifically to sign off on the expenses, which might delay payments. 4. If amounts are not budgeted accurately or changes occur mid-year, special town meeting or reserve fund transfers may be required.

Despite these potential difficulties, it is still within the authority of the town to require that all departments separately budget for and account for group insurance obligations attributable to their employees. It would be prudent in that case to encumber amounts in each departmental budget at the beginning of the fiscal year in the amount anticipated to be expended for the purpose, and to monitor the expenditures to modify the encumbrance if necessary during the year. I hope this addresses your concerns.

Gary A. Blau, Tax Counsel
Bureau of Municipal Finance Law
Division of Local Services
Massachusetts Department of Revenue
(617) 626-2400
blau@dor.state.ma.us

-----Original Message-----
From: Amy Lane [mailto:alane@townoflenox.com]
Sent: Friday, January 27, 2006 10:43 AM
To: DLSLAW@dor.state.ma.us
Subject: School Budgets

In order to more accurately reflect "true cost accounting" the Town of Lenox assigns the cost of benefits such as health insurance, retirement, life insurance, and medicare to each departmental budget. These amounts are appropriated at Town Meeting in each operating budget and are paid from each department on a monthly or biweekly basis as payroll occurs or bills arrive. The person authorized to spend from each appropriation signs off on each of these expenditures.

The exception to the above is the School Department who will not allow the cost of benefits to be part of their operating budget.

G.L. 41 Section 59, requires all town boards, committees, department heads and other officers authorized to spend money to give the town accountant or finance committee detailed estimates of the amount needed to run their departments in the following fiscal year.

From 93-616 ...*Chapter 71 Section 34 gived a municipal school committee full discretion to transfer money among line items in its operating budget without town meeting approval. However, if no logical reason exists why this autonomy with respect to intradepartment transfers should excuse a school department from the requirement to provide municipal budgetary officers with the information needed to make a rational allocation of the town's resources among the town's departments.....*

Is the School Department statutorily obligated to comply with the town's desire to include the cost of benefits in their operating budget?

Amy J. Lane

November 21, 2005

Joyce Frank
Kopelman & Paige
31 St. James Ave.
Boston, MA 02116-4102

Re: Walpole - Health Insurance Claims Trust Fund
Our File No. 2005-100

Dear Ms. Frank:

You have requested our opinion on several questions involving expenditures from the town's health claims trust fund established under GL c. 32B, §3A of the General Laws. In particular, you wish to know:

1. May the town use funds remaining in the trust after the town has switched to a premium based health insurance policy to fund the programs that have replaced the town's previous use of an administrative services contract and claims trust fund?
2. May the town spend such funds in annual increments?
3. Would the appropriate method for the town to make such purchases be to offset the town and employee contributions in the same proportions as their respective shares for each year such funds are used to offset premium costs?
4. Are there any other permissible purposes for which these funds may be spent?
5. May the excess funds be returned to the General Fund?

Summary Answers

1. Any excess remaining in the group health insurance claims trust fund after all obligations of the fund have been paid may be used to pay premiums of current enrollees until the funds have been exhausted.
2. Payment of the funds for insurance premiums may be done incrementally or in lump sum, subject to collective bargaining over the issue.
3. The expenditures for premiums should offset the current employee and employer obligations in the percentages contributed by each to the excess determined at the time of conversion to the fully insured plan.
4. We believe the excess funds may only be used to pay for group health expenses, including premiums and group health administrative expenses.
5. We believe the excess funds may not be returned to the general fund.

Discussion

1. The municipal group insurance claims trust fund is authorized in Massachusetts General Laws Chapter 32B, §3A[1]. In cities and towns that choose to employ this provision, the municipal employer's contribution appropriation to

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[1] Section 3A. A ... town..., when providing ... health care coverage as authorized by this chapter, and subject to the adequacy of a claims trust fund as hereinafter described, may, in lieu of or in addition to entering into the insurance policies, agreements, or contracts described in this chapter, enter into an administrative services ... contract ... to organize, arrange, or provide for the delivery or payment of health care coverage or services, whereby the funds for the payment of claims of eligible persons, including appropriate service charges of the insurance carrier, third party administrator or other intermediary, shall be furnished by the respective subdivision from the claims trust fund for the payment by such intermediary to the health care vendors or persons entitled to such payment in accordance with the terms and provisions of said contract. ...

Funds made available by appropriations by the ... town ... for purposes of this chapter on the basis of the contributory share of the subdivision as set forth and applicable therein shall, upon authorization by the subdivision, be transferred from said appropriation account by the treasurer and shall be deposited from time to time by the treasurer in a separate fund to be known as the claims trust fund. ... Any interest or return of premium or claims advance, excluding dividends applicable to section eight or eight A, shall be added to and become part of the fund. ... The treasurer shall take measures that will assure a sufficient balance at all times in said fund to make prompt payment for incurred and unpaid claims and other related liabilities. The subdivision insofar as practicable shall prepare annually or sooner a schedule for the treasurer which shall be an estimate of the amounts of anticipated monthly disbursements to be made from said fund and shall as frequently as necessary authorize disbursements therefrom in accordance with the terms and conditions of the contracts authorized by this section.

