

In The Matter Of
The Arbitration Between:

Medford Police Patrolmen's Association
And
City of Medford

AAA Case No. 11 390 01557 09
Grievance Concerning Quinn Bill Payments
Date of Award: June 9, 2010

Preliminary Statement

Arbitration hearings involving the above-captioned matter were held in Medford, Massachusetts on December 17, 2009, February 2 and March 22, 2010. Representing the City of Medford at such hearings was Paul L. Kenny, Esq., and representing the Association was Alan J. McDonald, Esq.. A transcript of the first two days of hearing was made; both parties filed post-hearing briefs which were received by the undersigned on May 22, 2010.

Issues

The parties did not agree upon the issues to be submitted for decision. In essence, this case presents the following questions: 1) Is the grievance substantively arbitrable? 2) If so, did the City violate Article XVIII, Section 3 of the collective bargaining agreement with respect to the educational incentive payments made by it to bargaining unit officers on or after July 1, 2009? 3) If so, what shall be the remedy?

Background

This case concerns the City's failure to pay 100% of the educational incentive payments (otherwise known as Quinn Bill payments) to its qualifying police officers for fiscal year 2010 (July 1, 2009 through June 30, 2010).

In particular, the circumstances surrounding this case were as follows. Ch. 41, s. 108L of the General Laws of Massachusetts establishes an educational incentive pay program for police officers by rewarding them with graduated percentage increases to their base pay for earning qualifying educational credits or degrees from accredited institutions - the greater the number of educational credits or the higher the degree the greater the percentage increase to base pay. The State Board of Higher Education is charged with the responsibility of maintaining a list of approved courses and for certifying the amount of salary increases to be granted to the members of a police department who have successfully earned qualifying educational credits.

Ch. 41, s. 108L is a local option law meaning that its provisions apply once a city or town specifically adopts the law but not beforehand. The law further provides that the Commonwealth shall reimburse any city or town which adopts Ch. 41, s. 108L for one-half the costs of the educational incentive payments it makes which have been certified by the State Board of Higher Education.¹ The way this reimbursement typically works under the statute is that a city or town appropriates 100% of the cost of the educational incentive (Quinn Bill) payments for a given fiscal year and then receives a 50% reimbursement for those payments from the Commonwealth in the following fiscal year. This 50% reimbursement is part of what is known as local aid.

The evidence was that in August 1975 the City of Medford adopted the provisions of ch.41, s. 108L.

The City and the police have had collective bargaining agreements since the early 1970s. At one time the police had longevity pay as a contractual benefit but with the adoption of the Quinn Bill in 1975, police officers had to choose between longevity pay and Quinn Bill benefits, and now most officers receive Quinn Bill benefits rather

¹ With regard to reimbursement Ch. 41, S. 108L provides in pertinent part as follows: "Any city or town which accepts the provisions of this section and provides career incentive salary increases for police officers shall be reimbursed by the commonwealth for one half the cost of such payments upon certification by the board of higher education."

than longevity pay. The provision in the parties' current collective bargaining agreement which speaks to Quinn Bill payments is Art. XVIII, Sec. 3(a) which reads in pertinent part:

"The City, having accepted the provisions of General Laws, Chapter 41, Section 108L, agrees to and shall pay to all employees so entitled, police career incentive base salary increases, as provided in, and pursuant to said Chapter 41, Section 108L."

In December 1993 a case entitled Town of Milton & others v. Commonwealth of Massachusetts & others, 416 Mass. 471, 623 N.E.2d 482, was decided by the Supreme Judicial Court. In that case the Massachusetts Legislature did not appropriate sufficient funds in fiscal years 1988 through 1991 to provide its 50% share of reimbursements to those cities and towns which had adopted the provisions of Ch. 41, S. 108L, and certain cities and towns brought suit to require the Legislature to fully fund its 50% share. The Court ruled that despite the mandatory statutory language of "shall", the Legislature was not obligated to fund its full 50% share of Quinn Bill payments. The decision rested on the rationale that one Legislature may not bind a successor Legislature to make a particular appropriation and that acceptance of Ch. 41, S. 108L by cities and towns did not create a binding contract obligating the Legislature to pay its 50% share.

