role in the process of negotiations. See G. L. c. 150E, § 1;[7] *Labor Relations Comm'n* v. *Natick*, 369 Mass. 431, 438 (1976); *Weymouth School Comm.*, 9 M.L.C. 1091, 1094 (1982).

The role of the town manager or board of selectmen in the collective bargaining process is an essentially executive function mandated by statute. We have held that, when a board of selectmen is acting in furtherance of a statutory duty, the town meeting may not command or control the board in the exercise of that duty. See *Russell* v. *Canton*, 361 Mass. 727 (1972); *Breault* v. *Auburn*, 303 Mass. 424 (1939); *Lead Lined Iron Pipe Co.* v. *Wakefield*, 223 Mass. 485 (1916). These decisions reflect an application of the more general principle that "[a] municipality can exercise no direction or control over one whose duties have been defined by the Legislature." *Breault* v. *Auburn*, *supra* at 428, quoting *Daddario* v. *Pittsfield*, 301 Mass. 552, 558 (1938).

We think it follows from these considerations that the essence of good faith bargaining would be thwarted if the parties entered negotiations at a point where the very subject of those negotiations — the insurance premium contribution rate — had already been inflexibly established by the town meeting. Good faith bargaining requires "an open and fair mind as well as a sincere effort to reach a common ground." *School Comm. of Newton* v. *Labor Relations Comm'n*, 388 Mass. 557, 572 (1983). It would be antithetical to this notion to permit a party to the bargaining process to come to the table with a fait accompli.[8]

[7]With respect to unionized school employees, the town's bargaining agent is the school committee or its representative. See G. L. c. 150E, § 1 (1988 ed.).

[8]Furthermore, 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. If a party was unable to achieve the desired contribution rate through collective bargaining, it could simply put the issue before the town meeting and pack the meeting with voters who supported its position. Such a practice would render the bargaining process an empty formality. "We do not attribute to the Legislature an intention to pass a largely ineffective collective bargaining statute . . . ." *School Comm. of Newton*, *supra* at 566. See *Weymouth School Comm.*, 9 M.L.C. 1091, 1095 (1982) (noting that, if a benefit can be obtained through collective bargaining, it would "undermine the purposes of Chapter 150E" to permit an end run around that process).

In a situation where two or more statutes relate to a common subject matter, they should be construed together to constitute an harmonious whole consistent with the legislative purpose. *Board of Educ.* v. *Assessor of Worcester*, 368 Mass. 511, 513-514 (1975). Consistent with this principle, we doubt the Legislature intended in G. L. c. 32B, § 7A, to undermine the well-established collective bargaining requirement that exists in this area.[9] Rather, § 7A, read together with the pertinent provisions of G. L. c. 150E, preserves, as to unionized employees, traditional functions. Negotiation of any contribution rate over 50% is handled by the town manager or board of selectmen. Negotiations would then be followed by a request for an appropriation necessary to fund the costs of any agreed upon contribution rate.[10] By passing on

[9]In fact, the procedure proposed by the plaintiffs in this case has been found to be impermissible on several occasions. In *Town of Provincetown*, 9 M.L.C. 1315 (1982), the town and its employees' union were engaged in collective bargaining for a new contract. The union presented a list of demands, which did not include an increase in the contribution to its members' insurance premiums. After negotiations stalled, the union put before the town meeting a proposal to authorize an additional 30% contribution under § 7A. The town meeting adopted the proposal. Subsequently, the town filed a charge with the Labor Relations Commission alleging that the union had bargained in bad faith in violation of G. L. c. 150E, § 10 (*b*)(1) & (2). Reasoning that "bypassing the employer's or employees' representative on mandatory subjects subverts collective bargaining," 9 M.L.C. at 1320, the commission held that the union's attempt to use § 7A rather than collective bargaining to obtain the additional 30% contribution constituted illegal bad faith bargaining. See *id.* at 1321. Similar results have been reached in *Commonwealth* v. *Labor Relations Comm'n*, 404 Mass. 124 (1989) (unilateral executive action on mandatory subject of collective bargaining prior to impasse constitutes illegal bad faith bargaining); *School Comm. of Newton* v. *Labor Relations Comm'n*, 388 Mass. 557 (1983) (same); *Weymouth School Comm.*, 9 M.L.C. 1091 (1982) (recourse to town's legislative branch to obtain job benefit available through collective bargaining constitutes illegal bad faith bargaining).