Where an annual or earlier accounting of administrative service charges, claims paid, and claims incurred and unpaid, under a contract authorized by this section to the subdivision, discloses that payment from the fund has resulted in the contributions of the subdivision and its employees and retirees toward a previously established total monthly premium or rate has been shared on a ratio inconsistent with the share of the contributions as provided from time to time by applicable sections of this chapter, the subdivision shall adjust future contributions toward the total monthly premium or rate to compensate for the inconsistency. Payment to the subdivision by the employees, retirees and surviving spouses of their contribution toward the total monthly premium or rate shall be to the extent and manner as required in the applicable sections of this chapter. (emphasis added)

employee group health insurance costs is deposited in part from time to time into the claims trust fund to match the agreed upon contribution ratio with the employee contributions deducted under GL c. 32B, §7 or §7A. Under those later sections, such employee contributions "shall be paid by the treasurer ... to the carrier or carriers entitled to ..." the premium. GL c. 32B, §7(c) & §7A(c). In the case of self-insurance under GL c. 32B, §3A, the carrier is essentially the town acting in a trustee capacity. Since employee contributions are for the same purposes as the funds appropriated by the town to the claims trust fund; i.e., for paying health service claims and related expenses, we have concluded that it is appropriate for the employee contributions to be commingled in that trust fund.

The clear intent of GL c. 32B, §3A is to assure a steady and predictable source of revenue to cover the administrative expenses and employee benefit claims of the group health insurance plans provided to municipal employees. Unfortunately, the section is silent about what happens to amounts remaining in the claims trust fund when the municipality converts to a third-party insurance premium based system.

Nevertheless, the statute does emphasize that the fund should continually operate utilizing the monthly "premium" contribution ratios determined under Chapter 32B and that if payment of benefits and administrative expenses from time to time deviate from this established ratio, that adjustments have to be made to the contribution rates ongoing until the previously established ratio has been reestablished. Thus, if the fund were to remain ongoing, contributions made thereto would continue to pay future benefits of employees in the predetermined ratios, and future employee/employer contributions could be reduced to reduce any unnecessary surplus or imbalance in the established contribution ratio. By converting to a premium based third party insurance plan, payment for premiums logically substitutes for payment of future administrative expenses and employee benefit claims.

Nothing in GL c. 32B, §3A requires that excess amounts in the trust fund be returned to the employees or employee organizations directly, or that they become the town's funds. The only direction in the statute is that the trust funds, including interest from the funds, be used to cover administrative and claims expenses related to providing health care to covered employees. If Section 3A were the only provision that governed, we think it would be clear that the excess funds should and must be used to pay future benefits, and the easiest way to do that would be to offset future premiums paid by the town and its employees.

A review of the other provisions of Chapter 32B reveals two sections that arguably could require a different use of the excess trust funds. Sections 8 and 8A specifically provide for the distribution of dividends and refunds from an insurance based plan when the insurer declares such a dividend or refund under the policy, or otherwise. Conceivably, any excess retained in a self-insurance fund

could be considered the equivalent of a premium-based dividend or refund, and those statutes might govern, or at least provide some guidance in the matter. In the case of a dividend or refund payable by a third-party insurance provider, the municipality either retains the entire amount under Section 8 (the default provision)[2] or its proportional share, after taking out amounts necessary to cover administrative expenses of the plan, under Section 8A[3]. Section 8A requires local acceptance and then supersedes Section 8. We understand that the town of Walpole accepted section 8A in 1969, prior to the establishment of the claims trust fund.

If Section 8A governs, then the use of the excess would first be applied to offset any town administrative expenses incurred during the period the excess was

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[2] GL c. 32B, §8. Any dividend or other refund or rate credit shall inure to the benefit of the governmental unit or to the governmental units participating under section eleven in proportion to the gross premiums paid by each governmental unit.

[3] GL c. 32B, §8A. In any governmental unit which accepts the provisions of this section, all dividends, their equivalent and other such refunds accepted by the governmental unit from the carrier or carriers as a result of any policy or policies entered into under the authority of this chapter shall be deposited by the treasurer thereof in a separate fund to be known as the employees' group insurance trust fund.

Prior to the distribution of all such dividends or refunds, the appropriate public authority shall determine the total administrative cost of all policies of insurance entered into under authority of this chapter for the calendar year preceding the date of receipt of the dividend, and shall notify the treasurer to transfer the amount of said total administrative cost from the said trust fund to the appropriate general revenue accounts of the governmental unit.

