

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, ss

SUPERIOR COURT  
CIVIL ACTION  
NO. MICV2009-2856

TEAMSTERS LOCAL UNION 25

vs.

TOWN OF NORTH READING & others<sup>1</sup>

**MEMORANDUM OF DECISION AND ORDER ON PLAINTIFF'S  
MOTION FOR SUMMARY JUDGMENT AND DEFENDANTS'  
CROSS-MOTION FOR SUMMARY JUDGMENT**

Plaintiff Teamsters Local Union 25 ("Union") contends that a provision of the Union's collective bargaining agreement with defendant Town of North Reading ("Town") and an April 8, 2009 Side Letter of Agreement clarifying that provision, conflict with General Laws c. 41, § 108L, known as the Quinn Bill, and are therefore superseded by the Quinn Bill under General Laws c. 150, § 7(d). The Union seeks a declaratory judgment that the collective bargaining provisions are illegal and null and void, and that the Town is obligated to pay its police officers their full educational incentives under the Quinn Bill. This matter is before the court on the Union's motion for summary judgment and the Town's cross-motion for summary judgment. The Town contends that the matter is not properly before the Court since the Union lacks standing and has failed to exhaust its administrative remedies; that the doctrine of "unclean hands" bars the equitable relief sought; and that, in any event, the Town is not obligated to pay for educational incentives for which no budgetary appropriation was made. After

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<sup>1</sup> The Board of Selectmen for the Town of North Reading and Greg Balukonis in his capacity as the Town Administrator for the Town of North Reading. Edward W. Nolan, in his capacity as the Chief of Police for the Town of North Reading, was originally named as a party defendant but was voluntarily dismissed from this lawsuit on August 20, 2009 (Paper # 7).

hearing, for the reasons that follow, the Union's motion for summary judgment is **ALLOWED** and the Town's cross-motion for summary judgment is **ALLOWED** insofar as it relates to the claims against the Town Administrator and Board of Selectmen,<sup>2</sup> and otherwise **DENIED**.

### **Background**

The material facts are not in dispute. Since November 2000, the Union has been the exclusive representative for establishing salary and other terms and conditions of employment for the Town's full-time police officers and sergeants (collectively, "police officers"). Thomas Mari ("Mari") is a business agent for the Union and represents the police officers.

General Laws c. 41, § 108L, known as the Quinn Bill, is a career incentive pay program offering base salary increases to regular full-time members of the state's city and town police departments as an incentive for furthering their education in the field of law enforcement. The Quinn Bill is a local option law that only applies to municipalities that have adopted G. L. c. 41, § 108L. In 1987, the Town voted to accept the provisions of G. L. c. 41, § 108L. The statute provides that regular full-time police officers employed by municipalities that adopt the statute are to be paid incentive salary increases based upon their level of education. The statute further provides that a municipality that accepts the provision of the statute and thereby provides career incentive salary increases for its police officers shall be reimbursed by the Commonwealth for one-half the cost of the payments upon certification by the Board of Higher Education.

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<sup>2</sup> As noted *infra*, the Union assents to dismissal of its claims against the Town Administrator and Board of Selectmen.

For some time prior to fiscal year 2009, the Commonwealth had reimbursed the Town for one half of its Quinn Bill expenses. In fiscal year 2009, the Commonwealth appropriated approximately \$163,425.00 for the purpose of reimbursing the Town for its Quinn Bill expenses. For fiscal year 2010, the Commonwealth drastically reduced the amount of funds it appropriated for purposes of reimbursing municipalities, including the Town, for their Quinn Bill expenses.

The Union and the Town are parties to a collective bargaining agreement titled "Memorandum of Agreement Between the Town of North Reading and Teamsters, Local 25" ("CBA") with effective dates of July 1, 2009 through June 30, 2010 (Exhibits 1; 7). Article X, section 3 of the CBA contains the following language regarding the Quinn Bill:

If G. L. c. 41, § 108L is repealed, or if funding of the Commonwealth's contribution toward the cost is eliminated or reduced, then it is agreed that the Town's obligations under c. 41, § 108L shall only be to pay eligible employees the Town's fifty percent (50%) share of the benefit, plus the amount that is being reimbursed to the Town by the Commonwealth, if any.

