

COMMONWEALTH OF MASSACHUSETTS
SUPREME JUDICIAL COURT

NO. SJC-10861

DANIEL J. ADAMS, et al.
BRIAN ALPERT, et al.
FRANCIS ARMSTRONG, et al.
Plaintiffs-Appellants,

v.

THE CITY OF BOSTON,
Defendant-Appellee.

ON RESERVATION AND REPORT FROM THE SINGLE JUSTICE
FOLLOWING TRANSFER FROM THE SUFFOLK SUPERIOR COURT

BRIEF OF AMICUS CURIAE CITY SOLICITORS
AND TOWN COUNSEL ASSOCIATION

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ISSUE PRESENTED

Does G.L. c. 41, § 108L (the "Quinn Bill") conflict with G.L. c.150E, thereby prohibiting cities and towns from negotiating with labor organizations representing police officers to address the Commonwealth's failure to fund its share of educational payments?

STATEMENT OF AMICUS INTEREST

The City Solicitors and Town Counsel Association ("Association") is the oldest and largest bar association in the Commonwealth dedicated to the practice of municipal law. The members of the Association are attorneys and their assistants who represent municipal governments as city solicitor, town counsel, town attorney, or corporation counsel. Members of the Association also include attorneys who represent or advise cities, towns and other governmental agencies in other capacities, or who otherwise devote a substantial portion of their practice to municipal law. The Association's mission is to promote better local government through the advancement of municipal law.

Many of the Association's members are responsible for collective bargaining on behalf of the municipalities they represent. The "Quinn Bill," G.L. c. 41, § 108L, which provides additional compensation to police officers based on achieving specified education levels, is a significant

factor in collective bargaining with labor organizations representing municipal police officers.

The Association files this brief because disposition of the instant matter will have a far reaching impact on every city and town that has accepted the Quinn Bill and included provisions for payment of such benefits in their respective collectively bargained agreements. A decision adverse to the City of Boston will have dire consequences for all of those participating municipalities that accepted the Quinn Bill in reliance on the Commonwealth's funding of benefits under the statute.

STATEMENT OF THE CASE

The Association adopts the Statement of the Case as set forth by Appellee, City of Boston, at pages 1-8 of its Brief.

SUMMARY OF ARGUMENT

The collective bargaining agreement provisions at issue in this case are enforceable if there is no "material conflict" between those provisions and G.L. c. 41, § 108L. No such conflict exists. The contractual provisions limiting the City's liability for police officer education benefits in the event of a reduction of state reimbursement are entirely consistent with a statute that expressly

provided state reimbursement as an incentive for local acceptance. (Pages 4-8).

In the absence of such a conflict, and consistent with this Court's decisions favoring collective bargaining over terms and conditions of public employment, the Court should validate solutions reached by municipalities and their unions to address the Commonwealth's failure to fully fund its Quinn Bill obligations. Such validation would allow municipalities the flexibility to determine for themselves how to balance fully funding Quinn Bill benefits and competing concerns on the municipalities' scarce resources. A contrary ruling would hamstring communities in dealing with a significant financial component of police officer compensation at a time when municipal resources are scarce, and cost pressures are high. (Pages 8-14).

ARGUMENT

I. THERE IS NO MATERIAL CONFLICT BETWEEN THE COLLECTIVE BARGAINING AGREEMENT PROVISIONS AT ISSUE AND G.L. c. 41, SECTION 108L

G.L. c. 41, Section 108L is not among the statutes listed in Section 7(d) of G.L. c. 150E. Therefore, the provisions of a collective bargaining agreement do not supersede the statute.

However this does not end the analysis. The absence of a statute from the list contained in Section 7(d) does

not bar a public employer and a labor organization from negotiating on the subject. It means only that if there is a "material conflict" between the statute and the contract which results from such negotiations, the statute prevails. City of Leominster v. International Brotherhood of Police Officers, 33 Mass. App. Ct. 121, 124-25 (1992). "In the absence of a material conflict with a statute not enumerated in § 7(d), the agreement may be enforced." Id. (citing cases). The contractual provision is invalid only if it "directly and substantially" conflicts with the fundamental purpose of the statute. City of Fall River v. AFSCME Council 93, Local 3177, AFL-CIO, 61 Mass. App. Ct. 404, 409-11 (2004).

The City of Boston argues in its brief (at pp. 19-29) that there is no material conflict between the Quinn Bill and the collective bargaining agreement provisions at issue in this case. Central to this argument is the City's assertion that the funding provision of the Quinn Bill cannot be considered separately from the provisions of the law specifying levels of educational pay for police officers (Id., pp. 12-19). The Association agrees with the City's argument in this regard, and adds the following from the perspective of the Association and its members.

The well-established model of local option statute acceptance allows municipalities to determine for themselves whether to accept particular legislation. Acceptance of a statute by a city or town is itself a legislative act. See G.L. c. 4 § 4 (acceptance of statute is, unless otherwise provided, by the "legislative body" of the local governmental unit); Doherty v. Mayor of Everett, 13 Mass. App. Ct. 202, 204-05, review denied, 385 Mass. 1103 (1982) (acceptance of G.L. c. 41, § 108L is a "legislative function").

