COMMONWEALTH OF MASSACHUSETTS, COMMISSIONER OF ADMINISTRATION AND ALLIANCE, AFSCME-SEIU, AFL-CIO AND GROUP INSURANCE COMMISSION, SUP-2156, 2159 (4/13/78).

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Commissioners participating: James S. Cooper, Chairman; Garry J. Wooters, Commissioner; Joan G. Dolan, Commissioner.

Appearances:

Warren Pyle, Esq.)
Augustus Camelio, Esq.) - Counsel to the Alliance

Mary Lee Walsh, Esq. - Counsel to the Employer

Christopher Worthington, Esq. - Counsel to the Group Insurance Commission

AMENDED DECISION AND ORDER

Statement of the Case

On January 13, 1978 and January 18, 1978, Complaints of Prohibited Practice were filed with the Labor Relations Commission (Commission) on behalf of Alliance, AFSCME-SEIU, AFL-CIO (Alliance)[1] alleging that the Commonwealth of Massachusetts had engaged in certain practices prohibited by Chapter 150E of the General Laws (Law). The Commission investigated the complaints pursuant to its authority under section 11 of the Law, and on January 3., 1978 issued its own Complaint of Prohibited Practice. A formal hearing was held on the Complaint on February 2, 1978 before Garry J. Wooters, a member of the Commission. All parties were afforded full and fair opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence. All parties filed timely briefs which have been considered. The Group Insurance Commission (GIC) was permitted to participate in the hearing and has filed a brief.[2]

[1]SUP-2156 was filed by "Local 509, Service Employees International Union, AFL-CIO on behalf of Alliance, AFSCME-SEIU, AFL-CIO." SUP-2159 was filed by "American Federation of State, County and Municipal Employees, Council 93, AFL-CIO a member of the Alliance."

[2]The Hearing Officer allowed the Motion to Intervene filed by the GIC only to the extent of permitting that agency to introduce evidence at the hearing in support of its claim that the Complaint of Prohibited Practice issued by the Commission interfered with the statutory authority of the GIC. The (cont'd.)

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Findings of Fact

Upon all of the evidence and the record as a whole we make the following findings of fact, and render the following opinion.

1. The Commonwealth of Massachusetts is a "public employer" within the meaning of section 1 of the Law.

2. The Commission of Administration is the representative of the Commonwealth for all purposes relative to this matter.

3. The Alliance, AFSCME-SEIU, AFL-CIO is an employee organization within the meaning of section 1 of the Law, and is the exclusive representative for the purposes of collective bargaining of certain employees of the Commonwealth.

4. Local 509, Service Employees International Union, AFL-CIO and Council 93, American Federation of State, County and Municipal Employees, AFL-CIO are members of the Alliance, and have authority to act on its behalf.

The Group Insurance Commission, established pursuant to G.L. c.32A, is empowered to enter into contracts with insurance carriers for the purpose of providing health insurance coverage for certain classes of active and retired state employees. It is composed of nine (9) members--the Commissioner of Administration,[3] the Commissioner of Insurance[4] and seven members appointed by the Governor. Of the seven gubernatorial appointees, one must be a retired state employee, and two must be full-time state employees. The state employee members represent Council 93 of AFSCME, and the Massachusetts State Employees Association. The GIC is established within the Executive Office of Administration and Finance, but is "not under its jurisdiction." G.L. c.32A, sec. 3.

Total premium cost for group insurance coverage is determined by the contracts awarded by the GIC. Legislation restricts the percentage contribution towards total premium costs which may be made by the state. Funds are appropriated to the accounts of the GIC to cover the state share of premium costs. In addition, the GIC administers a payroll withholding system through which the employee share of the premium is collected. G.L. c.32A, sec. 8. Current contracts with group insurance carriers provide that not later than the fifth day of any premium period (month), the GIC shall forward to the carrier a payment of ninety-five percent (95%) of the total premium due for that month. The balance is paid within three months after adjustments for additions, withdrawals and retirements have been determined. Failing payment

2 (cont'd.)
Complaint alleged a violation by the Commonwealth, and was directed only against the Commonwealth as it is represented for the purposes of collective bargaining by the Commissioner of Administration. In our decision in this matter, we make no finding of liability against the GIC, and issue no order running against that organization. We consequently deny the Motion to Intervene, insofar as it would make GIC a party to this case.