The CBA was ratified by the Town's Board of Selectmen and by the Union membership.

On or about April 8, 2009, the Union and the Town executed a Side Letter of Agreement (Exhibit 2) intended to clarify the language of Article X, section 3 of the CBA. The Side Letter of Agreement states as follows:

If G. L. c. 41, § 108L is repealed, or if funding of the Commonwealth's contribution toward the cost is eliminated or reduced, then it is agreed that the Town's obligations under c. 41, § 108L shall only be to pay to eligible employees the Town's fifty percent (50%) share of the benefit, plus the amount that is being reimbursed to the Town by the Commonwealth, if any.

The Town of North Reading's fifty percent "portion" is defined as the following:

ASSOCIATE DEGREE IN CRIMINAL JUSTICE OR LAW ENFORCEMENT PROGRAM – A base salary increase of five percent (5%) upon attaining degree.

BACCALAUREATE DEGREE IN CRIMINAL JUSTICE OR LAW ENFORCEMENT PROGRAM – A base salary increase of ten percent (10%) upon attaining degree.

MASTER'S DEGREE IN CRIMINAL JUSTICE OR LAW ENFORCEMENT PROGRAM – A base salary increase of twelve and a half (12.5%) percent upon attaining degree.

The previous collective bargaining agreement between the Union and the Town, with effective dates of July 1, 2006 through June 30, 2009, contained the following language in Article X, section 3 (Exhibit 3):

If G. L. c. 41, s. 108L is repealed, or if funding of the Commonwealth's contribution toward cost is eliminated or reduced, then it is agreed that the Town's obligations under c. 41, s. 108L shall cease and the Career Educational Incentive Program set forth in Article IX of the parties['] 1986-1988 collective bargaining agreement shall be revived and become effective.

On or about June 24, 2009, the Town Administrator, Greg Balukonis ("Balukonis"), notified Mari via email that the Town expected to receive only \$27,119.00 from the Commonwealth for its share of the Quinn Bill effective July 1, 2009, and that this amount did not represent anywhere close to full funding for the Commonwealth's share for fiscal year 2010. In his email message, Balukonis proposed that the Town either pay none of the Commonwealth's share of the Quinn Bill while continuing to pay the Town's share and await further clarification on how to implement the reduction, or continue to pay the Quinn Bill benefits at existing levels until clarification was received from the Commonwealth, and then require the police officers to reimburse the Town for overpayments in the form of a lump sum or by a monthly payroll deduction (Exhibit 4).

Since on or about July 1, 2009, the Town has reduced the eligible police officers' career incentive benefits by the estimated amount of the Commonwealth's underfunding

of the Quinn Bill reimbursement (Exhibit 5). On or about July 2, 2009, Mari contacted the Union's legal counsel after learning through discussions with Union members that the Side Letter of Agreement might be legally unenforceable. Subsequently, on or about July 14, 2009, Mari informed the Town via email that it was the Union's position that the police officers who qualified for Quinn Bill benefits were entitled to the full amount of base salary increases set forth in G. L. c. 41, § 108L; that the Town was obligated to pay the career incentive benefits as set forth in G. L. c. 41, § 108L; and that the Side Letter of Agreement and Article X, section 3 of the CBA could not supersede conflicting language in G. L. c. 41, § 108L (Exhibit 6). Prior to July 2, 2009, Mari had not consulted with the Union's legal counsel regarding anything involving the CBA, the Side Letter of Agreement, and/or G. L. c. 41, § 108L (Second Mari Affidavit; Feinberg Affidavit; Conti Affidavit).

