In the Matter of TOWN OF DENNIS

and

DENNIS FIRE FIGHTERS, LOCAL 2583, IAFF

Case No. MUP-2634

54.611	health insurance
67.15	union waiver of bargaining rights
67.16	other defenses
67.8	unilateral change by employer
82.3	status quo ante
91.11	statute of limitations
92.49	motion in limine

April 3, 2002
Helen A. Moreschi, Chairwoman
Mark A. Preble, Commissioner
Peter G. Torkildsen, Commissioner

Howard Lenow, Esq.	*Representing the Dennis Fire Fighters, Local 2583, IAFF*
Christopher Groll, Esq.	*Representing the Town of Dennis*

DECISION[1]

Statement of the Case

On March 6, 2000, the Dennis Fire Fighters, Local 2583, I.A.F.F. (the Union) filed a charge (first charge) alleging that the Town of Dennis (the Town) had violated M.G.L. c. 150E (the Law). Following an investigation, on September 12, 2000, the Commission issued a complaint of prohibited practice alleging that the Town had violated Section 10(a)(5) and derivatively, Section 10(a)(1) of the Law by unilaterally changing the co-payment for prescription drugs for members of the bargaining unit represented by the Union. The Town filed an Answer to the Complaint on October 5, 2000.

On December 29, 2000, in lieu of testimonial evidence, the parties jointly filed a document that contained "Stipulated Facts" and "Contested Facts" and affidavits and exhibits to support their respective versions of the contested facts and waived their right to a trial on the issue. The contested facts were relevant to the Town's argument that the Union's charge is untimely. On or about January 19, 2001, the parties filed post-hearing briefs.

On June 22, 2001, the Commission *sua sponte* notified the parties that it was remanding this case to a hearing officer because the record was insufficient to determine whether the Union's charge was timely. On July 5, 2001, the Union filed a second charge of prohibited practice (Case No. MUP-01-3407) (2001 allegations), which alleged that the Town had violated Sections 10(a)(5) and (1) of the Law by unilaterally implementing an increase in the co-payment for office visits and by making additional changes to the prescription drug co-payment structure. The Town also alleged those changes to be a repudiation of the parties' collective bargaining agreement. On July 5, 2001, the Union also filed a motion to consolidate MUP-01-3407 with MUP-2634 for hearing. The Commission denied that motion on July 13, 2001. However, in a letter dated July 5, 2001, the hearing officer indicated that the Commission would grant a motion to amend the complaint in MUP-2634 to add the facts that formed the basis of MUP-01-3407 if the Town did not oppose the Motion and if the parties stipulated to those additional facts. On September 10, 2001, the parties filed stipulated facts and exhibits relating to both charges. The Union also filed an assented-to Motion to Amend Complaint on September 10, 2001, which the Commission granted on October 1, 2001. The Commission issued an Amended Complaint of Prohibited Practice on October 10, 2001.

On October 10, 2001, Hearing Officer Marjorie F. Wittner, Esq. conducted a hearing at which both parties had an opportunity to examine and cross-examine witnesses and introduce documentary exhibits on the issue of whether the Union's charge in MUP-2634 was timely. The Town filed its Answer to the Amended Complaint orally at the start of the hearing. During the Town's opening statement, the Town's attorney indicated that it would provide testimony and evidence concerning the Cape Cod Municipal Health Group (CCMHG) and the Union's role in the Town's decision to join CCMHG. After the Town's opening statement, the Union filed a Motion in Limine to restrict the Town's testimony to the issue of whether the Union had filed the first charge in a timely manner. The hearing officer granted that motion on the record based on the parties' prior agreement to provide the facts that formed the basis of the Amended Complaint in the form of stipulations and the Commission's decision to remand the matter for hearing on the issue of timeliness alone. The Town indicated that it wished to preserve its right to appeal that decision but did not file an interlocutory appeal of the hearing officer's decision under Commission rule 456 CMR 13.03.

The Town's counsel also made a motion to dismiss the complaint arguing that there was nothing in the parties' stipulations linking the Town to the decision to make changes in health insurance co-payments. The hearing officer took that motion to dismiss under

1. Pursuant to 456 CMR 13.02(1), the Commission designated this case as one in which the Commission shall issue a decision in the first instance.

2. The Commission's jurisdiction in this matter is uncontested.

advisement. Both parties filed post-hearing briefs on or about November 9, 2001.