(notes 3, 4, see page 1871)

of the ninety-five percent premium cost, the carrier may refuse payment for covered services.

At all times material to this case, the state was authorized to pay no more than seventy-nine percent (79%) of the premium costs for group insurance. Chapter 300, Acts of 1977. In June of 1977, the Allinace and the Commonwealth entered into a collective bargaining agreement by which the Commonwealth agreed to seek to increase its percentage share of premium costs to eighty percent (80%) as of July 1, 1977, and to eighty-five percent (85%) as of January 1, 1978. Commission Exhibit 7, pp. 45-46. As this increased percentage payment required legislative approval, G.L. c.150E, sec. 7, enabling legislation was prepared and submitted by the executive branch. See H-6389 (1977).

Prior to July, the GIC had awarded group insurance contracts to a new insurer, at new rates, to be effective July 1, 1977. Because of the new rate structure, new instructions would have to be sent to all premium reporting locations responsible for making deductions for group insurance. The Executive Secretary to the GIC suggested that savings could be made if these changes were made at the same time as the state percentage contribution was adjusted. If the two transactions were carried out simultaneously, only one letter of instruction would have to be sent to the approximately 700 premium reporting locations. Thus, the Executive Secretary proposed, and the GIC adopted, a recommendation by which the state would make the higher percentage contributions called for by the collective bargaining agreement beginning in July 1977, anticipating passage of the enabling legislation referred to above. Failing passage of that legislation, overpayments would be recouped from participating employees. Intervenor Exhibit 2. As new rate schedules require approximately forty days for implementation, the Executive Secretary immediately prepared new instructions for each reporting location, as well as a notice to employees explaining the changes. These documents were issued on August 5, 1977. Commission Exhibit 3; Commission Exhibit 4. The Notice to Employees stated:

> To reduce the administrative burden upon all agencies caused by rate changes, the enclosed rate-charts have assumed that the legislature will approve the 80% state contribution. If the legislature should not approve this 80% state contribution, we shall adjust your rates accordingly at a later date. Commission Exhibit 3.

When the time arrived to begin preparation for adjusting the state contribution to eighty-five percent to be effective January 1, 1978, the enabling legislation permitting payment of more than seventy-nine percent by the state had still not been enacted. At the GIC meeting of October 29, 1977, the Executive Secretary noted that the legislation authorizing increased state contribution had become enmeshed in a controversy over state funding of abortions. He noted that the Governor had stated that he would veto the legislation

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[3] or his designee

[4] or his designee

if it reached his desk with an anti-abortion amendment attached. The minutes of this meeting of the GIC further indicate:

> The Secretary wishes to point out that while the Legislature and the Governor hold differing views on the anti-abortion measures, there is no disagreement on the salary increase measure or the State's share of the group insurance premiums being increased to 80% and 85% respectively. Therefore, the Secretary recommends that - in order to avoid an administrative burden being placed upon the 700 premium reporting locations across the state, which would be caused by a delay in implementing the 80% state share later than January 1, 1978 - the Commission approved new rates to become effective January 1, 1978, as follows, with a Rate Amendment Letter to be published no later than Friday, November 4, 1977.

The GIC voted unanimously to adopt the Secretary's recommendation. Intervenor Exhibit 4. The new rate adjustment letter was issued on November 4, 1977, indicating that the new rates were "conditional" pending approval of enabling legislation. Commission Exhibit 1. A notice to employees was also issued the same date which indicated that if the enabling legislation did not pass "we shall revoke all adjustments to restore the State's share as most recently authorized by Chapter 300 of the Acts of 1977." Commission Exhibit 2.