The present case in arbitration arises because the City received notice at the time of preparation of its fiscal year 2010 budget that the Legislature was going to underfund its 50% reimbursement of Quinn Bill benefits. In the case of the City of Medford that meant that the State Legislature was going to appropriate only 17%, rather than 50%, of the total cost of the Quinn Bill payments. As a result of the Legislature's underfunding, the City elected to pay its police officers only 67% (its 50% share and the Commonwealth's 17% share) of Quinn Bill benefits for fiscal year 2010.

Fiscal year 2010 was the first year since the City's adoption of the Quinn Bill back in 1975 that the City failed to make the full Quinn Bill payments to its police officers.

Evidence was introduced concerning Quinn Bill reimbursements by the State Legislature for fiscal years 2001 through 2009, and that evidence indicated that the State Legislature may have underfunded its share of Quinn Bill reimbursements in, possibly, only one year during that period of time. In the other fiscal years from 2001 through 2009 there were relatively small variations between cherry sheet estimates of reimbursements for a given fiscal year and the actual reimbursements for that fiscal year.

Evidence was also introduced concerning the history of collective bargaining negotiations between the parties for a successor contract in 2003. In those negotiations the Association made a proposal requiring the City to maintain the existing level of Quinn Bill benefits for, at least, 5 years should the Quinn Bill be amended or eliminated; that proposal was not ultimately accepted by the City. The Association's evidence was that such proposal was an "off-the-record" proposal; the City disputes that characterization of the proposal.

The Association filed a grievance on July 9, 2009 concerning the City's failure to pay qualifying officers their full Quinn Bill benefits in fiscal year 2010, and inasmuch as that grievance has remained unresolved, the Association has elected to bring this matter on to arbitration for resolution.

Position of the Parties

Position of the Association

The Association contends that the grievance is substantively arbitrable. It says that Art. XVIII, Sec. 3 of the collective bargaining agreement incorporates Ch. 41, Sec. 108L into the collective bargaining agreement, and that since this statutory provision has been incorporated into the contract by the parties, the Arbitrator has the authority to resolve disputes over the meaning and application of such statute under the parties' grievance and arbitration procedure. In support of its position, the Association cites the decision of the Massachusetts Supreme Judicial Court in

Rooney v. Yarmouth wherein the court held, it says, that by virtue of the incorporation of Ch. 41, Sec. 108L by the parties in that case into their collective bargaining agreement, the arbitrator had jurisdiction to resolve disputes over the meaning and application of that statute.

On the merits the Association argues that the plain language of Art. XVIII, Sec. 3 is unambiguous on its face and should be applied as written and that in such a case no interpretative aids outside the contractual language need be referenced. The Association argues that nothing in Ch. 41, Sec. 108L states or even implies that the City is relieved of its obligation to pay police officers their full Quinn Bill benefits under circumstances where the Commonwealth underfunds its share of the costs of the Quinn Bill benefits. The Association points to the disassociation of the reimbursement provision from the payment provision in the statute as further evidence that the City has the liability for full payment of the Quinn Bill benefit. The Association says that the Supreme Judicial Court in the 1993 Milton decision ruled that the Commonwealth was not obligated to reimburse cities and towns 50% of Quinn Bill payments, and that since then, the Legislature has not moved to amend Ch. 41, Sec. 108L to provide relief to cities and towns which paid full Quinn Bill benefits but did not receive full reimbursement from the Commonwealth.

The Association contends, assuming arguendo, that the contractual language is ambiguous, the practice and custom of the parties clearly supports the Association's position. The Association says that for 34 years since the adoption of the language, the parties without exception interpreted the language to mean that police officers were entitled to 100% of their Quinn Bill benefits even when the Legislature did not fully fund the cities' and towns' share of the benefit. The Association contends that there have been numerous occasions in the past when the Commonwealth failed to fully reimburse the City for Quinn Bill benefits it paid; the Association cites the fiscal years 1988, 1989, 1990, 1991, 2005, 2007 & 2008.