If the said total administrative cost exceeds the dividend receipts, the entire dividend shall be so transferred; if the dividend receipts exceed the said total administrative cost, the appropriate public authority shall notify the treasurer to transfer to the appropriate revenue accounts that portion of the remaining balance which represents the governmental units' proportionate share of the premium cost of the policy year to which the dividend or refund is attributable. The balance of said dividend remaining in the trust fund shall represent the employees' and retirees' proportionate share of the premium cost. The appropriate public authority at a date deemed practicable shall then authorize the treasurer to expend the remaining balance of the trust fund on behalf of the insured employees and retired employees to reduce the insured employees' and retired employees' share of future premium costs or by a proportionate refund to insured members. The reduction of such costs shall be determined by using the ratio of the dividends received to the insured employees' and retired employees' share of the total premiums which yielded the dividend.

In the event two or more governmental units are participating in accordance with section eleven, all dividends or their equivalent or other such refunds shall first be allocated to the respective governmental units in proportion to the gross premiums paid by each governmental unit to the respective carrier or carriers. ...

acquired, and then to offset the town and employee contributions. The town's proportionate share would then be general fund revenue, under GL c. 44, §53 and could be appropriated for any town purpose, including group insurance purposes. The employee contributions would then be applied to reduce the employee contributions for future premium costs.

Although not free from doubt, we think the better answer is that Sections 8 and 8A do not apply to surplus amounts remaining in a claims trust fund when a town converts to a third party insurance carrier. The rationale for that opinion is several fold. As an initial matter, to the extent any excess were to develop in the fund as it continues from year to year, the employee and town health insurance contribution amounts should be adjusted accordingly to use the surplus to the extent it is not needed to cover extraordinary claims. Secondly, the fund itself is a statutory trust fund established exclusively for payment of health service claims and related expenses, unlike premium contributions paid to a third party insurer. Excess amounts remaining in that fund are therefore arguably not the equivalent of a refund or dividend under Sections 8 and 8A.

In addition, we note that Sections 8 and 8A pre-dated the enactment of Section 3A in 1977. Self-insurance arose as a mechanism to reduce group health insurance costs to the towns and employees by eliminating the expense of the insurance company profit margins reflected in third party insurance premiums. The option was not available when Sections 8 and 8A were enacted, and the prospect of a self-insurance fund as an equivalent dividend or refund was likely not contemplated by the legislature at the time. We would not impute any such intention as a result of the subsequent authorization for self-insurance. Finally, we note that Sections 8 and 8A may have been added in order to clarify and establish a municipal entitlement to any insurance refund in the absence of a vote of acceptance of Section 8A, to avoid ambiguity in the interpretation otherwise. In the absence of Section 8 one might conclude that a refund was in effect a return of premium, which, having been shared by the employer and employees, had to be returned to them in the same proportions as the payments for the premium.

2. With respect to whether the excess funds may be expended in a lump sum or may be paid over a period of time, we think the matter may very well be a term and condition of employment for, or at least a matter of impact on, the active employee members of the plan, and thus subject to negotiation. See Anderson v. Board of Selectmen of Wrentham, 406 Mass. 508 (1990) (duty to negotiate over premium contribution percentage for group insurance under collective bargaining law); (Group Insurance Commission v. Labor Relations Commission, 381 Mass. 199 (1980) (Labor Relations Commission ordered the commonwealth to bargain with state employees over repayment of group insurance premiums not withheld from employee pay, which ought to have been withheld, but appeal of Group Insurance Commission of decision dismissed due to lack of standing of the GIC in the case).

We note that the group of employees on the plan is continually changing, and the longer the surplus is kept the population gaining the benefit of premium reductions will be increasingly different from the population that contributed to the fund. However, depending on the size of the surplus and the amount necessary to provide coverage on an annual basis, it may not be possible to use the surplus within a particular year. Since the payment of the surplus to reduce future covered employee premiums is based on practicality and does not require complete equity, we cannot say that extending the recouping period would necessarily be unlawful. We think the better answer is that any payment to reduce premiums should be subject to negotiation with respect to the period of time and amount of premium reductions.

3. We understand the excess in the fund has been maintained so as to reflect the percentage contributions made by the town and its employees during the period when the surplus was generated. The funds, including interest earned thereon, should be used in the same percentage ratios when paying current premium amounts, even if the relative rates of contribution vary in subsequent years.

4. By paying future group insurance premiums from the fund the use would remain consistent with the purposes of the trust fund. Any other use of the funds would be inconsistent with the purpose of the trust fund and we think an impermissible use.

5. Since we have concluded that Section 8A does not apply to an excess retained in a claims trust fund, which requires the excess to be used for health claims and health administrative purposes, we do not believe the funds may be paid to the general fund.

We hope this addresses your concerns. If there are further questions, please do not hesitate to contact us.