Subsequently, the legislation was passed and sent to the Governor with an amendment restricting use of state funds for abortions. The Supreme Judicial Court then rendered an advisory opinion holding that the Governor could veto the "item" in the legislation permitting increased state contribution to group insurance and containing the anti-abortion langauge. The remainder of the legislation, a supplemental appropriations bill, was signed. Opinion of the Justices, 11/8/77. Intervenor Exhibit 7. On December 1, 1977, the GIC authorized the Executive Secretary to write to the President of the Senate and the Speaker of the House. Letters were drafted explaining that the GIC had, without authorization, been paying at the higher rates, and urging the legislature to remedy the situation. These letters indicated that, if legislative authority was not granted, the rates of contribution would be adjusted at the earliest possible time--the February premium payment. Intervenor Exhibits 5, 6. On December 29, 1977, the matter was still pending before the House of Representatives. On that date, the GIC voted six to three that, if the necessary authority had not been conferred by January 4, 1978, the last day of the legislative session, the Secretary should immediately send out a new rate letter, which would return the state share to seventy-nine percent, and deduct from the checks of all employees during the February payroll period an amount equal to the overpayment which had been made for the preceding seven months. Intervenor Exhibit 1. The legislation failed, and the new instructions were sent out to all reporting locations on January 4, 1978. Commission Exhibits 5, 6. Deductions for the February payroll period reflected not only the lower state share, but the recoupment of the overpayments made previously.

Since this date, the State has been paying seventy-nine percent of the premium costs. The GIC had sufficient funds on hand to continue paying the higher rates through June 30, 1978. The overpayment from July of 1977 through January 1978 ammounted to approximately twenty-two dollars for employees on a Blue Cross-Blue Shield family membership.

There has never been an occasion in the more than twenty-year history of the GIC when a conflict has arisen over the GIC's authority to require a particular payroll deduction. Once voted by the GIC, rate schedules are sent to reporting locations directly. They are not approved by any other state authority.

Opinion

"Public employers" are obligated to give notice to and bargain with the exclusive representatives of their employees prior to making unilateral changes affecting mandatory subjects of bargaining. City of Boston, 4 MLC 1202 (1977); Boston School Committee, 3 MLC 1605 (1977); City of Boston, 3 MLC 1450 (1976); Town of North Andover, 1 MLC 1103 (1974); Town of Marblehead, 1 MLC 1140 (1974). Involuntary deductions from the pay of employees is manifestly a mandatory subject of bargaining. Town of North Attleboro, 3 MLC 1053, 1057 (H.O. 1977), aff'd, 4 MLC 1585 (1977). The employer in this case had failed to give the Alliance notice and opportunity to bargain sufficiently in advance of the unilateral change (the recoupment) to make bargaining effective.

Council 93 of the American Federation of State, County and Municipal Employees, AFL-CIO is represented on the Group Insurance Commission. Council 93 is one of the unions which, acting jointly, constitute the Alliance, the charging party in this case. We entertain no doubt that the representative of Council 93 was aware, as early as August of 1977, that increased state contributions were being made towards the cost of group insurance in anticipation of enabling legislation. This representative was also aware (as were all state employees who read the August 5, 1977 notice from the GIC) that, if such legislation failed, the state whould have to return to its authorized 79% level of contribution payment and also recover overpayments. Whether the participation by a representative of Council 93 in these decisions constituted "notice" to the Alliance, a distinct employee organization, may be left for another decision. See Commonwealth of Mass. (Commissioner of Administration), 2 MLC 1322 (1976). The broad distribution of the GIC notices in August, November and January must be considered to have produced actual notice to the Alliance. Consequently, we need not deal with questions of an agency between the Council 93 representative and the Alliance. As the Alliance had actual notice of the plan to retreat to the lower rate of contribution and recoup overpayments in the event the legislation did not pass, we find no violation by the Commonwealth in its decisions to return to the legislatively approved 79% contribution rate as of the February payroll period and to recover overpayments. The Alliance has waived its right to bargain over these matters.[5]

[5]Any right to bargain over this matter might well have been illusory, (cont'd.)