The Association says that the City's contention that the Quinn Bill under-reimbursements for 2005, 2007 & 2008 were due to timing

differences in officer eligibility or to the addition/subtraction of officers during a given year is without foundation. The Association points out that the Chief Clerk submits detailed data about Quinn Bill payments to police officers in the prior year based on degrees possessed and time worked. The Association contends that the amount of the reimbursement sought by the City from the State is based upon actual expenditures made and takes into account degree changes and the addition or subtraction of police officers from the bargaining unit; there is nothing speculative about the number submitted.

The Association argues that in fiscal years 2005, 2007 & 2008 the Commonwealth underfunded its 50% reimbursement to cities and towns.

The Association also argues that if an agreement is susceptible of two interpretations, one of which would work a forfeiture and the other of which would not, the interpretation that avoids a forfeiture is the preferred construction.

The Association argues that equitable considerations also support its position in this case. It says that police officers have been encouraged by the Quinn Bill to obtain qualifying degrees and have done so in large numbers and that it would be patently unfair for an employer to now terminate benefits which had been promised if an increased level of education were obtained. The Association further argues that it permanently waived longevity benefits for police officers hired after 1975 in return for receiving Quinn Bill benefits, and that police officers would continue to be ineligible to receive longevity benefits even if the City were allowed to evade its responsibility to pay Quinn Bill benefits. The Association says that the City has known at least since 1993 when the Milton case was decided by the Supreme Judicial Court that the Commonwealth was not obligated under Ch. 41, Sec. 108L to make full reimbursement to cities and towns for their Quinn Bill payments, and yet the City has taken no steps to address that issue.

The Association contends that the proposal it made in 2003 to hold the City responsible for full Quinn Bill benefits should the Commonwealth amend or eliminate Quinn Bill reimbursements should be disregarded as it was a proposal that was made in an off-the-record

discussion and was not to be used by either party for any purpose. Additionally, the Association says that even if its proposal is referenced here, the proposal had nothing to do with an underfunded reimbursement by the Commonwealth but, rather, sought only to protect police officers from the adverse consequences of an amendment to or repeal of the Quinn Bill. The Association notes that the Quinn Bill has been amended twice in the past - 1976 and 2009 - resulting in reduced benefits for some officers. The Association says that its proposal did not seek protection from under-reimbursement from the Commonwealth in the type of circumstances presented by this case.

In sum, the Association asks that the grievance be sustained and that the City be directed to resume 100% payment of Quinn Bill benefits to police officers and that police officers be made whole by the City for all losses of Quinn Bill benefits from July 1, 2009 to the present with interest at the rate of 12% compounded quarterly. The Association also asks the Arbitrator to retain jurisdiction over the implementation of any remedy ordered herein.

Position of the City

The City contends that it is not obligated under Ch. 41, Sec. 108L, incorporated into the collective bargaining agreement by reference, or under any other provision of the collective bargaining agreement to pay police officers 100% of the Quinn Bill payments under circumstances where the Commonwealth fails to pay or underfunds its 50% share.

In particular, the City says that the Arbitrator's task is limited to construing the meaning of Ch. 41, Sec. 108L at the time it was incorporated into the collective bargaining agreement back in 1975, and that at that time the parties' mutual intent was that the Commonwealth would be obligated to pay 50% of the total Quinn Bill payments in a given year.

The City contends that police officers are not entitled to receive 100% of the Quinn Bill payments should the Commonwealth fail to reimburse the City in accordance with its 50% obligation. The City

says that the language of Ch. 41, Sec. 108L makes it very clear that if a city accepts the Quinn Bill, the Commonwealth shall reimburse that city for 50% of the cost of the Quinn Bill benefits. The City points out that Sec. 108L reads: "any city or town ... shall be reimbursed by the Commonwealth for one-half the cost of such payments". The City says that the legislative history of Sec. 108L is consistent with the notion that the cost of Quinn Bill benefits were to be split evenly between the Commonwealth and cities and towns.

The City says that the Milton decision came 18 years after the parties incorporated Ch. 41, Sec. 108L into the contract, and the City argues that the Milton decision did not hold that a city or town was obligated to pay 100% of the Quinn Bill benefits in the event that the Commonwealth failed to fully appropriate its 50% share.