Very truly yours,

Kathleen Colleary, Chief
Property Tax Bureau

KC/GAB

MASSACHUSETTS DEPARTMENT OF REVENUE
DIVISION OF LOCAL SERVICES
P.O. Box 9655
Boston 02114-9655

MITCHELL ADAMS
Commissioner

LESLIE A. KIRWAN
Deputy Commissioner

(617) 727-2300
FAX (617) 727-6432

March 22, 1994

Diane M. Towle
Town Accountant
Town Hall
Groveland, MA 01834

Re: Group Health Insurance Deficit
Our File No. 94-122

Dear Ms. Towle:

You have asked three related questions concerning the means the town may or should use to meet its group health insurance contribution obligations given a projected deficit and insufficient available funds from which to make transfers. Your questions are:

1. Is the town required to schedule a special town meeting to transfer available funds or is that optional?

2. If the available funds are not sufficient to cover the deficit, must the town exhaust its available funds or can it decide to add the total deficit to the recap?

3. May the town wait until July 1, 1994 and use new certified free cash (if any), or must any meeting to transfer available funds have to take place in this fiscal year?

As an initial matter, G.L. Ch. 32B, S. 3 provides in pertinent part:

> If a town ... having accepted the provisions of section ten accepts any other section of this chapter but fails to appropriate the funds necessary to implement said provisions, the selectmen ... shall certify the cost to the town ... in carrying out the provisions of this chapter to the board of assessors who shall include the amount so certified in the determination of the tax rate of that year. (emphasis added)

Since the town's share of group health insurance costs must be raised in the tax rate if the appropriation is inadequate, the town has an obligation to pay such costs notwithstanding the absence of sufficient appropriations.

This is analogous to the town's obligation to raise money in the tax rate to pay principal and interest charges, even if there is an insufficient appropriation for that purpose. **G.L. Ch. 44, S. 16; G.L. Ch. 59, S. 23.** In the latter case we have applied a rule requiring that debt service be paid and any overdraft raised in the next year's tax rate. The same rule should apply to the town's share of health insurance costs under **G.L. Ch. 32B.**

Secondly, we emphasize that any effort to raise a projected health insurance deficit, whether by appropriation or on the recap, should be limited to the town's share of the costs. The employee's share of the deficit should be recovered from the employees by increasing the total premium and as a result, the employee's proportionate share. See also **G.L. Ch. 32B, S. 3A.**

1. Ordinarily, as with any other insufficient appropriation, every effort should be made to eliminate as much of the expected deficit as reasonably possible by expenditure reductions or an appropriation or transfer from available funds or both. See **G.L. Ch. 44, S. 33B** (transfer from available appropriations) & **G.L. Ch. 40, S. 6** (reserve fund transfer). The finance committee may transfer from the reserve fund if the additional expenses are extraordinary or unforeseen.

An appropriation or transfer request may be made at a special town meeting which is coming up, or at a special within the annual town meeting. A meeting to transfer funds may also be specially called, if there is greater immediacy for a transfer and it is economically justifiable to do so.

2. Although it would be preferable to transfer from available funds to cover the deficit, there is no general requirement that the town exhaust all such available funds, including necessary reserves, in order to cover it. The board of selectmen and the finance committee may recommend a smaller transfer if in their good faith judgment it would be prudent for the town to do so. Town meeting may also choose to transfer an amount which would not be sufficient to cover the deficit, and prefer to raise the necessary amount in the following year's tax rate. However, town meeting should be made aware that any such deficit raised in the following year will be in addition to group insurance costs for that year.

3. Generally, any transfers from FY94 to cover any group insurance deficit will have to be accomplished by July 15, 1994,

the date specified in G.L. Ch. 44, S. 56 by which the treasurer may indicate any outstanding obligations for FY94. However, FY95 appropriations may be made after July 1, 1994 from certified free cash or other revenue sources or available funds to cover the deficit, in lieu of adding the deficit amount to the tax rate. Although it would be preferable to cover the deficit from FY94 funds, as discussed above, there may be situations where such a transfer is not possible and an FY95 appropriation would be the best solution.

We hope this addresses your concerns. If we may be of further assistance, please do not hesitate to contact us again.

Very truly yours,

Marielle P. Murphy
Director of Accounts

Blau, Gary

From: DLSAlerts@dor-domo.dor.state.ma.us on behalf of DLS Alerts [igr@dor.state.ma.us]
Sent: Wednesday, May 17, 2006 12:04 PM
To: dls_alerts@dor-domo.dor.state.ma.us
Subject: Notification of Acceptance, MGL Chapter 32B 18

The Municipal Data Management/Technical Assistance Bureau is requesting that those cities or towns that have adopted MGL Chapter 32B §18 report the information to the Municipal Data Bank.

In recent years communities have experienced dramatic increases to their employee health insurance costs. One option available to communities is MGL Chapter 32B §18, which allows the community to save money on retiree health insurance costs. Adopting this section allows a community to shift a significant portion of its retiree health insurance costs to the federal Medicare program.