No such waiver may be inferred of a right to bargain over the method of recovering overpayments, however. Neither the August nor November notices put the Alliance on notice that the entire amount of the overpayment would be deducted from the pay of employees during the February payroll period. Only at the time the decision was made was the council 93 representative made aware of it, and there is no record evidence that the Alliance was ever given notice in any other manner. On such facts we must conclude that there has been no waiver of the right to bargain over the method of recoupment, without regard to the GIC's contention that immediate recoupment was required because the action had become "more illegal" than previously, or without any "color of legality." As the Hearing Officer noted in his North Attleboro decision, supra,

> I find that the Town's unilateral reduction of salaries of unit employees by a monthly portion of the alleged overpayments constitutes a clear violation of the aforementioned duty [to bargain]. The fact that the Town Meeting failed to approve Article 3 in no way eliminated the Employer's obligation to bargain with the union. Even if a return of certain premiums was inevitable, the process of negotiation could have allowed the Association some input into the manner by which the returns would be made. No matter how reasonable the Town wishes to appear in this matter, the violation of the Law turns on the unilateral nature of the Town's actions, not on the Town's inherent fairness. 3 MLC at 1057.

The facts of this case are legally indistinguishable.

The Commonwealth argues that it may not be held liable for the withholding of alleged overpayment from participating employees' paychecks even if there has been no waiver by the Allinace of its right to bargain. This argument is based upon a reading of G.L. c.32A, sec. 3, which the Commonwealth argues makes the GIC independent of the Commissioner of Administration, and a reading of G.L. c.32A, sec. 8, which grants the GIC authority to require payroll withholding of not only premiums but also alleged overpayments by the Commonwealth. OER argues that, if its interpretations are correct, even an admittedly unilateral withholding from pay cannot be a prohibited practice by the Commissioner of Administration.

We disagree with both the theory and the interpretations of G.L. 32A on which the theory is premised.

G.L. c.32A, sec. 3 indicates that the GIC shall be "within the executive office of administration and finance, but not under its jurisdiction...".

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5 (cont'd.)
given the clear statutory restriction preventing payment of more than 79% of premium costs. That provision could not have been modified by a collective bargaining agreement. G.L. c.150E, sec. 7. Any change in this area must be legislated. The fact that a provision might require legislative action before it can be effective does not remove that matter from the mandatory scope of bargaining, however. See, e.g., City of Medford, 4 MLC 1447 (1977).

Other provisions of G.L. c.32A[6] grant to the GIC the authority to enter into contracts for life and health insurance, thereby establishing the cost for these benefits. The GIC is further expressly authorized to collect employees' share of premium costs through a payroll deduction. The authority of the GIC to make deductions from the wages of employees is not without limitation, however. G.L. c.32A, sec. 8 provides:

> With respect to any period of insurance authorized by this chapter which is in effect for an active employee and dependent, there shall be withheld from each payment of salary or wages no more than twenty-five percent of the aforesaid total monthly premium or rate, or there shall be a lesser amount as provided in the most recent applicable appropriation act. (Emphasis added)

Under the most recent applicable appropriation act, this maximum permissible deduction was reduced to twenty-one percent. Chapter 300 of the Acts of 1977. During the February payroll period the GIC instructed its various reporting locations to deduct from the pay of employees not only the maximum permissible twenty-one percent of the total premium costs, but, in addition, an amount equal to the overpayments during preceding months. Rather than authorizing such recoupment, section eight appears to prohibit such a recoupment through payroll deduction where, as in this case, the additional withholding makes the total deduction more than twenty-one percent.

Thus, although they were acting in good faith, and apparently in reliance on the propriety of the deductions requested by the GIC, the comptroller and other common paymasters acted without authority in making the requested recoupments during the February payroll period. As no other statute or other source of privilege to take unilateral action without negotiations has been brought to our attention, the actions of the Commonwealth must be held to be a per se violation of G.L. c.150E, §10(a)(5) on the principles described above.

