



DLS

DIVISION OF LOCAL SERVICES
MA DEPARTMENT OF REVENUE

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Local Retirees

Negotiating and Funding Post-employment Benefits

Workshop C 2015

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Discussion Topics

CASE STUDY 1 **BARGAINABILITY OF RETIREE HEALTH INSURANCE CONTRIBUTIONS**

The Town of Prescott is in the first year of three-year contracts with its clerical employees union and its DPW employees union. The Town had previously accepted G.L. c. 32B, § 9E, which requires that it pay at least 50% of the health insurance premiums for its retirees. The clerical employees' contract contains a provision specifying that, upon retirement, the Town will make a contribution of 70% of health insurance premiums for retirees of the clerical employees union. The DPW employees' union contract contains a provision specifying that, upon retirement, the Town will make a contribution of 65% of health insurance premiums for retirees of the DPW employees union. The Town recently received notice from its health insurance providers of a major increase in health insurance rates for the next fiscal year. The Town is considering substituting less expensive health care insurance options than its present indemnity plan, such as preferred provider organization (PPO), HMO and other options, and adjusting health insurance contribution rates for retirees.

Question:

1. May the Town unilaterally adjust health insurance contribution rates and health plans for its clerical and DPW retirees?

Reference Materials for Case Study 1

G.L. c. 32B, § 9E
G.L. c. 32B, § 16
G.L. c. 150E, § 7(d)

Yeretsky v. City of Attleboro, 424 Mass. 315 (1997)
Twomey v. Town of Middleborough, 468 Mass. 260 (2014)
City of Somerville v. Commonwealth Employment Relations Bd., 470 Mass. 563 (2015)
(See Book 2)

CASE STUDY 2 **RECOVERING RETIREE HEALTH INSURANCE CONTRIBUTIONS FROM OTHER EMPLOYING GOVERNMENTAL ENTITIES**

An employee of Ashville retires in 2015 after 10 years of service for the town, having worked for the Commonwealth for 5 years, Boxton for 15 years and Cranborough for 2 years. The retiree continues coverage of group health insurance on Medicare and Ashville's HMO supplement plan for which the town pays 65% of the retiree's premium. Boxton has never accepted G.L. c. 32B, § 9A, 9E or 16 and pays no portion of its retirees'

indemnity plan premiums. It has no HMO plan. Cranborough pays 75% of its retirees' HMO premiums, and 55% of its retirees' PPO or Indemnity plan premiums. While the employee worked for Cranborough he was on the town's PPO plan. The Commonwealth pays 80% of its retirees' premiums for employees retiring in 2015. While the employee worked for the Commonwealth he was not on the Commonwealth's plan, but was covered by his wife's private employer plan.

Questions:

1. Is there currently any legal mechanism to recover a portion of Ashville's health insurance costs for this retiree from Boxton, Cranborough or the Commonwealth?
2. How is the amount payable by each charged governmental entity determined?
3. Must Boxton, which does not pay a retirement contribution for its retirees (see GL c. 32B, § 9), pay a contribution to Ashville?
4. Must the Commonwealth, which did not cover the retiree when he worked for it, pay any share?
5. Is Cranborough responsible for a retiree contribution based on the 75% premium rate for its HMO, the 55% premium rate for its PPO, or the 65% rate of Ashville's HMO?
6. If Cranborough does not pay its share of the health insurance costs to Ashville, what is the remedy?
7. If the treasurer of Cranborough agrees that the charge is correct, must the town appropriate funds specifically for this purpose, or may some other account be used without the necessity of a subsequent town meeting vote?
8. How are receipts from the other communities handled by Ashville?

Reference Materials for Case Study 2

G.L. c. 32B, § 9A½
G.L. c. 32B, §§ 9, 9A, 9E and 16
G.L. c. 44, § 53
House 2429 filed in 2013-2014 legislative session

CASE STUDY 3
LOCAL REGULATION OF ELIGIBILITY FOR
RETIREE HEALTH INSURANCE PLANS

The Town of Enfield recently received notice of a health insurance rate increase from its health insurance carriers. The Town has accepted G.L. c. 32B, § 9E, which requires that it pay at least 50% of the health insurance premiums for its retirees. Faced with the prospect

of layoffs, the Town is seeking to implement a number of changes to its health insurance plans. May the Town implement the following?

1. Require that, prior to retirement, employees seeking to retire must choose to elect whether to enroll in the Town's health insurance system.
2. Adopt a regulation barring initial enrollment of a retiree into its health insurance plans, if the retiree was not, during employment, enrolled in one of the Town's health insurance plans.
3. Adopt a 40% health insurance contribution rate for retirees.
4. Implement a policy requiring that retirees pass a medical examination prior to post-employment enrollment in the Town's health insurance plans.
5. Adopt a regulation that employees, including elected officials, who work less than 20 hours per week, are not eligible for health insurance coverage.
6. Implement a retirement policy restricting eligibility for a Town contribution in the Town's health insurance plan to those employees who retired from the Town after a minimum of 20 years employment by the Town.

Reference Materials for Case Study 3

G.L. c. 32B, § 14

McDonald v. Town Manager of Southbridge, 423 Mass. 1018 (1996), 39 Mass. App. Ct. 479 (1995)

Cioch v. Treasurer of Ludlow, 449 Mass. 690 (2007)

Twomey v. Town of Middleborough, 468 Mass. 260 (2014)

Galenski v. Town of Erving, 471 Mass. 305 (2015) (See Book 2)

CASE STUDY 4 RETIREMENT INCENTIVE PLANNING AS EMPLOYMENT MANAGEMENT TOOL AND BUDGET REDUCTION STRATEGY

The City of Holyfield is faced with a serious revenue shortfall for FY2016. It is very near its levy limit for FY2015 and no override or debt exclusion has been voted. The mayor recommended that the city council approve an early retirement incentive as a means of meeting her budget recommendations and stabilizing the city's work force for FY2016. In March the mayor recommended an FY2015 transfer from available funds of \$300,000 to offer an early retirement incentive of \$10,000 cash, to encourage the retirement of up to 30 senior employees otherwise eligible for retirement by the end of FY2015. The mayor also proposed to require the early retirees to defer payment of accrued vacation and sick leave buyback for several years as consideration for the early retirement cash incentive.

The city council voted to reject that appropriation and sent a recommendation to the mayor to offer an incentive package to increase the number of years of service or age of the otherwise qualified employees that would increase the pensions of the retirees electing to take the package, up to a maximum of 5 years, beginning in FY2016, similar to the Commonwealth's recent plan. The reason for the change was to avoid any expenditure from the city budget for FY2015 and minimize the amounts needed for FY2016. The plan would also defer the payment of vacation and sick leave accrual buyback.

Questions:

1. May a city/town/district offer early retirement incentives to qualifying employees for general employee management purposes or to reduce annual budget costs?
2. May an incentive include increasing the retirement allowance by adding years of service or age of the applicant?
3. May an incentive include additional monetary payment in exchange for the exercise of an existing retirement option of the employee?
4. May any retirement incentive be structured to provide payment of the incentive at specific times after retirement?
5. May an incentive election require the deferral of current year legal obligations to later years, such as sick and vacation leave and accrued comp time usually owed as of the date of termination of employment?

Reference Materials for Case Study 4

DOR Opinion 92-567
Chapter 46 of the Acts of 2003 – Municipal Relief
G.L. c. 41, §§ 52 and 56
G.L. c. 44, § 31
G.L. c. 44, § 53
G.L. c. 149, § 148
Attorney General Advisory 99/1
G.L. c. 40, §13D

CASE STUDY 5
POST-RETIREMENT EMPLOYMENT WITH THE TOWN

The Town of Dana has special legislation authorizing it to appoint as special police officers retired Town police officers to perform police work details in the Town, pursuant to G.L. c. 44, § 53C. The Town is adopting regulations pertaining to eligibility for such special police officers. The Town is considering the following:

Questions:

1. The Town has accepted G.L. c. 258, § 13, providing indemnification from liability claims. May the Town require that covered retired special police officers obtain their own liability insurance for their employment on special work details?
2. May the Town exempt those retiree special police officers from unemployment insurance claims when they have exceeded their annual post-retirement 960 hours of public employment?
3. May the Town exempt the retiree special police officers from the provisions of G.L. c. 41, § 111F?
4. May the Town treat the retiree special police officers as independent contractors?
5. May the Town require that retired police officers seeking to become special police officers meet certain physical requirements and pay their own costs of training and medical testing required by the Town?

Reference Materials for Case Study 5

Chapter 41 of the Acts of 2012

Chapter 54 of the Acts of 2013

Chapter 193 of the Acts of 2014

PowerPoint on Municipal Unemployment Task Force Report

Lynnfield v. Commissioner of Division of Unemployment Assistance, Peabody District Court, C.A. No. 1286CV 0502 (February 5, 2013)

CASE STUDY 6
PLANNING FOR HEALTH INSURANCE
OBLIGATIONS FOR FUTURE RETIREES

Although putting current money aside to pay for future retiree health insurance obligations of a municipality is a sound financial practice, is not legally required at present. The Town of North Abbey commissioned an actuary who determined the unfunded liability of the Town's health insurance obligations for its retirees and recommended raising additional appropriations over 30 years to fully fund the obligation. The finance committee has proposed an appropriation for the first year of this voluntary 30 year plan.

Questions:

1. What accounting mechanisms are available to receive and hold funds for future health insurance contributions of retired employees of the municipality?
2. Does a community that accepts G.L. c. 32B, § 20 (the OPEB general legislation) have to establish a board of trustees with responsibility to manage and invest the fund?

3. Are there any special rules for how the OPEB funds may be invested?
4. What are the sources of revenue that may or must be deposited into the OPEB fund?
5. How is money in the fund accessed to pay retiree health insurance premiums owed by the municipality?
6. Since the assets in the fund are retained for the purpose of meeting future obligations to the retirees, may they be reached by a judgment creditor of the governmental entity?

Reference Materials for Case Study 6

G.L. c. 32B, § 20

G.L. c. 40, § 5B

List of Special OPEB Fund Acts

G.L. c. 203C, § 3 (Prudent Investor Rule)

Chapter 189 of the Acts of 2013 (Holliston Special OPEB Act)

Chapter 97 of the Acts of 2007 (Belmont Special OPEB Act)

Chapter 382 of the Acts of 2010 (Amendment to Belmont Special OPEB Act)

Chapter 88 of the Acts of 2004 (Wellesley Special OPEB Act)

GENERAL LAWS

RETIREEES ENTITLED TO CONTINUE GROUP HEALTH INSURANCE BUT MUST PAY ENTIRE PREMIUM (Excerpt) **General Laws Chapter 32B, § 9**

Section 9. The policy or policies of insurance shall provide that upon retirement of an employee, ... the group general or blanket insurance providing hospital, surgical, medical, dental and other health insurance, as provided under sections four, eleven C, and sixteen as may be applicable, shall be continued and the retired employee shall pay the full premium cost, subject to the provisions of section nine A or section nine E whichever may be applicable of the average group premium as determined by the appropriate public authority for such hospital, surgical, medical, dental and other health insurance. ...

RETIREEES MAY CONTINUE GROUP HEALTH INSURANCE AND PAY 50% OF PREMIUM **General Laws Chapter 32B, § 9A**

Section 9A. A county, except Worcester county, by vote of the county commissioners, a city having a Plan D or a Plan E charter by majority vote of its city council, any other city by vote of its city council, approved by the mayor, a regional school district by vote of the

regional district school committee and a district by vote of the district at a district meeting, may provide that it will pay one-half of the amount of the premium to be paid by a retired employee under the first sentence of section 9. A town shall provide for the payment by vote of the town at a town meeting or if a majority of the votes cast in answer to the following question which shall be printed on the official ballot to be used at an election in said town is in the affirmative:— “Shall the town pay one-half the premium costs payable by a retired employee for group life insurance and for group general or blanket hospital, surgical, medical, dental and other health insurance?”

REIMBURSEMENT OF GROUP PREMIUMS PAID FOR RETIREE HEALTH INSURANCE

General Laws Chapter 32B, § 9A½

Section 9A1/2. Whenever a retired employee or beneficiary receives a healthcare premium contribution from a governmental unit in a case where a portion of the retiree’s creditable service is attributable to service in 1 or more other governmental units, the first governmental unit shall be reimbursed in full, in accordance with this paragraph, by the other governmental units for the portion of the premium contributions that corresponds to the percentage of the retiree’s creditable service that is attributable to each governmental unit. The other governmental units shall be charged based on their own contribution rate or the contribution rate of the first employer, whichever is lower.

The treasurer of the first governmental unit shall annually, on or before January 15, upon the certification of the board of the system from which the disbursements have been made, notify the treasurer of the other governmental unit of the amount of reimbursement due for the previous fiscal year and the treasurer of the other governmental unit shall immediately take all necessary steps to insure prompt payment of this amount. In default of any such payment, the first governmental unit may maintain an action of contract to recover the same, but there shall be no such reimbursement if the 2 systems involved are the state employees’ retirement system and the teachers’ retirement system.

RETIREEES MAY CONTINUE GROUP HEALTH INSURANCE AND PAY LESS THAN 50% OF PREMIUM

General Laws Chapter 32B, § 9E

Section 9E. A county, except Worcester county, by vote of the county commissioners; a city having a Plan D or Plan E charter by majority vote of its city council; in any other city by vote of its city council, approved by the mayor; a district, except as hereinafter provided, by vote of the registered voters of the district at a district meeting; a regional school district by vote of the regional district school committee; a veterans’ services district by vote of the district board; a welfare district by vote of the district welfare committee; a health district established under section twenty-seven A of chapter one hundred and eleven by vote of the joint committee may provide that it will pay in addition to fifty per cent of a stated monthly premium as described in section seven A for contracts of insurance authorized by sections three and eleven C, a subsidiary or additional rate which may be lower or higher than the aforesaid premium and the remaining fifty per cent of said premium is to be paid by a retired employee under the provisions of the first

sentence of section nine. A town shall provide for such payment by vote of the town or if a majority of the votes cast in answer to the following question which shall be printed on the official ballot to be used at an election in said town is in the affirmative:—"Shall the town, in addition to the payment of fifty per cent of a premium for contributory group life, hospital, surgical, medical, dental and other health insurance for employees retired from the service of the town, and their dependents, pay a subsidiary or additional rate?" Section nine A shall not apply in any governmental unit which accepts the provisions of this section. No governmental unit, however, shall provide different subsidiary or additional rates to any group or class within that unit.

AUTHORITY FOR RULES AND REGULATIONS OF MUNICIPAL GROUP HEALTH INSURANCE PLANS General Laws Chapter 32B, § 14

Section 14. The appropriate public authority in each governmental unit shall adopt such rules and regulations, not inconsistent with this chapter, as may be necessary for the administration of this chapter. At the option of the appropriate public authority, a copy of any such proposed agreement or contract may be submitted to the commission for review and comment by it upon all or such portions thereof as the appropriate public authority may request.

LOCAL OPTION FOR GROUP HEALTH MAINTENANCE ORGANIZATION PLANS General Laws Chapter 32B, § 16

Section 16. Upon acceptance of this section as hereinafter provided, the appropriate public authority of the governmental unit shall enter into a contract, hereinafter described, to make available the services of a health care organization to certain eligible and retired employees and dependents, including the surviving spouse and dependents of such active and retired employees, on a voluntary and optional basis, as it deems to be in the best interest of the governmental unit and such eligible persons as aforesaid, provided:—

(1) that the total monthly premium cost to be paid by the governmental unit is to be paid under the terms of a contract to a carrier and not paid directly to a health care organization. For purposes of this chapter such a contract shall be deemed to be a contract of insurance;

(2) that the health care organization maintains fair and non-discriminatory formulas for the payment of all vendor's services and that such formulas result in the same relative charges to all fiscal intermediaries or carriers with whom the health care organization has an agreement; provided, however, that any difference in relative charges which may result from the application of a rate of payment approved under section five of chapter one hundred and seventy-six A shall be deemed to comply herewith.

The appropriate public authority shall negotiate such a contract of insurance for and on behalf and in the name of the governmental unit for such a period of time not exceeding five years as it may in its discretion, deem to be the most advantageous to the governmental unit and the persons insured hereunder.

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

The governmental unit shall require under the terms and provisions of such insurance contracts an accounting at least annually of the payments made to providers of services on behalf of each person so insured; and, the extent and range of health care services shall be a matter of continuing analysis and study by the governmental unit for the purpose of maintaining a reasonable relationship between the total monthly premium cost or rate and the schedule of health care services provided.

Any dividend or its equivalent derived from insurance contracts issued pursuant to this section shall be applied as provided in sections eight or eight A whichever may be applicable.

The appropriate public authority may adopt such rules and regulations as may be necessary for the administration of this section.

This section shall take effect in a county, except Worcester county, city, town or district upon its acceptance in the following manner:—in a county, except Worcester county, by vote of the county commissioners; in a city having a Plan D or Plan E charter by majority vote of its city council, in any other city by vote of its city council approved by the mayor; in a town by vote of the board of selectmen; in a regional school district by vote of the regional district school committee and in all other districts by vote of the registered voters of the district at a district meeting.

OTHER POST-EMPLOYMENT BENEFITS FUND

General Laws Chapter 32B, § 20

Section 20. (a) A city, town, district, county or municipal lighting plant that accepts this section may establish an Other Post-Employment Benefits Liability Trust Fund, and may appropriate amounts to be credited to the fund. Any interest or other income generated by the fund shall be added to and become part of the fund. Amounts that a governmental unit receives as a sponsor of a qualified retiree prescription drug plan under 42 U.S.C. section 1395w-132 may be added to and become part of the fund. All monies held in the fund shall be segregated from other funds and shall not be subject to the claims of any general creditor of the city, town, district, county or municipal lighting plant.

(b) The custodian of the fund shall be (i) a designee appointed by the board of a municipal lighting plant; (ii) the treasurer of any other governmental unit; or (iii) if designated by the

city, town, district, county or municipal lighting plant in the same manner as acceptance prescribed in this section, the State Retiree Benefits Trust Fund board of trustees established in section 24A of chapter 32A, provided that the board of trustees accepts the designation. The custodian may employ an outside custodial service to hold the monies in the fund. Monies in the fund shall be invested and reinvested by the custodian consistent with the prudent investor rule established in chapter 203C and may, with the approval of the State Retiree Benefits Trust Fund board of trustees, be invested in the State Retiree Benefits Trust Fund established in section 24 of chapter 32A.

(c) This section may be accepted in a city having a Plan D or Plan E charter, by vote of the city council; in any other city, by vote of the city council and approval of the mayor; in a town, by vote of the town at a town meeting; in a district, by vote of the governing board; in a municipal lighting plant, by vote of the board; and in a county, by vote of the county commissioners.

(d) Every city, town, district, county and municipal lighting plant shall annually submit to the public employee retirement administration commission, on or before December 31, a summary of its other post-employment benefits cost and obligations and all related information required under Government Accounting Standards Board standard 45, in this subsection called "GASB 45", covering the last fiscal or calendar year for which this information is available. On or before June 30 of the following year, the public employee retirement administration commission shall notify any entity submitting this summary of any concerns that the commission may have or any areas in which the summary does not conform to the requirements of GASB 45 or other standards that the commission may establish. The public employee retirement administration commission shall file a summary report of the information received under this subsection with the chairs of the house and senate committees on ways and means, the secretary of administration and finance and the board of trustees of the Health Care Security Trust.