Bulletin 2006-07B provides information on Chapter 32B §18 as well as the form used to submit information to the Data Bank. It can be found at:

http://www.dls.state.ma.us/publ/bull/2006/2006_07B.pdf

Massachusetts Department of Revenue *Division of Local Services*
Alan LeBovidge , Commissioner Gerard D. Perry, Deputy Commissioner

Bulletin

2006-07B

To: City and Town Clerks

From: Frederick Kingsley, Bureau Chief
Municipal Data Management/Technical Assistance Bureau

Date: May 16, 2006

Subject: Notification of Acceptance, MGL Chapter 32B, §18

In recent years communities have experienced dramatic increases to their employee health insurance costs. One option available to communities is MGL Chapter 32B, §18 which allows the community to save money on retiree health insurance costs. Adopting this section allows a community to shift a significant portion of its retiree health insurance costs to the federal Medicare program.

This can be adopted locally by a majority vote of the city council in a city with a Plan D or Plan E charter, or the council, with the approval of the mayor, in any other city. In towns, acceptance by either a majority vote of town meeting or the electorate is required. Once adopted, Section 18 requires that all eligible retirees enroll in Medicare Part B.

If you would like additional information regarding the benefits of Section 18 of Chapter 32B the Technical Assistance Section has prepared two "Best Practices in Municipal Finance" on the subject. To view these click on the links below:

Saving Money of Retiree Health Insurance –
http://www.dls.state.ma.us/mdmstuf/Technical_Assistance/Best_Practices/retireehealthins.htm

Other Post-employment Benefits –
http://www.dls.state.ma.us/mdmstuf/Technical_Assistance/Best_Practices/opeb.htm

If your community has adopted Chapter 32B, §18, please fill out the attached Notification of Acceptance form and fax it to the Municipal Databank at (617) 626-2330.

_____
(City/Town)

Notification of Acceptance
General Laws Chapter 32B §18

The Commissioner of Revenue is hereby notified that the City/Town of _____,

by an act of its legislative body on _____, _____, has accepted the

provisions of General Laws Chapter 32B §18.

_____
(City/Town Clerk)

_____
(Date)

Please submit this form to:

Municipal Databank
PO Box 9569
Boston, MA 02114-9569
(617) 626-2330 (fax)

Informational Guideline Release

Bureau of Accounts
Informational Guideline Release (IGR) No. 05-101
September 2005

MUNICIPAL SELF-INSURED HEALTH PLANS

Chapter 61 of the Acts of 2005
(Amending G.L. Ch. 32B §3A)

This Informational Guideline Release informs local officials about recent legislation requiring annual audits of municipal self-insured health plans and monitoring of outstanding claims that have not been paid at the end of the fiscal year.

Topical Index Key:

Audits
Budgets

Distribution:

Mayors/Selectmen
City/Town Managers, Exec. Secys.
Finance Directors
Accountants/Auditors
Municipal/Regional School Treasurers
City Solicitors/Town Counsels

Informational Guideline Release (IGR) No. 05-101
September 2005

MUNICIPAL SELF-INSURED HEALTH PLANS

Chapter 61 of the Acts of 2005
(Amending G.L. Ch. 32B §3A)

SUMMARY:

These guidelines explain recent legislation intended to address deficits that have occurred in some municipalities with self-insured health plans due to their failure to accurately account or budget for all incurred obligations and claims.

Under this legislation, every city, town, county or other political subdivision that elects to self-insure its group health plan under G.L Ch. 32B §3A will now have to conduct an annual audit of its health insurance claims fund. The purpose of the audit is to ensure that the fund accounting meets generally accepted accounting principles and all claims incurred but not reported ("IBNR") at the end of the fiscal year are properly accrued. Any year-end deficit must be funded in the succeeding year.

In addition, the legislation gives a political subdivision that has a deficit in its self-insurance health fund at the end of fiscal year 2005 because it has not been accruing these IBNR claims a one-time opportunity to amortize that deficit over a period not to exceed three years, beginning in fiscal year 2007.

GUIDELINES:

A. Annual Audits

Every city, town, county or other political subdivision that self-insures its group health plan under G.L Ch. 32B §3A must have an annual audit of its self-insurance health fund. This audit may be conducted as part of the subdivision's annual audit, but is required even if the subdivision is not required to have an annual audit under the federal Single Audit Act.

In the unlikely event that a political subdivision not required to have an annual audit under the Single Audit Act is operating a self-insurance health fund, the selectmen, commissioners or other executive authority should contact the Director of Accounts, who will promulgate "agreed-upon procedures" for engagement of a certified public accountant to perform the required work.

B. Deficits

1. Fiscal Year 2005 Deficits - Recognition of IBNR

Any city, town, county or other political subdivision that ends fiscal year 2005 with a deficit in its self-insurance health fund that is attributable to IBNR claims may amortize the deficit over three years, beginning in fiscal year 2007. The option to amortize does not apply to self-insurance health funds in deficit at the end of fiscal year 2005 for other reasons, such as an insufficient appropriation.