Even assuming, however, that the Commonwealth is correct in reading G.L. c.32A, §8 to authorize deductions beyond the maximum permissible twenty-one percent, such an interpretation does not absolve the employer of liability under G.L. c.150E for the actions of the GIC. The Commonwealth's argument is premised on a theory that, if the representative of the public employer has no authority to influence or control a particular action, then that action may not form the basis for a finding of prohibited practice. We believe that this premise is erroneous.

G.L. c.150E contemplates that, with regard to state employees, the Commissioner of Administration must negotiate with the exclusive representatives of its employees over "wages, hours, standards of productivity and performance, and any other term or condition of employment." G.L. c.150E, §6. These subject matters are to be bargained over by the Commissioner of Administration whether or not they are within his control or discretion. In his representative capacity vis-a-vis the Commonwealth, the Commissioner of Administration is in no different position from the chief executive officer of a

[6]See G.L. c.32A, sec. 4, 5, 10(c).

municipality. Such chief executive officers are required to bargain over mandatory subjects even if they are by statute committed to the discretion of another municipal official. Labor Relations Commission v. Town of Natick, 1976 Mass. Adv. Sh. 31, 339 N.E. 2d 900 (1976). In the Natick case, the unions representing the Town's police officers and firefighters demanded to bargain with the selectmen, the Chief Executive Officers, over subject matters which were, by statute,[7] within the sole discretion of the police and fire chiefs respectively. The selectmen refused to bargain over these subject matters, and the unions filed complaints of prohibited practice. The Commission found a violation of the duty to bargain[8] on the theory that the Town of Natick, by adopting the strong chief statutes, had divided its authority to bargain between two Chief Executive Officers. Under this theory, the Chief would bargain over matters committed to his discretion, and the selectmen over other terms and conditions of employment.

On review, the Supreme Judicial Court expressly rejected this theory.

> Acceptance of those statutes raises the initial question whether matters thus assigned to the respective chiefs can be the subject of collective bargaining. We conclude that under present law the town must bargain with its police officers and fire fighters concerning those subjects. The next question is who must bargain on behalf of the town concerning subjects which are both within the area of a chief's responsibility and within the scope of permissible municipal collective bargaining. We reject the contention of the Labor Relations Commission (commission) that (1) the respective chiefs should bargain concerning employment conditions assigned to them by their respective "strong" chief statutes and (2) the selectmen should bargain only concerning other permissible bargaining subjects. We conclude that the selectmen of Natick are its chief executive officers for the purpose of collective bargaining with its police officers and fire fighters and that the selectmen are permitted to and must bargain concerning subjects which otherwise would be within the authority of the respective chiefs. 339 N.E. 2d at 902.

The analogy to the instant situation is clear. The Commonwealth, like the Town of Natick, has divided its executive authority over matters subject to collective bargaining. In spite of this division of authority, the Commissioner of Administration, the analog to the municipal chief executive officer, has the obligation to bargain over all mandatory subjects. As noted above, these mandatory subjects clearly include withholding from payroll checks.[9]

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[7] See G.L. c.41, §97A; G.L. c.48, §§42-44.

[8] The Natick case arose at the Commission under G.L. c.149, sec. G thru N, the predecessor, in the municipal sector, to the present G.L. c.150E. The Supreme Judicial Court decided the case under G.L. c.150E.

[9] We hold only that this narrow aspect of the fact pattern presented by (cont'd.)

It may be argued that the Natick situation is distinguishable since contracts negotiated by a municipal chief executive officer would prevail over rules and regulations issued by a fire or police chief.[10] However, the Court in Natick relied on the existence of similar language only for its conclusion that the subject matters were within the scope of bargaining, not for its conclusion that it was the obligation of the chief executive officer alone to bargain over all matters within the scope of negotiations. 339 N.E. 2d at 904.