Pursuant to Section 13.03(2) of the Commission's rules, the hearing officer issued Recommended Findings of Fact on December 27, 2001 neither party filed challenges to the hearing officer's Recommended Findings of Fact.

Findings of Fact[2]

Neither party challenged the Hearing Officer's Recommended Findings of Fact. However, in its post-hearing brief, the Town requested that the Commission remand this matter back to the Hearing Officer to present additional evidence that it claims is relevant to its defense of the second count of the Amended Complaint - that the Union, by its prior actions in the Town's decision to join the CCMHG, had waived its right to bargain over the unilateral change. We deny that request. The Commission's regulations, 456 CMR 13.03, permit a party to appeal a ruling by a hearing officer by submitting a motion in writing to the Executive Secretary prior to the close of the hearing. 456 CMR 13.03(2) provides that the Hearing Officer's ruling remains in effect unless and until it is modified or overturned by the Commission. The Town did not file an interlocutory appeal in accordance with 456 CMR 13.03 from the hearing officer's decision granting the Union's Motion in Limine to restrict the Town's testimony at the October 10, 2001 hearing to the issue of the timeliness of the first charge. Nor, as we have noted above, did the Town file any challenges to the Hearing Officer's Recommended Findings of Fact under 456 CMR 13.03(2). Accordingly, we decline to disturb the hearing officer's ruling and adopt the hearing officer's Recommended Findings of Fact in their entirety and summarize the relevant portions below.

December 29, 2000 Stipulated Facts[3]

1. The Respondent Town of Dennis ("Town") is a public employer within the meaning of Section 1 of the Law.

2. The Charging Party Dennis Professional Fire Fighters Association ("Union") is an employee organization within the meaning of Section 1 of the Law.

3. The Union is the exclusive collective bargaining representative for a bargaining unit of fire fighters employed by the Town.

4. The Firefighters Union and the Town of Dennis are covered by a collective bargaining agreement which runs from July 1, 1997 to June 30, 2000. (See Collective Bargaining Agreement, attached hereto as "Joint Exhibit 1."). Pursuant to Article XXV, the agreement remains in full force and effect until a new agreement is negotiated and executed. The parties are engaged in negotiations for a successor contract which are presently under the auspices of the Joint Labor Management Committee.

5. Under this Agreement, the Town pays a portion of the fire fighters' health insurance premiums. Article XVI of the Collective Bargaining Agreement provides in relevant part as follows:

> Section 1 (Group Insurance)
>
> All members covered by this agreement shall be entitled to the Town of Dennis Group Insurance Program in accordance with the provisions of Chapter 32B of the General Laws of Massachusetts. The Town agrees to contribute sixty percent (60%) of the cost of premiums of said insurance. (See Joint Exhibit 1).

6. The Town is a member of the Cape Cod Municipal Health Group (CCMHG), a joint purchase group of governmental employers which arranges for the purchase and administration of health insurance for its constituent members. The CCMHG is run by a Board of Delegates, whose membership is drawn from various municipal officials of the constituent group of governmental employers.

7. The Town offers employees in the bargaining unit referred to in paragraph three above a Blue Cross/Blue Shield Master Health Plus indemnity plan, the Harvard-Pilgrim HMO and the HMO Blue through the Cape Cod Municipal Health Group.

8. (a) *Blue Cross/Blue Shield Indemnity*

The individual health insurance monthly premium is $326.00. The Town's 60% share of this premium is $195.60 and the employees' 40% share is $130.40. The single parent/single child monthly premium is $654.00. The Town's 60% share of this premium is $392.40 and the employees' 40% share is $261.60. The family plan monthly premium is $816.00. The Town's 60% share of this premium is $489.60 and the employees' 40% share is $326.40.

(b) *The Harvard Pilgrim HMO*

The individual health insurance monthly premium is $236. The Town's 60% share of this premium is $141.60 and the employees' 40% share is $94.40. The family plan monthly premium is $615.00. The Town's 60% share of this premium is $369.00 and the employees' 40% share is $246.00.

(c) *HMO Blue*

The individual and family rates are the same as Harvard Pilgrim. However, HMO Blue has a single parent/single child option at $470 per month. The Town's 60% share is $282.00 and the employees' 40% share is $188.00.

9. Prior to July 1, 1999, the plans referred to in paragraph seven and eight above both included a prescription drug benefit requiring a $5 co-payment for the purchase of generic drugs and a $10 co-payment for the purchase of brand name drugs.