Election of this option requires an audit of the fund as of June 30, 2005 to establish the amount attributable to IBNR claims and the schedule of amounts to be funded in fiscal years 2007, 2008 and 2009.

2. Other Deficits

Any other year-end deficit in a political subdivision's self-insurance health fund at the end of fiscal year 2005, or any year thereafter, must be funded in the next fiscal year.

Year-end deficits in a city or town self-insurance health fund must be raised in the tax rate for the succeeding year unless otherwise funded by appropriation. Deficits in the funds of other political subdivisions must be funded in their next fiscal year's budget.

3. Free Cash

If a city, town, regional school district or other district has capitalized a deficit in its self-insurance health fund as of June 30, 2005 and is amortizing it as explained in Section B-1 above, the unamortized deficit will not be deducted from fund balance in the computation of free cash for a city, town or district or excess and deficiency funds for a regional school district.

Employee Health Insurance in Massachusetts: Condition Serious

by Jarrett Connor,
Worcester Regional Research Bureau

The following article is based on data in the Worcester Regional Research Bureau report entitled *Condition Serious, Prognosis Uncertain: The Impact of Municipal Employee Health Insurance in Massachusetts,* which is available at . This report includes data on national and regional trends for states, localities and private employers, and the results from a survey of the health benefits in 28 cities and towns in Massachusetts.

Municipalities in Massachusetts — particularly larger cities — have struggled in recent years to maintain stable financial footing. While fluctuating levels of state and federal support have played a role, the escalating cost of health insurance for employees is the fastest growing cost center in most municipalities. The *Boston Globe* reported on the strain across the state in 2004, citing double-digit percentage increases in a number of cities and towns. The Worcester Regional Research Bureau survey of 28 cities and towns in Massachusetts reveals that most Massachusetts cities are out of step with national and regional averages for health care expenditures.[1] For example, since 1991, in the City of Worcester, health insurance costs have climbed from 8.5 percent of the city's budget to 15 percent, making it the largest single budget item after the city's public schools.

Causes for the Cost Increases

Increases in the cost of insurance are driven by rapid increases in the cost of health care. Advanced technology, expensive prescription drugs and increased longevity all contribute to the escalating cost of health care. However, many of these costs are related to the structure of health insurance arrangements, which insulate consumers from the real cost of their health care decisions. Low co-payments lead to higher premiums, and most municipalities in the Commonwealth have high contribution rates, so that cities and towns bear a large percentage of those high premiums.

Changes in the structure of employee health insurance, particularly plan design elements such as office visit and prescription drug co-payments, can alter the way health care is consumed, and bring premiums down for both employers and employees. Private employers have been making these adjustments during the last decade, but such changes are slow in coming to municipal governments in Massachusetts. Nationally, in 2000, fewer than 20 percent of employers reported office visit co-payments of $15 or $20. In 2004, over 60 percent of those employers required higher co-payments for office visits (see *Figure 1*).[2] One health plan reports that less than 1.5 percent of its private-employer members offered a $5 office visit co-payment, while 75 percent of municipal members did. Similarly, only 3 percent of nationally surveyed employers reported a $5 office visit co-payment. Only three cities with a population over 50,000 required co-payments of $15 or higher, suggesting that plan design is an area in need of reform in many municipalities.

