

ARBITRATOR'S INVOICE

NUMBER MR09133A

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Arbitrator Michael C. Ryan, Esq. Case No. 11 390 02438 09

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UNION

LEOMINSTER PATROLMEN'S UNION,
MASSCOP LOCAL 364 and
LEOMINSTER SUPERIOR OFFICERS' UNION,
MASSCOP LOCAL 282

Gr: City reduced amount of Quinn Bill

EMPLOYER

CITY OF LEOMINSTER

ARBITRATOR COMPENSATION

Number of hearing days 1 @ \$ 1500.00 = \$ 1500.00
Hearing dates: 08/23/10

Study and preparation days 1 1/3 @ \$ 1500.00 = \$ 2000.00

Travel @ \$ 1500.00 = \$

Other: @ \$ 1500.00 = \$ 0
FEE \$ 3500.00

ARBITRATOR EXPENSES

Transportation \$ 161.00
Hotel \$
Meals \$
Other (specify) \$

EXPENSES \$ 161.00

TOTAL \$ 3661.00

Payable by Employer \$ 1830.50
Payable by Unions \$ 1830.50

Completed by the arbitrator.



Signature

Date May 12, 2010

AMERICAN ARBITRATION ASSOCIATION
Michael C. Ryan, Esq., Arbitrator

In the matter of the
arbitration between:

LEOMINSTER PATROLMEN'S UNION,
MASSCOP LOCAL 364 and LEOMINSTER
SUPERIOR OFFICERS' UNION,
MASSCOP LOCAL 282

- and -

CITY OF LEOMINSTER

AAA No. 11-390-02438-09
Grievance:
Quinn Bill - Class Action

DECISION AND AWARD

For the City

Brian M. Maser, Esq.

For the Unions

Joseph G. Sandulli, Esq.

I. Background.

The hearing in this matter took place on August 23, 2010.

The parties stipulated to the following statement of the issues:

Did the City violate Article XXIV of the contracts with its police unions when union members' educational incentive payments were reduced subsequent to the State Legislature's decision to underfund the Quinn Bill program for fiscal year 2010?

If so, what shall be the remedy?

Both parties filed post-hearing briefs.

Massachusetts G.L.c. 41, § 108L, commonly known as "the Quinn Bill," is an educational incentive program for full-time police officers. It provides increases in base salary for officers who earn higher-education credits and degrees. The statute mandates a ten percent increase for an associate's degree in law enforcement, twenty percent for a bachelor's degree and twenty-five percent for a master's or law degree. There are smaller increases for each credit hour toward these degrees.

The Quinn Bill is a local-option law, meaning that it is only effective in municipalities that vote to accept it. On its face, the statute contemplates that the state will reimburse municipalities for 50 percent of the incentive payments. It provides,

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.

A 1993 decision of the Supreme Judicial Court, Town of Milton v. Commonwealth, 416 Mass. 471 (1993), (hereafter "Town of Milton") qualified the apparently mandatory language "shall be reimbursed." That case concerned the legislature's cap on total state reimbursement under the Quinn Bill, which resulted

in the gradual erosion of the state's share of Quinn Bill payments in many municipalities, including Leominster.¹ The court held that the state "is not liable to the municipalities beyond the amount appropriated for \$108L. In other words, \$108L alone does not create a right to reimbursement ..." Id. at 473.

The Department of Higher Education, which administers the Quinn Bill, has established procedures for state reimbursement of municipalities for their Quinn Bill expenditures. Generally speaking, the municipality pays Quinn Bill benefits to its officers over the course of the fiscal year. (The City usually pays officers in four quarterly installments.) The municipality submits a request for reimbursement to the Commonwealth in August or September following that fiscal year, and it receives the reimbursement the following spring. Thus, there is over a year of lag time between the expenditure and the reimbursement.

On March 21, 2001, the City of Leominster adopted the Quinn Bill for all of its police officers. Thereafter the City and its two police unions, the Leominster Patrolmen's Union, Local 364, MassCOP (the Patrolmen's Union) and the Leominster Superior Officers, Local 282, MassCOP (the Superior Officers' Union), negotiated the following identical articles into their respective collective bargaining agreements:

¹ For example, in 1992, the state's 50% share of Quinn Bill payments in Leominster would have been approximately \$39,000, but the actual reimbursement was \$24,673.

