Civil Service revocation question before the voters without first bargaining with the Union. By failing to respond to the Union's demand to bargain over impact matters, however, the School Committee violated the Law.

Facts

The facts as stipulated by the parties may be summarized as follows.

On or about December 22, 1980, the Union requested that the Employer open negotiations for a collective bargaining agreement to succeed the agreement due to expire on June 30, 1981. On January 9, 1981,[2] the Employer responded that it was willing to begin negotiations for a new agreement and asked the Union to contact its legal counsel when it was ready to start negotiating. On January 16, without affording the Union prior notice or opportunity to bargain, the School Committee made a formal request to the Board of Selectmen of the Town of Weymouth that the Selectmen authorize the following question for a May 18 referendum election:

> Do you approve the rescission of the provisions of the former Section 17B, now Section 52 of Chapter 31, of the General Laws which are now in force in the Town of Weymouth, and which provide that certain employees of the Town shall be subject to Civil Service laws; said recission to apply to employees hired in the future, and not to affect the Civil Service status of the present employees?

The parties reached agreement for a new contract after two bargaining sessions on March 12 and March 18.[3] The Employer did not inform the Union that it was seeking revocation of Civil Service for custodians during these negotiations. On March 24, the Union first became aware of the revocation issue and immediately requested bargaining on both the original decision to seek revocation and the impact and implementation of revocation if approved by the voters. The Employer did not respond to the request for bargaining. On May 18 the referendum election was held and the Town voted 3,856 to 2,894 to rescind its acceptance of Civil Service coverage.

Opinion

The proper disposition of this case necessitates a thorough review of a number of Massachusetts General Laws. Although the focus of our inquiry is of course G.L. Chapter 150E, we have a responsibility to determine a party's bargaining obligations under that Law in context with other relevant statutory enactments.

The broad authority of the Legislature over the affairs of the Commonwealth's municipalities has never been in serious dispute. "[T]owns are political subdivisions created for the convenient administration of government, and they possess only such powers as are conferred upon them either in terms or by necessary

[2] All dates refer to 1981 unless otherwise indicated.

[3] The successor agreement had not, however, been executed by the parties as of the time the parties presented this case to the Commission.

ation of enabling statutes. They are separate units, possessing only the ity thus entrusted, and acting as instrumentalities of local self-government." m et al. v. Mayor and Aldermen of Beverly, 309 Mass. 388, 389 (1981) (cita- omitted). See also, Attorney General v. Lowell, 246 Mass. 312, 320 (1923).[4]

Pursuant to its broad authority over the affairs of municipalities, the Legis- has frequently enacted laws which, although expressed in terms of general ation, become effective in a given town only upon their acceptance by the Included among these "local option" laws are a number of statutes addressing s terms of employment of municipal employees.[6] Once a town has accepted a option law, it has the same force and effect within the municipality as any General Law.

In 1974, Chapter 150E took its rightful place among the Massachusetts General Pursuant to Section 6 of Chapter 150E, a municipal employer must negotiate he exclusive bargaining representative of its employees over "wages, hours, rds of productivity and performance, and any other terms and conditions of ment..."[7] Under Section 7(b) of the Law, following execution of a collective

[4]Nothing in the "Home Rule Amendment" detracts from the validity of this ple insofar as the issues in this case are concerned. See Article 89 of the ents to the Massachusetts Constitution.

[5]Unless the particular statute provides otherwise, such acceptance is by a f the town meeting. G.L. Chapter 4, Section 4. In the case of Civil Service ge, acceptance is by a referendum election. G.L. Chapter 31, Section 52.

[6]Most of these statutes require that, upon their acceptance, the municipality xtend the benefit in question. See, for example: G.L. Chapter 32B, Section up insurance coverage, toward which employer contributes 50% of premium); hapter 33, Section 59 (pay while in military service); G.L. Chapter 41, Sec- 00G (payment of funeral and burial expenses of fire fighters and police offi- G.L. Chapter 41, Sections 108D - 108I (fire fighter and police officer mini- nual compensation, additional pay for photographic work); G.L. Chapter 41, n 111 (vacations in general); G.L. Chapter 41, Sections 111A and 111D (vaca- for fire fighters and police officers); G.L. Chapter 41, Section 111B (sick in general); G.L. Chapter 41, Section 111H (overtime pay for police officers); hapter 48, Sections 57-57D (days off from work, union business leave for fire rs); G.L. Chapter 48, Sections 58A - 58C (hours of duty for fire fighters); hapter 149, Sections 30 and 31 (hours of duty in general); G.L. Chapter 149, ns 33A - 33C (overtime pay in general). A few authorize, but do not compel the pality to provide the benefit which is the subject of the legislation. See, t regard, G.L. Chapter 32B, Section 7A (group insurance coverage toward which ployer may contribute more than 50% of the premium).