STABILIZATION FUNDS

General Laws Chapter 40, § 5B

Section 5B. For the purpose of creating 1 or more stabilization funds, cities, towns and districts may appropriate in any year an amount not exceeding, in the aggregate, 10 per cent of the amount raised in the preceding fiscal year by taxation of real estate and tangible personal property or such larger amount as may be approved by the director of accounts. The aggregate amount in such funds at any time shall not exceed 10 per cent of the equalized valuation of the city or town as defined in section 1 of chapter 44. Any interest shall be added to and become part of the fund.

The treasurer shall be the custodian of all such funds and may deposit the proceeds in national banks or invest the proceeds by deposit in savings banks, co-operative banks or trust companies organized under the laws of the commonwealth, or invest the same in such securities as are legal for the investment of funds of savings banks under the laws of the commonwealth or in federal savings and loans associations situated in the commonwealth.

At the time of creating any such fund the city, town or district shall specify, and at any later time may alter, the purpose of the fund, which may be for any lawful purpose, including without limitation an approved school project under chapter 70B or any other purpose for which the city, town or district may lawfully borrow money. Such

specification and any such alteration of purpose, and any appropriation of funds into or out of any such fund, shall be approved by two-thirds vote, except as provided in paragraph (g) of section 21C of chapter 59 for a majority referendum vote. Subject to said section 21C, in a town or district any such vote shall be taken at an annual or special town meeting, and in a city any such vote shall be taken by city council.

COMPENSATED ABSENCE RESERVE FUND

General Laws Chapter 40, § 13D

Section 13D. Any city, town or district which accepts the provisions of this section by majority vote of its city council, the voters present at a town meeting or district meeting or by majority vote of a regional school committee may establish, appropriate or transfer money to a reserve fund for the future payment of accrued liabilities for compensated absences due any employee or full-time officer of the city or town upon the termination of the employee's or full-time officer's employment. The treasurer may invest the monies in the manner authorized by section 54 of chapter 44, and any interest earned thereon shall be credited to and become part of the fund. The city council, town meeting or district meeting may designate the municipal official to authorize payments from this fund, and in the absence of a designation, it shall be the responsibility of the chief executive officer of the city, town or district. In a regional school district, funds may be added to the reserve fund for the future payment of accrued liabilities only by appropriation in the annual budget voted on by the city council of member cities or at the annual town meeting of member towns.

APPROVAL OF BILLS

General Laws Chapter 41, § 52

Section 52. All accounts rendered to or kept in the departments of any city shall be subject to the inspection of the city auditor or officer having similar duties, and in towns they shall be subject to the inspection of the selectmen. The auditor or officer having similar duties, or the selectmen, may require any person presenting for settlement an account or claim against the city or town to make oath before him or them, in such form as he or they may prescribe, as to the accuracy of such account or claim. The wilful making of a false oath shall be punishable as perjury. The auditor or officer having similar duties in cities, and the selectmen in towns, shall approve the payment of all bills or pay rolls of all departments before they are paid by the treasurer, and may disallow and refuse to approve for payment, in whole or in part, any claim as fraudulent, unlawful or excessive; and in that case the auditor or officer having similar duties, or the selectmen, shall file with the city or town treasurer a written statement of the reasons for the refusal; and the treasurer shall not pay any claim or bill so disallowed. This section shall not abridge the powers conferred on town accountants by sections fifty-five to sixty-one, inclusive.

APPROVAL OF WARRANTS FOR PAYMENT OF BILLS

General Laws Chapter 41, § 56

Section 56. The selectmen and all boards, committees, heads of departments and officers authorized to expend money shall approve and transmit to the town accountant as often as

once each month all bills, drafts, orders and pay rolls chargeable to the respective appropriations of which they have the expenditure. Such approval shall be given only after an examination to determine that the charges are correct and that the goods, materials or services charged for were ordered and that such goods and materials were delivered and that the services were actually rendered to or for the town as the case may be; provided, however, that such approval may be given to any bill received from a state agency for the town's share of the costs of a federal urban planning assistance program, established under the provisions of section 701 of Public Law 83-560, as amended, before any goods, materials or services ordered or to be ordered under such a program have been delivered or actually rendered, as the case may be. The town accountant shall examine all such bills, drafts, orders and pay rolls, and, if found correct and approved as herein provided, shall draw a warrant upon the treasury for the payment of the same, and the treasurer shall pay no money from the treasury except upon such warrant approved by the selectmen. If there is a failure to elect or a vacancy occurs in the office of selectman, the remaining selectman or selectmen, together with the town clerk, may approve such warrant. The town accountant may disallow and refuse to approve for payment, in whole or in part, any claim as fraudulent, unlawful or excessive, and in such case he shall file with the town treasurer a written statement of the reasons for such refusal. The treasurer shall not pay any claim or bill so disallowed by the town accountant. So far as apt this section shall apply to cities.

APPROPRIATION LIMITS ON SPENDING AUTHORITY

General Laws Chapter 44, § 31

No department financed by municipal revenue, or in whole or in part by taxation, of any city or town, except Boston, shall incur a liability in excess of the appropriation made for the use of such department, each item recommended by the mayor and voted by the council in cities, and each item voted by the town meeting in towns, being considered as a separate appropriation, except in cases of major disaster, including, but not limited to, flood, drought, fire, hurricane, earthquake, storm or other catastrophe, whether natural or otherwise, which poses an immediate threat to the health or safety of persons or property, and then only by a vote in a city of two-thirds of the members of the city council, and in a town by a majority vote of all the selectmen. Payments of liabilities incurred under authority of this section may be made, with the written approval of the director, from any available funds in the treasury, and the amounts of such liabilities incurred shall be reported by the auditor or accountant or other officer having similar duties, or by the treasurer if there be no such officer, to the assessors who shall include the amounts so reported in the aggregate appropriations assessed in the determination of the next subsequent annual tax rate, unless the city or town has appropriated amounts specified to be for such liabilities; provided, that, if proceedings are brought in accordance with provisions of section fifty-three of chapter forty, no payments shall be made and no amounts shall be certified to the assessors until the termination of such proceedings. Payments of final judgments and awards or orders of payment approved by the industrial accident board rendered after the fixing of the tax rate for the current fiscal year may, with the approval of the director of accounts if the amount of the judgment or award is over ten thousand dollars, be made from any available funds in the treasury, and the payments so made shall be reported by the auditor or accountant or other officer having similar duties, or by the treasurer if there be no such officer, to the assessors, who shall include the amount so reported in the aggregate appropriations assessed in the determination of the next subsequent annual tax rate, unless the city or town has otherwise made provision therefor.

TREATMENT OF MUNICIPAL REVENUES

General Laws Chapter 44, § 53

Section 53. All moneys received by any city, town or district officer or department, except as otherwise provided by special acts and except fees provided for by statute, shall be paid by such officers or department upon their receipt into the city, town or district treasury. Any sums so paid into the city, town or district treasury shall not later be used by such officer or department without specific appropriation thereof; provided, however, that (1) sums allotted by the commonwealth or a county to cities or towns for highway purposes and sums allotted by the commonwealth to cities, towns or districts for water pollution control purposes shall be available therefor without specific appropriation, but shall be used only for the purposes for which the allotment is made or to meet temporary loans issued in anticipation of such allotment as provided in section six or six A, (2) sums not in excess of twenty thousand dollars recovered under the terms of fire or physical damage insurance policy and sums not in excess of twenty thousand dollars received in restitution for damage done to such city, town or district property may be used by the officer or department having control of the city, town or district property for the restoration or replacement of such property without specific appropriation and (3) sums recovered from pupils in the public schools for loss of school books or paid by pupils for materials used in the industrial arts projects may be used by the school committee for the replacement of such books or materials without specific appropriation.

PROMPT PAYMENT OF WAGES

General Laws Chapter 149, § 148

Section 148 (excerpt). Every person having employees in his service shall pay weekly or bi-weekly each such employee the wages earned by him to within six days of the termination of the pay period during which the wages were earned if employed for five or six days in a calendar week, or to within seven days of the termination of the pay period during which the wages were earned if such employee is employed seven days in a calendar week..., but any employee leaving his employment shall be paid in full on the following regular pay day, and, in the absence of a regular pay day, on the following Saturday..., and every county and city shall so pay every employee engaged in its business the wages or salary earned by him, unless such mechanic, workman, laborer or employee requests in writing to be paid in a different manner; and every town shall so pay each employee engaged in its business if so required by him; ... The word "wages" shall include any holiday or vacation payments due an employee under an oral or written agreement. ...

No person shall by a special contract with an employee or by any other means exempt himself from this section or from section one hundred and fifty. The president and treasurer of a corporation and any officers or agents having the management of such corporation shall be deemed to be the employers of the employees of the corporation within the meaning of this section. Every public officer whose duty it is to pay money, approve, audit or verify pay rolls, or perform any other official act relative to payment of any public employees, shall be deemed to be an employer of such employees, and shall be responsible under this section for any failure to perform his official duty relative to the payment of their wages or salaries, unless he is prevented from performing the same through no fault on his part. ...

**PUBLIC SECTOR COLLECTIVE
BARGAINING AGREEMENT PROVISIONS (Excerpt)
General Laws Chapter 150E, § 7**

Section 7. (a) ...

(d) 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 any municipal ordinance, by-law, rule or regulation; the regulations of a police chief pursuant to section ninety-seven A of chapter forty-one or of a police commissioner or other head of a police or public safety department of a municipality; the regulations of a fire chief or other head of a fire department pursuant to chapter forty-eight; any of the following statutory provisions or rules or regulations made thereunder:

- (a) the second paragraph of section twenty-eight of chapter seven;
- (a1/2) section six E of chapter twenty-one;
- (b) sections fifty to fifty-six, inclusive, of chapter thirty-five;
- (b1/2) section seventeen I of chapter one hundred and eighty;
- (c) section twenty-four A, paragraphs (4) and (5) of section forty-five, paragraphs (1), (4) and (10) of section forty-six, section forty-nine, as it applies to allocation appeals, and section fifty-three of chapter thirty;
- (d) sections twenty-one A and twenty-one B of chapter forty;
- (e) sections one hundred and eight D to one hundred and eight I, inclusive, and sections one hundred and eleven to one hundred and eleven I, inclusive, of chapter forty-one;
- (f) section thirty-three A of chapter forty-four;
- (g) sections fifty-seven to fifty-nine, inclusive, of chapter forty-eight;
- (g1/2) section sixty-two of chapter ninety-two;
- (h) sections fourteen to seventeen E, inclusive, of chapter one hundred and forty-seven;
- (i) sections thirty to forty-two, inclusive, of chapter one hundred and forty-nine;
- (j) section twenty-eight A of chapter seven;
- (k) sections forty-five to fifty, inclusive, of chapter thirty;
- (l) sections thirty, thirty-three and thirty-nine of chapter two hundred and seventeen;
- (m) sections sixty-one, sixty-three and sixty-eight of chapter two hundred and eighteen;
- (n) sections sixty-nine to seventy-three, inclusive, and seventy-five, eighty and eighty-nine of chapter two hundred and twenty-one;
- (o) section fifty-three C of chapter two hundred and sixty-two;
- (p) sections eighty-four, eighty-five, eighty-nine, ninety-four and ninety-nine B of chapter two hundred and seventy-six;
- (p1/2) the third paragraph of section 58 of chapter 31;
- (q) section eight of chapter two hundred and eleven B, the terms of the collective bargaining agreement shall prevail.

...

PRUDENT INVESTOR RULE

General Laws Chapter 203C, § 3

Section 3. (a) A trustee shall invest and manage trust assets as a prudent investor would, considering the purposes, terms, and other circumstances of the trust, including those set forth in subsection (c). In satisfying this standard, the trustee shall exercise reasonable care, skill, and caution.

(b) A trustee's investment and management decisions respecting individual assets shall be considered in the context of the trust portfolio as a part of an overall investment strategy reasonably suited to the trust.

(c) Among circumstances that a trustee shall consider in investing and managing trust assets are such of the following as are relevant to the trust or its beneficiaries:

- (1) general economic conditions;
- (2) the possible effect of inflation or deflation;
- (3) the expected tax consequences of investment decisions or strategies;
- (4) the role that each investment or course of action plays within the overall trust portfolio;
- (5) the expected total return from income and the appreciation of capital;
- (6) other resources of the beneficiaries;
- (7) needs for liquidity, regularity of income, and preservation or appreciation of capital; and
- (8) an asset's special relationship or special value, if any, to the purposes of the trust or to one of the beneficiaries.

(d) A trustee shall make a reasonable effort to verify facts relevant to the investment and management of trust assets.

(e) A trustee may invest in any kind of property or type of investment consistent with the standards of this chapter.

(f) A trustee who has special skills or expertise, or is named trustee in reliance upon the trustee's representation that the trustee has such special skills or expertise, shall have a duty to use such special skills or expertise.

SPECIAL ACTS & SESSION LAWS

CHAPTER 46 OF THE ACTS OF 2003, SECTION 116 (EXCERPT) **An Act Providing Relief and Flexibility to Municipal Officials. (Municipal Relief)**

Whereas, The deferred operation of this act would tend to defeat its purpose, which is to provide fiscal relief to municipalities in the commonwealth, therefore it is hereby declared to be an emergency law, necessary for the immediate preservation of the public convenience.

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

...
SECTION 116. (a) (1) Notwithstanding chapter 32 of the General Laws or any other general or special law to the contrary and upon the acceptance of this section on or before November 1, 2003 by the legislative and executive authorities within a city, town or county or an authority or district within a city, town or county or regional retirement

system, this section shall apply to an eligible employee who: (i) shall be an employee of the city, town, county, authority or district and an active member in service of the appropriate city, town, county or regional retirement system or shall be an employee of a regional school district and an active member in service of the state retirement system, but not a member of the state teachers' retirement system or Boston teachers' retirement system on the date of the regional school district's acceptance of this section or on the date of the city, town, county, authority or district's acceptance of this section; (ii) shall be eligible to receive a superannuation retirement allowance in accordance with subdivision (1) of section 5 of said chapter 32 or subdivision (1) of section 10 of said chapter 32 upon the effective retirement date specified in his written application to the retirement system; (iii) shall have filed a written application with the retirement system in accordance with paragraph (7); and (iv) shall be classified in Group 1, Group 2 or Group 4 in accordance with clause (g) of subdivision (2) of section 3 of said chapter 32. If the legislative authority in a town fails to accept this section by October 1, 2003, then the executive authority in a town may accept this section without the approval of the legislative authority.

Notwithstanding the notice provisions in section 10 of chapter 39 of the General Laws or any other general or special law to the contrary, at least 7 days notice shall be given of any special town meeting that may be called in pursuance of a warrant to accept this section. Notwithstanding said section 10 of said chapter 39, or any other general or special law to the contrary, the selectmen shall call such special town meeting, upon request in writing of 200 registered voters or by 10 per cent of the total number of registered voters of the town, whichever number is lesser, and such meeting shall be held not later than 30 days after the receipt of such request.

Notwithstanding this section or any general or special law to the contrary, the legislative and executive authorities within a city, town, county or regional retirement system may designate the departments which the early retirement incentive program shall apply.

(2) For the purposes of this section, "legislative authority" shall mean a town meeting in a town or in a town having a town council form of government, the town council or the town meeting if the town council so deems, the city council subject to its charter in a city and the county advisory board in a county other than the counties of Suffolk, Nantucket and Barnstable, in which cases the county commissioners shall serve as the legislative authority, the governing body of the authority in an authority and the district meeting in a district, except for a regional school district, in which case the regional district school committee shall be the legislative authority, and "Executive authority" shall mean the board of selectmen in a town, the mayor in a city, the county commissioners in a county, the governing body of the authority in an authority and the district meeting in a district, except for a regional school district in which case the regional district school committee shall be the executive authority. Any additional retirement benefits provided by this section for employees of regional school districts who are active members in service of the state retirement system shall be funded by the appropriate regional school districts. The early retirement incentive program shall be administered by the appropriate city, town, county, state or regional retirement system and each system shall promulgate regulations to implement the program.

(3) Notwithstanding said chapter 32 to the contrary, the normal yearly amount of the retirement allowance for an eligible employee shall be based on the average annual rate of regular compensation as determined under paragraph (a) of subdivision (2) of section 5 of said chapter 32 and shall be computed according to the table contained in said paragraph (a) based on the age of such member and his number of years and full months of creditable

service at the time of his retirement increased either by adding up to 5 years of age or by adding up to 5 years of creditable service or by a combination of additional years of age and service the sum of which shall not be greater than 5, but the executive authority in a city, town, county, authority or district may limit the amount of additional credit for service or age or a combination of service or age offered. The executive authority in a city, town, county, authority or district may limit the total number of employees for whom it will approve a retirement calculated under this section or the total number of employees within each group classification for whom it will approve a retirement calculated under this section and, if participation is limited, the retirement of employees with greater years of creditable service shall be approved before approval shall be given to employees with lesser years of creditable service.

(4) Words used in this section shall have the same meaning as they are used in said chapter 32 unless otherwise expressly provided or unless the context clearly requires otherwise. An eligible employee who retires and receives an additional benefit in accordance with this section shall be deemed to be retired for superannuation under said chapter 32 and shall be subject to all of said chapter 32, except that for the purposes of this section and notwithstanding subdivision (1) of section 10 of said chapter 32 requiring a member classified in Group 2 to have attained age 55 on the date of his termination of service in order to receive a Group 2 benefit, any employee eligible pursuant to the criteria established in this section, who is classified in Group 2 and who is at least 50 years of age but not yet 55 years of age, shall be eligible for a retirement allowance equal to that prescribed for a member classified in Group 2 upon the application for the additional benefit in accordance with this section.

(5) The total normal yearly amount of the retirement allowance, as determined in accordance with section 5 of said chapter 32, of an eligible employee who retires and receives an additional benefit under the early retirement incentive program in accordance with this section shall not exceed 80 per cent of the average annual rate of his regular compensation received during any period of 3 consecutive years of creditable service for which the rate of compensation was the highest or of the average annual rate of his regular compensation received during the periods, whether or not consecutive, constituting his last 3 years of creditable service preceding retirement, whichever is greater.

...

(8) The executive director of the public employee retirement administration commission shall analyze, study and value the costs and the actuarial liabilities attributable to the additional benefits payable in accordance with the early retirement incentive program established by this section for each retirement system. The executive director shall file a report of his findings to the board, in writing, on or before December 31, 2004, together with copies thereof to the county commissioners, the regional retirement board, the mayor, the board of selectmen, the governing body of an authority, the district committee or the regional school district committee, as the case may be.

(9) In accordance with section 22D of said chapter 32, the retirement board of a system which administers this section shall revise its retirement funding schedule to reflect the costs and the actuarial liabilities attributable to the additional benefits payable under the retirement incentive program in accordance with this section. In each of the fiscal years until the actuarial liability determined under this section shall be reduced to zero, it shall be an obligation of the applicable city, town, county, authority or district to fund such liability

and there shall be appropriated to the applicable pension reserve fund in each such fiscal year the amount required by the funding schedule and the updates thereto.

...

