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December 18, 2002

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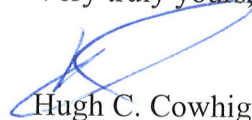
Re: Health Insurance Benefits

Dear Barbara:

The percentage of premium to be paid under G.L. 32B, Section 7A, in excess of 50%, is determined by the Board of Selectmen, not the Town Meeting.

I am enclosing copy of Anderson v. Wrentham, 406 Mass. 508.

Very truly yours,



Hugh C. Cowhig

HCC/cbs

Enc. 1

CC: Board of Selectmen

JAMES A. ANDERSON & others¹ vs. BOARD OF SELECTMEN
OF WRENTHAM & another.²

Norfolk, November 9, 1989. - January 18, 1990.

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

Municipal Corporations, Collective bargaining, Town meeting, Selectmen, Group insurance, Officers and employees.

General Laws, c. 32B, § 7A, a local option statute which permits municipalities to contribute more than 50% of their employees' group insurance premiums, did not empower a town meeting to set unilaterally the town's rate of contribution. [511-514]

CIVIL ACTION commenced in the Superior Court Department on March 9, 1988.

The case was heard by *William H. Welch, J.*

The Supreme Judicial Court on its own initiative transferred the case from the Appeals Court.

Paul V. Mulhern, Jr., for the defendants.

Charles J. Maguire, Jr., for the plaintiffs.

Margery E. Williams, for Massachusetts Teachers Association, amicus curiae, submitted a brief.

GREANEY, J. We are asked in this case to interpret G. L. c. 32B, § 7A, a local option statute which permits municipalities to contribute more than 50% of their employees' group insurance premiums.³ In particular, we must de-

¹Two other Wrentham police officers, the town's fire chief and superintendent of public works, and the Wrentham Police Association, an "employee organization" within the meaning of G. L. c. 150E, § 1 (1988 ed.).

²The town of Wrentham.

³Section 7A (1988 ed.) reads, in pertinent part, as follows:

"A governmental unit which has accepted the provisions of section ten [of c. 32B] and which accepts the provisions of this section may, as a part

cide whether § 7A empowered the Wrentham town meeting to set unilaterally the town's rate of contribution toward the group health and life insurance provided to the town's employees. We conclude that § 7A did not authorize the town meeting's action and reverse a Superior Court judgment that made a contrary determination.

The background of the case is as follows. On December 14, 1987, a special town meeting was convened in Wrentham. At the meeting, the voters agreed to accept G. L. c. 32B, § 7A.⁴ The meeting then voted to pay 99% of the premium of the group life and health insurance for all the town's employees and their dependents and to transfer \$150,000 from the town's treasury to pay for the costs of the additional contribution percentage. Approximately two weeks later, the board of selectmen (board) refused to comply with the special town meeting vote to pay 99% of the group life and health insurance premiums, but, rather stated that it would continue to fund only 50% of the insurance premium costs, the minimum amount required by § 7A. The board's refusal to pay the additional 49% represents a net weekly loss to each participating town employee of \$14.58 for individual coverage and \$34.54 for family coverage.

The plaintiffs, five town employees, and the Wrentham Police Association, commenced an action in the Superior Court seeking a declaration pursuant to G. L. c. 231A, that the town meeting had the authority to set unilaterally the 99%

of the total monthly cost of contracts of insurance authorized by sections three and eleven C [of c. 32B], with contributions as required by section seven [of c. 32B], make payment of a subsidiary or additional rate which may be lower or higher than a premium determined by the governmental unit to be paid by the insured, the combination of which shall result in the cent of the total monthly cost of more, but not less, than fifty per cent of the total monthly cost for such insurance. No governmental unit, however, shall provide different subsidiary or additional rates to any group or class within that unit."

⁴Sometime prior to this meeting, the town had voted to accept G. L. c. 32B in accordance with the provisions of § 10 thereof.

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contribution rate.⁵ The plaintiffs also sought an order directing the board to implement the town meeting vote on the rate. After the defendants filed their answer, the plaintiffs moved for summary judgment pursuant to Mass. R. Civ. P. 56 (a), 365 Mass. 824 (1974), essentially on the undisputed facts set forth above. A judge in the Superior Court allowed the plaintiffs' motion, concluding in his memorandum that "it is the town meeting . . . which sets the rate under G. L. c. 32B, § 7A." A judgment entered declaring that the board was obligated to abide by the town meeting vote of December 14, 1987, that established the contribution rate at 99%. The judgment also stated that the relief ordered would operate prospectively with the 99% contribution rate to be used by the selectmen in negotiating the next insurance contract or contracts. The plaintiffs filed a motion seeking reconsideration of the determination that the new rate should not apply retroactively. That motion was denied. The defendants appealed from the entire judgment. The plaintiffs appealed from the portions of the judgment concerning the retroactivity of the new contribution rate. We transferred the case to this court on our own motion.

In controversy is the interpretation of the language in § 7A, which refers to "a premium determined by the governmental unit to be paid by the insured." The term "[g]overnmental unit" is defined in G. L. c. 32B, § 2 (f), as "any political subdivision of the commonwealth," while "[p]olitical subdivision" is defined in § 2 (g), as including a "town." The plaintiffs contend that the reference in § 7A to the town (as "the governmental unit") can mean only the town meeting, and thus excludes the board. The plaintiffs maintain that this conclusion is supported by the separate definition in § 2 (a) of "[a]ppropriate public authority," as including the board of selectmen, and the reference in other parts of G. L. c. 32B to the "appropriate public authority" (board) as performing other duties with respect to insurance

⁵There is no dispute that the town meeting properly accepted § 7A in accordance with G. L. c. 32B, § 7A (d).

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coverages for town employees. See, e.g., G. L. c. 32B, §§ 3, 5, & 8A (1988 ed.). The defendants, on the other hand, argue that the reference to the town in § 7A is meant to be a more general reference to the municipality as a whole, not exclusively to the town meeting. The defendants point to numerous other provisions of G. L. c. 32B (which we need not detail here), that they maintain will have a strained and illogical meaning if "governmental unit" is rigidly construed to mean only "town meeting."⁶

We agree with the defendants' position that the reference in § 7A to the "town" is a general reference to the municipality as a whole and not a specific reference to the town meeting. In substance, § 7A requires that any premium contribution above the 50% minimum be "determined by the governmental unit." That determination requires several distinct steps. First, the town must vote to accept § 7A under the procedure set forth in G. L. c. 32B, § 7A (d). Second, a particular contribution percentage must be selected. Third, the town must fund the resulting contribution percentage. It is clear that the town meeting is the only branch of town government empowered to take the first and third steps. See (with respect to the first step) *Jenkin v. Medford*, 380 Mass. 124, 126-127 (1980); and (with respect to the third step) G. L. c. 40, § 5 (1988 ed.); G. L. c. 150E, § 7 (1988 ed.). The second step, however, involves the chief executive officer of the town, in this case the board of selectmen, in a mandatory task. Under State law, the contribution percentage to be paid on behalf of unionized employees must be collectively bargained by the employer. See G. L. c. 150E, § 6; *School Comm. of Medford v. Labor Relations Comm'n*, 380 Mass. 932 (1980). In that collective bargaining process, the town manager or board of selectmen is the exclusive bargaining representative of a town; the town meeting has no direct

⁶A brief has been filed by the Massachusetts Teachers Association as amicus curiae which supports the result sought by the defendants on this issue.