[7]In a town such as Weymouth the employer under Chapter 150E is, except with nce to the school department, the board of selectmen. Section 1 of the Law that "in the case of school employees, the municipal employer shall be rep- ed by the school committee..."

bargaining agreement "[t]he employer...shall submit to the appropriate legislative body...a request for an appropriation necessary to fund the cost items contained therein...if the appropriate legislative body duly rejects the request for an appropriation necessary to fund the cost items, such cost items shall be returned to the parties for further bargaining."[8] Thus, under Chapter 150E, the board of selectmen of a town must negotiate the working conditions of the town's employees independent of any participation from the legislative branch. The only legislative involvement in the process established by Chapter 150E is the approval or denial of the request for appropriations submitted by the board of selectmen to the town meeting. The statutory scheme under Chapter 150E requires that negotiations over working conditions take place between the union and the selectmen, and the union and selectmen only.[9]

The General Laws thus contain two different mechanisms by which municipal employees and/or the town in which they work may lawfully seek to establish a wide variety of the employees' working conditions. One of these mechanisms is a vote of the townspeople to accept the provisions of a particular local option law. The other mechanism is the negotiation pursuant to Chapter 150E of a collective bargaining agreement between the employees' exclusive representative and either the board of selectmen or, as the case may be, the school committee.

The enactment of G.L. Chapter 150E, Section 7(d) evinces the Legislature's recognition of the havoc which the co-existence of these two statutory schemes might otherwise cause. Section 7(d) provides that where there is a conflict between the working conditions contained in a collective bargaining agreement and those contained in any one of a host of local option laws, the terms of the collective bargaining agreement will prevail. Among the statutes enumerated in Section 7(d) are almost all the local option laws cited above in footnote 6.

At one time a town which had accepted a local option law pertaining to municipal employees' working conditions could not subsequently revoke its acceptance unless the statute specifically so provided. See, Brucato v. City of Lawrence, 338 Mass. 612 (1959). The passage of Proposition 2-1/2 eliminated that restriction on municipalities. Proposition 2-1/2 codified as St. 1980, Chapter 580 provides in relevant part in Section 5 that:

> At any time after the expiration of three years from the date on which any optional provision of the General Laws has been accepted in any city or town, whether by official ballot, by by-law, by ordinance or by vote of the legislative body of the city or town, or by vote of the board of selectmen or school committee

[8] Section 1 defines "legislative body" in the case of a town as the town meeting.

[9] Again, in the case of school department employees, the same respective rights and obligations exist, except that the school committee takes the place of the board of selectmen.

of a town, the revocation of such acceptance of any optional provision of the General Laws may be effected in the same manner as was the original vote to accept the said provisions, but such revocation shall be subject to the following restrictions:

(a) This section shall not apply if the optional provision contains, within itself, another manner of revocation.

(b) This section shall not apply to any optional provision which authorizes, but does not require, the city or town to act.

(c) This section shall not apply to any action taken under chapter thirty-two or thirty-two B of the General Laws.

(d) This section shall not apply to any action taken to establish a regional district, authority or other entity which involves another city, town, district or other governmental entity.

(e) This section shall not affect any contractual or civil service rights which have come into existence between the city or town and any officer or employee thereof as a result of the original acceptance of any optional provision of the General Laws, provided, however, such revocation shall apply to the successor to the incumbent officer or employee.[10] (emphasis added)

Our efforts to harmonize all of the diverse legislative measures outlined lead us to the following conclusions about a party's bargaining obligations G.L. Chapter 150E. If a local option law specifically involving a working ion of municipal employees is listed in Section 7(d) of Chapter 150E, a union employer must bargain over the matter rather than resort to any alternative to obtain or retract the benefit. If the law is not listed in Section 7(d), y to bargain exists. The reason is that in the former situation, the parties he authority to strike a legally binding agreement on the subject; in the situation they lack such authority.