(c) The executive authority in consideration of the benefits conferred in this section, shall negotiate to agreement any proposed changes of any payment due to the employees for total accrued vacation time and unused sick leave in accordance with chapter 150E.

...

Approved July 31, 2003.

CHAPTER 88 OF THE ACTS OF 2004
An Act Authorizing the Town of Wellesley to Establish a Group Insurance Liability Fund. (Wellesley Special OPEB Fund)

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

SECTION 1. As used in this act, the following words shall have the following meanings:-

"Normal cost of post retirement benefits", that portion of the actuarial present value of future premium costs and claim costs payable by the town on behalf of, or direct payments to, retired employees, including school teachers, of the town and the eligible surviving spouses or dependents of deceased employees, including school teachers, of the town, pursuant to this act which is allocable to a particular fiscal year, as determined by an actuary pursuant to section 2.

"Post retirement benefit liability", the present value of the town's obligation for future premium costs and claim costs payable by the town on behalf of, or direct payments to, retired and prospective retired employees of the town and the eligible surviving spouses or dependents of deceased and prospectively deceased employees of the town attributed by the terms of the plan to employee's service rendered to the date of the measurement, pursuant to this act as determined by an actuary, pursuant to section 2.

"Premium costs and claim costs", the amounts payable by the town for the provision of retiree health and life insurance.

"Unfunded post retirement benefit liability", the difference between the post retirement benefit liability on the measurement date and the actuarial value of the assets of the Group Insurance Liability Fund on the same date, as determined by an actuary, pursuant to section 2.

"Unfunded post retirement benefit liability amortization payments", the amount which, when paid into the Group Insurance Liability Fund annually over a period of years together with the normal cost of post retirement benefits for each year of said period of years, will reduce to zero at the end of said period the unfunded post retirement benefit liability in existence as of the beginning of said period, as determined by an actuary.

SECTION 2. (a) There shall be in the town of Wellesley a Group Insurance Liability Fund, which shall be under the supervision and management of the town's contributory retirement board established under paragraph (b) of subdivision (4) of section 20 of chapter 32 of the General Laws. The town treasurer shall be the custodian of the fund and may employ an outside custodial service.

(b) The fund shall be credited with all amounts appropriated or otherwise made available by the town for the purposes of meeting the current and future premium costs and claim costs payable by the town on behalf of, or direct payments to, retired employees of the town and the eligible surviving spouses or dependents of deceased employees of the town pursuant to this act. Amounts in the fund including any earnings or interest accruing from the investment of such amounts shall be expended only for the payment of such premium costs and claim costs payable by the town on behalf of, or direct payments to, retired employees of the town and the eligible surviving spouses or dependents of deceased employees of the town, except as otherwise provided in this act, and only in accordance with a schedule of such payments developed by an actuary in consultation with the town's contributory retirement board. Subject in each instance to the approval of the town's contributory retirement board, the town treasurer shall invest and reinvest the amounts in the fund not needed for current disbursement consistent with the prudent person rule, but no funds may be invested directly in mortgages or in collateral loans. The fund shall be subject to the public employee retirement administration commission's triennial audit.

(c) The board may employ any qualified bank, trust company, corporation, firm or person to advise it on the investment of the fund and may pay from the fund for such advice and such other services as determined by the town's contributory retirement board.

SECTION 3. (a) An actuary shall determine, as of January 1, 2003, and no less frequently than every second year thereafter, the normal cost of post retirement benefits, the post retirement benefit liability, and the unfunded post retirement benefit liability. All such determinations shall be made in accordance with generally accepted actuarial standards, and the actuary shall make a report of such determinations. The report shall, without limitation, detail the demographic and economic actuarial assumptions used in making such determinations, and each such report subsequent to the first such report shall also include an explanation of the changes, if any, in the demographic and economic actuarial assumptions employed and the reasons for any such changes, and shall also include a comparison of the actual expenses by the town for premium costs and claim costs constituting the post retirement benefit liability during the period since the last such determination, and the amount of such expenditures which were predicted pursuant to the previous such report for the period.

(b) An actuary, in consultation with the town's contributory retirement board, shall establish a schedule of annual payments to be made to the Group Insurance Liability Fund designed to reduce to zero the unfunded post retirement benefit liability. The schedule shall reduce the initial unfunded post retirement benefit liability over a period of years not to exceed 30. Any additional unfunded liability created subsequent to the last such determination by the provision of any new benefit or by any increase in the premium share payable by the town shall be separately so amortized over the 15 years following the date of the determination in which such additional liability is first recognized. Each such annual payment shall be equal to the sum of the unfunded post retirement benefit liability amortization payment required for such year and the payments required to meet the normal cost of post retirement benefits for such fiscal year.

(c) All payments for the purposes of meeting the town's share of premium costs and claim costs or direct payments to retired employees of the town and the surviving spouses or dependents of deceased employees of the town pursuant to this act shall be made from

the Group Insurance Liability Fund in accordance with a schedule of disbursements established by the actuary.

SECTION 4. This act shall take effect upon its passage.

Approved May 6, 2004.

CHAPTER 97 OF THE ACTS OF 2007
An Act Authorizing the Town of Belmont to Establish an Other Postemployment Benefits Trust Fund. (Belmont Special OPEB Fund)

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

SECTION 1. As used in this act, the following words shall have the following meanings:

“GASB 43 and 45”, Statements 43 and 45 of the Governmental Accounting Standards Board and its successors.

“Other postemployment benefits” or “OPEB”, postemployment benefits other than pensions as that term is defined in GASB 43 and 45 including postemployment healthcare benefits, regardless of the type of plan that provides them, and all postemployment benefits provided separately from a pension plan, excluding benefits defined as termination offers and benefits.

SECTION 2. (a) There shall be in the town of Belmont an OPEB Trust Fund, which shall be under the supervision and management of the town’s contributory retirement board established under paragraph (b) of subdivision (4) of section 20 of chapter 32 of the General Laws. The town treasurer shall be the custodian of the OPEB Trust Fund and may employ an outside custodial service.

(b) Beginning in fiscal year 2008, the OPEB Trust Fund shall be credited with all amounts appropriated or otherwise made available by the town for the purposes of meeting the current and future OPEB costs payable by the town. The OPEB Trust Fund shall be credited with all amounts contributed or otherwise made available by employees of the town for the purpose of meeting future OPEB costs payable by the town. Amounts in the OPEB Trust Fund, including any earnings or interest accruing from the investment of these amounts, shall be expended only for the payment of the costs payable by the town for OPEB in consultation with the town’s contributory retirement board. Subject in each instance to the approval of the town’s contributory retirement board, the town treasurer shall invest and reinvest the amounts in the OPEB Trust Fund not needed for current disbursement consistent with the prudent investor rule; but no funds shall be invested directly in mortgages or in collateral loans. The OPEB Trust Fund shall be subject to the public employee retirement administration commission’s triennial audit.

(c) The board may employ a qualified bank, trust company, corporation, firm or person to advise it on the investment of the OPEB Trust Fund and may pay from the OPEB Trust Fund for the advice and other services determined by the town’s contributory retirement board. Procurement for these services shall be subject to the procurement procedures and rules followed by the town’s contributory retirement board for services to the town’s contributory retirement system.

(d) If a civil action is brought against a member of the retirement board, the defense or settlement of which action is made by an attorney employed by the retirement board, the member shall be indemnified for all expenses incurred in the defense of this action and shall be indemnified for damages to the same extent as provided for public employees in chapter 258 of the General Laws if the claim arose out of acts performed by the member or members while acting within the scope of his official duties, but a member of a retirement board shall not be indemnified for expenses incurred in the defense of an action, or damages awarded in an action, in which there is shown to be a breach of fiduciary duty, an act of willful dishonesty or an intentional violation of law by the member.

SECTION 3. (a) An actuary, who shall be a member of the American Academy of Actuaries, shall perform an actuarial valuation of the town's OPEB liabilities and funding schedule, as of January 1, 2006, and no less frequently than every second year thereafter. The determinations shall be made in accordance with generally accepted actuarial standards and shall conform to the requirements of GASB 43 and 45 and the actuary shall make a report of the determinations to the town meeting. The report shall, without limitation, detail the demographic and economic actuarial assumptions used in making the determinations, and each report after the first report shall also include an explanation of the changes, if any, in the demographic and economic actuarial assumptions employed and the reasons for the changes.

(b) Beginning in fiscal year 2008, payments for the purposes of meeting the town's costs of OPEB under this act shall be made from the OPEB Trust Fund. Funds in the OPEB Trust Fund shall be segregated from other funds. Disbursements from the OPEB Trust Fund including earnings or interest accruing from the investment of these amounts may only be made based on sections 1 to 3, inclusive.

SECTION 4. This act shall take effect upon its passage.

Approved August 29, 2007.

CHAPTER 382 OF THE ACTS OF 2010
An Act Relative to the Other Postemployment Benefits Trust Fund of the
Town of Belmont. (Amended Belmont Special OPEB Fund)

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

SECTION 1. Chapter 97 of the acts of 2007 is hereby amended by striking out sections 2 and 3, and inserting in place thereof the following 2 sections:-

Section 2. (a) There shall be, in the town of Belmont a special trust fund to be known as the Belmont Other Post Employment Benefits Trust Fund. The Belmont treasurer shall transfer funds to that trust fund as such funds are appropriated or those received from other sources specifically dedicated to OPEB purposes become available. The trust fund shall be irrevocable as required by GASB 43 and 45. Notwithstanding any general or special law to the contrary, the town of Belmont may appropriate funds in order to offset the anticipated cost of premium or direct payments for OPEB to be made to retired employees of the town and to any eligible surviving spouse or dependents of deceased employees of the town.

(b) Beginning in fiscal year 2008, the trust fund shall be credited with all amounts appropriated or otherwise made available by the town to meet the current and future OPEB

costs payable by the town. Interest or other income earned by the trust fund shall be added to and become part of the trust fund. Except as otherwise expressly provided in this act, amounts expended from the trust fund shall be expended only for the costs payable by the town for OPEB.

(c) The Belmont contributory retirement board shall be the custodian of the trust fund and may employ an outside custodial service to hold the monies in the fund. The retirement board and the custodian shall be bonded and the bonding costs shall be paid for out of the trust fund. The Belmont contributory retirement board may invest and re-invest the monies held in the trust fund not required for current disbursement under the investment powers granted to retirement boards under paragraph (g) of subdivision (2) of section 23 of chapter 32 of the General Laws, under the regulations of the public employees retirement administration commission and with any applicable general laws. Monies held in the trust fund shall be segregated from other funds held by the Belmont retirement board and by the town. Trust fund monies shall not be subject to the claims of the town's general creditors. The trust fund shall be subject to the public employee retirement commission's triennial audit and the town's contributory retirement system annual audit.

(d) The Belmont contributory retirement board may employ any qualified bank, trust company, corporation, firm or person to provide advice on the investment of amounts held in the trust fund and may pay for the advice from amounts held in the fund. Procurement for these services shall be subject to the procurement procedures and rules followed by the Belmont contributory retirement board for services to the town's contributory retirement system.

(e) If a civil action is brought against a member of the retirement board, the defense or settlement of which action is made by an attorney employed by the retirement board, the member shall be indemnified for all expenses incurred in the defense of the action and shall be indemnified for damages to the same extent as provided for public employees in chapter 258 of the General Laws if the claim arose out of acts performed by the member while acting within the scope of the member's official duties; provided, however, that a member of a retirement board shall not be indemnified for expenses incurred in the defense of an action, or damages awarded in an action, in which there is shown to be a breach of fiduciary duty, an act of willful dishonesty or an intentional violation of law by the member. Such indemnification shall be paid from amounts held in the fund.

Section 3. (a) The town shall engage an actuary, who shall be a member of the American Academy of Actuaries, to perform an actuarial valuation of the town's OPEB liabilities and funding schedule, as of January 1, 2006, and no less frequently than every second year thereafter. The determinations shall be made in accordance with generally accepted actuarial standards and shall conform to the requirements of GASB 43 and 45 and the actuary shall make a report of the determinations to the town meeting and include it in the town report. The report shall, without limitation, detail the demographic and economic actuarial assumptions used in making the determinations and each report after the first report shall also include an explanation of the changes, if any, in the demographic and economic actuarial assumptions employed and the reasons for the changes. The cost of the biennial actuarial evaluation shall be at the town's expense.

(b) Beginning in fiscal year 2008, payments for the purposes of meeting the town's cost of OPEB under this act may be made from the trust fund.

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

Approved December 1, 2010.

CHAPTER 41 OF THE ACTS OF 2012
An Act Authorizing the Appointment of Special Police Officers in the Town
of Watertown. (Watertown May Hire Retired Police)

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

SECTION 1. The town manager of the town of Watertown may appoint, at the recommendation of the police chief and as said chief deems necessary, retired Watertown police officers as special police officers to perform police details or any other duties arising therefrom or during the course of police detail work, whether or not related to the detail work; provided, however, that the officers shall have been regular Watertown police officers and retired based on superannuation. The special police officers shall be subject to the same maximum age restriction as applied to regular police officers under chapter 32 of the General Laws. Prior to appointment under this act, a retired police officer shall pass a medical examination conducted by a physician or other certified professional chosen by the town to determine whether the retired police officer is capable of performing the essential duties of a special police officer and the cost thereof shall be borne by the retired police officer.

SECTION 2. Special police officers appointed under this act shall not be subject to chapter 31 of the General Laws, section 99A of chapter 41 of the General Laws or chapter 150E of the General Laws.

SECTION 3. When performing duties authorized under section 1, special police officers shall have the same power to make arrests and perform other functions as do regular police officers of the town of Watertown.

SECTION 4. A special police officer shall be appointed for an indefinite term, subject to removal or suspension by the town manager at any time. In the case of removal, a special police officer shall be provided with 14 days written notice prior to removal. Upon request, the town manager shall provide the reasons for removal or suspension in writing.

SECTION 5. Special police officers appointed under this act shall be subject to the rules and regulations, policies and procedures and requirements of the town manager and the chief of police of the town of Watertown including, but not limited to, restrictions on the type of detail assignments, requirements regarding medical examinations to determine continuing capability to perform the duties of a special police officer, requirements for training, requirements for firearms licensing and qualifications and requirements regarding uniform and equipment. Special police officers shall not be subject to section 96B of chapter 41 of the General Laws. The cost of all training, uniforms and equipment shall be borne by the special police officer.

SECTION 6. Special police officers shall be sworn before the town clerk of the town of Watertown who shall keep a record of all such appointments.

SECTION 7. Special police officers appointed under this act shall be subject to sections 100 and 111F of chapter 41 of the General Laws. The amount payable under said section 111F of said chapter 41 shall be calculated by averaging the amount earned over the prior 52 weeks as a special police officer working police details, or averaged over such lesser period of time for any officer designated as a special police officer less than 52 weeks prior

to the incapacity. Payments under said section 111F of said chapter 41 shall not exceed, in a calendar year, the limitation on earnings in paragraph (b) of section 91 of chapter 32 of the General Laws. Payments under said section 111F of said chapter 41 shall terminate in accordance with said section 111F of said chapter 41 or when a special police officer reaches the age of 65, whichever occurs sooner. In the event the age limitation applicable to regular police officers serving a town is increased under said chapter 32 from the current 65 years of age, the termination benefits under said section 111F of said chapter 41, as provided under this act to special police officers, shall terminate at such higher age limit but in no event shall those termination benefits extend beyond the age of 70 for such special police officers. Special police officers appointed under this act shall not be subject to section 85H or 85H½ of said chapter 32 nor shall they be eligible for any benefits pursuant thereto.

SECTION 8. An appointment as a special police officer shall not entitle that person to assignment to a detail.

SECTION 9. Special police officers appointed under this act shall be subject to the limitation on hours worked and other restrictions on earnings as provided in paragraph (b) of section 91 of chapter 32 of the General Laws.

SECTION 10. This act shall take effect upon its passage.

Approved February 24, 2012.

CHAPTER 54 OF THE ACTS OF 2013
An Act Relative to Police Detail Work in the Town of Harvard. (Harvard May Hire Retired Police)

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

SECTION 1. Notwithstanding any general or special law to the contrary, a police officer who has served at least 20 years of continuous, full-time service in the police department of the town of Harvard and terminated the service in good standing may be appointed as a special police officer and may work police details with the town of Harvard until the age of 70; provided, however, that any such officer so appointed shall abide by the rules and regulations of the police department, including firearm qualification and cardio-pulmonary resuscitation (CPR)/automated external defibrillator (AED) and first responder training.

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

Approved August 2, 2013.

CHAPTER 189 OF THE ACTS OF 2013
An Act Authorizing the Town of Holliston to Establish an Other Postemployment Benefits Trust Fund. (Holliston Special OPEB Fund)

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

SECTION 1. As used in this act, the following words shall have the following meanings:

“GASB 43 and 45”, statements 43 and 45 of the Governmental Accounting Standards Board as amended from time to time and their successors.

“Other post-employment benefits” or “OPEB”, post-employment benefits other than pensions as that term is defined in GASB 43 and 45, including post-employment healthcare benefits, regardless of the type of plan that provides them, and all post-employment benefits provided separately from a pension plan, excluding benefits defined as termination offers and benefits.

SECTION 2. (a) There shall be in the town of Holliston an OPEB Trust Fund which shall be under the supervision and management of a 5-member board of trustees. The board of trustees shall be comprised of the chair of the board of selectmen, the town administrator, the town treasurer and tax collector, the chair of the school committee and a resident appointed by the board of selectmen. The town treasurer and tax collector shall be the custodian of the fund and may employ an outside custodial service.

(b) Beginning in fiscal year 2013, the OPEB Trust Fund shall be credited with all amounts appropriated or otherwise made available by the town to meet the current and future OPEB costs payable by the town. The fund shall be credited with all amounts contributed or otherwise made available by employees of the town to meet future OPEB costs payable by the town. Any interest or other income generated by the fund shall be added to and become part of the fund. Any reimbursements that the town receives as a participant in the Retiree Drug Subsidy Program created pursuant to the Medicare Prescription Drug Improvement and Modernization Act of 2003, Public Law 108-173, or in a qualified retiree prescription drug plan pursuant to 42 U.S.C. 1395w-132 may be added to and become part of the fund. Amounts in the fund, including any earnings or interest accruing from the investment of these amounts, shall be expended only for the payment of the costs payable by the town for OPEB in consultation with the retirement board. Subject in each instance to the approval of the board of trustees, the town treasurer and tax collector shall invest and reinvest the amounts in the fund not needed for current disbursement consistent with the prudent person rule and sections 3, 4, 5, 8 and 9 of chapter 203C of the General Laws, but no funds shall be invested directly in mortgages or collateral loans. All monies held in the fund shall be segregated from other funds and shall not be subject to the claims of any general creditor of the town.

(c) The board of trustees may employ any qualified bank, trust company, corporation, firm or person to advise it on the investment of the OPEB Trust Fund and may pay from the fund for this advice and other services determined by the board of trustees. Procurement for these services shall be subject to chapter 30B of the General Laws.

SECTION 3. (a) An actuary, who shall be a member of the American Academy of Actuaries, shall perform an actuarial valuation of the town's OPEB liabilities and funding schedule, as of June 30, 2012, and no less frequently than every second year thereafter. The determinations shall be made in accordance with generally accepted actuarial standards and shall conform to the requirements of GASB 43 and 45 and the actuary shall make a report of the determinations to the town. The report shall, without limitation, detail the demographic and economic actuarial assumptions used in making the determinations and each report after the first report shall also include an explanation of the changes, if any, in the demographic and economic actuarial assumptions employed and the reasons for the changes.

