

## QUINN BILL PAYMENT OBLIGATIONS

By

Attorney John M. (Jack) Collins

General Counsel

Massachusetts Chiefs of Police Association

The failure of the Massachusetts legislature to fully fund what has come to be referred to as the state's "share" (50%) of the so-called Quinn Bill (GL c. 41, s. 108L) has prompted numerous questions among the 254 communities that have adopted the program as to their obligation to make payments to officers under such law. The state's 50 percent share should have been between \$54 and \$58 million for fiscal 2010, but the state appropriated just \$10 million. (While some legislators are discussing possibly asking for a supplemental appropriation, there is also some speculation that the Governor may even reduce this further in the Fall under his "9 C" authority.)

Despite language in some collective bargaining agreements that seem to authorize reductions, a municipal employer must continue to pay 100% of any Quinn Bill payments regardless of any reduction in state appropriations.

So long as the proper paperwork is submitted to and approved by the Board of Higher Education, the Supreme Judicial Court ruled in the 1991 case of *Rooney v. Town of Yarmouth* that payment in the full amount specified by the Quinn Bill must be made by the municipal employer.<sup>1</sup> According to the SJC, the obligation of a city or town to make payments once it has accepted the Quinn Bill is not contingent

upon reimbursement from the state. As the Court explained in the 1975 case of *Palmer v. Selectmen of Marblehead*, "Once the statute was accepted by the town it had a legal duty to pay the amounts due the plaintiff as certified by the board."<sup>ii</sup> In fact, the Court noted that a town which does not seek such certification must pay the additional salary from its own coffers without reimbursement from the state.<sup>iii</sup>

On its face, it would appear that the language of the statute would require the state to pay half. Section 108L specifies:

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.

However, despite the wording of the statute that seems to require reimbursement from the state, the Supreme Judicial Court, in the 1993 case of *Town of Milton v. Commonwealth*, ruled that this is not the case.<sup>iv</sup> The Court held that a municipality's right to reimbursement depends upon the availability of funds appropriated for the purpose. It explained that the statute does not create a right to reimbursement either as a statutory mandate or as a contractual obligation.

### **Collective Bargaining Agreements**

Some municipalities have included various provisions in their collective bargaining agreements with the police union concerning the Quinn Bill. Some, for example, have included a provision that attempts to address what will happen in the event the state fails to fully fund its

“share.” However, since only state laws listed in MGL c. 150E, s. 7(d) may be overridden or contradicted by the provisions of a collective bargaining agreement, and section 108L is not among those listed, it is unlikely that a court would enforce any contractual modification that paid officers less than what the statute specified. As the SJC noted in the *Rooney* case concerning s. 108L:

“municipalities and public employee unions may not bargain over matters covered by an adopted local option law that is not listed in § 7 ( d ), see *National Ass'n of Gov't Employees, Local R1-162 v. Labor Relations Comm'n*, 17 Mass.App.Ct. 542, 544-546, 460 N.E.2d 619 (1984).”

However, as the Court went on to explain, “it does not follow that parties may not agree to simply “incorporate” such statutes in their entirety into a collective bargaining agreement, and further agree that disputes concerning the statutes are arbitrable under the agreement's grievance procedures.”<sup>v</sup>

The contract could not contain language contradicting the payment or other provisions of the Quinn Bill. The effect of “incorporating” section 108L into a collective bargaining agreement simply would be to substitute an arbitrator for a court in determining the meaning of the statutory language. Henceforth, the grievance procedure and not a court complaint would be the required way to seek enforcement.<sup>vi</sup>

A provision that requires a city or town to pay the full amount of the Quinn bill regardless of any reimbursement from the state is superfluous, since it merely recites what the law already requires. However, since it does not “contradict” section 108L, it would be enforceable by an arbitrator in any event.

NOTE: The Massachusetts Municipal Association has issued a memo

to its members that indicates that language in a contract may modify a municipality's obligations under the Quinn Bill. They caution their members, however, "Some police unions, however, may try to claim that failure to pay the full amount is a violation of Sections 148 and 150 of Chapter 149 regarding the payment of wages. Such violations, if proved, result in treble damages plus attorneys' fees paid to the employee. While such an interpretation of the law is not necessarily accurate, the MMA has called on the Legislature and the governor to enact corrective language to clarify that failure to pay the state's share is not a violation of Chapter 149."

### **Non-Unionized Positions**

Police chiefs and other officers that are not covered by a collective bargaining agreement must be paid the full amount of the Quinn Bill regardless of any appropriation by the state.<sup>vii</sup> While a collective bargaining agreement may not modify the provisions of section 108L, it is possible that a court might approve language in a chief's employment contract that waived or modified a community's obligations to make Quinn Bill payments. Unless and until a court decides a case involving GL c. 41, s. 108O, which statute authorizes employment contracts for chiefs, this matter will remain uncertain.

### **Revocation of Acceptance of S. 108L**

Some communities have considered revoking their acceptance of the Quinn Bill. This process is governed by GL c. 4, s. 4B. In most cases, while it also possible to petition for a special act of the legislature, revocation would be accomplished simply by a vote by a Town Meeting or City Council. However, especially where a collective bargaining agreement incorporates section 108L, unions are likely to point to the following provision in s. 4B as somehow "grandfathering"

current employees:

A rescission shall not affect any contractual rights which have come into existence between a city or town and any officer or employee as a result of the original acceptance.

It is unlikely that a court would reach such a conclusion. Incorporating the matter into the contract simply substitutes an arbitrator for a judge in interpreting the provisions of section 108L. It grants no new contractual rights. However, until a case is decided, the matter is not free from doubt.

---

<sup>i</sup> *Rooney v. Town of Yarmouth*, 410 Mass. 485, 573 N.E.2d 969 (1991).

<sup>ii</sup> *Palmer v. Selectmen of Marblehead*, 368 Mass. 620, 335 N.E.2d 349 (1975). See *Brucato v. Lawrence*, 338 Mass. 612, 156 N.E.2d 676 (1959) (payments due employees pursuant to annual step rates set forth in State statute must be paid).

<sup>iii</sup> *Id.*

<sup>iv</sup> *Town of Milton v. Commonwealth*, 416 Mass. 471, 623 N.E.2d 482 (1993).

<sup>v</sup> *Id.*

<sup>vi</sup> See, *Foley v. Town of Northbridge*, 14 Mass.App.Ct. 526, 440 N.E.2d 1293 (1982). *Rooney v. Town of Yarmouth*, 410 Mass. 485, 573 N.E.2d 969 (1991).

<sup>vii</sup> *Rooney v. Town of Yarmouth*, 410 Mass. 485, 573 N.E.2d 969 (1991); *Palmer v. Selectmen of Marblehead*, 368 Mass. 620, 335 N.E.2d 349 (1975).