10. Effective July 1, 1999, the CCMHG unilaterally changed the cost of co-payments for brand-name prescription drugs.

11. On or about July 1, 1999, the CCMHG increased the co-payment for brand-name prescription drugs to $15 under indemnity plan and the two HMO plans.

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3. We have omitted the "Contested Facts" portion of the parties' December 29, 2001 stipulations because we remanded this matter for a hearing specifically to resolve those contested facts.

12. Neither the Town nor CCMHG specifically notified the Union of these changes.

13. The Town did not specifically provide the Union with notice of the benefit changes implemented by CCMHG referenced in paragraph 11, and did not bargain with the Union to resolution or impasse over the change in co-payments.

September 10, 2001 Stipulations

1. The Dennis Professional Firefighters Association, Local 2583 ("Local 2583", "Association" or "Union") and the Town of Dennis ("Town") are parties to a collective bargaining agreement which runs from July 1, 2000 through June 30, 2003. Pursuant to Article XVI of that agreement, the Town of Dennis pays 60% of the cost of premiums for health insurance and employees pay 40%. (See copy of collective bargaining agreement, attached hereto as "Exhibit 1").

2. The Town is a member of the Cape Cod Municipal Health Group ("CCMHG"), a joint purchase group of governmental employers that arranges for the purchase and administration of health insurance for its constituent members. Through CCMHG, the Town offers members of Local 2583 the option of electing different health insurance plans, including Blue Cross/Blue Shield Master Health Plus Indemnity plan the Harvard-Pilgrim HMO and the HMO Blue plan.

3. Prior to July 1, 1999, the co-payment for prescription drugs under all three of the above-listed plans was $10 for brand-name drugs. Effective on or about July 1, 1999, the Town through CCMHG increased the co-payments from $10 to $15. The facts of the 1999 health insurance change are contained in Paragraphs 1-10 of the Complaint in this case which the Commission issued on September 12, 2000 and in the original Stipulated Facts submitted by the parties on December 29, 2000. (See copy of Complaint, attached hereto as "Exhibit 2" and Stipulated Facts, attached hereto, as "Exhibit 3").

4. Effective July 1, 2001, the Town, through CCMHG, implemented additional changes to the health insurance benefits of Local 2583 members. In May 2001, the Town included a bulletin from CCMHG in all Local 2583 members' paychecks describing the following changes to health insurance. The bulletin provided that:

> Office co-pays will change to $10 per visit for the following plans: Master Health Plus, Blue Care Elect Preferred, Network Blue (HMO Blue) Harvard Pilgrim EPO, Harvard Pilgrim PPO.
>
> Prescription drug (Rx) co-pays will be $5 for generic drugs, $15 for formulary brand name drugs, and $30 for non-formulary brand name drugs for a 30-day supply at the retail pharmacy or for a 90-day supply by Mail Order for the following health plans: Master Health Plus, Blue Care Elect Preferred & Network Blue (HMO Blue). The three co-pay tiers apply to the Mail Order RX for Master Medical. (See CCMHG bulletin at page 5 attached hereto as "Exhibit 4").

5. While the Town provided the Union with notice of the benefit changes implemented by CCMHG referenced in Paragraph 4, the Town did so after the decision to implement the changes was made by the CCMHG and did not bargain with the Union to resolution or impasse over the change in co-payments.

6. On May 21, 2001, the Union filed a grievance over this change in health insurance benefits, alleging a violation of the parties' collective bargaining agreement. (See copy of Grievance 01-02, attached hereto as "Exhibit 5.") The Town denied the grievance at each contractual step, and, on June 26, 2001, the Union filed a demand for arbitration with the American Arbitration Association. (See Copy of Town's Denial at Step One dated June 6, 2001, and the Union' s Demand for Arbitration dated June 26, 2001, attached hereto as "Exhibit 6", "Exhibit 7" and "Exhibit 8", respectively).

Additional Stipulations

1. Prior to July 1, 2000, office co-pays were $5.00 for the following plans: Master Health Plus, Blue Care Elected Preferred, Network Blue, HMO Blue, Harvard Pilgrim PPO, Harvard Pilgrim EPO.