The City also argues that the Rooney decision does not grant an arbitrator authority to interpret external law. The City says that the fact pattern and the contractual language underlying Rooney are distinguishable from those same elements in the case before me. The City says that an arbitrator's authority is limited to interpreting the language of the collective bargaining agreement and does not extend to interpreting statutory law unless such law has been expressly incorporated into the collective bargaining agreement. The City argues that there was no conflict between the collective bargaining agreement and Sec. 108L when it was incorporated into the collective bargaining agreement in 1975, and that the Arbitrator should confine his interpretation of Sec. 108L as to what it meant when it was incorporated into the contract in 1975 and should not consider what Sec. 108L might mean today. The City says that at the time of incorporation of Sec. 108L into the contract each party understood that the City's obligation was limited to 50% of the costs of the Quinn Bill benefits.

The City argues that back in 2003 the Association believed that the City and the Commonwealth were each required under the collective bargaining agreement to pay a 50% share of the Quinn Bill benefits. The City refers to a proposal submitted by the Association in 2003 wherein the Association sought to have the City guarantee payment of

100% of the cost of the Quinn Bill benefits for 5 years. The City references a letter from the Association's attorney which read in part: "The City's commitment to guarantee the existing level of municipal and state educational incentive payments for all bargaining unit officers under the Quinn Bill regardless of future changes therein pursuant to a budget bill or other special or general legislation..." The City also cites the comments of the Association President, as reported in the local newspaper at the time, stating that the purpose of the Association proposal was to guarantee 100% payment by the City in the event that the Commonwealth did not fully fund its share. The City argues, based on the foregoing, that the Association did not believe 10 years after the Milton decision that Milton stood for the proposition that the City is obligated to pay 100% of the Quinn Bill benefits in the event that the Commonwealth failed to fully fund its share.

The City contends that there is no substantial evidence of a past practice whereby the City paid the shortfall in Quinn Bill benefits under circumstances where the Commonwealth had failed to fully fund its portion. The City says that the constituent elements of a past practice are that the practice must be based on unequivocal evidence, that it must be clearly enunciated and acted upon, and that it must be readily ascertainable over a reasonable period of time as a fixed and established practice accepted by the parties.

The City says that Finance Director Anne Baker testified that she could remember only one year in which the Commonwealth had underfunded its Quinn Bill re-imburement to cities and towns. The City argues that there was no evidence that the Commonwealth underfunded its Quinn Bill reimbursement obligation either in fiscal year 1988 or 1989. The City contends that fiscal year 2010 was the first time the City's reimbursement from the Commonwealth was substantially reduced. The City says that the projected reimbursements under the Quinn Bill and the actual reimbursements under the Quinn Bill amounted to negligible differences over fiscal years 2005-09.

In sum, the City asks that the grievance be denied.

Analysis

Substantive Arbitrability

The City suggests that the grievance is not substantively arbitrable because the Arbitrator lacks authority to interpret external law and because Ch. 41, Sec. 108L falls into the category of external law.

Art. XVI, Sec. 1 of the parties' collective bargaining agreement defines a grievance as "any dispute concerning the interpretation, application or enforcement of this Agreement" and then provides in Sec. 2 that any unresolved grievance may be submitted to arbitration. In this case the Association's grievance complains that the City has not complied with the terms of Art. XVIII, Sec. 3(a) of the collective bargaining agreement which states: "The City, having accepted the provisions of General Laws, Chapter 41, Section 108L, agrees to and shall pay to all employees so entitled, police career incentive base salary increases, as provided in, and pursuant to said Chapter 41, Section 108L." It is plain on its face that in Art. XVIII, Sec. 3(a) the parties have expressly incorporated by reference the content of Ch. 41, Sec. 108L into their agreement. Under circumstances where the parties have incorporated by reference a statutory provision into their agreement and have defined a grievance as "any dispute concerning the interpretation, application or enforcement" of their agreement, the parties have empowered an arbitrator to resolve any disputes over the meaning and/or application of the provision of external law incorporated into the agreement.