(b) Beginning in fiscal year 2013, all payments for the purposes of meeting the town's costs of OPEB pursuant to this act shall be made from the OPEB Trust Fund. Disbursements from the fund, including any earnings or interest accruing from the investment of these amounts, shall only be in accordance with this act.

SECTION 4. This act shall take effect upon its passage.

Approved December 30, 2013.

CHAPTER 193 OF THE ACTS OF 2014
An Act Authorizing the Appointment of Special Police Offers in the City Known as the Town of Barnstable (Barnstable May Hire Retired Police)

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

SECTION 1. (a) The town manager of the city known as the town of Barnstable may appoint, upon recommendation of the chief of police, retired Barnstable police officers as special police officers to perform police details or other police duties arising therefrom or during the course of police detail work, whether or not related to the detail work; provided, however, that such retired police officer shall have been a regular Barnstable police officer who retired based on superannuation. A special police officer shall not be subject to the maximum age restrictions applied to regular police officers pursuant to chapter 32 of the General Laws, but shall not be eligible to serve as special police officers if that person has reached the age of 70. Prior to appointment, retired police officers shall pass a medical examination conducted by a physician or other certified professional chosen by the city known as the town of Barnstable to determine whether such officers are capable of performing the essential duties of a special police officer and the cost thereof shall be born by the retired officers.

(b) Special police officers appointed under this act shall not be subject to chapter 31, section 99A or 111F of chapter 41 or chapter 150E of the General Laws.

(c) Special police officers when performing duties under subsection (a), shall have the same powers to make arrests and perform other functions as do regular police officers in the city known as the town of Barnstable.

(d) Special police officers shall be appointed for a term of 1 year, subject to removal or suspension by the chief of police with the approval of the town manager at any time. In the case of removal, a special police officer shall be provided with 14-days written notice prior to removal. Upon request, the chief of police shall provide the reasons for removal or suspension in writing.

(e) Special police officers appointed under this act shall be subject to the rules and regulations, policies and procedures and requirements of the chief of police of the city known as the town of Barnstable, including, but not limited to, restrictions on the type of detail assignments, requirements regarding medical examinations to determine continuing capability to perform the duties of a special police officer, requirements for training, requirements for firearms licensing and qualifications and requirements regarding uniforms and equipment. Special police officers in the city known as the town of Barnstable shall not be subject to section 96B of chapter 41 of the General Laws. The cost of all training equipment and uniforms shall be born by the special police officer.

(f) Special police officers shall be sworn before the town clerk who shall keep a record of all appointments.

(g) Special police officers appointed under this act shall be subject to section 100 of chapter 41 of the General Laws; provided, however, that eligibility under said section 100 shall not terminate when the special police officer reaches age 65. Special police officers appointed under this act shall not be subject to section 85H of chapter 32 of the General Laws or eligible for benefits pursuant to that section.

(h) An individual who is appointed a special police officer under this act shall be eligible for assignment to any detail, as authorized by the chief of police.

(i) Retired police officers in the city known as the town of Barnstable serving as special police officers under this act shall be subject to the limitations on hours worked and payments to retired town employees under subsection (b) of section 91 of chapter 32 of the General Laws.

(j) Special police officers appointed under this act shall not be eligible to collect unemployment compensation under chapter 151A of the General Laws.

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

Approved July 29, 2014.

Legislative Bills

House Bill 2429 (2013-2014 Legislative Session) An Act to Clarify Chapter 32B, Section 9A1/2. (Not enacted and not refiled for 2015-2016)

Section 1. Section 9A½ of Chapter 32B of the General Laws is hereby stricken in its entirety and replaced with the following section:-

Section 9A1/2. Whenever a retired employee or beneficiary receives a healthcare premium contribution from a governmental unit, as defined by Chapter 32B, in a case where a portion of the retiree's creditable service is attributable to service in 1 or more other governmental units, the first governmental unit shall be reimbursed in accordance with this paragraph by the other governmental units for the portion of the premium contributions that corresponds to the percentage of the retiree's creditable service that is attributable to each governmental unit. For the purpose of this section the other governmental units shall be assumed to contribute 50% of the premium cost for the plan/plans in which the retiree and their dependents were enrolled in for the prior fiscal year and any calculation shall be based on that amount.

Each Chapter 32 retirement board operating under the provisions of Chapter 32 under the General Laws shall annually on or by December 1 certify and distribute to the treasurer of each member unit the amount of creditable service for each individual with creditable service from more than one governmental unit who retired after January 1, 2011. Upon certification from their retirement board of such creditable service under Chapter 32 of any individual who retired on or after January 1, 2011, the treasurer of the first governmental unit may annually, on or before January 15, notify the treasurer of the other governmental units of the amount of reimbursement due for the previous fiscal year. The treasurer of the other governmental unit shall immediately take all necessary steps to insure prompt payment of this amount. Any governmental unit receiving a bill may pay the bill from its

current health benefits appropriation or from any other funds that may be available for such purposes. In default of any such payment, the first governmental unit may maintain an action of contract to recover the same.



MASSACHUSETTS DEPARTMENT OF REVENUE
DIVISION OF LOCAL SERVICES

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MITCHELL ADAMS
Commissioner

(617) 727-2300
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LESLIE A. KIRWAN
Deputy Commissioner

July 2, 1992

Joseph F. Nicholson, Ed. D.
Superintendent
Sandwich Public Schools
Clark-Haddad Bldg., Dewey Ave.
Sandwich, MA 02563

Re: Teacher Retirement Incentive
Our File No. 92-567

Dear Dr. Nicholson:

You have asked whether a school committee has the authority to enter into a teacher retirement incentive agreement with its teachers? Although no municipality may incur an expense solely for the benefit of an individual, including an employee, the town may grant a reasonable retirement incentive to its employees for the purpose of avoiding expenses of layoff, such as unemployment benefits, or to reduce the costs of providing services.

The school committee has the authority to collectively bargain with and to contract with school department personnel, including teachers, concerning the operation of the schools. G.L. Ch. 150E, SS. 1 & 7(b); G.L. Ch. 71, S. 38. Thus, provided there are sufficient funds in an appropriate account to cover the costs of the retirement incentive program, the school committee may agree to such a program for teachers. G.L. Ch. 44, S. 31.

I hope this addresses your question. If I may be of further service, please do not hesitate to contact me again.

Very truly yours,


Harry M. Glassman
Chief, Property Tax Bureau

JOANNE CIOCH vs. TREASURER OF LUDLOW & others. ¹

1 The board of selectmen of Ludlow and the town of Ludlow.

SJC-09838

SUPREME JUDICIAL COURT OF MASSACHUSETTS

449 Mass. 690; 871 N.E.2d 469; 2007 Mass. LEXIS 587

April 6, 2007, Argued
August 10, 2007, Decided

PRIOR HISTORY: [***1]

Hampden. Civil action commenced in the Superior Court Department on October 1, 2001. The case was heard by C. Brian McDonald, J., on a motion for summary judgment. The Supreme Judicial Court on its own initiative transferred the case from the Appeals Court.

DISPOSITION: Judgment affirmed.

HEADNOTES

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

COUNSEL: Sandra C. Quinn for the plaintiff.

Michael K. Callan (David J. Martel, with him) for the defendants.

Patrick Neil Bryant, for Boston Police Patrolmen's Association, Inc., IUPA, AFL-CIO, amicus curiae, submitted a brief.

JUDGES: Present: Marshall, C.J., Greaney, Ireland, Spina, Cowin, & Cordy, JJ.

OPINION BY: MARSHALL

OPINION

[**471] [*690] MARSHALL, C.J. This appeal brings us to the intersection of the statutory health insurance system for retired municipal [*691] employees ² and municipal fiscal considerations. ³ We are asked to consider whether *G. L. c. 32B* precludes a municipality from barring initial enrollment of an employee into its municipal health insurance plans after she has retired. ⁴ We conclude that because the broad authority afforded to a municipality does not require it to enroll retirees who were not plan participants on retirement, a municipality may follow a policy precluding

participation by retirees who, although eligible for "contributory insurance" [***2] ⁵ on retirement, were not enrolled in one of the municipality's health insurance plans at that time. ⁶

2 *General Laws c. 32B* is a local-option statute that governs health insurance benefits for active and retired employees of municipalities and other State political subdivisions, as well as the dependents of those employees. While we use the term "municipal" throughout this opinion, our analysis applies also to other political subdivisions covered by the statute. See *Yeretsky v. Attleboro*, 424 Mass. 315, 316, 676 N.E.2d 1118 & n.4 (1997).

3 We are cognizant of legislation presently pending before the General Court that, if enacted, may affect municipal health insurance options. Among other things, the pending legislation proposes that municipalities be given an option to join the State's Group Insurance Commission (GIC) with respect to the provision of health care for coverage for active and retired employees. See 2007 House Doc. No. 3749, §§ 4-8 ("An Act establishing the municipal partnership act"); 2007 Senate Doc. No. 1584 ("An Act to promote quality and affordable municipal health insurance through the GIC"); 2007 House Doc. No. 2601 ("An Act to promote quality and affordable municipal health insurance [***3] through the GIC").

4 Although regulations promulgated by the GIC under *G. L. c. 32A* do not apply to municipalities or *G. L. c. 32B*, see, e.g., *McDonald v. Town Manager of Southbridge*, 39 Mass. App. Ct. 479, 482, 657 N.E.2d 1285 (1995), S.C., 423 Mass. 1018, 672 N.E.2d 10 (1996), for simplicity we use various terms as they are defined in those regulations. In that regard, we use the terms "retired employee" and "retiree" to mean a "former employee in the service of the [municipality], whose services have ended, and who is

eligible for and actually receives a retirement or pension allowance." *805 Code Mass. Regs. § 1.02* (1996) (defining term for purposes of regulations applicable to *c. 32A*). See *G. L. c. 32, § 3 (1) (a) (ii)* ("Member Inactive" defined as employee whose employment has been terminated, and who is receiving retirement allowance, or who is otherwise on authorized leave without pay, and "who may be entitled to any present or potential retirement allowance," although not then receiving such allowance); *G. L. c. 32, § 10 (3)* (deferring receipt of retirement allowance).

5 "Contributory Insurance" refers to "[i]nsurance which provides for a contribution of a part of the premium by the insured and a contribution of [***4] a part of the premium by his Employer." *805 Code Mass. Regs. § 1.02*.

6 Municipal regulation of participation and enrollment into municipal health insurance plans by a "deferred retiree" is not before us. See *805 Code Mass. Regs. § 1.02* ("An Employee whose services terminate and who has vested rights to a retirement allowance relating to this employment which are currently deferred. The [GIC] regards such a person as an employee on leave of absence without pay, only as long as the Employee retains the right to receive a retirement allowance at some future date").

[**472] 1. *Background*. After some twenty-two years as a Ludlow [*692] public school teacher, the plaintiff, Joanne Cioch, retired in June, 1994, at the age of fifty-five years. See *G. L. c. 32, § 5*. The record suggests that, at that time, Cioch "elected to continue her life insurance on retirement." ⁷ With respect to health insurance, however, she did not enroll in the town's public employee group insurance plan. Rather, during her tenure as an active public employee and on her retirement Cioch was enrolled in her husband's health insurance plan. When Cioch's husband retired in 1997 -- about three years after her own retirement -- the couple [***5] was no longer eligible for his employer's insurance program, and they purchased private health insurance.

7 Under the regulations concerning insurance for State employees, "[e]mployees and retirees other than Elderly Governmental Retirees are required to be enrolled in the [GIC's] Basic Life Insurance Program in order to be eligible for health coverage." *805 Code Mass. Regs. § 9.03* (1996).

After reading an article in a newsletter for retired persons, ⁸ in October, 1999, Cioch inquired of the town treasurer whether she "could be enrolled in a Town

health insurance plan." She received no response either to that query or to subsequent inquiries and, in December, 1999, requested and received enrollment forms for the town's retiree group health insurance program, specifically for the health maintenance organization, Health New England. On the form she submitted to the town, Cioch requested individual enrollment and indicated that "[i]f, in the future, spouses are allowed to join," her husband would elect coverage. She also indicated that neither she nor her husband was enrolled in Medicare. ⁹ When Cioch learned in April, 2000, that the town had not acted on her application, she persisted in [***6] her enrollment efforts through the summer of 2000.

8 Cioch identified the newsletter as the "MTA Reporter," which we assume is a publication of the Massachusetts Teachers' Association. A copy of the publication is not part of the record.

9 There is no evidence that Cioch applied for any other municipal health insurance plan, such as an indemnity plan, pursuant to *G. L. c. 32B, § 9*.

There is no dispute that Cioch made no preretirement inquiry [*693] concerning postretirement health insurance eligibility, or that she was not affirmatively told that, if she was not enrolled in the town's health insurance program on retirement, she would be eligible or ineligible to enroll thereafter. Nothing in the record indicates, however, that Cioch believed she was entitled to postretirement enrollment at any time before reading a publication of an entity not connected to the town some years after both she and her husband had retired; to the contrary, the couple had purchased private health insurance after her husband retired. ¹⁰, ¹¹ While the town [**473] appears to have had no written policy concerning postretirement enrollment at the time Cioch retired, there is no suggestion that it permitted such enrollments, or [***7] that its employees understood that it would do so.

10 We do not consider whether or how the town would apply its preretirement enrollment policy to deferred retirees -- employees whose employment has been terminated, but "who may be entitled to any present or potential retirement allowance," *G. L. c. 32, § 3 (1) (a) (ii)* (inactive members), although not then receiving such an allowance. See *G. L. c. 32, § 10 (3)* (deferring receipt of retirement allowance).

11 Similarly manifesting the lack of any general perception among municipal employees of any postretirement eligibility for employees who were not enrolled in the town's group health plans during their employment or on retirement

is that only one retired employee other than Cioch has attempted to enroll in the town's health insurance plan after retirement. The town denied reenrollment to that retiree, despite the fact that he had been enrolled on retirement, but cancelled his coverage about eight years later.

By October 12, 1999, before Cioch either made any inquiries concerning, or submitted, her group health insurance application, the town's board of selectmen (board) formalized a written "Policy on Health Insurance,"¹² generally communicating [***8] that enrollment in the town's group health insurance program on retirement was a predicate to coverage during retirement.¹³ The policy provides, in pertinent part:

"Eligibility. Regular employees of the Town (whether employed, appointed or elected) whose normal workweek [*694] is twenty (20) or more hours per week are eligible for health insurance benefits provided by the Town.

"Enrollment. Enrollment in the health insurance plans offered by the Town is limited to eligible employees, the legal spouse, and their dependent unmarried children

"Retirees. Any employee retired by the Town under the current pension plan or who receives retirement income as a result of their employment with the Town shall be eligible to enroll in the Blue Cross/Blue Shield Blue Care 65 Plan, Blue Cross Blue Shield Medex Plan or Health New England MedWrap Plan upon attaining age 65, if they are eligible for Medicare. If a retiree is not eligible for Medicare, the employee will continue on the plan they were last enrolled in with the Town. The Town will pay 50% of the premium for the plan and the retiree will pay 50% of the premium."¹⁴

12 The written policy apparently surfaced after the town filed its opposition [***9] to Cioch's motion for summary judgment, and her motion for reconsideration. The town's oppositions to those motions referred only to a long-standing practice or policy requiring pre-retirement enrollment.

13 The minutes of the meeting of the board on October 12, 1999, at which the policy was adopted, reflect that the policy was an "effort at putting together the Board's practices."

14 Several years later, on October 6, 2003, the town meeting added a group insurance benefit bylaw. It provides: "RETIREES. Any employee retired by the Town under the current pension plan as a result of their employment with the Town shall be eligible to continue as a participant in the group health insurance plans offered by the Town's carrier provided he/she was enrolled in a plan on the date of retirement."

On October 1, 2001, Cioch filed a complaint against the town, as well as its treasurer, the board, and the board's chairman; she filed an amended complaint on July 17, 2004. She sought a declaration that the defendants had violated the "state public employee retirement law, in particular *G. L. c. 32B, §§ 9 & 16*, by [their] refusal to enroll [Cioch] in the Town's retiree group health insurance program," an [***10] order requiring that she be enrolled in the plan of her choice, and damages, as well as costs and attorney's fees pursuant to *G. L. c. 231, § 6F*.

After various preliminary proceedings, the Superior Court judge considered Cioch's motion for entry of judgment, and the defendants' request for findings of fact and rulings of law, on stipulated facts and exhibits. Treating the motion as one for summary judgment, he denied Cioch's motion, and entered judgment for the defendants, concluding that the town's regulations were properly adopted and that when Cioch first applied [*695] for enrollment in the town's health insurance programs in December, [**474] 1999, she was ineligible under the terms of the town policy.¹⁵ Cioch filed a timely notice of appeal, and we transferred the appeal to this court on our own motion.¹⁶

15 We do not address Cioch's claim that her denial of enrollment in the town's health insurance program is inconsistent with the terms of a collective bargaining agreement. While the parties stipulated that the applicable agreements contained no provision stating "if teachers covered by those agreements did not enroll in the Town's group health insurance program by the time they retired, they [***11] would forfeit their right to enroll," no such agreement has been made part of the record. We are therefore unable to determine what, if any, grievance procedures were required to be undertaken by Cioch. See *Johnston v. School Comm. of Watertown*, 404 Mass. 23, 25, 533 N.E.2d 1310 (1989), quoting *Balsavich v. Local Union 170, Int'l Bhd. of*

Teamsters, 371 Mass. 283, 286, 356 N.E.2d 1217 (1976) ("Employees may not simply disregard the grievance procedures set out in a collective labor contract and go direct to the court for redress against the employer. . . . They must initiate the grievance procedures as the contract provides . . .").

16 Shortly after we transferred the case here we solicited amicus briefs. We acknowledge the amicus brief filed by the Boston Police Patrolmen's Association, Inc., IUPA, AFL-CIO. Because we conclude that *G. L. c. 32B, § 16*, does not forbid a municipality from precluding postretirement enrollment in its health insurance programs, we need not rule on the town's motion to strike the brief.

2. *Discussion.* Where the Superior Court judge has decided the case on stipulated facts and agreed exhibits, all questions of law and fact are open to our decision on review. See *American Lithuanian Naturalization Club, Athol, Mass., Inc. v. Board of Health of Athol*, 446 Mass. 310, 322, 844 N.E.2d 231 (2006). [***12] Under the *Home Rule Amendment, art. 89 of the Amendments to the Massachusetts Constitution*, the Commonwealth's various municipalities may undertake certain health insurance obligations to their employees. *G. L. c. 32B*. See *Yeretsky v. Attleboro*, 424 Mass. 315, 316, 676 N.E.2d 1118 (1997). The town has voted to accept that responsibility and, among other provisions, has accepted *G. L. c. 32B, § 16*, thereby requiring it to "enter into a contract . . . to make available the services of a health care organization to certain eligible and retired employees and dependents . . . of such active and retired employees, on a voluntary and optional basis, as it deems to be in the best interest of the governmental unit and such eligible persons. . . ." *Id.* See *Ludlow Educ. Ass'n v. Ludlow*, 31 Mass. App. Ct. 110, 113 n.5, 644 N.E.2d 227 (1991). The town offers several group insurance plans for active and retired [*696] municipal employees, including teachers. The parties do not dispute that a town may regulate participation in such a plan, provided such regulations are both reasonable and properly adopted. See *McDonald v. Town Manager of Southbridge*, 423 Mass. 1018, 672 N.E.2d 10 (1996). The question here is whether a town may, consistent with its obligations [***13] under *G. L. c. 32B*, adopt a policy or regulation precluding postretirement enrollment of retirees in such a health insurance plan who were not enrolled in the plan on retirement.