2. In May 1999, there were thirty-four (34) full-time firefighters.

Additional Findings of Fact

From time to time, the Town has asked its payroll department to distribute certain documents along with the paychecks or pay statements[4] of Town employees. The Town's payroll department has accomplished this task in a number of ways, including inserting the attachment along with the paycheck in a sealed pay envelope individually addressed to the Town employee; putting a stack of the documents next to where the payroll checks are usually picked up; or including, as a loose stack, the particular documents in the manila inter-office envelope that contains a specific department's individual pay envelopes. As of May 1999, then payroll clerk Robin Sexton-Neisius (Sexton-Neisius) normally placed Town distributions inside the individual employee's pay envelope and sealed that envelope.

The Town's employees are paid on Wednesdays. As of May 1999, the fire fighters would send a representative to the payroll department each Wednesday to pick up the department's pay envelopes. Once there, the representative would typically sign for the manila inter-office envelope containing the fire fighters' individual, sealed, pay envelopes and bring that inter-office envelope back to the department. The inter-office envelope was then placed in a central location from which the individual fire fighters could retrieve their sealed pay envelopes.

In May 1999, CCMHG prepared a document called "Health Benefits Update" (CCMHG newsletter). This two-page document set forth various changes in the health benefits that CCMHG offered to the governmental members who comprise its membership. The first page of the newsletter detailed "Blue Cross & Blue Shield plans benefit changes," "Pilgrim plan benefit changes," and "Other BCBS changes." The second page outlined the differences between the Pilgrim Health Care EPO and the Harvard EPO that

4. The Town provides a pay statement to those employees whose paychecks are directly deposited in their bank accounts.

became effective on July 1, 1999 and also discussed two new plans for retirees.

The CCMHG newsletter announced the following prescription drug co-pay changes to Blue Cross & Blue Shield Plans effective September 1, 1999[5]:

> *1. Master Health Plan - Retail*: (up to 34 day supply) $5 generic; $15 brand; *Mail Order* (90 day supply): $5 generic; $15 brand;
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> *2. Master Medical/Master Health and Medicare Carveout*: Mail Order (90 day supply): $5 generic; $15 brand;
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> *3. Network Blue (HMO Blue) - Retail* (up to a 34 day supply): $5 generic; $15 brand; *Mail Order* (90 day supply): $5 generic; $15 brand.

The newsletter also stated that "starting on 9/1/99 BCBS plans (except Medex and Blue Care 65) will not cover drugs that are not on BCBS's preferred list (formulary) of drugs. Your employer has the list of the 56 non-covered drugs."

The newsletter announced similar changes to the Pilgrim EPO plan. The new co-payments were $5 for formulary (generic and brand name)[6] and $15 non-formulary drugs. Previously, the co-payments were $3 for generic and $6 for brand-name drugs. The newsletter directed subscribers to contact the provider directly to find out if their medication was on the formulary list. As a member of the Executive Committee of CCMHG, Assistant Town Administrator Robert Canevazzi (Canevazzi) approved the format and wording of the CCMHG newsletter.

On Monday, May 3, 1999, Canevazzi drafted a memorandum (May 3 memorandum) to "All Full and Part Time Town Employees" regarding "Employee/Retiree Benefit Fair." Canevazzi's stated purpose for drafting the May 3 memorandum was twofold: to inform Town employees of the upcoming health fair, particularly because the Town had not held one in the last few years, and to distribute the CCMHG memorandum to inform Town employees of changes to their health plans.

The first paragraph of the May 3 memorandum stated in bold print:

> On *WEDNESDAY, MAY 19, 1999*, the Town of Dennis will sponsor an Employee/Retiree Benefit Fair for its full and part-time...employees and retirees. This fair will be held in the large hearing room in the lower level of the Dennis Town Hall.

(Emphasis in original).

The next two paragraphs of the May 3 memorandum indicated that representatives of Blue Cross/Blue Shield, Harvard Pilgrim Health Care, and other Town insurance programs would be present during the fair to discuss their plans, any changes to existing plans and to address any questions or problems Town employees may have recently experienced. The third paragraph of the memo stated in pertinent part that "The month of May is open enrollment period for health and/or dental insurance...The Benefit Fair will provide you with an opportunity to review insurance material and ask questions of insurance provider..."

The final substantive paragraph of the one page memo stated:

> There are a number of changes to the overall health insurance programs as shown in the enclosed health Benefits Update. These changes are scheduled to take place on *July 1, 1999*. We encourage you to attend this very important event. Should you have any questions, please do not hesitate to contact either Robert Canevazzi (760-6264) or Roberta Govoni (760-6147) at Town Hall. (Emphasis in original).