More specifically, if, on behalf of the employees it represents, a union seeks ain a job benefit that is the subject of a local option law never accepted town but listed in Chapter 150E, Section 7(d), its only lawful recourse is gain with the town's executive branch, not to place acceptance of the law the town's voters. If the benefit is bargained and incorporated into a cole bargaining agreement, it necessarily conflicts with the local option law. The local option law by its terms affords the benefit only upon acceptance by wn, whereas the language of the collective bargaining agreement is uncondi-. The benefit as contained in the collective bargaining agreement thereby is pursuant to Section 7(d) and is enforceable as fully as any other working ion set forth in the contract. Since the union can lawfully obtain the job t by negotiating with the employer, it would undermine the purposes of r 150E to permit the union to accomplish its goal by bypassing the employer pealing to the town's legislative process.

[10]The School Committee contends that the revocation statute pursuant to which ed is St. 1979, Chapter 151, Section 14. There is no material difference n the two enactments.

Similarly, an employer under Chapter 150E may not legally seek to have the townspeople revoke their prior acceptance of a local option law listed in Section 7(d).[11] By bargaining with the union over the matter, the employer may succeed in obtaining a provision in the collective bargaining agreement which reduces, eliminates, or otherwise modifies the benefit. In any resulting conflict with the terms of the local option law, the provisions of the contract will prevail by virtue of Section 7(d). Since the employer can obtain what it wants through negotiations with the union, recourse to the legislative process instead of the bargaining table constitutes a refusal to bargain in good faith under Chapter 150E.

Conversely, if a union wants a job benefit that is the subject of a local option law not mentioned in Seciton 7(d), it may lawfully resort to the town's legislative process without violating its good faith bargaining obligations under Chapter 150E. How so? The necessary implication of Section 7(d) is that where a conflict arises between the terms of a local option law not enumerated in Section 7(d) and the provisions of a collective bargaining agreement, the terms of the law will prevail. No matter how insistent or persuasive the union may be at the bargaining table in such a situation, the employer is legally unable to provide the job benefit that the union seeks. Therefore, it can hardly be deemed bad faith bargaining on the part of the union to appeal to the only forum which legally can provide what the union wants.[12]

Lastly, the same consideration dictates that an employer does not engage in

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[11] We recognize that there may be occasions when townspeople call upon the board of selectmen to place such an article on the warrant. We express no opinion at this time on the selectmen's obligations under Chapter 150E should this situation arise.

[12] We find nothing inconsistent between this view and the determination of the Supreme Judicial Court in School Committee of Medford v. Labor Relations Commission, 1980 Mass. Adv. Sh. 687, that insurance benefits under G.L. Chapter 32B, Section 7A constitute a mandatory subject of bargaining. As noted above, Chapter 32B, Section 7A authorizes but does not compel a municipality to contribute more than 50% of the premium. The implementation of a higher contribution involves two pre-conditions -- (1) acceptance of Section 7A by the town meeting and (2) agreement between the union and the employer on a specific rate. See, Jenkins v. City of Medford, 1980 Mass. Adv. Sh. 683; School Committee of Medford v. Labor Relations Commission, supra; City of Taunton v. Taunton Branch of Mass. Police Assn., 1980 Mass. App. Adv. 1359; School Committee of Holyoke v. Duprey, 1979 Mass. App. Adv. Sh. 1418. We read the Court's opinion in the Medford case to mean only that the employer must bargain with the union over the exact percentage of the premium contribution and that the order in which the union seeks to accomplish the two prerequisites to receipt of the benefit is immaterial for purposes of Chapter 150E. We do not read the opinion to mean that the employer and the union must bargain over the town's acceptance of Section 7A. Our analysis accordingly calls into question the holding of the hearing officer in Town of Belmont, 7 MLC 1614 (1980).

ith bargaining by seeking revocation of prior acceptance of a local option t mentioned in Section 7(d). Regardless of its willingness to agree to the ion, elimination, or other modification of the job benefit that is the subject law, the union is powerless to do so under Chapter 150E. In a resulting ct between the union's concessions as set forth in the contract and the terms local option law, the latter will prevail. The specific relief which the er seeks is obtainable only through the legislative process, and therefore ployer should not be obligated to bargain with the union over the matter.