The conclusion reached herein is consistent with prevailing case law in Massachusetts. In Rooney v. Town of Yarmouth, 410 Mass. 485, 573 N.E.2d 969 (1991) the Supreme Judicial Court considered a case not unlike this one where the collective bargaining agreement incorporated by reference the provisions of Ch. 41, Sec. 108L, and the Court ruled that under such circumstances an arbitrator had the authority to interpret and apply for the parties the provisions of this statute; in short, the Court found such a grievance to be substantively

arbitrable. The Court said in this regard: "The agreement authorizes the arbitrator to determine statutory violations to the extent that any statute is incorporated into the agreement, and § 108L is expressly incorporated into the agreement. Because of this incorporation, an arbitrator would be free to interpret and apply § 108L." (p. 492).

The grievance at issue in the case before me is substantively arbitrable.

Merits

The contractual provision at issue in this case is Art. XVIII, Sec. 3(a), recited above, which provides in pertinent part: "(t)he City ... agrees to and shall pay to all employees so entitled, police career incentive base salary increases, as provided in, and pursuant to said Chapter 41, Section 108L." This language is clear on its face; the City shall pay to all qualifying police officers the Quinn Bill benefits pursuant to Ch. 41, Sec. 108L; the language does not say that some other entity shall pay these benefits. The language specifically incorporates the provisions of Ch. 41, Sec. 108L of the General Laws into the collective bargaining agreement; that statute clearly sets forth a scheme whereby a city or town pays the full amount of the Quinn Bill benefits and then is to be partially reimbursed by the Commonwealth; the statute clearly speaks in terms of reimbursement to a city or town. On this point Ch. 41, Sec. 108L states: "Any city or town which accepts the provisions of this section and provides career incentive salary increases for police officers shall be reimbursed by the commonwealth for one half the cost of such payments upon certification by the board of higher education." (Emphasis added.)

The evidence was that over the years since the City adopted the provisions of Ch. 41, Sec. 108L in 1975 the parties have consistently followed each year the sequencing referenced above, namely, the City pays the full amount of Quinn Bill benefits to its qualifying officers and then receives partial reimbursement thereafter from the

Commonwealth after going through the process laid out in Ch. 41, Sec. 108L.

A principal contention of the City in this case is that both parties understood at the time Art. XVIII, Sec. 3(a) became part of their collective bargaining agreement that the City and the Commonwealth were each obligated for 50% of the costs of the Quinn Bill benefits, and that an understanding formed at the time of contract formation should carry through unchanged to the present time. It is often the case that the parties' mutual intent with respect to a provision at the time of contract formation informs the interpretation of that provision during its life absent some overriding factor. In this case there is an overriding factor, and that factor is that by virtue of having incorporated by reference a statutory provision into their collective bargaining agreement, the parties have obligated themselves to follow the evolving interpretation of such statutory provision as determined by courts of competent jurisdiction. In short, the parties have opted for a dynamic rather than a static interpretation of a provision of their agreement, and that is what has happened in this case.

While the parties may have thought initially that the City and the Commonwealth were each obligated for 50% of the costs of the Quinn Bill, the Supreme Judicial Court in 1993 decided the Milton case. In that case the Massachusetts Legislature did not appropriate sufficient funds in fiscal years 1988 through 1991 to provide its 50% share of reimbursements to those cities and towns which had adopted the provisions of Ch. 41, S. 108L, and certain cities and towns brought suit to require the Legislature to fully fund its 50% share. The Court ruled that despite the mandatory statutory language of "shall", the Legislature was not obligated to fund its full 50% share of Quinn Bill payments. The decision rested on the rationale that one Legislature may not bind a successor Legislature to make a particular appropriation and that acceptance of Ch. 41, Sec. 108L by cities and towns did not create a binding contract obligating the Legislature to pay its 50% share.

In practical terms this interpretation meant that a city, such as Medford, which had adopted the provisions of Ch. 41, Sec. 108L, could no longer expect after it had made full payment of Quinn Bill benefits to all its qualifying officers in one fiscal year to receive necessarily a full 50% reimbursement from the Commonwealth in the succeeding fiscal year. Milton, therefore, changed the original expectation of the parties, and if the City wanted to maintain its original expectation regarding the extent of its financial obligation for Quinn Bill benefits post-Milton, it needed to sit down with the Association and negotiate a limitation of liability provision. Absent such provision, the City remains obligated per the language of Art. XVIII, Sec. 3(a) and the incorporated statutory provision to pay the full Quinn Bill benefits and is remitted to obtaining whatever partial reimbursement the Commonwealth chooses to make.