Canevazzi did not directly inform any Union officials about the co-payment changes or personally send any Union official a copy of the May 3 memorandum or the CCMHG newsletter. Town Administrator, Steven Lombard, did not tell Canevazzi to notify the Union about the changes nor did Canevazzi believe that the Town had any obligation to bargain with the Union over those changes.

On May 3, 1999, Canevazzi gave the May 3 memorandum and the CCMHG newsletter to his administrative assistant Roberta Govoni (Govoni) and instructed her to give them to the Town's payroll clerk to include them in the payroll checks to all Town employees, which numbered approximately 225-250. Govoni proceeded to make 250 copies of the inserts and pre-folded them to fit into the pay envelopes. That same day, Govoni took the pre-folded copies over to the payroll office and told Sexton-Neisius that they needed to go out to in the next payroll checks on Wednesday (May 5, 1999) for all the full time and permanent part-time Town employees. She did not give Sexton- Neisius specific directions about how she should accomplish this task. No one ever told Canevazzi or Govoni that Sexton-Neisius had not completed this task. However, Govoni never received any phone calls from Town in response to the May 3 memo or the newsletter. She did however receive phone calls several months later, in July or August 1999, because certain employees had received new prescription cards from Blue Cross/Blue Shield and were confused over the effective dates of the new cards.[7]

Despite Canevazzi's and Govoni's efforts to have the May 3 memorandum and CCMHG newsletter distributed with all Town employees' paychecks, the employees of the fire department never received this distribution in their May 5, 1999 paychecks. The co-payment increases went into effect for Blue Cross/Blue Shield subscribers (except for Medex and Blue Care 65) on September 1, 1999.

At some unspecified point thereafter, in either September or October 1999, Wayne Conlon (Conlon), who is the Union president and a bargaining unit member, learned that the fire fighters' prescription

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5. The parties' December 29, 2000 stipulations indicated that the effective date for all prescription drug co-payment changes was July 1, 1999. Based on the newsletter and record testimony, the hearing officer found that the effective date for Blue Cross/Blue Shield changes was, in fact, September 1, 1999.

6. According to the newsletter, formulary drugs are medications that the health plan's physicians and pharmacists have determined are the most effective with the best prices.

7. The top of the first column of the first page of the CCMHG memorandum stated that Blue Cross/Blue Shield subscribers would be receiving new cards right before the September 1, 1999 changeover date due to a change in Blue Cross's pharmacy benefits manager.

co-payments had increased. Conlon received that news from other fire fighters who had approached him to ask why their co-payments had gone up.[8] Conlon replied that he did not know. Several bargaining unit members also asked him whether it was legal for the Town to increase their co-payments, and Conlon again replied that he did not know, but that he would call the Union's attorney to find out, which he did. According to Conlon, news travels very quickly in the firehouse. Once one firefighter had complained that his co-payments had gone up, within approximately one week, all the fire fighters would have become aware that there had been an increase in co-payments.

Sometime in October 1999, the Union held a meeting to discuss the co-payment increases. At that meeting, Conlon asked whether any of the fire fighters remembered getting any notice from the Town that their co-payments were going to go up. No firefighter responded in the affirmative. The fire fighters either found out about the increased co-payments from their co-workers, from their spouses, or at a union meeting that was held at some point in October 1999.[9] At least one of the fire fighters that testified had a spouse or other dependent covered by their plan who was receiving constant medication.

Opinion

The general framework surrounding the issues raised in this case is well-settled. A public employer violates Sections 10(a)(5) and (1) of the Law when it unilaterally alters an existing condition of employment or implements a new condition of employment involving a mandatory subject of bargaining without providing to the exclusive representative of its employees prior notice and an opportunity to bargain. *City of Somerville*, 19 MLC 1795, 1798 (1993) citing *Town of Ludlow*, 17 MLC 1191, 1195 (1990); *Commonwealth of Massachusetts* v. *Labor Relations Commission*, 404 Mass. 124 (1989); *School Committee of Newton* v. *Labor Relations Commission*, 338 Mass. 557, 572 (1983). It is undisputed that normally, under M.G.L. c. 150E, a public employer must bargain over the terms and costs of health insurance coverage provided pursuant to M.G.L. c. 32B and that such an employer would commit a prohibited practice by changing health insurance benefits without first bargaining over the subject. *Massachusetts Correctional Officers Federated Union (MCOFU)* v. *Labor Relations Commission*, 417 Mass. 7, 9, n. 3 (1994); *City of Somerville* 19 MLC at 1799, *citing Kerrigan* v. *City of Boston*, 361 Mass. 24 (1982); *Town of Ludlow*, 17 MLC 1191, 1195 (1990) *citing School Committee of Medford* v. *Labor Relations Commission*, 8 Mass. App. Ct. 139, 140 (1979). The Commission has also held that employer-subsidized health insurance is a form of compensation. *Board of Regents of Higher Education*, 19 MLC 1248, 1265 (1992), citing *Anderson v. Board of Selectmen of Wrentham*, 406 Mass. 508 (1990). Changes in the amount of a co-payment that employees are required to pay for prescription drugs or office visits under an employer's health insurance plans are clearly changes to both the terms and costs of health insurance affecting employees' overall compensation. Therefore, we find, and the Town does not dispute, that generally, employer must bargain with a union to resolution or impasse prior to changing the amount of co-payments that employees are required to make under the employer's group health insurance plan.