When we apply the above analysis to the facts of this case, we have little ulty dismissing the claim that the School Committee violated Chapter 150E, ns 10(a)(5) and (1) by failing to bargain with the Union over the decision to he townspeople's revocation of their prior acceptance of G.L. Chapter 31. e Chapter 31 is not among the statutes enumerated in Chapter 150E, Section bargaining with the Union over those asepcts of the Civil Service system which hool Committee finds objectionable would be to no avail. Were Union con- ns during negotiations to result in a conflict between the terms of the par- collective baraaining agreement and the job protections set forth in Chapter e provisions of Chapter 31 would prevail. Since the Union is powerless to he relief from Civil Service status that the School Committee seeks, the Committee should not have to bargain before seeking such relief from the only that has the necessary authority.

When we test our reasoning in the context of the opposite situation, we re- onfident that it is sound. A substantial number, if not a majority of the Com- lth's towns have never accepted the provisions of Chapter 31. It would not l the purposes of either Chapter 150E or Chapter 31 to compel a union repre- g the employees of such a town to bargain with the employer over the subject il Service protection. Instead, the union should be free to address the issue townspeople by way of a referendum election pursuant to Chapter 31, Section ause only the townspeople can give the union the specific benefits it desires. ning pursuant to Chapter 150E would be an exercise in futility.

On the basis of the above reasoning, we hold that the School Committee did not e Chapter 150E, Sections 10(a)(5) and (1) when it sought revocation of the acceptance of Chapter 31 prior to bargaining with the Union.

We do agree with the Union, however, that the School Committee is under an ition to bargain over the impact of the subsequent revocation on the employees' g conditions.

By way of defending its failure to bargain over impact matters, the School tee asserts that the loss of Civil Service status will not affect current bar- g unit members since the revocation shall not affect any Civil Service rights umbents but shall apply only to successors to incumbent employees. The School tee argues that it has no obligation to bargain impacts on future employees. es our decision in Boston School Committee, 3 MLC 1603 (1977), where we held employers have no obligation to bargain over the establishment of residency re- ments as a condition of hire because applicants for hire are not members of the

For several reasons, Boston School Committee, supra is inapposite. First, we cannot conclude on this record or upon examination of the pertinent statute that Civil Service revocation will have no effect on current bargaining unit members' terms and conditions of employment. In fact, given public sector realities under Proposition 2-1/2, it seems inevitable that current employees will be affected by the revocation. Specifically, in the now-common layoff, bumping, and transfer transactions taking place throughout the Commonwealth, employees are moving to other positions at an unprecedented level. Although an employee retains Civil Service status as an incumbent in a position, it appears that the employee loses that status if bumped or transferred. The same holds true in the context of promotion. After such a transaction, the employee is not an incumbent in the new position but a successor within the meaning of the law, thus losing the rights protected by Chapter 31, among which layoff and recall rights are of critical importance.

There is a second reason why Boston School Committee does not govern the situation in this case. Boston held that the employer had no obligation to bargain over conditions of hire but that it did have to bargain over conditions of continued employment or promotion once individuals became members of the unit. In this case, the Union represents Weymouth School custodians and has the right to bargain over the impact of Civil Service revocation on bargaining unit positions, regardless of whether the individual filling the position is a new hire or current employee.

Remedy

The Union has asked that we issue a bargaining order, return the situation to the status quo ante, and declare the revocation vote void and of no effect. In light of our ruling above that the violation here was the failure to bargain over the impacts of revocation, it is unnecessary for us to discuss the question of whether or not we have the authority to declare a referendum election void. By virtue of the revocation, however, job protections previously afforded by Chapter 31 no longer exist. Before implementing new conditions of employment, an employer must fulfill its bargaining obligations under Chapter 150E. Accordingly, we will order that the School Committee bargain with the Union over disciplinary procedures and standards, promotional opportunities, layoff and recall rights, and all other terms of employment eliminated as a result of the referendum election.

WHEREFORE, pursuant to its authority under Section 11 of the Law we hereby ORDER:

1. That the Weymouth School Committee cease and desist from failing to and refusing to bargain in good faith with Local R1-162, National Association of Government Employees as required by Section 6 of the Law.

2. Take the following affirmative action which will effectuate the policies of the Law.

   a. Post in conspicuous places where employees represented by the 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;

b. Upon request of the Union, bargain in good faith over the impact of the revocation of civil service upon the terms and conditions of employment of school custodians represented by the Union.

c. Notify the Commission within ten (10) days of receipt of this decision and order of the steps taken to comply therewith.

ERED.