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. Labor Relations Commission v. Town of Dracut, Mass. Adv. Sh. (1978) 657; Mendes v. City of Taunton, 366 Mass. 109, 315 N.E. 2d 856 (1975). If negotiations produced a result which required action by the GIC within its exclusive area of authority, the Commissioner of Administration and the other parties to the agreement would have the same good faith obligation to seek the required action. While we decline to speculate on the extent of the good faith obligation, it must certainly prohibit the Commissioner or his designee on the GIC from supporting or sponsoring actions inconsistent with the terms of the contract. If good faith efforts failed to produce the required action, the matter would be returned to the parties for further bargaining. This interpretation of the bargaining obligation will permit both statutory schemes to operate to their fullest extent.

The independence of the GIC is not impaired. The Commissioner of Administration would negotiate over all mandatory matters. If implementation required action by the GIC, such action would have to be sought in good faith.

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9 (cont'd.)
this case constitutes a mandatory subject of bargaining. The Commission declined to issue a complaint on that aspect of the Alliance charge which challenged the rollback of the state share to the statutorily permitted seventy-nine percent. Our decision does not imply any judgment as to the mandatory nature of that action. Nor do we reach any issue regarding the negotiability of decisions regarding group insurance carrier or coverage for state employees. Under the balancing test adopted in Town of Danvers, 3 MLC 1553 (1977), the nature and structure of the GIC would be given consideration in determining the negotiability of these areas. See, e.g., Brooks v. School Committee of Gloucester, Mass. App. Adv. Sh. (1977) 246, 360 N.E. 2d 647 (1977).

[10] G.L. c.150E, sec. 7 provides: "If a collective bargaining agreement reached by the employer and the exclusive representative contains a conflict between matters which are within the scope of negotiations pursuant to section six of this chapter and... the regulations of a police chief pursuant to section 97A of chapter forty one; the regulations of a fire chief or other head of a department pursuant to chapter forty eight... the terms of the collective bargaining agreement shall prevail."

The bargaining obligation is meaningless if the employer is permitted unilaterally to establish terms and conditions of employment. NLRB v. Katz, 369 U.S. 736, 50 LRRM 2177 (1962).

The Commonwealth's obligation to bargain over matters potentially within the exclusive domain of the GIC implies a liability for unilateral actions by that body.[11] Such liability is not unknown. See, e.g., Town of Arlington, 3 MLC 1007 (H.O. 1976); City of Boston, 4 MLC 1202, 1215-16 (1977); City of Worcester, 4 MLC 1285, 1289 (1977); G.L. c.152 (Workmen's Compensation). We are concerned that such a result may be unjust or unfair in some cases. In situations where those having an obligation to bargain have no control or discretion over the actions giving rise to the liability,[12] we cannot be blind to the realities of the situation. Under such circumstances, we will find the violation--any other result would eliminate the subject matter from the scope of bargaining--and exercise our remedial discretion to fashion the most satisfactory remedy possible under the circumstances.

Remedy

The Alliance does not challenge the fact that, because of the failure by the General Court to enact the implementing legislation for increased state contribution to group insurance premiums, an overpayment has been made by the Commonwealth. Nor does it dispute the fact that the overpayment will have to be made up by increased employee contribution. Rather, the Alliance challenges the unilateral nature of the decision to recoup in a single payroll period without negotiating this change. We have found above that this action constitutes a violation of sections 10(a)(1) and (5) of the Law. Our normal remedy in such cases would be to restore status quo ante and direct the employer to bargain. Town of North Andover, 4 MLC 1086 (1977) and cases cited. In this case, such a remedy is impractical. We could order the Commonwealth to refund the money deducted to the employees. Such an order would involve substantial expense to the Commonwealth as to the refund itself and the administrative costs. This inconvenience would be largely irrelevant,[13] if it were not for the fact that it would also be futile. The employees would then have to give the money back in some form, creating an additional administrative expense. To order overpayment amounts transferred twice at substantial expense (without conferring any ultimate benefit on anyone) would make the remedy largely punitive rather than compensatory. See H. K. Porter v. NLRB, 397 U.S. 851 (1966). Consequently, we shall not order the overpayment money returned to the employees represented by the Alliance.