Although the Town does not dispute that it had an obligation to bargain over the impacts of the decision to increase insurance co-payments, it contends that the first charge was untimely and should therefore be dismissed. The Town also argues, citing *MCOFU* v. *Labor Relations Commission*, 417 Mass. 7 (1994) and several other Commission decisions, that it had no obligation to bargain over the *decision* to increase insurance co-payments because that decision was made by CCMHG and was therefore beyond the sole control of the Town. We will treat each of those arguments in turn.

Timeliness of First Charge

456 CMR 15.03 of the Commission's regulations expressly provides that "except for good cause shown, no charge shall be entertained by the Commission based upon any prohibited practice occurring more than six months prior to the filing of a charge with the Commission." A charge of prohibited practice must be filed with the Commission within six months of the alleged violation or within six months from the date the violation became known or should have become known to the charging party, except for good cause shown. *Felton* v. *Labor Relations Commission*, 33 Mass. App. Ct. 926 (1992).

Because an allegation that a charge is untimely is an affirmative defense, the Town has the burden of showing that the Union had knowledge of the co-payment increases prior to September 6, 1999. *City of Boston*, 26 MLC 177, 181 (2000) *citing Town of Wayland*, 5 MLC 1738, 1741 (1979). The Town has not met that burden. Although the Town may have intended, in May 1999, to send a CCMHG newsletter to the firefighters informing the fire fighters about certain co-payment increases, the fire fighters never received that newsletter. Rather, the unchallenged record reflects that the Union did not learn about the increases until September or October 1999, after they had already taken effect. Therefore, because Town has not demonstrated that the Union learned about the changes any time prior to September 6, 1999 and the first charge was filed on

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8. The hearing officer discredited the statement contained in Conlon's sworn affidavit, which was part of the first stipulated record, that he did not receive notice of the co-payment changes until he received a bulletin from Blue Cross/Blue Shield in October 1999.

9. The hearing officer discredited that portion of twenty-one (21) identically worded affidavits from fire fighters that were submitted by the Union as part of the December 2000 stipulated record indicating that the individual fire fighter did not receive notice of the co-payment increases until October 1999, when the fire fighter received a bulletin from Blue Cross/Blue Shield to that effect.

10. Because we have found that the Union did not learn about the changes until after they were implemented, we reject the Town's additional argument that we should find that the Union waived by inaction its right to bargain over those changes. See generally, *Scituate School Committee*, 9 MLC 1010, 1012 (1982)(the doctrine of waiver by inaction will not apply in cases where a union's demand to bargain would be fruitless). In addition, because we have found that the Union did not receive notice of the prescription drug co-payment increases until September or October 1999, we need not reach the issue of whether the May 1999 newsletter constituted adequate notice of that change.

March 6, 2000, we find that the Union filed its charge in a timely manner.[10]

We also reject the Town's argument that it was excused from bargaining over the decision to increase the co-payments because that decision was made by the CCMHG and therefore was beyond its control. The Commission has held that, where certain actions taken by parties like the Group Insurance Commission (GIC), the Legislature, or an insurance company are beyond the employer's control, the public employer may not be required to bargain over the third party's decision to take that action. *See e.g., MCOFU* v. *Labor Relations Commission*, 417 Mass. 7, 1994 (employer not required to bargain over Group Insurance Commission's decision to reduce health insurance benefits); *Town of Weymouth*, 23 MLC 71 (1996)(insurance company's decision to cancel Town's coverage excused Town from bargaining over decision to cancel that coverage); *City of Somerville*, 19 MLC 1798 (1993) (Legislature's mandating increase in employee portion of HMO premium deduction excused City from bargaining over Legislature's decision to make change).[11]