COMMONWEALTH OF MASSACHUSETTS
LABOR RELATIONS COMMISSION

PHILLIPS AXTEN, Chairman

JOAN G. DOLAN, Commissioner

sioner Bary D. Altman dissenting:

This case and Town of Westport, MUP-4280 (decided today) involve the interplay n Chapter 150E and two local option laws: G.L. c.31 Civil Service coverage cal employees; and, G.L. c.41 Section 108L Educational Incentive Pay for officers. My colleagues, without considering whether these laws impact upon and conditions of employment of local employees, hold that there is no duty to n over the subject matter of these option laws because they are not contained tion 7(d) of G.L. c.150E. They reason that the employer and union cannot unionally agree on the subject matter because under the statutory scheme a local ative body or voter referendum has the final word on whether to reject or the provisions of such option laws. Therefore, they conclude that there is lation of the legal duty to bargain in good faith when an employer sets in the process to revoke the provisions of the option law.[1] It is from this ination that I respectfully dissent.

The State Legislature has determined that a collective negotiation system is propriate method for public employees to establish and change terms and con- s of employment. Under Chapter 150E collective negotiations over working ions are a closed two-sided process between the public employer and the exclu- epresentative of the employees: other groups are excluded from the bargaining s. "Through the collective bargaining process, the negotiators for both the Employer and the Union seek to reach an agreement that reflects the common sts of their respective constituency." Town of Norton, 3 MLC 1140, 1141 . Under Chapter 150E, Section 7(d) the public employer can change conditions

[1] In Weymouth, the parties were at the bargaining table, negotiating over the of a new contract, and the Employer never gave notice of intentions to remove service coverage.

of employment, after the bargaining obligation is satisfied. Even the local legislative body is excluded from the bargaining process. Specifically, ordinances, by-laws and option laws that at one time regulated local personnel matters and which previously required local legislative approval are preempted by the collective negotiation process. G.L. c.150E, Section 7(d). "The fact that the legislature has provided expressly that the negotiated agreement prevails over conflicting by-laws, regulations, and statutes (See G.L. c.150E, Section 7), indicates that the statutory goal of achieving entirely open, conclusive negotiations between the chief executive officer (or a selected representative) and the employees' representative is preeminent." Labor Relations Commission v. Town of Natick, 339 N.E. 2d 900, 906 (1974).

There are, however, certain option laws which permit a local legislative body or the town voters to have the final word on the employment conditions of local employees. This is because there exist statutory enactments whose provisions are not contained in Section 7(d). It is these enactments, or option laws that concern us today. The majority concludes that with respect to these laws, a union or employer can attempt to gain acceptance or rejection of the subject matter of these laws completely outside of the collective bargaining process. The majority reasons that employees and unions lack final authority over these items hence bargaining would be meaningless.

It is true that on these subjects not contained in 7(d) the local legislative bodies or town voters have the final vote. Nonetheless, I fully believe that these option laws can be reconciled within the collective bargaining process mandated by Chapter 150E, without entirely ignoring or bypassing collective bargaining, or removing many appropriate subjects from the bargaining table. In my opinion, "[o]ne may bargain about terms which will be of no effect unless confirmed by a legislative body." School Committee of Medford v. Labor Relations Commission, 392 N.E. 2d 541, 543 (Mass. App. 1979) aff'd 401 N.E. 2d 847 (1980).

Indeed, the cost items of collective bargaining involve subjects, which under the statutory scheme, are not entirely within the public employer's control. G.L. c.150E, Section 7(b). See, County of Suffolk, 8 MLC 1573 (1981). Specifically, if a collective bargaining agreement requires funding, the legislative body can review and reject the funding request. Nonetheless, there is no question that wages are a mandatory topic of negotiations between the employer and the union.

Implicit in the requirement to bargain in good faith over conditional subjects is the necessary requirement that the parties seek legislative action consistent with their conduct at the bargaining table. See, Labor Relations Commission v. Town of Dracut, 373 N.E. 2d 1165 (1978). (Indeed, one of the items negotiated was police educational incentive pay, which after agreed upon at the bargaining table required local legislative action); Mendes v. City of Taunton, 366 Mass. 109, 315 N.E. 2d 856)1975). See also, Commonwealth of Massachusetts, 4 MLC 1869 (1978), in which the Commission stated: "Nor are we troubled by the fact that negotiated agreements in some areas of mandatory negotiations might not have automatic validity. Where negotiations produce agreements which require legislative action, either for funding or some other purpose, the Commission and the Courts have implied a good faith obligation to seek such changes." Id. at 1877 (emphasis added). An agreement reached

bargaining table, if supported by the parties, carries great weight in the ɜtive process. Thus, contrary to my colleagues, I do not think that bargain- these matters is meaningless.