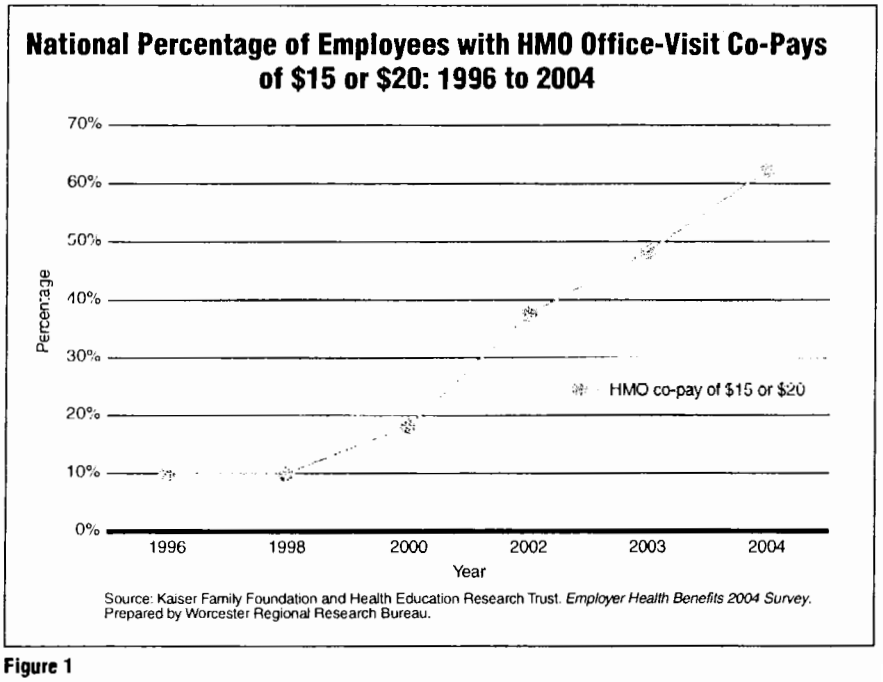
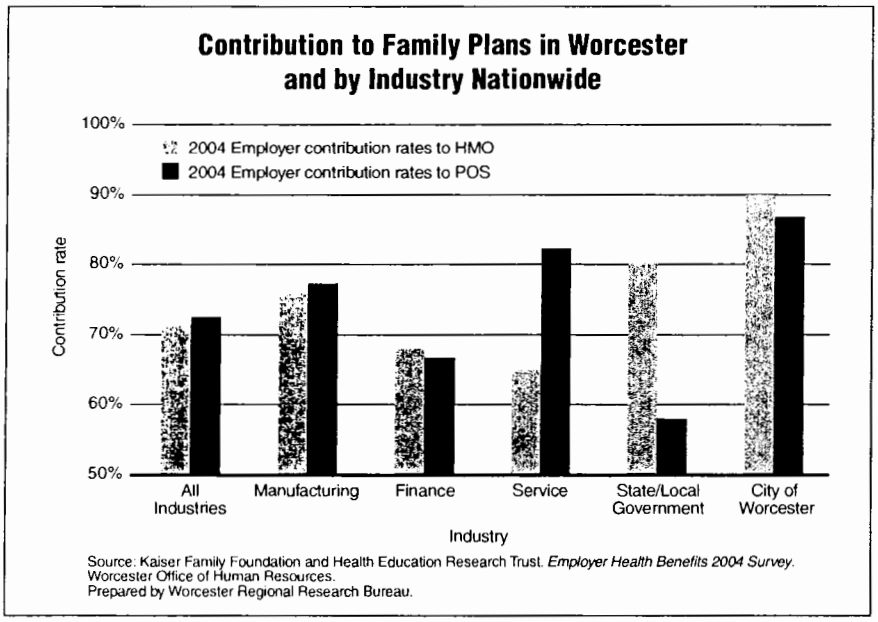
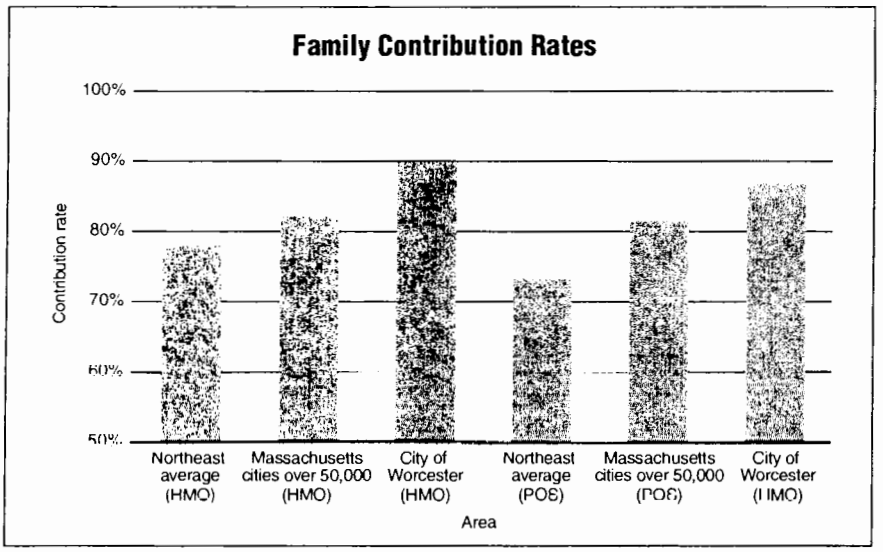


Figure 1

Contribution Rates

Contribution rates are higher in large cities including Worcester than in smaller cities and towns, or in private industry. Again, the City of Worcester provides an example of the problem in many of the larger cities in Massachusetts. Worcester offers a 90 percent contribution rate, the highest contribution rate allowed by law for the HMO plans, and 87 percent for the more ex-





Figures 2 and 3

pensive Point of Service (POS) plans. Nationally, employers average less than 75 percent contribution rate for HMO and POS plans.[2] State and local governments nationally average a contribution rate of under 60 percent for POS plans. The Massachusetts cities with populations over 50,000 surveyed by the Research Bureau averaged an 82 percent contribution rate for HMO plans, indicating that larger cities do not have contribution rates in line with the national averages (see *Figures 2 and 3*).