As such, a city or town's decision to accept a particular statute is based on a variety of factors. Those factors include, of course, political considerations, as well as considerations of the public policies advanced by the statute.

Financial/fiscal factors are also significant considerations. Any municipality considering acceptance of legislation must assess how the legislation will affect the municipality's budget, revenues and bond rating. Therefore, one question a municipality must ask in contemplating acceptance of a statute is "How much will acceptance of this statute cost the city/town?"

With respect to the Quinn Bill, the statute itself helps answer this question. The statute provides that any

city or town accepting the statute "shall be reimbursed by the Commonwealth for one half the cost of such payments."

G.L. c. 41, § 108L.

Appellants suggest that the educational pay provisions of the Quinn Bill should be considered in a vacuum, without consideration of the funding/reimbursement provision of the law. Such a reading ignores common sense. The Legislature intended the reimbursement provision of the statute as an incentive to municipalities to accept the Quinn Bill.

Indeed, the language providing for state funding is contained in the very same sentence of Section 108L that calls for local acceptance of the statute: "Any city or town which accepts the provisions of this section . . . shall be reimbursed by the Commonwealth for one half the cost of such payments" In performing the political and financial calculus as to acceptance of the statute, cities and towns obviously evaluated the financial impact in light of the 50% reimbursement provision. To suggest, as the Appellants do, that the provisions of the statute calling for state reimbursement are unrelated to the education pay provided by the statute makes no more sense than would an argument that the price or cost of any item is unrelated to the decision to purchase that item.

The relationship between the Commonwealth's reimbursement and local acceptance of the Quinn Bill was certainly not lost on labor organizations representing police officers. This is illustrated by the history of negotiations between the City of Boston and its police unions, recounted at pages 2-4 of the City's Brief. That history shows an explicit linkage between the City's contractual obligation to pay educational benefits and the 50% state reimbursement. The purpose of such linkage is clear; to assure the City that, if it accepted the Quinn Bill, its financial exposure would be limited to 50% of the cost.

The Quinn Bill, like all statutes, must be read as a "consistent and harmonious whole". EMC Corp. v. Commissioner of Revenue, 433 Mass. 568, 574 (2001); see also Palmer v. Selectmen of Marblehead, 368 Mass. 620, 627 (1975) (Plain language of statute will not be followed if result is obviously not the intended one). With this as a guiding principle, the law's provisions as to the Commonwealth's reimbursement of costs to cities and towns cannot be read apart from the underlying benefits provided to police officers by the statute.

Therefore, no material conflict exists between the statute and collective bargaining agreement provisions that

condition full payment of Quinn Bill benefits on state reimbursement. As a result, these provisions should be given effect according to their terms.

II. CITIES AND TOWNS SHOULD BE GIVEN THE FLEXIBILITY TO BARGAIN WITH LABOR ORGANIZATIONS AS TO THE PAYMENT OF QUINN BILL BENEFITS SHOULD THE COMMONWEALTH CONTINUE TO FAIL TO MEET ITS REIMBURSEMENT OBLIGATIONS UNDER THE STATUTE

A decision in favor of Appellants in this matter will hamstring cities and towns in addressing the financial implications of the Commonwealth's reductions in Quinn Bill reimbursement. This Court's decision in Town of Milton v. Commonwealth, 416 Mass. 471 (1993), precludes cities and towns from seeking from the Commonwealth Quinn Bill reimbursements which, while required by the statute, have not been appropriated by the Legislature. Id. at 473-75. Municipalities are therefore left with two options; to either assume the entire risk of reduced state reimbursement or to address, in negotiations with the duly-certified or recognized representatives of police officers, the contingency of insufficient state funding. If Appellants prevail, this second option will be unavailable.

Approximately 254 of the Commonwealth's 351 cities and towns have accepted the Quinn Bill. MMA.org, Quinn Cut Causes Local Headaches, available at <http://www.mma.org/labor-and-personnel/4063-quinn-cut->

causes-local-hadaches (last visited October 6, 2011). Due to the Commonwealth's reduction in Quinn Bill reimbursement, these cities and towns were faced with a \$48 million gap in fiscal year 2010 alone. Id.

According to a survey conducted by the Massachusetts Municipal Association ("MMA"), cities and towns are attempting to cover this shortfall in a variety of ways (see Massachusetts Municipal Association, "Quinn Bill Funding and Bargaining Survey," attached as Exhibit 1). While some communities have agreed through collective bargaining to pay the entire amount regardless of the level of state reimbursement, others (like Boston) had previously negotiated for a reduced level of funding in the event of a reduction in state reimbursement. Still others have collective bargaining agreements that do not specify what is to occur should state funding be decreased (see Exhibit 1, p. 2). Many of these municipalities are currently involved in negotiations with police unions addressing the reduction in reimbursement. Id.