In my opinion the collective bargaining law requires the public employer and :lusive representative of the employees to attempt to reach agreement on the ions of an option law which if changed will vitally affect terms and condi- ɔf employment of local employees. See, G.L. C.150E, Section 6. Commonwealth ɜachusetts, 4 MLC 1869, (1978). The collective bargaining process and the ɜ of Chapter 150E would be furthered by encouraging discussion and agreement bargaining table instead of "end runs" to local legislative bodies.[2] See ɯealth of Massachusetts, Id.; City of Worcester, 4 MLC 1285, 1289 (1977); f Belmont, 7 MLC 1614 (H.O. 1980). I think it is wrong, that the majority decision removes subjects from the bargaining table without even considering importance to the employer-employee relationship.[3] In sum, I believe that my retation of the bargaining obligation on both the employer and union will the different statutory schemes to operate at their fullest extent.

Section 6 of the Law requires public employers and public employee represen- s "to negotiate in good faith with respect to wages, hours, standards of pro- ity and performance and other terms and conditions of employment." G.L. , Section 6. In my view, the appropriate question in this case is whether the th School Committee's decision to set into irreversible motion the revocation ɔption statute which provides civil service protections for its employees is ɜion within the scope of Section 6 of the Law, thus rendering its failure to ɜte with the Union unlawful.

The Massachusetts Civil Service System was designed to favor workers by elim- g the spoils system and to guarantee public employment based on merit.[4] Its

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[2] Collective bargaining in the public sector is inherently a political process. certain level of politicing is expected during the negotiation for collective ɜing agreements. The concern I am addressing is negotiating by exercising ɜal power with the local legislative body and excluding the statutory bargain- ɔresentative. In my opinion, the collective bargaining process must prevent ɣpe of bypass of the bargaining representative.

[3] Some of the option laws that are not contained in Section 7(d) are the fol- : Chapter 40, Section 21C (union leave); Chapter 41, Section 111k (vacation ling for fire fighters); Chapter 41, Section 111L (vacation for police and ighters after 20 years of service); Chapter 41, Section 108L (educational in- e pay); Chapter 41, Section 100G (funeral and burial expenses for police offi- ɲd fire fighters); and, Chapter 31 (Civil Service coverage).

[4] The protections that workers received under Civil Service systems cannot be cored. Indeed, one commentator states "the civil service system for many filled the gap caused by lack of public sector bargaining." Edwards, The ng Duty to Bargain in the Public Sector, 71 Mich. L. Rev. 885, 911 (1973). e collective bargaining agreements in Massachusetts cannot contain provisions istent with Civil Service Rules and Regulations, without Civil Service protec- tions, public employees will be without substantial protections.

asic function was to eliminate unwarranted employer discretion and to enforce non-rbitrary employment standards. The system was "designed to secure a service of ersons freed from parties and political control, reasonably secure against arbi-rary discharge, transfer, abolition of office and reduction of rank or compensa-ion." Alger v. Justice of the District Court, 283 Mass. 596, 598 (1933). Essen-ial in carrying out the merit principle, the Civil Service Commission promulgated egulations and rules covering employment and promotional examinations, appointment, robationary periods, demotion, seniority, dismissal, discipline and appeal proce-ures. In sum, the Civil Service System provides public employees with both rights nd remedies and a public agency in which to vindicate these interests. Id.

The decision whether to remove the merit principle and the personnel practices mbodied by the Civil Service system, without any doubt, literally affect, "stan-ards of productivity and performance and other terms and conditions of employment" or public employees. See eg., Local 1383, IAFF v. City of Warren, 411 Mich. 642, 11 N.W. 2d, 702 (1981). Indeed, the majority decision recognizes that the removal f Civil Service protections directly and significantly impacts the working condi-ions of incumbent employees even though those employees retain benefits in their ncumbent positions by a grandfather clause.[5] On the other hand, the employer has a egitimate interest in attempting to revoke Civil Service coverage for its employees o obtain greater control over the management of its affairs.