We are concerned, however, that the unilateral action by the employer has undercut the effectiveness of the union is its role as exclusive representative. Any remedy must communicate effectively to employees that the withholding of the additional money constituted a prohibited practice, and

[11] Our decision also renders unnecessary any discussion of an agency relationship between the GIC and the Commonwealth. If such an agency exists, however, the Commonwealth would be liable for actions of the GIC, whether authorized or not. See, St. Elizabeth Hospital v. Labor Relations Commission, Mass. Adv. Sh. (1975) 71, 321 N.E. 2d 837 (App. Ct. 1975).

12 and 13, see page 1879

that the Allinace was not permitted to bargain over this transaction. Consequently we shall order that an appropriate notice be distributed. We shall further order that the Commonwealth bargain with the Alliance, upon request, over payroll withholding in order that such problems may be avoided in the future. The subject matter of increased premium payments by the state or other compensation in lieu of such payments would also be negotiable on demand, given the legislative rejection of the funding request. G.L. c.150E, sec. 7.

Upon all of the evidence and the record as a whole we find:

1. The Commonwealth of Massachusetts has failed and refused to bargain in good faith with the Alliance over the method of recovery of alleged overpayment of group insurance premiums in violation of section 10(a)(5) of the Law.

2. The Commonwealth of Massachusetts has restrained, coerced and intimidated its employees in the exercise of their right to bargain collectively over the method of recovery of alleged overpayment of group insurance premiums in violation of section 10(a)(1) of the Law.

WHEREFORE, pursuant to the authority vested in the Commission by section 11 of the Law it is hereby ORDERED that:

The Commonwealth of Massachusetts shall cease and desist from failing to and refusing to bargain in good faith with the Alliance over the method of recovery of alleged overpayment of group insurance premiums from the pay of employees represented by the Alliance.

In order to effectuate the purposes of the law, the Commonwealth is hereby ordered to take the following affirmative action:

1. Distribute to employees represented by the Alliance, in the same manner as payroll checks are distributed to such employees, the attached Notice to Employees.

2. Upon request, bargain in good faith with the Alliance, to resolution or impasse, over the method of recovery of alleged overpayment of group insurance premiums.

3. Notify the Commission within ten (10) days of receipt of this Decision and Order of the steps taken to comply therewith.

James S. Cooper, Chairman; Garry J. Wooters, Commissioner, Joan G. Dolan, Commissioner

[12] As discussed p. 1874 supra, we do not consider that the facts of the instant case, limited as they are to the recoupment via payroll withholding of alleged overpayments, constitutes such a situation.

[13] As between the wrongdoer and the victim, the expense and the inconvenience of repairing the damage belong to the wrongdoer.

Commonwealth of Massachusetts, Commissioner of Administration, et. al.,
4 MLC 1869

NOTICE TO EMPLOYEES

To State Employees represented by the Alliance:

During the month of February 1978, money was withheld from the pay of certain employees in order to recover overpayments made by the Commonwealth relative to Group Insurance premiums. In addition, your February pay reflects an increased precentage share of regular monthly premiums. These changes resulted from the failure of the legislature to approve increases in the Commonwealth's contribution to group insurance costs retroactive to July of 1977.

The Commonwealth decided that all of the overpayments would be recovered during the month of February. It made this decision without notifying or bargaining with the Alliance. The Labor Relations Commission has determined that this action was a prohibited practice within the meaning of G.L. c.150E. As the amounts deducted were owed by the employees, return of the deductions has not been ordered. We have been ordered to distribute this notice to employees in order that they will understand their rights under the law and to prevent future violations of those rights.

We acknowledge our obligation to bargain collectively with the Alliance over "wages, hours, standards of productivity and performance, and any other terms and conditions of employment."

We will not restrain, coerce or intimidate the Alliance or the employees whom it represents in the exercise of their rights to bargain collectively.

We will bargain upon request with the Alliance over payroll withholding for group insurance premiums, and will not take action unilaterally in these matters in the future.

John R. Buckley
Commissioner of Administration