The decision in *McDonald v. Town Manager of Southbridge*, 39 Mass. App. Ct. 479, 657 N.E.2d 1285 (1995), S.C., 423 Mass. 1018, 672 N.E.2d 10 (1996), provides a starting point for our analysis. There, the issue was whether a statute, *G. L. c. 32B, § 9* (municipal

obligations with respect to group indemnity health insurance programs), precludes a retired municipal employee from enrolling, postretirement, in a municipal indemnity group health insurance plan. ¹⁷ The Appeals Court concluded [***475] that, "at least until the town issues regulations to the contrary, § 9 does not require participation by the employee at the time of retirement to obtain coverage thereafter." *Id.* at 483. On further review, we clarified "that a municipality may adopt reasonable regulations, see *G. L. c. 32B, § 14* (1994 ed.), as has been done under *G. L. c. 32A, § 3* (1994 ed.), concerning participation in a municipality's program under *G. L. c. 32B* (1994 ed.) by a retiree who was not a participant in such a program at the time of retirement." ¹⁸ *McDonald v. Town Manager of Southbridge*, 423 Mass. 1018, 672 N.E.2d 10 (1996).

17 Although [***14] the present case involves health insurance provided by an health maintenance organization under another section of the statute, *G. L. c. 32B, § 16*, we construe *G. L. c. 32B, §§ 9 and 16*, to the extent possible, in a consistent manner. See, e.g., *Yeretsky v. Attleboro*, 424 Mass. 315, 319, 676 N.E.2d 1118 (1997).

18 Cioch's argument that *G. L. c. 32B* gives a municipality "no discretion" to decline to enroll a retiree into its group health insurance plan, and makes it "mandatory" to do so, is based on a flawed reading of *McDonald v. Town Manager of Southbridge*, 39 Mass. App. Ct. 479, 657 N.E.2d 1285 (1995). The Appeals Court's decision in that case rejected the town's argument that *G. L. c. 32B, § 9*, precluded it from enrolling, postretirement, a retiree into its group health insurance plan. It did not address whether a town could regulate postretirement eligibility. Our decision, on further appellate review, made clear that such regulation is permissible. *McDonald v. Town Manager of Southbridge*, 423 Mass. 1018, 672 N.E.2d 10 (1996).

Given that *G. L. c. 32B* establishes a sparse framework for [*697] provision of public employee insurance, there is nothing unreasonable about the town's defining eligibility for that insurance, or conditioning eligibility [***15] on preretirement or at retirement participation. When construing statutes such as *c. 32B*, we "attempt to ascertain and carry out the intent of the Legislature. *Baker Transp., Inc. v. State Tax Comm'n*, 371 Mass. 872, 877 n.11, 360 N.E.2d 860 (1977). To that end we examine the whole statute with attention to the language used, the evil to be remedied, and the object to be accomplished by enactment." *Hayon v. Coca Cola Bottling Co. of New England*, 375 Mass. 644, 648, 378 N.E.2d 442 (1978). See *Yeretsky v.*

Attleboro, supra at 319. In enacting *G. L. c. 32B*, the Legislature generally intended to "enabl[e] each community which votes to accept the statute to contract for and contribute to a program of insurance for its employees," *Teamsters, Chauffeurs, Warehousemen & Helpers Union, Local No. 59 v. Chatham*, 404 Mass. 365, 367, 535 N.E.2d 597 (1989), to "gather[] employees in large groups to facilitate bargaining for and administering insurance coverage," *id.* at 369, citing *Municipal Light Comm'n of Taunton v. State Employees' Group Ins. Comm'n*, 344 Mass. 533, 539, 183 N.E.2d 286 (1962), and to provide a "comprehensive scheme of [health insurance] coverage" for public employees. See *Teamsters, Chauffeurs, Warehousemen & Helpers Union, Local No. 59 v. Chatham*, supra at 368; [***16] *McDonald v. Town Manager of Southbridge*, 39 Mass. App. Ct. 479, 480-481, 657 N.E.2d 1285 (1995). See *G. L. c. 32B, § 1* ("purpose of this chapter is to provide a plan of group . . . health insurance").

As a local-option statute, however, *G. L. c. 32B* is "effective in a city and town only when the municipality votes to adopt its provisions," *Yeretsky v. Attleboro*, supra at 316-317, and a municipality is permitted to adopt "only those provisions of the statute that best accommodate its needs and budget." ¹⁹ *Id.* [**476] at 317. While the statute establishes the broad requirements for [*698] participating municipal insurance programs, it otherwise accords municipalities substantial latitude in the adoption of "such rules and regulations, not inconsistent with this chapter, as may be necessary for the administration of this chapter." *G. L. c. 32B, § 14*. See *Teamsters, Chauffeurs, Warehousemen & Helpers Union, Local No. 59 v. Chatham*, supra at 367 ("A community is bound by expressly stated constraints in setting up its program, but is given broad authority to act within those constraints"). ²⁰

19 Both Cioch and the town argue that there are economic benefits to be derived from their respective positions. Given our conclusion [***17] that the Legislature has left it largely to municipalities to design and implement their health programs, we do not consider the possible economic impact of the municipality's choices in this case. Likewise, while Cioch argues that postretirement health insurance benefits are necessary to attract employees into public service, we note only that such benefits are available to attract such employees, but they must comply with eligibility requirements.

20 This authority is similar to that granted to the GIC, *G. L. c. 32A, § 3*, as administrator of *G. L. c. 32A*. See *G. L. c. 32B, § 16* (municipality may adopt "such rules and regulations as may be necessary for the administration of this sec-

tion"). While the GIC has promulgated more inclusive eligibility regulations than the town has adopted, see *805 Code Mass. Regs. § 9.20* (1996) (permitting retirees to apply for enrollment postretirement, but not automatically extending coverage), they are not the only reasonable eligibility requirements. The Legislature has given each "appropriate public authority in each governmental unit" discretion to fashion a program of insurance meeting its needs, *G. L. c. 32B, § 14*, and requiring participation at [***18] the time of retirement is not inconsistent with the statute.

Nothing in the plain language of *G. L. c. 32B, §§ 9 or 16*, requires a municipality to permit a retiree who has not enrolled in a municipal health insurance plan while employed, to enroll in a municipal health insurance plan after she has retired, or precludes it from doing so. ²¹ *McDonald v. Town Manager of Southbridge*, supra at 480. *Chapter 32B* addresses the broad requirements with which a municipal health insurance group policy must comply, including the periods (i.e., active employment and retirement) for which it must offer coverage. See *id.* at 481. It does not, however, define individual eligibility. The requirement in § 9 that "the group general or blanket insurance . . . shall be continued" refers not to compulsory insurance coverage for individual retirees, but rather "mandates that the period covered by group policies shall continue through retirement without specifying whether a retired employee has to be [*699] covered prior to retirement." *Id.* at 481. While *G. L. c. 32B, § 16*, is not identical to § 9, its requirement that a municipality "make available the services of a health care organization to certain eligible and [***19] retired employees," similarly obligates a municipality to contract for coverage for eligible retirees.

21 In keeping with the noncoercive nature of the statutory scheme, not only are municipalities not obliged to accept the provisions of *G. L. c. 32B*, but once they have, employees are not obligated to accept coverage. *Municipal Light Comm'n of Taunton v. State Employees' Group Ins. Comm'n*, 344 Mass. 533, 539, 183 N.E.2d 286 (1962) (while Legislature could force insurance on public employees, *G. L. c. 32B, § 4*, permits employees to opt out). *Teamsters, Chauffeurs, Warehousemen & Helpers Union, Local No. 59 v. Chatham*, 404 Mass. 365, 369-370, 535 N.E.2d 597 (1989).

Undoubtedly, a municipality may not enact a by-law, policy, or regulation that is inconsistent with State law. See, e.g., *TBI, Inc. v. Board of Health of N. Ando-*

ver, 431 Mass. 9, 19, 725 N.E.2d 188 (2000); *Boston Gas Co. v. Somerville*, 420 Mass. 702, 703, [**477] 652 N.E.2d 132 (1995). But *G. L. c. 32B, § 16*, if accepted by a municipality, requires only that a municipality obtain a health insurance policy or policies providing coverage for "eligible" retirees. See *Yeretsky v. Attleboro*, *supra* at 322-323 & nn.15-16. The Legislature's use in § 16 of the language "certain eligible and retired employees" [***20] leaves it to individual municipalities to define the appropriate class. See *Shea v. Selectmen of Ware*, 34 Mass. App. Ct. 333, 336-337, 615 N.E.2d 196 (1993) (public authority has substantial authority to make and change eligibility requirements). The town accordingly is free to adopt a policy limiting enrollment to active employees, provided the policy provides for continued coverage of those employees during their retirement, as the statute requires.

We similarly reject Cioch's contention that application of the town's policy to her constitutes an improper retroactive denial of health insurance benefits: Cioch has not demonstrated that she has been denied in retirement any benefit she earned as an active employee. Specifically, she has not shown either that the benefits she earned as an active town employee included the right to enroll in the insurance program after retirement, cf. *Gordon v. Safety Ins. Co.*, 417 Mass. 687, 689, 632 N.E.2d 1187 (1994) ("When policy language identifying those to whom coverage is afforded constitutes part of the basic insurance agreement, a person claiming coverage . . . must demonstrate that he is an insured"); *McDonald v. Town Manager of Southbridge*, *supra* at 479 (plaintiff's burden [***21] to demonstrate eligibility for coverage), or that her failure to enroll in the program was in reliance on any representation by the town concerning future eligibility. Indeed, the parties stipulated that Cioch did not "discuss health insurance benefits upon her retirement with any representative [*700] of the school department," and she does not allege that the town made any representation about postretirement eligibility.²² The record demonstrates no expectation of postretirement eligibility on Cioch's part.

22 In contrast, it appears that another retiree, who was enrolled in the town's health insurance plan on retirement, was permitted to add coverage for his wife postretirement. In that case, however, there were allegations that an employee in the town treasurer's office led the employee to a belief that the wife could be added during a future enrollment period.

Certainly, *G. L. c. 32B* does not preclude postretirement enrollment, see *McDonald v. Town Manager of Southbridge*, *supra* at 479, and it does permit the town's active employees to continue their health insurance

coverage during retirement. *Id.* But nothing in the record supports the notion that Cioch, as a retiree, is entitled to benefits [***22], available to active employees. Cf. *Larson v. School Comm. of Plymouth*, 430 Mass. 719, 724, 723 N.E.2d 497 (2000) (health insurance "is an unearned benefit, no different in concept from holidays, future sick leave, or other similar benefits"). While Cioch's appellate brief is replete with language to the effect that the town's policy causes the "forfeiture" of a substantive right, she has not established forfeiture of rights she had as a retiree. The town's policy, first reduced to writing in 1999, has the effect of denying enrollment to retirees who were not enrolled at the time of retirement. But Cioch has not demonstrated that the policy was applied retroactively to deny her benefits to which she otherwise would have been entitled.

3. *Conclusion.* The decisions of this court and the Appeals Court in *McDonald v. Town Manager of Southbridge*, 39 Mass. App. Ct. 479, [**478] 657 N.E.2d 1285 (1995), S.C., 423 Mass. 1018, 672 N.E.2d 10 (1996), built on prior decisions establishing the broad authority of municipalities to regulate the terms of their health care plans within the statutory framework. See, e.g., *Teamsters, Chauffeurs, Warehousemen & Helpers Union, Local No. 59 v. Chatham*, 404 Mass. 365, 367, 535 N.E.2d 597 (1989); *Shea v. Selectmen of Ware*, *supra*. [***23] In the more than ten years since *McDonald v. Town Manager of Southbridge*, *supra*, the Legislature has not amended the statute to limit that discretion. Accordingly, we conclude that the town properly may proscribe postretirement enrollment in its *G. L. c. 32B* [*701] health care plans, by limiting eligibility for enrollment to active employees.

Judgment affirmed.

THE COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF THE TRIAL COURT

ESSEX, ss.

PEABODY DISTRICT COURT
C.A. No. 1286 CV 0502

TOWN OF LYNNFIELD,

Plaintiff,

v.

COMMISSIONER OF DIVISION OF
UNEMPLOYMENT ASSISTANCE and
HARTLEY BOUDREAU,

Defendants

DECISION

13 FEB -5 PM 3:48
PEABODY DISTRICT COURT

The Town of Lynnfield ("Plaintiff") appeals the determination by the Department of Unemployment Assistance that Harley Boudreau ("Defendant") is entitled to unemployment compensation.

Procedural History

Defendant filed a claim for unemployment benefits in September 2011. The Department of Unemployment Assistance ("Department") ultimately approved the Defendant's request for benefits.

After an initial hearing, a review examiner determined that the Defendant had been terminated from employment. The Director of the Department of Unemployment Assistance ("Director") found that the decision was not supported by substantial evidence. The Director ordered the matter to be reconsidered. The second examiner affirmed the decision of the first examiner. Plaintiff appealed and requested a further review by the Board of Review. The Board affirmed the decision of the examiner and Plaintiff filed this appeal.

Facts

Defendant retired as a full-time police officer with the Town of Lynnfield in 1998. From 1998 through 2009 the Defendant worked infrequently for the Lynnfield Police Department. The number of road projects in Lynnfield substantially increased in May 2010. As a result, the Defendant began to work more frequently in 2011.

There were, however, some practical limitations to the amount of money the Defendant could earn in 2011.

M.G.L. Ch. 32 §91b, which limits the pay of retirees, reads:

“not more than nine hundred and sixty hours in the aggregate, in any calendar year; provided that the earnings therefrom when added to any pension or retirement allowance he is receiving do not exceed the salary that is being paid for the position from which he was retired or in which his employment was terminated.”

In August of 2011, Plaintiff's accountant requested information from the retirement administrator about the Defendant's pension to determine if the Defendant was nearing the limit on earnings allowed. Prior to meeting with the town accountant, Defendant had been apparently unaware or unconcerned about any potential financial penalty he would face for going over the allowed post-retirement earnings. If the Defendant was aware, there is no evidence that he sought to stagger his hours to allow for continued part-time employment throughout the year.

On August 18, 2011 Plaintiff's accountant notified the Defendant that if his earnings exceeded those allowed by statute he would be required to return all wages above the maximum allowed.

On August 22, 2011 Plaintiff's accountant informed the Defendant of the situation and the calculations that she had made. Defendant then went to the Police Department and told the

supervisor that he could not work any more details until January 2012 because he had reached his earnings cap.

On September 4, 2011 the Defendant filed for unemployment benefits. The Defendant unsuccessfully sought other employment. He returned to work for the Police Department in January 2012.

Legal Analysis

M.G.L. Ch 151A Sec. 25 §24(b) requires that in order to be eligible for unemployment benefits an employee must be "available" for work.

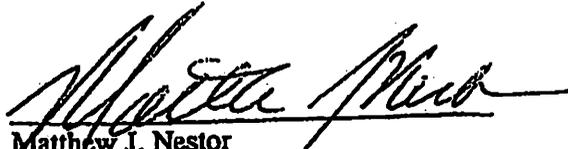
The Defendant in this case could have made himself available for continued work assignments with the Plaintiff. Defendant voluntarily retired and accepted all the benefits and limitations of his pension. One of those limitations was the amount of hours and/or compensation he could receive per year without facing a financial penalty. The Defendant chose to make himself unavailable for work so as not to incur a significant financial penalty.

Defendant has the obligation of understanding his own pension benefits. Plaintiff is not obligated to keep track of when it is beneficial for the Defendant to work and when it is economically advisable for him to stop. To the extent that the Plaintiff provided such advice, the Defendant was free to ignore it.

The law mandates, and common sense dictates, that a retired employee should not be able to get unemployment benefits from his former employer.

Conclusion

The decision of the Division of Unemployment Assistance is reversed. The Defendant is not entitled to any unemployment benefits.


Matthew J. Nestor
Acting Presiding Justice
Peabody District Court

LAURENT E. McDONALD vs. TOWN MANAGER OF SOUTHBRIDGE.

SJC-07162

SUPREME JUDICIAL COURT OF MASSACHUSETTS

423 Mass. 1018; 672 N.E.2d 10; 1996 Mass. LEXIS 312

November 18, 1996, Decided

DISPOSITION: [**1] Judgment reversed and case remanded to Superior Court.

HEADNOTES

Municipal Corporations, Regulations, Group insurance. Fire Fighter, Retirement.

COUNSEL: Richard Eric Brody (Florence Chandler with him) for the defendant.

Michael Caplette for the plaintiff.

OPINION

[*10] We granted the defendant's application for

further appellate review. See *McDonald v. Town Manager of Southbridge*, 39 Mass. App. Ct. 479, 657 N.E.2d 1285 (1995). We agree with the conclusion stated by the Appeals Court. We add only that a municipality may adopt reasonable regulations, see *G. L. c. 32B, § 14* (1994 ed.), as has been done under *G. L. c. 32A, § 3* (1994 ed.), concerning participation in a municipality's program under *G. L. c. 32B* (1994 ed.) by a retiree who was not a participant in such a program at the time of retirement.

The judgment is reversed and the case is remanded to the Superior Court for further proceedings.

So ordered.

LAURENT E. McDONALD vs. TOWN MANAGER OF SOUTHBRIDGE.

No. 94-P-1335.

APPEALS COURT OF MASSACHUSETTS

39 Mass. App. Ct. 479; 657 N.E.2d 1285; 1995 Mass. App. LEXIS 851

September 13, 1995, Argued
December 4, 1995, Decided

PRIOR HISTORY: [***1] Worcester. Civil action commenced in the Superior Court Department on December 7, 1989. The case was heard by James P. Donohue, J.

HEADNOTES

Municipal Corporations, Group insurance. Insurance, Group, Coverage. Fire Fighter, Retirement. Statute, Construction.

COUNSEL: Michael V. Caplette for the plaintiff.

Richard E. Brody for the defendant.

JUDGES: Present: Dreben, Laurence, & Lenk, JJ.

OPINION BY: DREBEN

OPINION

[*479] [**1285] DREBEN, J. The plaintiff, a retired firefighter in the town of Southbridge, brought this action seeking reinstatement in the town's group health insurance plan. After a jury-waived trial, a judge of the Superior Court dismissed the complaint, ruling that under *G. L. c. 32B, § 9*, the plaintiff could not be covered by the plan because he had not been a plan participant at the time of his retirement. On conflicting evidence the judge found that the plaintiff had not sustained his burden of showing that his request for reinstatement in the plan came before his retirement. We do not construe § 9 as precluding enrollment [**1286] after retirement and, accordingly, reverse the [*480] judgment and remand the matter to the Superior Court for further proceedings.