In *MCOFU* v. *Labor Relations Commission*, the Supreme Judicial Court held that because it was inherent in the statutory scheme that the Commonwealth, as the public employer, and the union had no control over the GIC's decision to reduce health insurance benefits, the Commonwealth was relieved of its duty to bargain over the changes in health insurance coverage mandated by GIC. 417 Mass. at 9. However, the Court specifically noted that its holding did not concern collective bargaining rights and health insurance coverage under M.G.L. c. 32B for employees of political subdivisions of the Commonwealth. *Id.* at 9, n.3, *citing Town of Ludlow*, 17 MLC 1191, 1198 (1990). The Commission has similarly found that there is no independent agency analogous to the GIC for purchasing health insurance for municipal employees. *City of Malden*, 23 MLC 181, 184 (1997). Moreover, although Section 12 of M.G.L. c. 32B permits public authorities of two or more governmental units to join together in negotiating and purchasing one or more policies of insurance for the employees of all of the governmental units, it does not require those public authorities to do so, nor does that statute relieve the participants in those groups of their respective obligations to bargain over changes to the terms and costs of its employees' benefits within their municipality.[12]

Here, the record before us reflects that the CCMHG is a joint purchase group of governmental employers that arranges for the purchase and administration of health insurance for its constituent members. The CCMHG is run by a Board of Delegates, whose membership is drawn from various municipal officials of the constituent group of governmental employers. Canevazzi is a member of CCMHG's Executive Committee and approved the format and wording of the CCMHG newsletter that announced the 1999 changes in health insurance co-payments. Unlike the GIC, therefore, the CCMHG is not an independent third-party agency with the statutory authority to make health insurance decisions on behalf of its members. Rather, the CCHMG is a group that is comprised of the very parties who have a duty to bargain about health insurance decisions under the Law and that can act only at the bidding of those parties, some of whom, like the Town, sit on its Executive Board and therefore must necessarily exercise a certain amount of control over its actions. Here, although the CCMHG, acting through its members, apparently did not take those members' respective bargaining obligations into account when deciding to increase insurance co-payments, there is no evidence that that decision, or the CCMHG itself, otherwise prevented or excused the Town from bargaining with the Union before it unilaterally increased the co-payments its employees were required to pay. Thus, even assuming that the Town could not control CCMHG's decision in the first instance, that did not relieve it from bargaining with the Union over that decision, and not merely the impact of that decision. *Cf. City of Gardner*, 26 MLC 72, 77, *citing City of Malden*, 23 MLC 181, 194 (1997)(School Committee remained obligated to give notice and opportunity to bargain over city's decision to change health benefits and not merely the impact of the municipality's decision, even where School Committee did not make the original decision).[13]

Failure to Bargain over 2001 Co-Payment Increases

The Town does not dispute that it did not specifically give notice to the Union or bargain with it prior to implementing change to its employees' office and prescription drug co-payments in 2001. The Town does not raise any defenses to its failure to bargain with the Union over that unilateral change except to request that we remand this matter back to the hearing officer to allow it to submit further evidence to support its one asserted defense; that the Union, by its prior actions concerning the Town's decision to join the CCMHG, waived its right to bargain over health insurance changes implemented by the CCMHG. That request has been denied for the reasons described above. Therefore, in the absence of other defenses and consistent with the foregoing analysis, we accordingly find that the Town has violated Sections 10(a)(5) and (1) of the Law by failing to bargain over the 2001 co-payment increases. However, even assuming that the Town had presented evidence in support of its asserted waiver defense, because the collective bargaining agreement contains no waiver of the Union's right to bargain over increases in insurance co-payment amounts, and is silent regarding the CCMHG, *see City of Gardner*, 26 MLC at 77 (finding no waiver of right to bargain over changes to health insurance options where nothing in collective bargaining agreement unequivocally authorized City to act unilaterally to change those options), and because

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11. The Town does not argue that the Legislature or its insurance carriers caused it to lack control over the decision to increase co-payment costs.

12. M.G.L. c. 32B, Section 12 states in pertinent part that "upon acceptance of this chapter, the appropriate public authorities of two or more governmental units *may* join together in negotiating and purchasing...one or more policies of insurance...for the employees of said governmental units." (Emphasis supplied).