Retiree Benefits and Medicare

An additional burden borne by all cities and towns in Massachusetts and by few private employers is the cost of retiree health benefits. Municipalities have the option, through Chapter 32B, Sec. 18 of Massachusetts General Laws, to require eligible retirees to enroll in Medicare (doing so obligates the municipality to pay Medicare penalties for late enrollment if the retiree is over 65 and not enrolled in Medicare). Half of the cities and towns surveyed by the Research Bureau do not require employees to enroll in Medicare when they become eligible. As a result, many eligible employees remain on more expensive conventional plans. Most private employers do not offer retiree health benefits at all.

Change Contribution Rates

Changes to contribution rates can have a significant impact on municipal finances. In Worcester, for instance, a change to a 75 percent contribution rate for all plans would result in $8 million in savings to the city. If the city contributed 75 percent of the lowest cost provider and an equal dollar amount for more expensive plans, the city would save over $15 million — enough to hire 250 additional employees, or return $250 to the average homeowner and $1,300 to the average business owner.

Plan Design

Massachusetts' cities and towns should aim to align their co-payment structures with private industry and national averages. Plan designs that allow consumers to see the cost of their health care decisions make it more likely that they will make more prudent health care decisions, reducing the unnecessary use of medical resources and alleviating some of the upward pressure on prices and premiums. As total premiums come down, cities and towns as well as employees will benefit.

Retiree Plans

Cities and towns should examine the contribution rates for retirees who remain on conventional plans. Cities may change those rates and create an incentive for retirees to select Medicare plans voluntarily (hence avoiding the penalties associated with requiring enrollment in Medicare via M.G.L. Chapter 32B, Sec. 18).

Obstacles to Reform

The obstacles to reform in municipalities are well known: changes to employee health benefits must be achieved through collective bargaining. In some

cases, cities must negotiate with all unions combined for health benefits through an Insurance Advisory Commission. Unions often oppose changes to existing health benefits.

The difficulty of advocating changes through union negotiations prompted the Metropolitan Coalition of Mayors (Boston, Cambridge, Chelsea, Everett, Malden, Melrose, Medford, Quincy, Revere and Somerville) to request a state mandate that cities may not contribute more than 75 percent of health insurance premiums as a part of their "Core Elements of Municipal Relief." In its report of February 28, 2005, the Research Bureau recommended that Worcester city leaders lobby for state legislation to address the issue of employee health benefits for municipalities if negotiations cannot produce the needed reforms. Legislation was the method of reform used to change the structure of health benefits for state employees who are now required to contribute 25 percent of the premiums and $15 co-payments for office visits.[3] The strategy employed by the state may be needed in order to keep cities like Worcester solvent.

Editor's note: This article represents the opinions and conclusions of the author and not those of the Department of Revenue.

1. Brenda Buote, "Cities, Towns Join to Lower Health Premiums." *Boston Globe*, November 7, 2004, Globe North, Page 1. "Health Insurance Saps Local Budgets" *Boston Globe*, February 22, 2004, Globe North. Page 1.

2. National data on health insurance contribution rates are from the Kaiser Family Foundation *Employer Sponsored Health Benefits: 2004 Survey* and the International City Management Association's "Health Plans for Local Government Employees 2002."

3. The Commonwealth adopted different contribution rates for employees hired before and after June 30, 2003, and also offers an 85 percent contribution rate for employees making under $35,000 per year.

Course 101 DVDs

The Division of Local Services has completed a videotaped version of Course 101, the basic course for assessors, which is now available in DVD format.

Although not intended to replace the traditional Course 101 classes, the Course 101 DVDs may be used for:

- Assessors and others who cannot attend a regular classroom offering of the course due to disability, illness and/or other personal circumstances other than travel distance.
- Course 101 participants who do not pass the examination and would like to review the DVD version as a refresher.
- Internal training for assessor and their staff.

For information on how to obtain copies of the DVD version of Course 101, please contact Joan Grourke at 617-626-2353 or grourkej@dor.state.ma.us.

The Federal Institute of Museum and Library Services announced grants totaling over $160 million to state library agencies earlier this year. The grants are awarded under the Library Services and Technology Act and are made to each state's library agency to administer the funds according to a population-based formula. Massachusetts will receive $3,423,733. In the Commonwealth, the Massachusetts Board of Library Commissioners (MBLC) is charged with administering these grants.

Some of the libraries in Massachusetts that will benefit from theses grants include the Watertown Free Public Library, the Central Massachusetts Regional Library System in Shrewsbury, and the Snell Library at Northeastern University.

In his budget recommendations for the upcoming fiscal year, Governor Romney proposed an increase in funding for library service across the Commonwealth. The FY06 House 1 budget proposal includes an increase of almost $95,000 in the administrative account of the MBLC and a $150,000 increase in the Library Technology and Resource Sharing account.

According to Robert C. Maier, Director of the MBLC, "Funds in the MBLC administrative account will, in part, permit us to fill the head of Library Development/Deputy Director position that has been vacant since October 2002. The $150,000 increase in the Library Technology and Resource Sharing account will be distributed to the nine automated library networks where it will reduce costs for member libraries and ease their local budgets."