Prom 1956 until his involuntary retirement [***2] in 1984 on account of an on-duty accident, the plaintiff served as a firefighter for the town of Southbridge. He was covered by the town's group health insurance plan from 1956 to 1980 when, at his request, he was removed so that he could transfer to his wife's insurance plan. Upon her retirement, he could no longer be covered

under her plan. Although the plaintiff did not sustain his burden of showing that he had requested reinstatement prior to retirement, the judge found that "following his retirement, McDonald made repeated requests to a variety of town officials, mostly orally, but some in writing, to be allowed to rejoin the town's health insurance plan and to have the town pay 50 percent of his premiums." 1

1 In 1964, the town accepted the provisions of *G. L. c. 32B, § 9A*, a local option statute, which, in relevant part, provides that the town will pay one-half of the premiums to be paid by a retired employee for group health insurance.

The question before us is whether, on the facts found by the [***3] judge, the statute precludes reinstatement. We turn to the relevant statutory provisions concerning group insurance for governmental workers. Chapter 32A governs group insurance for State employees. Chapter 32B, which governs group insurance for municipal employees, applies to the plaintiff. *Section 4* of c. 32B, as appearing in St. 1986, c. 705, § 1, provides that employees are automatically covered by group insurance unless the employee "give[s] written notice . . . indicating that he is not to be insured for such coverages . . . under such [group or blanket] policy or policies." An almost identical provision is found in § 5 of c. 32A. These provisions for automatic coverage indicate a legislative intent to have a "comprehensive scheme of coverage" for governmental employees, see *Teamsters, Chauffeurs, Warehousemen & Helpers Union, Local No. 59 v. Chatham*, 404 Mass. 365, 368, 535 N.E.2d 597 (1989), and to gather them in large groups so as to effect economies of scale. See *Municipal Light Commn. of [*481] Taunton v. State Employees' Group Ins. Commn.*, 344 Mass. 533, 539, 183 N.E.2d 286 (1962).

As part of the comprehensive scheme of coverage, both chapters 32A and 32B [***4] provide protection for retired workers. Thus, § 9 of c. 32B, as appearing in St. 1986, c. 705, § 3, requires that the group policy or policies provide minimum amounts of group life in-

insurance on retirement and that "the group general or blanket insurance providing hospital, surgical, medical, dental and other health insurance, as provided under section[] four . . . shall be continued and the retired employee shall pay the full premium cost, subject to the provisions of section nine A . . . [see note 1, *supra*] of the average group premium" for such insurance.

Focussing on the words that the group policy "shall be continued," the judge adopted the view of the town that an employee has to be insured at the time of retirement to be covered after retirement.

Another reasonable interpretation of the statutory language, and one consistent with the purpose of providing a comprehensive scheme of group health (and other) insurance for employees, is that § 9 merely mandates that the period covered by group policies shall continue through retirement without specifying whether a retired employee has to be covered prior to retirement.² This appears to be the interpretation given to [***5] the parallel provision, c. 32A, § 10, by the Group Insurance Commission (commission). That commission is "a special unpaid commission" established under § 3 of c. 32A, as amended by St. 1986, c. 704, § 1, and charged with adopting "such reasonable rules and regulations as may be necessary for the administration of the chapter."

2 It is noteworthy that the third paragraph of c. 32B, § 9, as appearing in St. 1971, c. 946, § 6, which gives rights to employees who terminate their services prior to retirement, speaks of "insured" employees. The portion of § 9 we are concerned with does not say "insured" employee who retires.

3 The commission also has functions under c. 32B. See § 11, as appearing in St. 1965, c. 841, § 6, which requires the commission, on request, to "furnish information and advisory rulings"; § 14, which provides that agreements or contracts may be submitted to the commission for review and comment. It may be that § 14 also permits regulations to be submitted for comments and review. See also §§ 2(h), 11E, 11F, 17, & 19 of c. 32B.

[***6] [*482]

[**1287] Section 10 of c. 32A, as amended through St. 1977, c. 958, § 6, in relevant part, provides, "the group general or blanket insurance providing hospital, surgical, medical, dental and other health insurance, as provided under section[] five . . . shall be continued, provided said retiree makes application to the commission on a form prescribed by the rules and regulations of the commission. The retired employee shall

make payment . . ." The only difference between the relevant portions of c. 32A, § 10, and c. 32B, § 9, is that under c. 32A the retired State employee must apply for continued coverage to the Group Insurance Commission on a particular form. Both provisions use the phrase "shall be continued," the words the judge deemed crucial.

The regulations of the commission dealing with retirement, 805 Code Mass. Regs. § 9.52 (1993), make clear that a State retiree need not be a participant in the State group health policy at the time of retirement to take advantage of group health insurance thereafter. Paragraph (2) of § 9.52 sets forth the conditions that must be met in cases in which "the retired employee has never been insured by the Commonwealth's Group Insurance Plans [***7] and initially applies for group insurance as a retiree." Paragraph (6) provides that "retired employees who voluntarily withdraw from the Basic Life and Basic Health Insurance are not eligible for reinstatement at any future date unless they submit acceptable Medical Evidence of Insurability to the Commission no earlier than one year from the date the withdrawal took effect."

While the regulations of the commission are not binding on the town,⁴ the commission's regulations are mentioned here "as confirming a common sense interpretation" of the statutory language. *Watertown Firefighters, Local 1347 v. Watertown*, 376 Mass. 706, 712 n. 11, 383 N.E.2d 494 (1978). See also *Municipal Light Commn. of Taunton v. State Employees' Group Ins. Commn.*, 344 Mass. at 538; *Donnelly v. Contributory Retirement Appeal Ed.*, 15 Mass. App. Ct. 19, 22, 443 N.E.2d 416 (1982) (court may turn to analogous statutes for guidance); [*483] 2B Sutherland, *Statutory Construction* §§ 51.01-51.03 (5th ed. 1992).

4 The town has issued extensive personnel regulations (included in the record appendix), but none of them covers retirement benefits.

[***8] Based on (1) the broad policy of the statute to provide coverage, (2) the statutory language which admits of more than one reading, and (3) the interpretation given by the commission to the analogous provision, *G. L. c. 32A, § 10*, we conclude that, at least until the town issues regulations to the contrary,⁵ § 9 does not require participation by the employee at the time of retirement to obtain coverage thereafter.

5 We do not consider whether the town may issue regulations requiring participation at the time of retirement. See *Brooks v. School Comm. of Gloucester*, 5 Mass. App. Ct. 158, 162-163, 360 N.E.2d 647 (1977).

The town also argues that c. 32B, § 9A, at the time of its adoption in 1964, provided that a town *may*, rather than *shall*, provide for payment of one-half of the premiums of retired employees. Therefore, the town claims, it may decline to cover the plaintiff. The contention is without merit. As pointed out by the judge, the 1973 amendment to c. 32B, § 9A, did not in any [***9] way change the language of the ballot question which was presented to the town. ⁶ Since that question, which was approved by the voters, used the word "shall" when the town adopted § 9A, the town cannot now argue that the voters were only approving the portion of § 9A which read "may." Moreover, as also pointed out by the

judge, the town has consistently considered itself bound to pay such premiums if the other requirements of § 9 are complied with.

6 The ballot question was: "*Shall* the town pay one-half the premium costs payable by a retired employee . . . for health insurance?" (Emphasis supplied).

The judgment is reversed and the case remanded to the Superior Court for further [**1288] proceedings consistent with this opinion. ⁷

7 On the record before us, it is not clear when reinstatement should have been effected.

So ordered. [***10]

GAIL E. TWOMEY & others¹ vs. TOWN OF MIDDLEBOROUGH & others² (and a consolidated case³).

1 Alice L. Carey, Margaret Y. Chace, Jane E. Guimares, and John R. Hilsabeck, Jr. For ease of reference, we refer to these plaintiffs collectively as the Twomey plaintiffs.

2 The board of selectmen and the town manager of Middleborough.

3 Charles Armanetti & others vs. Town of Middleborough & others. For ease of reference, we refer to these plaintiffs collectively as the Armanetti plaintiffs.

SJC-11435

SUPREME JUDICIAL COURT OF MASSACHUSETTS

468 Mass. 260; 10 N.E.3d 618; 2014 Mass. LEXIS 395

February 6, 2014, Argued

June 2, 2014, Decided

PRIOR HISTORY: [***1]

Plymouth. Civil actions commenced in the Superior Court Department on October 30, 2009, and June 1, 2010. After consolidation, the case was heard by Jeffrey A. Locke, J., on motions for summary judgment. The Supreme Judicial Court on its own initiative transferred the case from the Appeals Court.

HEADNOTES

Municipal Corporations, Home rule, Group insurance, Selectmen, Town meeting, Insurance, Group Retirement. Middleborough.

COUNSEL: Sandra C. Quinn for Gail E. Twomey & others.

Thomas J. Burns, III, for Charles Armanetti & others.

Leo J. Peloquin for the defendants.

JUDGES: Present: Ireland, C.J., Spina, Cordy, Botsford, Gants, Duffly, & Lenk, JJ.

OPINION BY: SPINA

OPINION

[*260] [**619] SPINA, J. In this case, we consider which municipal entity, the board of selectmen or the town meeting, has the authority to establish the percentage of the total monthly premium for insurance coverage by a health maintenance organization (HMO) that is to be paid by a town's retired employees. We conclude [*261] that, pursuant to *G. L. c. 32B, § 16*, the board of selectmen has such authority.

1. Statutory framework. Under the Home Rule Amendment, *art. 89, § 6, of the Amendments to the*

Massachusetts Constitution, municipalities of the Commonwealth may choose to provide health insurance coverage to their employees. See *Cioch v. Treasurer of Ludlow*, 449 Mass. 690, 695, 871 N.E.2d 469 (2007). *General Laws c. 32B* [***2] is a so-called "local option" statute that governs the provision of group insurance (medical and certain other coverages) once a municipality has voted to accept the terms of the statute.⁴ See *Connors v. Boston*, 430 Mass. 31, 37, 714 N.E.2d 335 (1999); *Yeretsky v. Attleboro*, 424 Mass. 315, 316-317, 676 N.E.2d 1118 (1997). Recognizing that various municipalities may have different priorities, we have said that "a municipality is permitted to adopt 'only those provisions of the statute that best accommodate its needs and budget.'" *Cioch, supra* at 697, quoting *Yeretsky, supra* at 317. Where the municipality at issue is a town, acceptance of many, but not all, of the provisions of *G. L. c. 32B* is "by vote of the inhabitants at a town meeting." *Yeretsky, supra* at 317 n.5. See *G. L. c. 32B, § 10*.

4 For the sake of simplicity, we use the term "municipality" in this opinion to refer to the counties, cities, towns, and districts covered by *G. L. c. 32B*.

When it was enacted, *G. L. c. 32B*, inserted by St. 1956, c. 730, § 1, authorized municipalities to offer certain employees and their dependents group indemnity health insurance coverage. See *G. L. c. 32B, §§ 1, 3*. Beginning in 1971, municipalities were given the option of making [***3] available to such individuals the services of an HMO by accepting *G. L. c. 32B, § 16*, inserted by St. 1971, c. 946, § 5.⁵ See *Yeretsky*, 424 Mass. at 317 [**620] (statutory language governing traditional indemnity group health insurance programs differs from language governing HMOs). *Section 16*

takes effect in a town when it is accepted "by vote of the board of selectmen." *G. L. c. 32B, § 16*.

5 *General Laws c. 32B, § 16*, uses the term "health care organization," as defined in *G. L. c. 32B, § 2*. Throughout this opinion, we shall use the more common term, "health maintenance organization" (HMO). See *Yeretsky v. Attleboro*, 424 Mass. 315, 317 n.6, 676 N.E.2d 1118 (1997).

General Laws c. 32B, § 16, states, in pertinent part:

"Upon acceptance of this section . . . , the appropriate [*262] public authority of the governmental unit shall enter into a contract . . . to make available the services of [an HMO] to certain eligible and retired employees and dependents . . . , on a voluntary and optional basis, as it deems to be in the best interest of the governmental unit and such eligible persons as aforesaid The appropriate public authority shall negotiate such a contract of insurance for and on behalf and in the name of [***4] the governmental unit for such a period of time not exceeding five years as it may in its discretion, deem to be the most advantageous to the governmental unit and the persons insured hereunder. . . . Eligible persons . . . shall pay a minimum of ten percent of the total monthly premium cost or rate for coverage under this section, . . . provided . . . that such eligible persons shall in no event be required to pay more than fifty percent of such total monthly premium cost or rate. . . . The appropriate public authority may adopt such rules and regulations as may be necessary for the administration of this section" (emphasis added).

The term "governmental unit" is defined as "any political subdivision of the [C]ommonwealth." *G. L. c. 32B, § 2*. With respect to a town, the "appropriate public authority" that shall contract for the services of an HMO is "the selectmen." *Id.*

2. Factual and procedural background. The facts are taken from the parties' joint statement of material facts, which we have supplemented with undisputed facts from the record. The Twomey plaintiffs are retired public school employees in the town of Middleborough (town), and each receives a retirement allow-

ance from [***5] the Massachusetts Teachers' Retirement System (MTRS) pursuant to *G. L. c. 32*. The Armanetti plaintiffs are retired town employees, including former teachers, police officers, fire fighters, and other public servants. Those individuals who are retired teachers receive a retirement allowance from the MTRS, and the other retired employees receive an allowance from the Plymouth County Retirement System pursuant to *G. L. c. 32*. The Armanetti plaintiffs also include the Middleborough Retirees Insurance Group (MRIG), a voluntary association of individuals comprised of retired town employees.

The town is a municipal corporation and a political subdivision of the Commonwealth. It operates under an open town meeting [*263] form of government. The town meeting is a legislative body,⁶ and it makes appropriations with respect to the town's budget. Registered voters are authorized to place matters necessitating action on a town meeting warrant pursuant to *G. L. c. 39, § 10*.⁷ A board of selectmen acts as [**621] the chief executive officer of the town,⁸ and it appoints a town manager to handle the town's affairs. See generally D.A. Randall & D.E. Franklin, *Municipal Law and Practice* § 6.13 (5th ed. 2006).

6 *General Laws c. 4, § 7*, [***6] Eighteenth B, provides that the term "legislative body," when used in connection with the operation of municipal government, "shall include that agency of the municipal government which is empowered to enact ordinances or by-laws, adopt an annual budget and other spending authorizations, loan orders, bond authorizations and other financial matters and whether styled a city council, board of aldermen, town council, town meeting or by any other title."

7 The purpose of a town meeting warrant and the articles contained therein is to inform the town's residents of the time and place of a meeting, as well as the subjects that will be discussed and acted on during such meeting. See *G. L. c. 39, § 10*; *Wolf v. Mansfield*, 67 Mass. App. Ct. 56, 59, 851 N.E.2d 1115 (2006).

8 *General Laws c. 4, § 7, Fifth B*, provides that the term "chief executive officer," when used in connection with the operation of municipal government, "shall include the mayor in a city and the board of selectmen in a town unless some other municipal office is designated to be the chief executive officer under the provisions of a local charter."

The town offers group health insurance coverage to both its active and retired employees pursuant to [***7] *G. L. c. 32B*.⁹ One of the insurance plans that the town offers to retirees pursuant to *G. L. c. 32B, §*

16, is HMO Blue New England (HMO Blue).¹⁰ At all relevant times, the Twomey plaintiffs and the Armanetti plaintiffs were enrolled in this plan. The portion of the premium [*264] cost for which they were responsible was deducted from their retirement allowances and transferred to the town pursuant to *G. L. c. 32*. At the time each plaintiff retired, the town paid ninety per cent of that retiree's insurance premium for HMO Blue coverage, and the retiree paid the remaining ten per cent.¹¹

9 Because the Twomey plaintiffs and the Armanetti plaintiffs are retired employees of the town, they are not represented by an employee organization under *G. L. c. 150E*. Prior to their retirements, however, all of the Twomey plaintiffs and some of the Armanetti plaintiffs were members of collective bargaining units. The collective bargaining agreements (CBA) in effect at the time they retired did not include express language about future contributions from the town toward the cost of their health insurance premiums. Nonetheless, when they retired, the town continued to pay the same percentage of their health [***8] insurance premiums as it then was paying for active employees under the CBAs. The remaining Armanetti plaintiffs were not members of any collective bargaining unit during the tenure of their employment with the town. When they retired, the town continued to pay the same percentage of their health insurance premiums as it then was paying for nonunionized active employees.

10 It is not contested that *G. L. c. 32B, § 16*, was accepted "by vote of the board of selectmen." *Id.*

11 It appears from the record that sometime during the spring of 2009, the town's contribution to the HMO premiums of active employees was reduced to eighty per cent.

On April 16, 2009, MRIG submitted a written request to the board of selectmen, in accordance with *G. L. c. 39, § 10*, to include an article in a town meeting warrant (article 9), pertaining to "freezing" the percentage of the town's contribution to the health insurance premiums for retired employees at ninety per cent.¹² Article 9 was certified for inclusion on the warrant for a special town meeting to be held on May 26, 2009. On May 7, 2009, the warrant was published in the *Middleboro Gazette*, a local newspaper.

12 The warrant provided notice that the special [***9] town meeting would act on the following: "ARTICLE 9. To see if the Town will vote to raise and appropriate and/or transfer a

sum of money from the Town's Employee Fringe Benefits, Health and Life Insurance account, Taxation, free-cash, another specific available fund or Stabilization Fund, an existing appropriation or account or other available source or by borrowing to continue to contribute the same monetary percentage of the premium of a retired Town of Middleborough employee's contributory group, general or blanket hospital, surgical, dental and other health insurance, that the Town contributed for the retired Town of Middleborough employee at the date of the Town of Middleborough retiree's retirement from the Town of Middleborough, but in no case less than in effect in fiscal year 2007, or act anything thereon." For the 2007 fiscal year, the town continued to pay ninety per cent of the retirees' insurance premiums for HMO coverage, and the retirees paid the remaining ten per cent.

[**622] On May 11, 2009, the board of selectmen voted that "the contribution to be put in by retirees be the same as the general government employees, including the end of co-pay reimbursements effective July [***10] 1, 2009."¹³ The effect of this vote was to increase the portion of the premium paid by retired employees for HMO Blue coverage from ten per cent to twenty per cent. At the time of this vote, the board of selectmen was aware that a special town meeting had been scheduled for May 26, and [*265] that article 9 would be considered by registered voters. The town's treasurer proceeded to mail letters to retired employees, including the Twomey plaintiffs and the Armanetti plaintiffs, informing them that the portion of the HMO premium for which they were responsible had increased to twenty per cent of the total premium, effective July 1, 2009.

13 The town meeting has not adopted any charter, bylaw, rule, or ordinance expressly delegating to either the board of selectmen or the town manager the responsibility for determining how the HMO premium should be apportioned between the town and its retired employees.

On May 26, 2009, the special town meeting was held. A quorum was present to conduct business, and article 9 was approved.¹⁴ However, the town never implemented it. Since July 1, 2009, retired employees have been paying twenty per cent of the premium for their HMO coverage in accordance with the [***11] vote of the board of selectmen.

14 Prior to the vote at the special town meeting, town counsel advised voters that article 9

only could serve as a recommendation to the board of selectmen regarding the town's contribution to the retirees' health insurance premiums.

