

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT
CIVIL ACTION NO.

09-5021-C

MASSACHUSETTS COMMUNITY
COLLEGE COUNCIL, INCORPORATED,
MASSACHUSETTS TEACHERS
ASSOCIATION, JOHN CIPORA, MARIA
VITA CALKINS, CYNTHIA DUDA,
PATRICK LOCHELT
and ELIZABETH JANE SMITH,

Plaintiffs,

COMPLAINT

v.

BOARD OF HIGHER EDUCATION, BOARD
OF TRUSTEES OF THE UNIVERSITY OF
MASSACHUSETTS, GROUP INSURANCE
COMMISSION, COMMONWEALTH
HEALTH INSURANCE CONNECTOR
AUTHORITY,

Defendants.

I. Introduction

1. On April 12, 2006, the General Court enacted St. 2006, c. 58, commonly known as the Health Care Reform Act. The stated purpose of the Act is "forthwith to expand access to health care for Massachusetts residents." Emergency preamble. But despite this policy to expand health care access, the Commonwealth itself does not provide health insurance coverage to many of its employees who are higher education faculty. This action alleges that many of these employees are, in fact, eligible for Group Insurance Commission (GIC) coverage under the provisions of G.L. c. 32A, but are erroneously excluded. Other

employees are not eligible for coverage under G.L. c. 32A, but are entitled to “pro-rated contributions to the chosen plan [offered by the Commonwealth Health Insurance Connector Authority] on behalf of the commonwealth” under the Health Care Reform Act. However, the Commonwealth makes no monetary contribution as required by the Act.

2. Accordingly, this action seeks a declaration and relief in the nature of mandamus to: (a) require the enrollment of eligible higher education faculty who are erroneously excluded from the GIC Plans; and (b) require the GIC to “develop a protocol for making pro-rated contributions to the chosen plan [offered by the Commonwealth Health Insurance Connector Authority] on behalf of the commonwealth” for higher education faculty who are ineligible to enroll in state employee health insurance offered by the GIC.

II. Jurisdiction

3. Jurisdiction over this action lies in the Superior Court for Suffolk County, as provided in G.L. c. 231A, § 1 (declaratory judgment) and G.L. c. 249, § 5 (mandamus).

III. Parties

A. Plaintiffs

4. The Plaintiff, Massachusetts Community College Council, Incorporated (MCCC), is a Massachusetts non-profit corporation and is an “employee organization” within the meaning of G.L. c. 150E, § 1. MCCC is the “exclusive representative,” pursuant to G.L. c. 150E, §§ 4 & 5, of a bargaining unit of “all full and part-time professional employees teaching credit courses in the Community Colleges’ Divisions of Continuing Education,” which includes employees of the Commonwealth who are (a) eligible for enrollment in health insurance offered by the Group Insurance Commission but are erroneously treated

as ineligible for such enrollment; or (b) “ineligible for group insurance commission enrollment” within the meaning of G.L. c. 176Q, § 9. The MCCC’s principal place of business is 27 Mechanic Street, Suite 104, Worcester, Worcester County, Massachusetts.

5. The Plaintiff, Massachusetts Teachers Association (MTA), is a Massachusetts non-profit corporation and is an “employee organization” within the meaning of G.L. c. 150E, § 1, with a principal place of business at 20 Ashburton Place, Boston, Suffolk County, Massachusetts.
6. The Plaintiff, John Cipora, resides at 34 Stimson Street, Palmer, Hampden County, Massachusetts, is an employee of the Commonwealth at Holyoke Community College (HCC), in the bargaining unit described in ¶4, above, and has taught from three to six courses in each fall and spring semester from Fall 2006 through the present.
7. The Plaintiff, Maria Vita Calkins, resides at Two Ruth Evelyn Drive, Oxford, Worcester County, Massachusetts, is an employee of the Commonwealth at Quinsigamond Community College (QCC) in the bargaining unit described in ¶4, above, and has taught four courses in each spring and fall semester from Fall 2006 through the present, as well as one summer semester course in 2207 and 2008.
8. The Plaintiff, Cynthia Duda, resides at Four Carpenter Street, Salem, Essex County, Massachusetts, is an employee of the Commonwealth at Bunker Hill Community College (BCC) and North Shore Community College (NSCC) in the bargaining unit described in 4, above, and has taught at least five courses at BCC and NSCC, combined, in each semester from Fall 2006.
9. The Plaintiff, Patrick Lochelt, resides at 59C Arlington Street, Haverhill, Essex County, Massachusetts, is an employee of the Commonwealth at Northern Essex Community

College (NECC), Middlesex Community College (MCC), in the bargaining units described in ¶¶ 4, above, and ay the University of Massachusetts at Lowell (UML), and has taught at least three courses in each spring and fall semester, in addition to summer semester courses, at NECC, MCC and UML combined.

10. The Plaintiff, Elizabeth Jane Smith, resides at 105 Eastgate Road, Brewster, Barnstable County, Massachusetts, is an employee of the Commonwealth at Cape Cod Community College (CCCC), in the bargaining unit described in ¶ 4, above, who has taught one course in each spring and fall semester since Fall Semester 2006, who is “ineligible for group insurance commission enrollment,” within the meaning of G.L. c. 176Q, § 9.

B. Defendants

11. The Defendant, Board of Higher Education (BHE), is an agency of the Commonwealth established pursuant to G.L. c. 15A, § 4, which, *inter alia*, oversees the Commonwealth’s system of public higher education as provided by G.L. c. 15A, § 9 and other applicable provisions of law. Pursuant to G.L. c. 150E, § 1, the BHE is the “employer” of employees of the state colleges or community colleges, including the individual Plaintiffs named herein, for purposes of collective bargaining. The BHE also performs certain payroll and human resource functions for the state colleges and community colleges, including enrollment for Group Insurance Commission benefits. The BHE’s principal place of business is One Ashburton Place, Room 1401, Boston, Suffolk County, Massachusetts.
12. The Defendant, Board of Trustees of the University of Massachusetts (U. Mass.), is an agency of the Commonwealth established pursuant to G.L. c. 75, § 1A, which, *inter alia*, establishes those policies necessary for the administrative management of personnel, staff