The balancing test, which was adopted by the Commission in Town of Danvers, MLC 1559 (1977) acknowledges that when both employers and unions have significant nterests then their competing interests must be balanced to determine the nego-iability of a proposed subject. "Those management decisions which do not have a irect impact on terms and conditions of employment must not be compelled to be hared with the representative of employees through the collective bargaining pro-ess." Id at 1559. In Boston School Committee, 3 MLC 1603, at 1607 (1977), the ommission stated:

> The determination of what is a condition of employment, as opposed to a core educational policy matter, is not subject to hard rules. We must balance the competing interests. Is the predominant effect of a decision directly upon the employment relationship, with only limited or speculative impact on core educational policy? Or is the predominant effect upon the level or types of education in a school system, with only a side effect upon the employees?

The Massachusetts Civil Service System provides employment security to overed workers by restricting the circumstances under which they can be discharged, isciplined, laid off, or terminated. G.L. c.31. Though "incumbents" keep their ivil Service protections, they lose such rights, if they are bumped, transferred

[5] See, majority's opinion, page 1098.

ioted into other positions. Thus, revocation of Civil Service vitally affects ıloyment security of employees.

n addition to providing standards for employment security, the Civil Service ıvides procedural protections to enforce these standards, Alger, supra. The ervice Commission serves as a quasi-judicial neutral agency that reviews employer actions. Certainly, public employees have an interest in preserv- procedural protections which vitally affect their job tenure. The choice rnative methods[6] to challenge adverse employer actions is a matter of pro- mportance to all employees. The choice of forums, and the law of the forum, ıbly affects substantive rights.

lor are the employee's rights preserved by allowing bargaining over the im- of the decision to revoke Civil Service coverage. The substantive job pro- ıs under the Civil Service law cannot be separated from the procedural pro- ıs which exist through the Civil Service forum. Thus, it is not enough to only over the impacts. Under the majority's conclusion employees are left ghts but no remedies, and they have lost a forum to vindicate the loss of ights. In the present case, we are confronted with circumstances in which fects of a decision are so "inextricably interwoven with the decision itself ırgaining limited to effects will not be meaningful if it must be carried hin a framework of a decision that cannot be revised." Ozark Trailers, Inc., RB 561, 570, 63 LRRM 1264, 1269 (1964).

It is not enough to say that the decision to set in motion the process of ıg Civil Service has a significant impact on employees' terms and conditions loyment; the employer's countervailing interests must also be considered. ision to revoke Civil Service affects the conduct of municipal business. ıly, the School Committee has an interest in whether to continue in statutory e benefit programs. The School Committee's interest in attempting to gain managerial control is legitimate.

Requiring bargaining over the decision would not, however, unnecessarily he public employer of its management prerogative. The public employer retains ver to determine when to set the revocation process in motion.[8] All that is

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[6]Arbitration often provides an alternative forum by which to challenge an er's adverse action. Where the controversy concerns issues arising under ıe collective bargaining agreement and involves job tenure covered by civil e law the employee is entitled to choose one forum to decide the matter. The is that the employee has the option of alternative methods of review.

[7]Many of the protections guaranteed by the Civil Service Commission are not d in parties' collective bargaining agreements. In these instances, an arbi- would have no authority to remedy any abridgement of Civil Service proce- Instead of having an option of alternative forums, the employee would have

[8]The public employer's decision to revoke Civil Service is somewhat analogous (continued)

required is that the two sides discuss the matter at the bargaining table. If an impasse is reached, the public employer can set in motion the revocation process.

Contrary to my colleagues, I cannot presume that collective bargaining in the present case would be fruitless or worthless. Specifically, there is no evidence to justify the presumption that bargaining over the decision would be maningless. The Union would in all likelihood endeavor to persuade the public employer not to seek revocation of Civil Service decision. The Union might convince the employer that the existing system is preferable to the lack of any merit system. If given the opportunity, the Union might provide information on the relative costs of proceeding to arbitration as opposed to Civil Service Commission. To the extent that management needs greater control over its affairs, the union may have been able to offer concessions in other areas of employment security such as contracting out, in exchange for the retention of Civil Service protections for its members. If the employer had bargained over the decision to revoke Civil Service, these suggestions would have been debated. The employer would still have been free to move for Civil Service revocation.[9]

In summary, the revocation of Civil Service has far reaching impact on terms and conditions of employment for Weymouth school custodians. Revocation strips public employees of a system that establishes definite standards of employment security. The School Committee would not be unduly hampered nor suffer any harm if required to bargain over the decision to seek revocation of Civil Service.