On October 30, 2009, the Twomey plaintiffs filed an action in the Superior Court against the town, the board of selectmen, and the town manager (collectively, the defendants), challenging their refusal to comply with the vote of the May 26, 2009, special town meeting to pay ninety per cent of the HMO premiums for retired employees. Count I of the second amended complaint, filed on July 15, 2010, sought a declaratory judgment pursuant to *G. L. c. 231A*, stating that the proper and lawful vote of the special town meeting could not be set aside by a vote of the board of selectmen. Count II of the second amended complaint requested relief in the nature of mandamus. The Twomey plaintiffs sought an order, retroactive to July 1, 2009, requiring the defendants to implement the vote of the special town meeting and to make the Twomey plaintiffs whole for the premium payments that they had made in excess of the amount authorized by the [***12] special town meeting.

On June 1, 2010, the Armanetti plaintiffs filed a complaint for declaratory relief pursuant to *G. L. c. 231A* in the Superior Court. They presented the same claim that had been raised by the Twomey plaintiffs, namely, that the board of selectmen did not have the authority to ignore the vote of the special town meeting and raise the HMO premium contribution percentage for retired town employees from ten per cent to twenty per cent.¹⁵ The Twomey plaintiffs and the defendants subsequently [*266] filed a motion pursuant to *Mass. R. Civ. P. 42 (a)*, as amended, 423 Mass. 1402 (1996), to consolidate the two civil actions for the purpose of deciding the town meeting claims. The Armanetti plaintiffs opposed the motion. Nonetheless, on January 5, 2011, the motion was allowed.

15 The action filed by the Armanetti plaintiffs raised several additional grounds for declaratory relief. Because those grounds are not relevant to these proceedings, we do not discuss them further. See note 17, *infra*.

[**623] On June 3, 2011, the Twomey plaintiffs and the Armanetti plaintiffs filed separate motions for summary judgment pursuant to *Mass. R. Civ. P. 56*, 365 Mass. 824 (1974).¹⁶ They asserted that the May [***13] 26, 2009, vote of the special town meeting was lawful, that the town meeting acted within its authority to freeze the HMO premium contribution rate for the town's retired employees at ten per cent, and that the defendants did not have the discretion to refuse to implement the special town meeting vote. The defendants

filed a cross motion for summary judgment. They argued that the board of selectmen had the legal authority to determine the premium apportionment for town retirees pursuant to its May 11, 2009, vote.

16 The Armanetti plaintiffs only moved for summary judgment on Count I of their complaint for declaratory relief, which pertained to the town meeting claim.

Following a hearing, a judge allowed the defendants' motion and denied the motions filed by the Twomey plaintiffs and the Armanetti plaintiffs. The judge ordered that a declaration enter stating that under *G. L. c. 32B, § 16*, the board of selectmen had the authority to determine the health insurance premium contribution rate for town retirees, and the town meeting could not override this decision. Therefore, the defendants were not required to comply with the May 26, 2009, vote of the special town meeting that approved article [***14] 9 because the board of selectmen's May 11, 2009, vote controlled the matter. The judge denied the Twomey plaintiffs' request for an order in the nature of mandamus. Judgment entered for the defendants.¹⁷ The Twomey plaintiffs and the Armanetti plaintiffs appealed the judge's [*267] decision, the case was entered in the Appeals Court, and we transferred it to this court on our own motion.

17 Summary judgment against the Armanetti plaintiffs was inadvertently entered with respect to all of the claims raised in their complaint, rather than solely with respect to their town meeting claim. In order to preserve their other claims, they filed a motion for entry of a separate and final judgment pursuant to *Mass. R. Civ. P. 54 (b)*, 365 Mass. 820 (1974), that would dispose only of their town meeting claim. The Armanetti plaintiffs subsequently decided to dismiss the remainder of their claims, with the assent of the defendants, and to pursue an appeal only on the town meeting claim. Consequently, the Armanetti plaintiffs, the Twomey plaintiffs, and the defendants filed a joint motion for entry of final judgment on Count I of the Armanetti plaintiffs' complaint and for dismissal of all of the remaining [***15] counts in that complaint. On July 31, 2012, a judge allowed the joint motion.

3. Standard of review. Summary judgment is appropriate where there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law. See *Kourouvacilis v. General Motors Corp.*, 410 Mass. 706, 716, 575 N.E.2d 734 (1991); *Mass. R. Civ. P. 56 (c)*, as amended, 436 Mass. 1404 (2002). We review a decision to grant summary judg-

ment de novo. See *Ritter v. Massachusetts Cas. Ins. Co.*, 439 Mass. 214, 215, 786 N.E.2d 817 (2003). "In a case like this one where both parties have moved for summary judgment, the evidence is viewed in the light most favorable to the party against whom judgment is to enter." *Albahari v. Zoning Bd. of Appeals of Brewster*, 76 Mass. App. Ct. 245, 248 n.4, 921 N.E.2d 121 (2010). See *DiLiddo v. Oxford St. Realty, Inc.*, 450 Mass. 66, 70, 876 N.E.2d 421 (2007).

4. Discussion. The thrust of the arguments by the Twomey plaintiffs and the Armanetti plaintiffs is that *G. L. c. 32B, § 16*, does not confer authority on the board of selectmen to set the HMO premium contribution rate that is to be paid by the town's retired employees. Rather, [**624] they contend that it is solely the province of the town meeting, which serves as the town's [***16] legislative body, to act on matters of municipal finance. These matters include establishing the HMO contribution rate for retirees at ninety per cent, not eighty per cent. In the view of the Twomey plaintiffs and the Armanetti plaintiffs, because the Legislature did not expressly delegate this responsibility to the board of selectmen, that entity functions exclusively to carry out those measures enacted by the town meeting. We disagree.

Our analysis of *G. L. c. 32B, § 16*, is guided by the familiar principle that "a statute must be interpreted according to the intent of the Legislature ascertained from all its words construed by the ordinary and approved usage of the language, considered in connection with the cause of its enactment, the mischief or imperfection to be remedied and the main object to be accomplished, [*268] to the end that the purpose of its framers may be effectuated." *Hanlon v. Rollins*, 286 Mass. 444, 447, 190 N.E. 606 (1934). See *Sullivan v. Brookline*, 435 Mass. 353, 360, 758 N.E.2d 110 (2001), and cases cited. Courts must ascertain the intent of a statute from all its parts and from the subject matter to which it relates, and must interpret the statute so as to render the legislation effective, consonant [***17] with sound reason and common sense. See *Champigny v. Commonwealth*, 422 Mass. 249, 251, 661 N.E.2d 931 (1996); *Pentucket Manor Chronic Hosp., Inc. v. Rate Setting Comm'n*, 394 Mass. 233, 240, 475 N.E.2d 1201 (1985); *Tilton v. Haverhill*, 311 Mass. 572, 577-578, 42 N.E.2d 588 (1942).

The broad purpose of *G. L. c. 32B* is to allow municipalities to provide group insurance (medical and certain other coverages) to their active and retired employees and their employees' dependents. *G. L. c. 32B, § 1*. See *Yeretsky*, 424 Mass. at 316. Where, as here, the municipality at issue is a town, *G. L. c. 32B, § 16*, explicitly confers authority on the board of selectmen to make available "to certain eligible and retired em-

ployees and dependents" the services of an HMO. *G. L. c. 32B, § 16*. This particular statutory section takes effect upon its acceptance by the board of selectmen, thereby rendering its provisions applicable to the town. Id. It is the board of selectmen that is empowered to negotiate and enter into a contract for health insurance that the board deems to be "in the best interest of" and "the most advantageous to" the town and the persons insured thereunder. Id. Moreover, it is the board of selectmen that is authorized to adopt rules and [***18] regulations that may be necessary to the administration of § 16. Id. The plain language of this statutory section indicates that once § 16 has been accepted by a town, the board of selectmen is the municipal entity designated by the Legislature to implement its various provisions. One of those provisions states that eligible persons shall pay between ten per cent and fifty per cent of the total monthly premium for HMO coverage. Id.

We recognize, and the parties acknowledge, that *G. L. c. 32B, § 16*, is silent with respect to exactly how the total monthly premium should be apportioned between a town and its retired employees. Nonetheless, given the broad authority conferred on the board of selectmen by the Legislature with respect to the [*269] implementation of § 16, and given the complete absence of any reference to the town meeting in that same statutory section, it is reasonable to conclude that it is the province of the board of selectmen to determine what portion of the total monthly premium for HMO coverage should be borne by the town's retired employees. Had the Legislature intended to confer on the town [**625] meeting the authority to set HMO premium contribution rates for town retirees, it [***19] would have included language to that effect in § 16. See, e.g., *G. L. c. 32B, § 9A* (town shall contribute one-half of premium to be paid by retired employees for group indemnity insurance when approved by vote of town at town meeting). We will not read into a statute, here § 16, a provision that the Legislature did not put there. See *General Elec. Co. v. Department of Emytl. Protection*, 429 Mass. 798, 803, 711 N.E.2d 589 (1999).

We find instructive the 2011 amendments to *G. L. c. 32B* wherein the Legislature authorized municipalities to implement health insurance plan design changes outside the collective bargaining process. St. 2011, c. 69, § 3. As part of this reform, the Legislature prohibited a "public authority" -- with regard to a town, the board of selectmen -- from increasing before July 1, 2014, "the percentage contributed by retirees . . . to their health insurance premiums from the percentage that was approved by the public authority prior to and in effect on July 1, 2011" (emphasis added). *G. L. c. 32B, § 22 (e)*. See *G. L. c. 32B, § 2* (defining "[a]ppropriate public authority"). Although the 2011

amendments to *G. L. c. 32B* are not applicable to the actions filed by the Twomey plaintiffs [***20] and the Armanetti plaintiffs, the language of § 22 (e) provides important insight into the Legislature's understanding of the operation of § 16. The Legislature is presumed to be aware of existing statutes when it enacts a new one. See *Charland v. Muzi Motors, Inc.*, 417 Mass. 580, 582-583, 631 N.E.2d 555 (1994). The language of *G. L. c. 32B*, § 22 (e), clearly reflects the Legislature's understanding that, in a town, the board of selectmen determines the HMO premium contribution rate for retired employees.

Generally speaking, "[a] municipality can exercise no direction or control over one whose duties have been defined by the Legislature." *Breault v. Auburn*, 303 Mass. 424, 428, 22 N.E.2d 46 (1939), quoting *Daddario v. Pittsfield*, 301 Mass. 552, 558, 17 N.E.2d 894 (1938). [*270] More specifically, a town meeting cannot exercise authority over a board of selectmen when the board is acting in furtherance of a statutory duty. See *Anderson v. Selectmen of Wrentham*, 406 Mass. 508, 512, 548 N.E.2d 1230 (1990) (board of selectmen not bound by town meeting vote to set rate of contribution for group insurance provided to town's employees under *G. L. c. 32B*, § 7A);¹⁸ *Russell v. Canton*, 361 Mass. 727, 730-731, [**626] 282 N.E.2d 420 (1972) (where Legislature delegated to board of selectmen [***21] right to take land by eminent domain, town meeting could authorize but not command such taking). Here, once the board of selectmen accepted the provisions of *G. L. c. 32B*, § 16, it had a statutory duty to provide HMO coverage to retired town employees, among others, in a manner that was in the best interest of and most advantageous to both the town and its insureds. See *G. L. c. 32B*, § 16. An integral part of this duty was the apportionment of the total monthly premium for HMO coverage between the town and its retired employees in a fiscally responsible way. The town meeting could not usurp the authority given to the board of selectmen by the Legislature in § 16.

18 In *Anderson v. Selectmen of Wrentham*, 406 Mass. 508, 511, 548 N.E.2d 1230 (1990), we said that the selection of a contribution percentage to be paid on behalf of unionized town employees for their group insurance coverage had to be collectively bargained by the employer. See *G. L. c. 150E*, § 6. Because the board of selectmen was the chief executive officer of the town, its duty to collectively bargain the contribution percentage was a function mandated by statute. See *Anderson*, *supra* at 511-512. As a consequence, the town meeting had no direct [***22] role in the collective bargaining process. See *id.* We noted that "permitting resort to

the town meeting on a subject of mandatory collective bargaining would enable a party to the negotiations to circumvent the bargaining process altogether[,] . . . put the issue before the town meeting[,] and pack the meeting with voters who supported its position." *Id.* at 512 n.8. The present case, unlike *Anderson*, does not involve collective bargaining. Nonetheless, the board of selectmen is acting in furtherance of its statutory duty under *G. L. c. 32B*, § 16, when it makes available to its retired employees the services of an HMO. Part and parcel of that duty is the establishment of an appropriate contribution percentage. One of the Legislature's purposes in enacting § 16 was "to enable government employers to gain control over health care costs." *Yeretsky*, 424 Mass. at 321. The concern that was articulated nearly twenty-five years ago in *Anderson* regarding the consequences of having the town meeting decide insurance contribution percentages takes on even greater significance today when the fiscal burdens imposed on municipalities by retiree health care benefits continue to soar. In accordance [***23] with the language and intent of *G. L. c. 32B*, § 16, it is the province of the board of selectmen to ensure that the town's HMO program is administered in a fiscally responsible manner.

[*271] In contrast to the comprehensive authority of the board of selectmen to effectuate the provisions of *G. L. c. 32B*, § 16, the role of the town meeting is substantially more limited. It is undisputed that pursuant to *G. L. c. 40*, § 5, "[a] town may at any town meeting appropriate money for the exercise of any of its corporate powers." However, to the extent that the town meeting fails to appropriate the funds necessary to implement the provisions of *G. L. c. 32B*, the board of selectmen shall certify to the board of assessors the cost to the town of carrying out the provisions of *c. 32B*, and the board of assessors "shall include the amount so certified in the determination of the tax rate of that year." *G. L. c. 32B*, § 3. Ultimately, it is the board of selectmen that ensures the appropriation of funds to pay for the town's contribution to HMO coverage for retirees, emphasizing the board's authority over all aspects of HMO coverage for town employees.

5. Conclusion. The town's board of selectmen has the authority, [***24] pursuant to *G. L. c. 32B*, § 16, to establish the percentage of the total monthly premium for HMO coverage that is to be paid by the town's retired employees. Accordingly, the declaratory judgment entered in the Superior Court is affirmed.

So ordered.

MILDRED YERETSKY & another ' vs. CITY OF ATTLEBORO.

1 Mathew Savastano.

SJC-07249

SUPREME JUDICIAL COURT OF MASSACHUSETTS

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

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

PRIOR HISTORY: [***1] Bristol. Civil action commenced in the Superior Court Department on August 14, 1991. The case was heard by John A. Tierney, J., on a motion for summary judgment. The Supreme Judicial Court on its own initiative transferred the case from the Appeals Court.

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

HEADNOTES

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

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

William G. Rehrey for the plaintiffs.

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

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

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

OPINION BY: GREANEY

OPINION

[*315] [**1118] GREANEY, J. The plaintiffs are two retired employees of the defendant, the city of Attleboro (city). They are members of the city's retirement system and not members of any collective bargaining unit. The plaintiffs brought a complaint in the Superior Court seeking declaratory and injunctive relief in connection [***2] with a claim that, under the third paragraph of [*316] *G. L. c. 32B, § 16*, which con-

cerns the allocation of premium costs for health maintenance organization (HMO) coverage (see note 6, *infra*), the city was obligated to pay 90% of their HMO premium costs from July [**1119] 1, 1990, and continuing. It was agreed that, since at least August, 1985, the city has offered its retired employees health insurance coverage under a Blue Cross/Blue Shield group indemnity plan and has paid 50% of the premium costs. During the same period, the city has offered several HMO plans to retired employees and has contributed toward the premium cost of these plans at rates varying between 50% and 81.3%.² Based on these facts and a stipulation as to damages, the plaintiffs moved for summary judgment, and their motion was allowed. Judgment entered declaring that, from July 1, 1990, and continuing, the city was obligated to pay 90% of the plaintiffs' premium costs for HMO coverage. The judgment also directed the city to repay to the plaintiffs, any overpayments of premiums made by them for HMO coverage, with interest.³ The city appealed, and we transferred the appeal from the Appeals Court to this court on our motion. [***3] We vacate the paragraphs of the judgment that made the declarations and orders just stated and direct the entry of new declarations.

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

3 The judgment also declared and ordered that, from July 1, 1989, to September 30, 1989, the city was obligated to pay the same dollar contribution toward premiums for HMO coverage as it paid toward premiums for Blue Cross/Blue Shield indemnity coverage. (Payments for the period from October 1, 1989, to June 30, 1990, were not at issue.) The city does not challenge this part of the judgment on appeal.

The plaintiffs' claims involve *G. L. c. 32B*, a local-option statute that governs the provision of health insurance to active and retired employees of municipi-

palties and other State political subdivisions.⁴ Under the home rule amendment (*art. 89 of the Amendments to the Massachusetts Constitution*), a local-option statute becomes effective in a city and town only [***4] [*317] when the municipality votes to adopt its provisions.⁵ See D. Randall & D. Franklin, *Municipal Law and Practice* §§ 1, 8 (1993). Before a municipality offers a group health insurance plan to its employees, it evaluates the options offered in the various provisions of the statute. The municipality then adopts only those provisions of the statute that best accommodate its needs and budget. See *id.* at § 295; *G. L. c. 32B*, § 3. The statutory language governing the local options available for traditional indemnity group health insurance programs differs from that governing HMO programs. See *G. L. c. 32B*, §§ 7, 7A, 9, 9A, 9E, and 16. As the landscape of group health insurance has changed, the language of the statutory provisions governing these two types of health insurance plans has sometimes created unanticipated fiscal challenges for municipalities, one of which is before us in this case.

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

[***5]

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

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

Municipalities may make HMO plans available to active and retired employees by accepting § 16 of *c. 32B*, which was inserted by *St. 1971, c. 946*, § 5.⁶ An HMO option was also provided to State employees by the same act. See *G. L. c. 32A*, § 14, inserted by *St. 1971, c. 946*, § 2. The third paragraph of [***6] § 16, as amended through *St. 1989, c. 653*, [**1120] § 37 (effective July 1, 1990; *id.* at § 242), now reads as follows:

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

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

At issue is the meaning of the second sentence in this paragraph. The sentence states that "eligible persons . . . shall pay a minimum of ten percent" of the HMO premium with the remainder to be paid by the governmental unit, and then goes on to add two provisos: first, that parties to a collective bargaining agreement may agree that "such eligible persons" shall pay more than 10% of the premium, and second, that "such eligible persons" shall in no case pay more than 50%. The parties in this case offer contrasting interpretations of this second sentence.

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

the premium. Other eligible persons (including retirees and nonunionized employees) are to pay exactly 10%.⁷

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

(b) The city argues that the second proviso is independent of the first. Under the city's construction, all eligible persons are to pay no less than 10% and no more than 50%. Unionized employees may only be charged more than the minimum [*319] if so provided in the governing bargaining agreement. For other eligible persons, the payment rate (within the 10% to 50% range) is to be determined through the local political process, as is the case with contributions to indemnity plans.⁸

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

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

Based on these considerations, we conclude that the city's interpretation of the disputed paragraph is the one that best corresponds to the Legislature's intent.