This Court has repeatedly recognized a public policy in favor of collective bargaining. See City of Somerville v. Somerville Municipal Employees Association, 451 Mass. 493, 494 (2008) (citing cases). A decision in the City's favor would further this policy, and permit municipalities,

and their unions, to individually assess their situations and determine the best approach for addressing issues resulting from the Commonwealth's failure to fund its Quinn Bill obligations.

The diverse nature of Massachusetts' cities and towns counsels in favor of allowing such an individual assessment. Some municipalities, and the labor organizations representing their police officers, may decide that the Quinn Bill's goal of assuring a well-educated police force (See 368 Mass. at 627) is paramount. These municipalities and unions may therefore choose to fully fund Quinn Bill benefits notwithstanding the reduction in reimbursement from the Commonwealth.

Others may make different policy choices, based on their particular circumstances and collective bargaining priorities. For example, the town of North Andover recently reached an agreement with its police union whereby the town will make up for the Commonwealth's payments for officers hired before July 1, 2009. See Sally Applegate, Lanen Takes on Quinn Bill Compromise, NORTH ANDOVER CITIZEN, January 21, 2011, available at <http://www.wickedlocal.com/northandover/news/x1409903672/Lanen-takes-on-Quinn-Bill-compromise#axzz1XHxsiMdm> (last visited October 6, 2011). Officers hired after this date

will receive much smaller payments. Officers also agreed to contribute more to their health insurance payments, and to receive a smaller annual raise.

Other municipalities may seek different outcomes. This is illustrated by the examples set forth at pages 26-30 of the brief of the amicus, Massachusetts Municipal Association. These examples, and others, show that, when given the opportunity to do so, municipalities and the representatives of their employees have been able to craft solutions for the problem caused by a reduction in state Quinn Bill funding.

It must be emphasized that these decisions as to addressing insufficient Quinn Bill reimbursement are not made unilaterally by the municipalities alone. As the above examples illustrate, these decisions are made jointly as a result of negotiations between the municipalities and the labor unions representing police officers. Just as the priorities and interests of municipalities may differ, so too might the priorities of the labor organizations representing the police officers in those municipalities. Those organizations should be free to bargain so as to advance those interests and priorities.

A decision adverse to the City in this matter would strip affected municipalities and unions of their ability

to agree on how to address the reality of underfunded Quinn Bill payments. Such a result would run contrary to sound public policy, in particular the public policy favoring collectively-bargained solutions.

The financial impact on cities and towns should Appellants prevail must also be recognized. Many of the municipalities in the Commonwealth are currently in dire financial straits. The reasons are many, and cumulative: Local aid from the Commonwealth has fallen substantially, and local revenues from tax collections are stagnant or decreasing. See masstaxpayers.org, Municipal Financial Data, http://www.masstaxpayers.org/sites/masstaaxpayers.org/files/mfd_40_0.pdf (last visited October 6, 2011). Additional concerns for cities and towns are the general recessionary economy and a dramatic drop in the housing markets. See Craig M. Douglas, Boston Home Market Sinks to 02 Levels as Losses Mount, BOSTON BUSINESS JOURNAL, August 9, 2011, available at <http://www.bizjournals.com/boston/news/2011/08/09/boston-home-market-sinks-to-02-levels.html>. (last visited October 6, 2011). Further certain costs, particularly related to health insurance costs for municipal employees, have continued to grow. See, e.g., masscare.org, Municipalities and Health Care Costs, [12](http://masscare.org/who-is-</p></div><div data-bbox=)

affected/municipalities-and-health-care-costs/ (last visited October 6, 2001). All of this has caused a significant gap between municipal revenue and the cost of providing necessary services.

This gap has forced cities and towns to cut services and expenses. Cash-strapped municipalities have already made difficult and unpopular decisions, including furloughs and layoffs of employees, reductions in essential services such as road repair and snow removal, delay in replacement of vehicles and equipment, etc.

If cities and towns are deprived of the ability to negotiate concerning the shortfall in state funding of Quinn Bill benefits, that shortfall must be made up elsewhere. This could result in staffing reductions, decreased overtime, delayed or canceled equipment purchases, etc. The ability to bargain over the impact of state reduction of Quinn Bill payments should be a tool available to cities and towns to best address their particular situations.

A ruling in plaintiffs' favor will also provide a strong disincentive to cities and towns to accept local option statutes, especially those concerning municipal employees. Even if a statute provides for Commonwealth funding or reimbursement, municipalities will be justly

concerned that, should such funding be decreased or eliminated in the future, the city or town will be without a means of addressing the resulting shortfall.

Indeed, a ruling in plaintiffs' favor may even cause some communities to consider revoking acceptance of the Quinn Bill. From a policy perspective, such action would be unfortunate. Cities and towns which revoke the law could lose the benefits of a better-educated police force. This was one of the principal goals of the Quinn Bill. See Foley v. Town of Northbridge, 14 Mass. App. Ct. 526, 531 (1982). Cities and towns should not be left with the choice of either foregoing the benefits of the Quinn Bill entirely, or absorbing 100% of the costs of providing these benefits.

CONCLUSION

For the above reasons, the contract provisions at issue should be deemed valid and enforceable, and plaintiffs' complaint should be dismissed.

Respectfully submitted,

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