

In the Matter of COMMONWEALTH OF
MASSACHUSETTS COMMISSIONER OF
ADMINISTRATION

and

MASSACHUSETTS CORRECTION OFFICERS
FEDERATED UNION

Case No. SUP-3869

28.	<i>Relationship Between c. 150E and Other Statutes Not Enforced by Commission</i>
54.611	<i>health insurance</i>
54.8	<i>mandatory subjects</i>
67.162	<i>preemption by other legislation</i>
67.17	<i>statutory changes</i>
67.8	<i>unilateral change by employer</i>
82.12	<i>other affirmative action</i>
82.4	<i>bargaining orders</i>
92.51	<i>appeals to full commission</i>

June 10, 1998

Robert C. Dumont, Chairman
Claudia T. Centomini, Commissioner

Joseph M. Daly, Esq.	<i>Representing the Commonwealth of Massachusetts, Commissioner of Administration</i>
Matthew E. Dwyer, Esq.	<i>Representing the Massachusetts Correction Officers Federated Union</i>

**DECISION ON APPEAL OF ADMINISTRATIVE LAW
JUDGE'S DECISION¹**

STATEMENT OF THE CASE

On October 19, 1992, the Massachusetts Correction Officers Federated Union (Union) filed a charge of prohibited practice with the Labor Relations Commission (Commission) alleging that the Commonwealth of Massachusetts, Commissioner of Administration (Commonwealth) had violated Sections 10(a)(1) and (5) of Massachusetts General Laws, Chapter 150E (the Law) by failing to bargain in good faith by unilaterally offering and implementing a health insurance buy-out program.

The Commission investigated the charge and issued a complaint of Prohibited Practice on October 18, 1993. An evidentiary hearing was scheduled for April 19, 1994 before Administrative Law Judge Ann T. Moriarty (ALJ), but during pre-hearing discussions, the parties agreed to the following procedure. First, the Commonwealth was granted an extension of time until April 27, 1994 to file an answer to the Commission's complaint of prohibited practice. In addition, the ALJ instructed the parties to file cross motions for summary judgment. On May 18, 1997, the

Commonwealth filed a motion for summary judgment, and the Union filed its motion on August 2, 1994. The Commonwealth did not file a response to the Union's motion.

On October 11, 1995, the ALJ issued her decision based upon the parties' motions. The ALJ found that the Commonwealth had violated Section 10(a)(5) and derivatively, Section 10(a)(1) of the Law by unilaterally offering and implementing a health insurance buy-out program without giving notice to the Union and without giving the Union opportunity to bargain over the impacts of the Legislature's decision to create the program.

The Commonwealth filed a timely notice of appeal and both parties filed supplementary statements. We have reviewed the ALJ's decision as well as the parties' Supplementary Statements, and conclude that, for the reasons set forth below, the ALJ's decision should be affirmed.

STATEMENT OF FACTS²

In 1991, the Massachusetts Legislature authorized a health insurance buy-out program for certain employees, including those represented by the Union (the Buy-out Law).³ In its April 27, 1994 answer to the Commission's complaint of prohibited practice, the Commonwealth admitted the following factual allegations:

1. The Respondent (Commonwealth of Massachusetts), acting through the Commissioner of Administration, is a public employer within the meaning of Section 1 of the Law.
2. The Union is an employee organization within the meaning of Section 1 of the Law.
3. The Union is the exclusive collective bargaining representative of employees of the Respondent in statewide bargaining unit 4 that work in the Respondent's Department of Corrections.
4. In or about August 1992, the Respondent offered to employees in the bargaining unit referred to in paragraph 3, above, an opportunity to "buy-out" their health insurance by exchanging their health insurance benefits for cash.
5. On or about November 1, 1992, the Respondent implemented its insurance "buy-out" program for several employees in the bargaining unit referred to in paragraph 3, above.
6. The Respondent took the actions referred to in paragraphs 4 and 5, above, unilaterally without providing the Union with or an opportunity to bargain about its decision to offer the "buy-out" program, or the impacts of its decision on mandatory subjects of bargaining.
7. Health insurance benefits are a mandatory subject of bargaining.