Fiscal year 2010 was not the first time that the City experienced an underfunding by the Commonwealth of the Commonwealth's 50% share. It is plain that the Commonwealth underfunded its reimbursement contribution to cities and towns in fiscal years 1988 through 1991 as those were the fiscal years involved in the Milton litigation. There may also have been an underfunding in one other fiscal year since then according to the evidence presented in this case. Accordingly, the City cannot argue that it did not have prior notice of this problem. What apparently happened is that in fiscal year 2010 the City felt for the first time that it could not cover the amount by which the Commonwealth had underfunded its reimbursement.

The City further contends that the Association understood that the City was only obligated for its 50% share of the Quinn Bill benefits by virtue of a contract proposal that the Association tendered during the 2003 contract negotiations. The persuasive evidence was that the contract proposal in question was not made as a part of formal contract negotiations but, rather, was made as "an off-the-record" proposal in a meeting with the Mayor and was so understood by both parties. In fact, the City, in response to the Association proposal, in its letter dated June 23, 2003 clearly acknowledged the proposal as an "Off the Record Tentative Proposal" in the heading to

its letter. There was no indication that the parties mutually agreed subsequently to change the status of the proposal from that of an "off-the-record" proposal. Accordingly, such proposal may not be cited as evidence in this proceeding as to do so would breach the understanding the parties had with respect to this proposal and would limit the parties' ability to use such devices as a way to progress in their future negotiations.

Moreover, even assuming arguendo that the foregoing reasons were somehow not sufficient for excluding such evidence from this proceeding, it is not even clear that the proposal in question supports the purpose for which the City seeks to introduce it. While the Association's intent with respect to the scope of this proposal is somewhat murky, I point out that the Association's written proposal dealt with the City's assumption of financial liability for a limited period of time in the event that the Quinn Bill was legislatively amended or abolished; the condition of underfunding absent legislative amendment or abolition was not part of the Association's written proposal. In any event, I rule that this written proposal which was jointly understood by the parties to be "off-the-record" shall not be accepted as evidence in this proceeding.

In sum, then, I find that the City has no viable basis for declining to pay the full Quinn Bill benefits; it must adhere to the obligation it undertook in Art. XVIII, Sec. 3(a) of the collective bargaining agreement.

For remedy, the City must pay the full Quinn Bill benefits to its qualifying police officers for fiscal year 2010 and for the remaining fiscal years covered by the current collective bargaining agreement and must make such police officers whole.

The Association requests that the City pay interest on the back pay award. I decline to order interest on grounds that it is not customary in labor arbitration decisions to do so and also in recognition of the fact that the City is in difficult financial circumstances. This declination of interest is predicated on an assumption that the full Quinn Bill payments to police officers will be made as soon as reasonably possible; if this does not occur, then

the issue of interest may be revisited. I shall retain jurisdiction, as the Association requests, to oversee the implementation of the remedy ordered herein.

Therefore, after having considered the evidence and arguments of the parties, I award as follows:

- 1) The grievance is substantively arbitrable.
- 2) The City violated Article XVIII, Section 3(a) of the collective bargaining agreement with respect to the educational incentive payments made by it to bargaining unit officers on or after July 1, 2009.
- 3) The City shall pay the full Quinn Bill benefits to its qualifying police officers for fiscal year 2010 (July 1, 2009 through June 30, 2010) and for the remaining fiscal years covered by the current collective bargaining agreement and must make such police officers who have received less than 100% of their Quinn Bill benefits whole. No interest is awarded on back pay subject to the qualification expressed in the body of the opinion supra.
- 4) The Arbitrator shall retain jurisdiction for 90 days from the date of this award for the purpose of resolving any disputes arising over the implementation of the remedy ordered herein.



Lawrence T. Holden, Jr.
Arbitrator