ARTICLE 24
Educational Differential

Pursuant to the vote of the Leominster City Council on March 12, 2001 the City of Leominster...adopts the provisions of Massachusetts General Laws, Chapter 41, § 108L, the so called Quinn Bill. Nothing in this paragraph, however, will change the rights of any current officer who was employed by the City as a police officer prior to May 26, 1981, to his or her Quinn Bill entitlement as set forth in the 1980 Judgment by Consent Agreement. Officers will be entitled to benefits in accordance with the terms and conditions of M.G.L.c. 41, § 108L.

Article 24 has carried forward through the current collective bargaining agreements.

Mayor Dean Mazzearella has been the mayor of Leominster since 1994. (Until he won that office, he was a Leominster police officer.) Mayor Mazzearella testified that the Quinn Bill proposal was attractive to the City as well as the Union. Over time, the Quinn Bill recipients who were grandfathered in Article 24 had retired and the bargaining unit had grown younger. Many of the new officers had college degrees or were interested in obtaining further education, and the City could provide them with a substantial educational incentive with the state absorbing half the cost.

The Union had accepted a somewhat lower wage settlement as a *quid pro quo* for the Quinn Bill provision, and the Mayor testified that the Quinn Bill language was "part of a package for the Union to get its members' approval." The Mayor further

testified that during the parties' many discussions of the Quinn Bill during negotiations, "no one ever really thought the state would eliminate it. I can't recall to what degree we talked about 'what if the state cuts 50%.'"

After agreeing to Article XXIV, the City regularly paid full Quinn Bill benefits to eligible officers for some years, and the Commonwealth regularly reimbursed the City for 50% of the payments. For example, over the course of FY05 the City paid its police officers \$380,816.87 in Quinn Bill benefits, requested reimbursement of \$190,408.44 on August 28, 2006 and received the payment at the end of June 2007.

In FY09, however, things changed. The City paid some \$387,000 in Quinn Bill benefits expecting that the state would reimburse half. Soon after FY09 ended, the City requested reimbursement of 50% of its Quinn Bill payments from the Commonwealth. However, when the City received its FY10 Cherry Sheet (i.e., the notification to municipalities of the estimated state aid that they will receive over the next fiscal year), it turned out that instead of \$193,500, the state had allocated only \$34,078 for Quinn Bill reimbursement.²

²The Unions introduced evidence that showed that there was a less dramatic shortfall in the state's reimbursement for FY08, amounting to some \$17,000 less than expected, and that the City did not reduce Quinn Bill benefits to make up the difference. City Comptroller John Richards testified that the City received that amount later via a supplemental appropriation.

In preparing the City's FY10 budget, Mayor Mazzarella reduced Quinn Bill benefits proportionally, to about 59% of what they would have been had the state reimbursed them at the 50% level. The City Council approved. When the City's police officers received their first reduced Quinn Bill payment in September 2009, the Unions filed these grievances.

The City's March 2001 vote was not the first time it had adopted the Quinn Bill. The City Council took a similar vote in December 1970, whereupon Mayor Joseph Moriarty declined to fund the benefit. In response, a group of police officers initiated an action to compel payment. On February 9, 1981, the parties settled the action via a Consent Judgment, under which only police officers actively employed by the City on the date of the Judgment would continue to be entitled to Quinn Bill payments. For officers hired after that date, the City revoked its adoption of the Quinn Bill.

The Judgment also provided:

For those fiscal years prior to July 1, 1981, the City of Leominster shall only be required to pay eighty (80%) percent of said benefits, unless the Commonwealth makes a fifty (50%) percent reimbursement, in which event full payment of benefits shall be made.

The parties then executed an amendment to the 1980-82 collective bargaining agreement covering the patrolmen to track that language of the Judgment:³

Effective January 1, 1980, employees shall be entitled to receive all benefits provided by M.G.L. Chapter 41, Section 108L; provided, however, that for those fiscal years commencing prior to July 1, 1981, the City shall only be required to pay eighty (80%) percent of the benefits, unless the Commonwealth makes a fifty (50%) percent reimbursement, in which event full payment of the benefits shall be made.