By the passage and enactment of Section 119 of Chapter 138 of the Acts of 1991, the legislature authorized a health insurance buy-out program for certain employees, including those represented by the Union. The buy-out program that the Commonwealth offered to employees in or about August 1992 and implemented on or about November 1992, provided that employees who elected to

1. The full text of the administrative law judge's decision is reported at 22 MLC 1247 (1995).

2. The Commonwealth does not object to any of the ALJ's finding of fact.

3. Massachusetts General Laws Chapter 32A, §19, amended by Section 99 of Chapter 110 of the Acts of 1993.

participate in the program would receive a taxable reimbursement of 25% of the total monthly insurance premium for individual coverage in the health plan in which the employee was enrolled. Further, the program provided that employees would receive this reimbursement over a twelve (12) month period, with checks issued to the employee on a monthly basis.

OPINION

An employer violates Sections 10(a)(1) and (5) of the Law when it unilaterally implements any change in mandatory subjects of bargaining without first giving the union notice and an opportunity to bargain to resolution or impasse. *Town of Danvers*, 3 MLC 1599 (1977). The Commonwealth first argues that it had no duty to bargain over implementing the health insurance buy-out program because the Group Insurance Commission (the GIC), not the Commonwealth, is required to implement the program under the terms of the Buy-out Law. When a third party makes a decision that is out of the employer's control, the employer is under no duty to bargain with the union over the decision to implement the program. *MCOFU v. Labor Relations Commission*, 417 Mass. 7 (1994). Here, the decision to implement the buy out program was not in the Commonwealth's control. However, the amount of money to be paid to employees participating in the program was an aspect of the Buy-out Law that was within the Commonwealth's control. The Commonwealth continues to owe a duty to bargain with the Union concerning the aspects of the Buyout Law that remained within its control. *City of Malden*, 20 MLC 1400 (1994). The Legislature provided language in the Buy-out Law that specifically reserved some discretion with the Secretary of Administration in determining the specific amount of the compensation.⁴ The amount of money represents an economic benefit for certain bargaining unit members and to the extent that the Commonwealth controls the amount, it is a mandatory subject of bargaining. *Commonwealth of Massachusetts*, 22 MLC 1459, 1463 (1996); *Town of Ludlow* 17 MLC 1191 (1990). Therefore, the Commonwealth was not excused from bargaining over the amount of the buy-out.

The Commonwealth also argues that the Legislature intended the buy-out program to be beyond the scope of collective bargaining. This argument is not persuasive, because, as discussed previously, the Legislature reserved some discretion regarding the amount of the buy-out payments with the secretary of administration and finance.⁵ The Respondent does not enjoy a complete freedom from bargaining when only certain aspects of a law lay beyond the scope of bargaining. *Commonwealth of Massachusetts v. Labor Relations Commission*, 404 Mass, 124 (1989). If the Legislature intended all components of the Buyout Law to be completely removed from collective bargaining, it could have designated a specific statutory amount or formula, leaving no room for negotiation.

4. "...an amount of money to be determined by the secretary of administration and finance; provided that such amount shall equal no less than twenty-five percent of twelve times the total monthly rate for individual insurance coverage as determined by the commission." M.G.L. c. 32A, §119 (as amended by St. 1993, c. 110, §99).

In addition, the Commonwealth argues that it did not change the health insurance benefits or coverage when it implemented the new program. Generally, the Commission has held that health insurance benefits are a mandatory subject of bargaining. *Worcester Police Officials Association*, 4 MLC 1366, 1370 (1977). Although the Commonwealth's adoption of the buy-out program did not affect the substantive coverage under any plan offered by the GIC, an employee's decision to entirely opt out of coverage represents a drastic change in his or her health care status, and the Commonwealth must fulfill its legal obligation to bargain with the employees' exclusive representative. *City of Springfield*, 17 MLC 1380, 1385 (1990); *Town of Randolph*, 8 MLC 2044, 2052 (1982). Further, implementing cash payments in exchange for health care coverage represents an economic benefit, and, therefore, a mandatory subject of bargaining. See *Commonwealth of Massachusetts*, 19 MLC 1069, 1081 (1992) (employer's payment to health and welfare trust fund a mandatory subject of bargaining).