13. For the foregoing reasons, we also deny the Town's motion to dismiss the amended complaint. At the hearing the Town argued that the Commission should dismiss the complaint in its entirety because there was nothing in the parties' stipulations linking the Town to the decision to make changes in health insurance co-payments. However, as discussed above, the issue here is not who may have made that decision in the first instance, but whether, despite who made that decision, the Town remained obligated to bargain with the Union before increasing bargaining unit members' co-payments for prescription drugs and office visits. Cf. *City of Malden*, 23 MLC 181, 184 (1997).

the alleged waiver took place before the Union even had notice of the unilateral changes that are at issue here, *see supra* note 10 and accompanying text, that defense would not appear to be viable under any of the Commission's traditional waiver analyses. Even assuming the Union had somehow waived its right to bargain over changes in the terms and costs of its health insurance coverage at the time the Town joined the CCMHG, that would not forever bar the Union from opposing all future recurrences of that action. *City of Gardner*, 26 MLC 72, 77, citing *Town of Randolph*, 8 MLC 2244, 2052 (1982).

Conclusion

Based on the record for reasons stated above, we conclude that the Town violated Sections 10(a)(5) and (1) of the Law by unilaterally making increases to prescription drug and office visit co-payments in 1999 and July 2001 without first giving notice to the Union and bargaining to resolution or impasse.[14]

Order

WHEREFORE, based on the foregoing, it is hereby ordered that the Town of Dennis shall:

1. Cease and desist from:

a) Unilaterally changing the health insurance co-payments for prescription drugs and office visits for bargaining unit members represented by Dennis Fire Fighters, Local 2583, IAFF.

b) In any like manner, interfere with, restrain and coerce any employees in the exercise of their rights guaranteed under the Law.

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

a) Restore to employees represented by the Union the cost and structure of prescription drugs co-payments for all health insurance plans offered by the Town that were in place prior to July 1, 1999.

b) Restore to employees represented by the Union the office visit co-payments that were in place prior to July 1, 2001.

c) Provide Dennis Fire Fighters, Local 2583 with prior notice of any proposed change in health insurance co-payments affecting employees represented by them and, upon request, bargain in good faith to resolution or impasse before implementing any changes in health insurance prescription drug or insurance co-payments.

d) Make whole bargaining unit members for any economic losses they may have suffered as a result of the Town of Dennis's unlawful change in health insurance co-payments, plus interest on any sums owing at the rate specified in M.G.L. c. 321, 6B compounded quarterly.

e) Sign and post immediately in conspicuous places where employees usually congregate or where notices to employees are usually posted and maintain for a period of thirty (30) days thereafter copies of the attached Notices to Employees.

f) Notify the Commission within ten (10) days after the date of service of this decision and order of the steps taken to comply with its terms.

SO ORDERED.

NOTICE TO EMPLOYEES

The Massachusetts Labor Relations Commission (the Commission) has determined that the Town of Dennis (the Town) has violated Section 10(a)(5) and, derivatively 10(a)(1) of M.G.L. c. 150E (the Law) by unilaterally changing health insurance prescription drug and office visit co-payments for employees represented by Dennis Fire Fighters, Local 2583, IAFF.

We hereby assure our employees that:

WE WILL NOT unilaterally change health insurance prescription drug and office visit co-payments of employees represented by Dennis Fire Fighters, Local 2583, IAFF, without giving Dennis Fire Fighters, Local 2583, IAFF an opportunity to bargain to resolution or impasse.

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

WE WILL restore the health insurance prescription drug co-payments that were available to members of the bargaining unit represented by Dennis Fire Fighters, Local 2583, IAFF prior to July 1, 1999.

WE WILL restore the office visit co-payments that were available to members of the bargaining unit represented by Dennis Fire Fighters, Local 2583, IAFF prior to July 1, 2001.

WE WILL make whole any employees for any losses suffered as a result of the Town's unlawful change to health insurance co-payments, plus interest.

WE WILL provide Dennis Fire Fighters, Local 2583 with prior notice of any proposed change in health insurance co-payments affecting employees represented by them and, upon request, bargain with Dennis Fire Fighters, Local 2583 in good faith to resolution or impasse before implementing any changes in health insurance co-payments.

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14. Because we have found that the Town violated the Law by unilaterally changing the insurance co-payments, we do not reach the issue of whether Town's conduct also was a repudiation of the parties' collective bargaining agreements. *City of Leominster*, 23 MLC 62, 67 (1996) citing *City of Everett*, 19 MLC 1304, 1315, n. 20 (1992).