

## **CLIENT ALERT: Supreme Judicial Court Affirms Right of Massachusetts Cities, Towns and School Districts to Unilaterally Change Retiree Health Insurance Contribution Rates**

In a case which will provide cities, towns, and school districts with another tool to address the problem of increasing health insurance costs, the Massachusetts Supreme Judicial Court has ruled that such employers are not required to bargain with unions before unilaterally reducing the percentage contribution to retired employees' health insurance premiums. The case, [City of Somerville v. Commonwealth Employment Relations Board](#), was decided by the Court on February 3, 2015.

The facts of the Somerville case are as follows: The City's municipal and school department employees are represented by a variety of labor organizations. The City had previously accepted the provisions of Mass. G.L. c. 32B, which allowed it to offer health insurance to active and retired employees. For some years the City had paid 99% of the premium for retiree health insurance premiums under the City's indemnity plan, and between 80% and 90% of premium for retirees selecting coverage under HMOs. The City was able to do this because it had accepted the provisions of G.L. c. 32B, Section 9E, which authorized it to cover more than 50% of the premium cost.

In 2009, the City decided to reduce its contribution rates to 60% of the premium under the indemnity plan, and 75% under the HMO. It imposed the new rates without bargaining with the various unions representing city and school employees. The unions filed prohibited practice charges with the state Department of Labor Relations ("DLR"), claiming that the unilateral implementation violated G.L. c. 150E, the public sector collective bargaining statute. Specifically, the unions claimed that the unilateral action violated the City's duty to bargain in good faith over matters relating to wages, hours, and other terms and conditions of employment.

The unions' DLR charges were submitted for decision to the Commonwealth Employment Relations Board ("CERB"), which reviews decisions of the DLR. The CERB ruled that health insurance contribution rates for retirees were a mandatory subject of collective bargaining, and that the City had violated Chapter 150E by unilaterally changing such rates. It ordered the City to rescind the unilaterally-imposed changes, and to make whole retirees for any economic losses resulting from the unilateral change. CERB also ordered the City to bargain any proposed retiree premium changes with the unions to agreement or impasse. The City appealed and the Supreme Judicial Court agreed to hear the case directly.

The unanimous Court ruled that the health insurance contribution rate for retired employees was not a mandatory subject of bargaining under c. 150E. As a result, the City had no obligation to bargain with unions over the increase to retiree health insurance premium contributions.

In reaching this result, the Court reasoned that G.L. c. 32B expressly granted cities and towns the right to determine retiree health insurance rates. This grant of authority, the Court stated, would be “wholly undermined” if the employer was obligated to collectively bargain the matter.

It is worth noting that the collective bargaining agreements at issue in Somerville contained no specific provision addressing health insurance contribution rates for retirees. However, even if the contracts contained such provisions, the result would likely not change. Section 7 of Chapter 150E provides that a collective bargaining agreement prevails over contrary terms of certain enumerated statutes. The Court pointed out that Chapter 32B is not among those enumerated statutes. Therefore, according to the Court’s reasoning, the provisions of c. 32B Section 9E would prevail even in the face of a contrary contractual provision.

The problem of ever-increasing health care costs has bedeviled public sector employers for years. Increased power to alter the contribution rates for retirees will be a welcome tool for municipalities and school districts in seeking to address this problem.

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