As noted, Mayor Mazzarella was a Leominster police officer from 1983 to 1994. According to Mayor Mazzarella, the grandfathered officers who were eligible for Quinn Bill benefits (and who remained on the police force - a gradually diminishing number) continued to receive them through 2001, when they were extended to the entire bargaining unit. The Mayor testified that the those officers received full payments even during the years when the legislature capped reimbursements - that is, the period that led to the SJC's Town of Milton decision.

II. Contentions of the Parties.

The Unions. The plain language of the Agreements and the Quinn Bill requires the City to pay Quinn Bill benefits in full. Article XXIV is mandatory: officers "will be entitled to

³ A different union represented the patrolmen at the time. No contemporaneous agreement covering the Superior Officers is in evidence.

benefits" under the Quinn Bill. The Quinn Bill itself is mandatory: officers "shall be granted a base salary increase." Nothing in the Agreement or statute authorizes the City to discount benefits in case of a shortfall in state reimbursement. Arbitrator Larry Holden interpreted similar contract language to require full payment of benefits. Medford Police Patrolmen's Association and City of Medford, AAA No. 11-390-01557 (Holden, 6/9/10) (the "Medford Award").

Bargaining history supports this interpretation. The parties' 1981 settlement expressly provided for a discounted Quinn Bill benefit for certain years when the state did not fully reimburse the City. When the City adopted the Quinn Bill again in 2001, it made no reference to any discount in case of a state shortfall. Clearly the City consciously surrendered any claim of right to reduce the benefit under those circumstances.

Past practice requires full payment of Quinn Bill benefits. From 1998 to 1992, when the Legislature capped total reimbursement, the City paid full Quinn Bill benefits to grandfathered police officers under similar contract language. In FY08 the City confirmed that practice under the current contract language by paying full benefits even though there was a shortfall in state reimbursement.

As a remedy, the Unions ask the arbitrator to order the City to make the officers whole for the reduction in Quinn Bill

benefits in FY10 and to pay full Quinn Bill benefits prospectively, and to retain jurisdiction for 90 days to resolve any disputes about implementation of the remedy.

The City. The Unions did not meet their burden of proof. Their case consisted entirely of hearsay, supposition, and statements of counsel. The Unions offered documents without any supporting testimony purporting to show the entire history of the Quinn Bill in Leominster, even going so far as to offer a newspaper clipping from 1992. While arbitrators do not strictly follow the rules of evidence, the Unions cannot present an entire case through self-serving hearsay.

During the parties' negotiations for the Agreements, the Quinn Bill was a topic of each and every session. Mayor Mazzarella and Comptroller Richards testified that the City made it clear that the City would not, and could not, be responsible for 50 percent of the cost of the Quinn Bill because the City did not have the funds. The Union did not offer a single witness to the contrary.

The Union's past-practice evidence proved nothing. To establish a binding practice, a party must prove that the practice was unequivocal, clearly enunciated, prolonged over a reasonable period of time, and accepted by both parties. The mere fact that the Comptroller's journal amount was less than the *estimated* payment shown on the Cherry Sheet does not show

that the Commonwealth did not eventually pay its full 50 percent. There was no testimony at all concerning the payments made years ago.

III. Opinion.

Initially, it is necessary to address the City's protest that the Union's case consisted entirely of hearsay documents and representations of counsel. It is true that the Union presented its case in an unusual manner. It did not produce a single witness, choosing instead to bring out most of the facts through documents and cross-examination of the City's witnesses.

The parties do recognize that the rules of evidence do not strictly apply in arbitration. Absent a jury, it is expected that the arbitrator can separate wheat from chaff. Experienced counsel for both parties presented the facts of the case in an eminently practical and expeditious format. No dispute of material fact was actually noted. Mayor Mazzarella and Comptroller Richards testified willingly, credibly, and candidly on both direct and cross-examination. In the end, there is little or no dispute about what actually happened and what the issues are. Under these circumstances, it is appropriate to address the issues rather than be overly punctilious about hearsay. There is ample reliable and undisputed evidence to support an informed decision.