Another issue presented is at what point the bargaining obligation arises. In the present case, the collective bargaining function and responsibilities of public employers to the voting electorate have become intermingled. Therefore, a balance must be found between the principle requiring a public employer to bargain in good faith with a union to the point of impasse prior to implementing a change in any term and condition of employment and the right of the public to determine whether to make changes in the business of government.

An accommodation of the rights of municipal employees and the rights of the general electorate may be best attained by requiring public employers to fulfill their obligations pursuant to Section 6 of the Law prior to placing a matter which directly affects terms and conditions of employment before the electorate. "If a

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8 (continued)
to a private employer's decision to close part of its business. In the later situation the Supreme Court recognized that "management may have great need for speed, flexibility, and secrecy in meeting business opportunities and exigencies." First National Maintenance Corp. v. NLRB, ___ U.S. ____, ____ LRRM ____, ____ (1981). In the present case, the employer has not introduced any evidence of necessity why the decision had to be made without union participation, especially when the parties were at the time negotiating a successor agreement which included reference to Civil Service.

9 A Federal Appeals Court noted that "the value of collective bargaining cannot be measured solely in terms of the possibility of an alteration in the employer's decision to close the facility. Merely by sitting down together to consider the (continued)

statute prescribes that a city should follow certain procedures in regulating subjects, then the city cannot validly follow a different procedure. If lective bargaining statute provides that, when a majority of employees has d a representative, the City shall regulate certain subjects through bargain- e City cannot supersede that procedure by the unilateral acts of the chief ve, the legislature, or even a referendum." Summers, Public Employee Bargain- Political Perspective, 83 Yale L. Journ. at 1192 n 68.

n circumstances such as those present here, where municipal officials seek e a matter before the town meeting, the logical point at which to require fulfill their bargaining obligations pursuant to Chapter 150E is prior to the matter upon the town meeting warrant.[10] Requiring bargaining at that e is the most effective way of preserving the employee's bargaining rights nce the matter is placed before the town meeting, a process is unalterably motion which may affect terms and conditions of employment. At the same time, ion of the bargaining obligation prior to the point at which an issue is before the town meeting best preserves the right of the electorate to take ion it deems appropriate without encountering conflicting demands from muni- employee unions. See Local 406 AFSCME, Council 93, 7 MLC 1614 (H.O. 1980).

The majority decision undermines the basic purpose of our law by permitting ers to set in motion the process in which to revoke Civil Service without even ng the union or in any way discussing the matter beforehand. This hinders than fosters collective bargaining. I therefore dissent.

COMMONWEALTH OF MASSACHUSETTS
LABOR RELATIONS COMMISSION

GARY D. ALTMAN, Commissioner

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9 (continued)
, the employer and employees may achieve important aims, including the enhance- f the sense that problems confronting one of them also intimately concern the Even if no immediate results flowing from such an awareness of their com- of interests become evident, the value of fostering that attitude between rties should not be underestimated." Brockway Motor Trucks v. NLRB, 99 LRRM 2025 n. 93 (1981).

10 The requirement that certain conditions be met before a matter may be placed a governing body for vote is not unprecedented. For example, Massachusetts l Laws, Chapter 40A, Section 5 requires any changes in a zoning ordinance or to be screened through a planning board, so that interested persons may have ortunity to be heard. In Whittemore v. Town Clerk of Falmouth, 12 N.E. 2d 187, 937), the Massachusetts Supreme Court made it clear that such requirement is a ion precedent to any change in a zoning ordinance, and that until the planning has acted, the town meeting has no jurisdiction to take up the matter.

Weymouth School Committee and NAGE, Local R1-162, 9 MLC 1091

NOTICE TO EMPLOYERS
POSTED BY ORDER OF
THE MASSACHUSETTS LABOR RELATIONS COMMISSION
AN AGENCY OF THE COMMONWEALTH OF MASSACHUSETTS

After a hearing the Massachusetts Labor Relations Commission determined that the Weymouth School Committee violated G.L. Chapter 150E, Sections 10(a)(5) and (1) by refusing to bargain with the National Association of Government Employees, Local R1-162 over the impact of the revocation of prior acceptance of G.L. Chapter 31 on the terms of employment of custodial employees.

WE WILL cease and desist from such unlawful activity.

WE WILL

Upon request, bargain in good faith with Local R1-162 to resolution or good faith impasse over the impact of the town's revocation of Civil Service coverage for school custodians.

CHAIRMAN, WEYMOUTH SCHOOL COMMITTEE