According to the wording of c. 32B, § 16, in effect before the disputed language was inserted, the municipal contribution toward an HMO premium for an employee was to be the "same amount" as would have been contributed to an [*320] indemnity plan for that person.⁹ In 1984, the Appeals Court ruled that the "same amount" meant the same *dollar* amount, not the same percentage of the total premium due. *Hemman v. Harvard Community Health Plan, Inc.*, 18 Mass. App. Ct. 70, 72-73, 463 N.E.2d 361 (1984). The court noted that the title to St. 1971, c. 946, indicated that the option to elect HMO coverage was to involve "no additional premium charge" to a governmental unit over the cost of indemnity insurance, and that this would only be achieved, whatever the relative prices of the two plans, with a "same dollar amount" interpretation. *Id.* at 73-74.

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

[***11] During the 1980's, the cost of indemnity plan coverage began to exceed the cost of HMO coverage. See *Ludlow Educ. Ass'n v. Ludlow*, 31 Mass. App. Ct. 110, 113, 644 N.E.2d 227 (1991). By a process of adverse selection, younger and healthier employees tended to shift into HMOs, and indemnity plan premiums rose for those remaining in the traditional plans, resulting in increased governmental costs. *Id.* *Hemman, supra* at 70, 74 n.7. This shift to HMOs was exacerbated by the "same dollar" rule, which made it possible for some employees to belong to an HMO for free.¹⁰ See *Everett v. Local 1656, Int'l Ass'n of Firefighters*, 411 Mass. 361, 362-363, 582 N.E.2d 532 (1991); *School Comm. of Brockton v. Brockton Educ. Ass'n*, 36 Mass. App. Ct. 171, 172, 629 N.E.2d 341 (1994). Besides facing higher health benefit costs, municipalities risked losing access to indemnity plan coverage altogether if the groups covered by such plans shrank to a point where insurers would refuse coverage. See, e.g., *Kusy v. Millbury*, 417 Mass. 765, 766, 632 N.E.2d 1227 (1994).

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

[**12] The Legislature responded to these problems by including provisions in St. 1989, c. 653, that amended the payment [*321] formulas for both State and municipal HMOs to eliminate the "same dollar amount" rule. Chapter 653, which was titled "An Act establishing the budget control and reform act of 1989," was passed at a time of critical fiscal problems at both the State and local levels of government. ¹¹ The statute reduced appropriations in the State budget and contained over 200 other provisions. In contrast to the 1971 legislation that had created the State and municipal HMO options, c. 653 established different payment formulas for each. The State contribution to its HMOs was changed to "the same percent share" as for indemnity plans. *G. L. c. 32A, § 14*, as [**1122] amended through St. 1989, c. 653, § 36. The Legislature considered, but rejected, proposals to apply this "same percent" formula to municipal HMOs as well. Instead, the Legislature enacted, as § 37 of c. 653, the new language for *G. L. c. 32B, § 16*, that is the subject of this dispute. ¹² Although the enacted provisions were different, the Legislature's purposes in amending both c. 32B, § 16, and c. 32A, § 14, were the same: [**13] to enable government employers to gain control over health care costs and to reduce the financial incentives that had favored HMO enrollment and had led to adverse selection. ¹³

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

12 The Senate adopted the percentage formula for municipal HMOs in its version of the budget-control measure, 1989 Senate Doc. No. 2136, § 205, but the Senate proposal was replaced with the current wording in a conference committee report, 1989 House Doc. No. 6565, § 37. The conference report was then approved by both

branches and enacted into law as St. 1989, c. 653.

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

[**14] The plaintiffs argue that their interpretation of the disputed language in the third paragraph of § 16 accords with the [*322] legislative purpose by requiring those persons who previously had paid nothing towards their HMO membership to begin paying 10% of the cost. ¹⁴ However, in many communities, including the city, setting the retiree (and nonunionized employee) HMO contribution rate at 10% would reduce the current levels of participant contributions, causing increases in municipal costs and providing further incentives to enroll in HMOs. The city's interpretation of this section of the statute provides much greater likelihood of reduced costs and increased controls by giving municipalities the flexibility to set rates in order to eliminate the impact of cost differentials on plan selection. In the case of unionized employees, rates will be set as part of a collective bargaining process. ¹⁵

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

The plaintiffs rely on § 218 to explain why the phrase "a minimum of ten percent" appears in *G. L. c. 32B, § 16*. They argue that this phrase was needed to account for unionized employees who were paying more than 10% at the time of enactment and who were, under the provisions of St. 1989, c. 653, § 218, to continue doing so during the life of their contract, without having bargained to that effect under the first proviso of

§ 16. Our explanation of "minimum" is more straightforward: it establishes a floor, not a ceiling.

[***15]

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

Although the amendment to § 16 disconnects the prior link between municipal contributions to indemnity plans and HMOs, our interpretation maintains a degree of congruence between the two types of coverage that is absent from the plaintiffs' interpretation.¹⁶ The gap between payments for [*323] [**1123] indemnity plans and HMOs is likely to be much smaller under our interpretation, particularly for retirees and nonunionized employees, than under the plaintiffs' interpretation. Under our construction of the [***16] language, municipalities will pay at least 50% and up to 90% of HMO premium costs. By comparison, for indemnity plans, municipalities pay 50% for active employees if *G. L. c. 32B, § 7*, is the governing provision, and a greater amount if § 7A has been adopted. For retirees, the municipality is not required to pay anything toward the premium cost of indemnity plans but most have adopted *G. L. c. 32B, § 9A* or § 9E, and pay 50% or more.¹⁷ Under the interpretation argued for by the plaintiffs, municipal contributions to HMO costs would range from 50% to 90% for unionized employees (depending on the outcome of negotiations), and would be fixed at 90% for retirees and nonunionized employees. This simply is not a logical result.

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

contributions, however, group the eligible persons differently, by establishing a rule that applies only to unionized employees.

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

[***17] The judge offered an additional rationale for the plaintiffs' interpretation based on his view of legislative intent. In the judge's opinion, § 16 "exhibits a special legislative concern" for governmental employees and retirees, and "prohibits a unilateral increase by employers in the percentage contribution" required from those persons, by allowing changes to the 10% contribution rate only through union approval or (in the case of retirees and nonunionized employees) through an act of the Legislature. It has been suggested that this restriction was intended to protect retirees and nonunionized employees, who lack the bargaining power of workers represented by a union. We find this argument unconvincing, considering that no such restriction applies, and no such protection is offered, to retirees enrolled in indemnity plans. For indemnity plan retirees, the municipal contribution rate, whatever its amount, is determined in all instances by decisions made at the local [*324] governmental level. It is more plausible to us that the Legislature intended to allow the contribution rates for HMOs to be determined through the local political process, as is the case with indemnity plans. Our interpretation [***18] allows that to occur.

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

So ordered.

ADVISORY 99/1

An Advisory from the Attorney General's Fair Labor Division on Vacation Policies

Pursuant to M.G.L. c. 23, s. 1(b), the Attorney General issues the following advisory:

Vacation Payments Are Wages

Employers who choose to provide paid vacation to their employees must treat those payments like any other wages under M.G.L. c. 149, s. 148. See *Massachusetts v. Morash*, 490 U.S. 107 (1989). Like wages, the vacation time promised to an employee is compensation for services which vests as the employee's services are rendered. Upon separation from employment, employees must be compensated by their employers for vacation time earned "under an oral or written agreement." M.G.L. c. 149, s. 148. Withholding vacation payments is the equivalent of withholding wages and, as such, is illegal.

Employers may establish the terms of employment and determine the hourly rate or salary to be paid as well as how many hours the employee is expected to work. Employers may likewise establish the amount of paid vacation the employee will receive and/or a specific time of the year when the employee can take a vacation, depending on the needs or demands of the business. Employers may establish procedures regarding the scheduling of vacations; i.e., whether employees must notify the employers as to their intent to take vacation, when they intend to take it, and how much vacation time they plan to take.

No Forfeiture of Earned Vacation Time

General Laws c. 149, s. 148, provides that no employer shall "by special contract with an employee or by any other means exempt himself" or herself from the statute or from its penalty provision in Section 150. Since the statute provides for the timely payment of all wages earned, an employer may not enter into an agreement with an employee under which the employee forfeits earned wages, including vacation payments. Examples of these agreements are vacation policies that condition the payment of vacation time on continuous employment or that require that employees provide notices to quit. Employees who have performed work and leave or are fired, whether for cause or not, are entitled to pay for all the time worked up to the termination of their employment, including any earned, unused vacation time payments.

Generally, time earned under any vacation policy need be compensated only with the equivalent time off. The exception is where an employee separates from employment or where an employee agrees to receive monetary compensation in lieu of vacation time.

Accrual of Vacation

An employer may cap the amount of vacation time that an employee may accrue or earn. For example, an employer may state that after accruing a total of four weeks of vacation leave, the employee will cease to earn any additional vacation time until the employee uses some of the accumulated vacation time. Thus, the employee would not earn additional vacation time until the employee's total vacation time falls below four weeks. While the employee retains all earned vacation leave, the employer is permitted to cap, prospectively, the amount of vacation time or pay which it must provide to the employee.

An acceptable variation of an accrual cap is the vacation policy known as “use it or lose it.” Under this policy, employees must use all of their accumulated vacation time by a certain period of time or lose all or part of it. Some policies allow the employees to “carry over” a certain number of hours of vacation after the expiration of the designated time period. The “use it or lose it” policy effectuates a cap on accrual by limiting the total amount of vacation time that an employee may accrue during the term of their employment. Under such policies, the employer must provide adequate prior notice of the policy to employees and must ensure that employees have a reasonable opportunity to use the accumulated vacation time within the time limits established by the employer. Otherwise, a cap on accrual or a “use it or lose it” policy may result in an illegal forfeiture of earned wages.

Pro-rating Vacation Pay

Employers can protect themselves by adopting clear and unambiguous vacation policies. For example, an employer may provide that employees begin to earn vacation time after a specific probationary period, such as after six months of employment. Another example of an unambiguous policy is one that provides that an employee earns vacation time at a rate of one day at the end of each month.

However, a policy that provides for employees to earn a given amount of vacation “a year,” “per year,” “on their anniversary date,” or “every six months” is not clear because the definitions of the time periods are imprecise and subject to confusion concerning their start and end dates. Where an employer’s policy is ambiguous, the actual time earned by the employee will be pro-rated according to the time period in which the employee actually works. For example, if an employee is to receive twelve vacation days “in a year,” and the employee voluntarily or involuntarily terminates his or her employment after ten months of employment, the employee would be entitled to ten vacation days or one day per month worked. Discharge prior to one year without pro rata payment constitutes failure to pay wages earned under Section 148.

Annual Leave

Some employers combine sick leave, personal leave, vacation leave, and/or other types of leave into one general category called “annual leave.” This combined leave is also called paid time off, earned time, or paid days off. Employers who provide annual leave instead of vacation leave should designate the amount of hours or days of the leave which are considered vacation time. Employers who have previously designated vacation time in this manner, whether orally or in writing, shall produce proof of such designation to rebut a complaint of unpaid wages pursuant to M.G.L. c. 149, s. 148.

All Amendments to Vacation Policies Apply Prospectively

As is the case with any condition of employment affecting wages, employers may amend the terms of their vacation policies at any time. Any such amendment, however, must be prospective in nature.

We urge employers to give employees copies of their written vacation policy in advance and to have each employee acknowledge in writing his or her understanding of the policy.

OPEB Special Legislation

- Holliston Ch. 189 of 2013 (<https://malegislature.gov/Laws/SessionLaws/Acts/2013/Chapter189>)
- Plymouth Ch. 113 of 2012 (<https://malegislature.gov/Laws/SessionLaws/Acts/2012/Chapter113>)
- Wayland Ch. 372 of 2010 (<http://www.malegislature.gov/Laws/SessionLaws/Acts/2010/Chapter372>)
- Hanover Ch. 66 of 2009 (<http://www.malegislature.gov/Laws/SessionLaws/Acts/2009/Chapter66>)
- Ipswich Ch. 514 of 2008 (<http://www.malegislature.gov/Laws/SessionLaws/Acts/2008/Chapter514>)
- Lincoln Ch. 474 of 2008 (<http://www.malegislature.gov/Laws/SessionLaws/Acts/2008/Chapter474>)
- Concord Ch. 185 of 2008 (<http://www.malegislature.gov/Laws/SessionLaws/Acts/2008/Chapter185>)
- Belmont Ch. 97 of 2007 (<http://www.malegislature.gov/Laws/SessionLaws/Acts/2007/Chapter97>)
amended Ch. 382 of 2010 (<http://www.malegislature.gov/Laws/SessionLaws/Acts/2010/Chapter382>)
- Franklin Ch. 272 of 2006 (<http://www.malegislature.gov/Laws/SessionLaws/Acts/2006/Chapter272>)
- Sudbury Ch. 72 of 2006 (<http://www.malegislature.gov/Laws/SessionLaws/Acts/2006/Chapter72>)
- Arlington Ch. 161 of 2005 (<http://www.malegislature.gov/Laws/SessionLaws/Acts/2005/Chapter161>)
- Wellesley Ch. 88 of 2004 (<http://www.malegislature.gov/Laws/SessionLaws/Acts/2004/Chapter88>)
- Lexington Ch. 317 of 2002 (<http://www.malegislature.gov/Laws/SessionLaws/Acts/2002/Chapter317>)
- Winchester Ch. 139 of 2002 (<http://www.malegislature.gov/Laws/SessionLaws/Acts/2002/Chapter139>)
- Hingham Ch. 126 of 2002 (<http://www.malegislature.gov/Laws/SessionLaws/Acts/2002/Chapter126>)
- Waltham Ch. 98 of 2002 (<http://www.malegislature.gov/Laws/SessionLaws/Acts/2002/Chapter98>)
- Needham Ch. 10 of 2002 (<http://www.malegislature.gov/Laws/SessionLaws/Acts/2002/Chapter10>)
- Bedford Ch. 346 of 2000 (<http://www.malegislature.gov/Laws/SessionLaws/Acts/2000/Chapter346>)
- Brookline Ch. 472 of 1998 (<http://www.malegislature.gov/Laws/SessionLaws/Acts/1998/Chapter472>)
amended Ch. 143 of 2009 (<http://www.malegislature.gov/Laws/SessionLaws/Acts/2009/Chapter143>)

***Municipal Unemployment
Task Force Report***

- Convened to review Unemployment Insurance (UI) issues raised by c/t's (see Town of Lynnfield case)
- Reviewed current state and federal law, US DOL mandates, c/t practices, DUA practice and policies, impact on both employees and c/t employers
- Report issued on November 15, 2012

***Municipal Unemployment
Task Force Report
Areas Identified:***

- Retirees
- School-Based Employees
- Seasonal Employees
- Election Day Workers

***Municipal Unemployment
Task Force Report
Areas Identified:***

- Election Workers
- On-Call Employees
- Method of Contribution to UI System by Municipal Employers
- Process, Policy and Practice
- Summary and Conclusion

***Municipal Unemployment
Task Force Report***

■ **RETIREES:**

- Issue – Payment of UI benefits to 960 and “critical needs” retirees who return to prior c/t employer
- Issue – Public employees who apply for and receive UI benefits upon reaching mandatory retirement age of 65

***Municipal Unemployment
Task Force Report***

■ **RETIREES:**

- Solution Identified – New Legislation:
- To reduce UI benefits of all public and private retirees receiving a defined benefit pension
- Reduce UI benefits by 65% of the retiree’s weekly pension payment

***Municipal Unemployment
Task Force Report***

■ **RETIREES:**

- Outcome: Covered retirees with annual pension of \$53,920 or higher would not received any UI benefits
- Pension offset would surpass UI benefits
- Retirees earning below threshold would receive little UI, due to formula

***Municipal Unemployment
Task Force Report***

- **SCHOOL-BASED EMPLOYEES:**
- **Issue – Non-tenured teachers who are pink-slipped, uncertain about next year**
- **Issue – School-based employees who are paid directly by c/t, e.g., crossing guards, nurses**
- **Issue – Substitute teachers**

***Municipal Unemployment
Task Force Report***

- **SCHOOL-BASED EMPLOYEES:**
- **Solution:**
- **For school-based employees paid by c/t, new legislation making them ineligible for UI when no school**
- **Would include them in definition of “reasonable assurance,” same as for school employees**

***Municipal Unemployment
Task Force Report***

- **SCHOOL-BASED EMPLOYEES:**
- **Solution – Substitute teachers would also come under def. of “reasonable assurance” policy**
- **Outcome – All public employees providing service to a school with a “reasonable assurance” of continuity not eligible for UI benefits**

***Municipal Unemployment
Task Force Report***

- **SEASONAL EMPLOYEES:**
- **Issue** – How to ensure “seasonal certification exemption” from UI benefits is properly managed
- **Solution** – DUA must clarify its rules and procedures to ensure uniformity
- **Outcome** – Would allow c/t's more flexibility to use seasonal employees

***Municipal Unemployment
Task Force Report***

- **ELECTION DAY WORKERS:**
- **Issue** – Individuals who work only elections and are UI eligible
- **Solution** – Recommends statutory change to exempt election day work from UI, if wages received are less than \$1k/ year
- **Outcome** – No UI liability for < \$1k

***Municipal Unemployment
Task Force Report***

- **ON-CALL EMPLOYEES:**
- **Two categories:**
- 1) On-call firefighters & EMT's (who are statutorily exempt from UI)
- 2) General group of on-call employees, such as substitute teachers

***Municipal Unemployment
Task Force Report***

- **ON-CALL EMPLOYEES:**
- **Solution – For on-call firefighters & EMT's, DUA recommends c/t's "properly identify them" for UI claims**
- **Solution – For other on-call personnel, recommends DUA uniformly apply the rule that p-t, intermittent employees not eligible for UI if work > 1 hour/week**

***Municipal Unemployment
Task Force Report***

- **C/T CONTRIBUTIONS TO UI SYSTEM:**
- **Issue – Should c/t's opt to contribute to UI Trust Fund or self-insure?**
- **Recommendation – Keep present system**
- **Outcome - Most c't's self-fund, still more economically preferable than contributing to UI Trust Fund**

***Municipal Unemployment
Task Force Report***

- **PROCESS, POLICY AND PRACTICE:**
- **Task Force recommends DUA make many policy, procedural changes to ensure better access by c/t's, uniform internal policies, enforcement, create DUA c/t unit, training to c/t's**
- **Task Force recommends c/t's better manage their UI issues internally**

***Municipal Unemployment
Task Force Report***

- **SUMMARY AND CONCLUSION:**
- **Task Force hopes combination of legislative changes, DUA policy changes, commitment to uniformity, and c/t recognition of their need to better manage their UI costs will provide economic relief to c/t's**
- **Hopes remain to be seen**



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Prospective Participants

[SRBTF Investment Checklists \(12/24/14\)](#)

[Investment Agreement Between SRBT Fund Board and Municipality \(5/18/15\)](#)

[Sample Resolution for Municipalities \(12/24/14\)](#)

[Sample of Incumbency Certificate \(12/24/14\)](#)

[Form of Opinion of Counsel for Municipalities \(12/24/14\)](#)

[State Retiree Benefits Trust Fund Frequently Asked Questions \(3/3/2015\)](#)

[Current SRBTF Participants \(8/6/2015\)](#)

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Town of Ayer
Town of Bedford
BiCounty Educational Collaborative, Franklin, MA
Town of Boxford
Town of Brewster
Town of Brookline
Town of Burlington
Town of Chelmsford
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