Article XXIV of both Agreements provides: "Officers will

be entitled to benefits in accordance with the terms and conditions of M.G.L.c. 41, § 108L." The statute that the parties thereby incorporated into their Agreements is a program of educational incentives for police officers. It mandates certain increases in base salary for educational attainments. Once a municipality accepts it, it is bound to pay those increases, and may then seek reimbursement from the Commonwealth.

The language of Article XXIV is straightforward and unambiguous. It confers an unconditional entitlement on Leominster police officers to educational incentive payments "in accordance with the terms and conditions of" the Quinn Bill. The parties could have included exceptions and contingencies in Article XXIV, but they did not.

The City's argument is based on the parties' bargaining history. Since Article XXIV is clear on its face, and contains no unusual concepts, it is doubtful that any bargaining history could give it a meaning other than what the clear language on its face conveys. It is axiomatic, after all, that the primary source material for discerning the intent of the parties is the language that they chose to use. More importantly, unless the shared bargaining history shows that particular words mean something other than their common and expected meaning in collective bargaining, the language itself must be treated as

the sole source. That is the case here.

But even if I were to consider the bargaining history, it would not change the interpretation of Article XXIV. According to the City, both Mayor Mazzarella and Comptroller Richard made it clear during negotiations that the City would not under any circumstances shoulder more than 50 percent of Quinn Bill payments. This is a misconstruction of those witnesses' testimony. Mayor Mazzarella actually testified, with admirable candor, "neither party ever really thought the state would eliminate it [i.e., the 50 percent reimbursement]. I can't recall to what degree we talked about 'what if state cuts 50%.'" The City's bargaining team therefore could not have warned the Unions that they would not pay more than 50% of Quinn Bill benefits, because it had not occurred to the City that the Commonwealth would reduce its reimbursement.

Mayor Mazzarella apparently perceived the Legislature's decision to reduce the reimbursement rate for Quinn Bill benefits as a kind of *force majeure* - that is, an unforeseen and unforeseeable change in circumstances that would warrant a deviation from the parties' bargain. If so, he was incorrect. That the state's reimbursement might dip below 50 percent was not only foreseeable, it had already happened in the past and was the subject of a decision by the Supreme Judicial Court. In 1988 and for several years thereafter, during one of the state's

recurring fiscal crises, the Legislature imposed a cap on total dollars expended for reimbursement under the Quinn Bill, resulting in a shortfall in Leominster, among other cities and towns. Unfortunately for the municipalities of the Commonwealth, the court decided in 1993 in Town of Milton that the Commonwealth is under no obligation to reimburse cities and towns beyond the amount appropriated by the Legislature.

Therefore, when the City Council adopted the Quinn Bill in 2001, it knew, or should have known, that it was undertaking the risk that the Commonwealth might not reimburse the payments at the 50% rate. The same applies to the City's agreement to Article XXIV in its two police unions' collective bargaining agreements. As Arbitrator Holden observed in the Medford Award, when parties incorporate a statute into their collective bargaining agreement, they automatically commit themselves to follow the evolving interpretation of the statute by the courts. Medford Award at 12. Since the parties agreed that qualifying bargaining unit members were "entitled" to Quinn Bill benefits, the risk fell on the City, not the police officers.

For these reasons, the City was obligated to pay qualifying police officers their full Quinn Bill benefit regardless whether the Commonwealth reimbursed the City for those benefits at the 50% rate.

AWARD

The City violated Article XXIV of the contracts with its police unions when union members' educational incentive payments were reduced subsequent to the State Legislature's decision to underfund the Quinn Bill program for fiscal year 2010.

The City shall pay full Quinn Bill benefits to qualifying police officers for fiscal year 2010 (July 1, 2009 through June 30, 2010) and for the remaining life of the current collective bargaining agreements and must make such police officers, who received less than 100% of their Quinn Bill benefits, whole.

I will retain jurisdiction for 90 days from the date of this award for the sole purpose of resolving any disputes about implementation of the remedy.



Michael C. Ryan
Arbitrator
November 24, 2010