The Commonwealth further argues that it did not violate the Law because the implementation of the buy-out program did not result in a substantial detriment to the Union or members of the bargaining unit.⁶ Although only seven (7) out of approximately four-thousand (4,000) bargaining unit members opted to participate in the buy-out program, the change cannot be characterized as *de minimis*. The Commission has found a benefit program to be a mandatory subject of bargaining even where the participation in the program was completely optional. *Commonwealth of Massachusetts*, 22 MLC 1459, 1463 (1996). Although the number of bargaining unit members who chose the plan may be small, all of the employees in the unit had an opportunity to select the buy-out option. If the Commonwealth had first given the Union notice and opportunity to bargain the impact of the change, the amount of money received for electing the option might have led additional employees to select that option.

Finally, the Commonwealth argues in its appeal that the Union had waived its right to bargain over the implementing the buy-out program. However, in the Commonwealth's answer to the Commission's complaint of prohibited practice, it has admitted that it took the action "unilaterally, without providing the Union with notice or an opportunity to bargain about its decision to offer the buy-out program, or the impacts of its decision on mandatory subjects of bargaining." Therefore, the Union could not have waived its right to bargain about a program of which it had no notice.

CONCLUSION

For the foregoing reasons, we affirm the ALJ's conclusion that the Commonwealth violated Section 10(a)(5) and derivatively, Section 10(a)(1) of the Law by unilaterally offering and implementing a health insurance buy-out program without giving notice to the Union and without giving the Union opportunity to bargain over

5. Id.

6. The Commonwealth relies on *City of Quincy*, 14 MLC 1434, 1436 (1988), for its argument on this point. However, *City of Quincy* does not address the standard of "material or substantial impact on the bargaining unit."

the amount of the buy-out. However, we amend the remedy ordered by the ALJ to more precisely reflect the specific nature of the Commonwealth's duty to bargain. In particular, we limit the Commonwealth's duty to involve only the amount of money to be paid to eligible employees who elected to participate in the buy-out program.

ORDER

WHEREFORE, based on the foregoing, IT IS HEREBY ORDERED that the Commonwealth of Massachusetts, commissioner of Administration shall:

1. Cease and desist from:

- a) Offering and implementing a health insurance buy-out program pursuant to Section 19 of M.G.L.c.32A, without giving the Massachusetts Correction Officers Federated Union notice and an opportunity to bargain to resolution or impasse about the amount of money to be paid to eligible employees who elect to participate in the program;
- b) Failing or refusing to bargain in good faith with the Massachusetts Correction Officers Federated Union over the amount of money to be paid to eligible employees who elect to participate in a health insurance buy-out program established pursuant to M.G.L. c.32A, Section 19;
- c) In any like or related manner, interfering with, restraining, or coercing employees in the exercise of their rights under the Law.

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

- a) Upon request of the Massachusetts Correction Officers Federated Union, bargain in good faith to agreement or impasse about the amount of money to be paid to eligible employees who elect to participate in a health insurance buy-out program established pursuant to M.G.L. c. 32A, Section 19.
- b) If a health insurance buy-out program is again offered and implemented, pay to those employees who participated in the 1992 program, an amount of money equal to the difference, if any, between what they received under the 1992 formula and, using the insurance rate schedule in effect in 1992, the amount of money they would have received under the program next offered to employees plus interest, on all sums due calculated at the rate specified in *Everett School Committee*, 10 MLC 1609 (1984), compounded quarterly, unless the parties reach agreement on an alternative remedy for these bargaining unit members.
- c) Post in conspicuous places where employees represented by the Massachusetts Correction Officers Federated Union usually congregate or where notices are usually posted, and display for a period of thirty (30) days thereafter, signed copies of the attached notice to Employees; and
- d) Notify the Commission in writing within ten (10) days of receipt of this Decision and Order of the steps taken in compliance therewith.

SO ORDERED.

NOTICE TO EMPLOYEES

The Labor Relations Commission has determined that the Commonwealth of Massachusetts, Commissioner of Administration violated Massachusetts General Laws, Chapter

150E, the Public Employee Collective Bargaining Law by unilaterally offering and implementing a health insurance buy-out program without first giving the Massachusetts Correction Officers Federated Union notice and an opportunity to bargain over the impacts of the program on employees' wages, hours and other terms and conditions of employment.

WE WILL NOT offer and implement a health insurance buy-out program without giving the Massachusetts Correction Officers Federated Union notice and an opportunity to bargain.

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

WE WILL, upon request of the Massachusetts Correction Officers Federated Union, bargain in good faith about the impacts of the legislature's decision to create a health insurance buy-out program on mandatory subjects of bargaining.

[signed]
COMMONWEALTH OF MASSACHUSETTS

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