[10]The last sentence of the first paragraph of § 7A extends the benefits of any increase in the contribution rate obtained by unionized employees to nonunionized employees. However, a municipal employer may pay

the latter, the town meeting will have its say on the subject. Nothing further argued by the plaintiffs dissuades us from this view.[11] Our conclusion renders it unnecessary to consider the issue raised in the cross appeal by the plaintiffs with respect to the retroactive payment of the benefits voted by the town meeting.

The judgment is reversed. A new judgment is to enter which declares that the defendant board is not obligated to abide by the December 14, 1987, vote of the special town meeting which purported to establish under G. L. c. 32B, § 7A, the town's rate of contribution on group insurance benefits paid the town's employees at 99%.

So ordered.

a higher premium percentage for certain employees pursuant to G. L. c. 32B, § 15, as appearing in St. 1988, c. 82. See also St. 1989, c. 653, § 37, amending G. L. c. 32B, § 16.

[11]In particular, we reject the plaintiffs' argument that the definition of the term "appropriate public authority" in G. L. c. 32B, § 2 (*a*), settles the issue because the Legislature, if it had intended to include the board of selectmen in the process outlined in § 7A, would have used "appropriate public authority" in place of "governmental unit." The Legislature's choice not to use the term "appropriate public authority" merely indicates that the Legislature did not intend to confer the authority stated in § 7A solely on the board of selectmen. The choice by no means implies exclusion of the board from a proper role in the statutory process. Indeed, if the plaintiffs' argument is accepted, the school committee of a town or its representative would have no role to play establishing § 7A benefits. This result also is not contemplated by G. L. c. 150E.

LYNN TEACHERS UNION, LOCAL 1037, AFT, AFL-CIO, *vs.* MASSACHUSETTS COMMISSION AGAINST DISCRIMINATION.

Essex. September 11, 1989. - January 22, 1990.

Present: LIACOS, C.J., WILKINS, ABRAMS, NOLAN, LYNCH, O'CONNOR, & GREANEY, JJ.

Employment, Discrimination. *Massachusetts Commission Against Discrimination. Anti-Discrimination Law*, Employee, Sex, Maternity leave, Prima facie case, Burden of proof. *Statute*, Construction.

The Massachusetts Commission Against Discrimination correctly found a "continuing violation" of G. L. c. 151B, § 4 (1), in a union's failure to credit two female employees with seniority under its seniority system's requirement of consecutive years of service because of the employees' interruption of service (involuntarily) due to an unlawful maternity leave policy, with the result that the six-month filing limitation of G. L. c. 151B, § 5, did not apply. [520-523]

The Massachusetts Commission Against Discrimination correctly determined that the exemption embodied in G. L. c. 151B, § 4 (17) (*a*), referring specifically to age discrimination, did not apply to cases of sex discrimination. [523-525] LYNCH, J., with whom O'CONNOR, J., joined, dissenting.

Complainants before a commissioner of the Massachusetts Commission Against Discrimination established a prima facie case that a certain union seniority system unlawfully discriminated against them, where they demonstrated that they were denied seniority credit as the result of being unlawfully forced to resign their employment on account of pregnancy. [526-527] GREANEY, J., concurring.

CIVIL ACTION commenced in the Superior Court Department on October 28, 1985.

The case was heard by *John T. Ronan*, J.

The Supreme Judicial Court granted a request for direct appellate review.

Deborah L. McCutcheon for the plaintiff.

Jean A. Musiker for Massachusetts Commission Against Discrimination.