The figure of \$27,119.00 that the Town expected to receive from the Commonwealth for its share of the Quinn Bill for fiscal year 2010 was \$136,306.00 less than the amount the Town had received from the Commonwealth in fiscal year 2009. Given this reduction, and in light of the Town's agreement with the Union regarding the Town's Quinn Bill responsibilities if the Commonwealth were to underfund its share, Balukonis formulated the Town's Police Department budget for fiscal 2010 based on the Town only being responsible for a fifty percent share, plus the \$27,119.00 the Town would be receiving from the Commonwealth. This budget was approved by the Board of Selectmen and the Town's Finance Committee. With respect to the Police Department part of the budget, Town meeting appropriated the funds as set forth in the budget (Balukonis Affidavit).

The CBA contains in Article XXIV a grievance and arbitration procedure provision (Exhibit 3). That provision defines a “grievance” as “a dispute concerning the interpretation, application or alleged violation of the terms of this agreement.” It also provides for binding arbitration as the remedy where a Union member is aggrieved by the decision of the Town Administrator in answering a grievance (Exhibit 3).

### **Discussion**

Summary judgment is appropriate where there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law. Mass. R. Civ. P. 56(c); Community Nat’l Bank v. Dawes, 369 Mass. 550, 553 (1976). The moving party bears the burden of affirmatively demonstrating the absence of a triable issue and that the record entitles it to judgment as a matter of law. Pederson v. Time, Inc., 404 Mass. 14, 16-17 (1989). A party who does not bear the burden of proof at trial may satisfy this burden either by submitting affirmative evidence that negates an essential element of the opposing party’s case or by demonstrating that the opposing party has no reasonable expectation of proving an essential element of his case at trial. Flesner v. Technical Commc’ns. Corp., 410 Mass. 805, 809 (1991). Once the moving party “establishes the absence of a triable issue, the party opposing the motion must respond and allege specific facts which would establish the existence of a genuine issue of material fact.” Pederson, 404 Mass. at 17. The court reviews the evidence in the light most favorable to the nonmoving party, but does not weigh evidence, assess credibility, or find facts. See Attorney Gen. v. Bailey, 386 Mass. 367, 370-371 (1982).

I. Plaintiff's Claim against Selectmen and Town Administrator

The Town claims that Balukonis, as Town Administrator, and the Town's Board of Selectmen should be dismissed as parties to this lawsuit because they "are indistinguishable from the Town and are all one and the same party." At oral argument in open court, the Union assented to dismissal of its claims against Balukonis and the Board of Selectmen. Accordingly, the Town's cross-motion for summary judgment is **ALLOWED** as it relates to Balukonis and the Board of Selectmen.

II. Standing

The Town contends that the Union does not have standing to assert its claim for a declaratory judgment. This argument lacks merit. "An association has standing to bring suit on behalf of its members [for declaratory relief] when (1) its members would otherwise have standing to sue in their own right; (2) the interests it seeks to protect are germane to the organization's purpose; and (3) neither the claim asserted nor the relief requested requires the participation in the lawsuit of each of the individual members." Hunt v. Washington State Apple Advertising Commission, 432 U.S. 333, 343 (1977). As the Union points out, all criteria are satisfied here: each of the individual members could sue in his or her own right; the interest sought to be protected relate directly to the organization's purpose of establishing salary and other terms and conditions of employment for the Town's police officers; and the question at issue is a question of law which does not required the participation in the lawsuit of each of the individual members. Thus, the Union has standing to bring this action.

### III. Exhaustion of Administrative Remedies

The Town claims that the Union cannot seek relief from this court because it has failed to exhaust its administrative remedies by submitting this dispute to arbitration under the terms of the CBA. The Union concedes that grievances relating to the CBA must be submitted to arbitration, but argues that the issue presented in this lawsuit is not arbitrable because it is not a grievance, in that it does not involve a dispute concerning the interpretation, application or an alleged violation of the terms of the CBA and the Side Letter of Agreement. Rather, it concerns whether the agreements include provisions that are prohibited as a matter of law because they conflict with G. L. c. 41, § 108L.

The Town contends that under Rooney v. Yarmouth, 410 Mass. 485 (1991), this dispute must proceed to arbitration prior to any judicial review. In Rooney, the plaintiff filed a grievance under the town of Yarmouth's collective bargaining agreement with its police union, claiming that he was denied certain retroactive salary benefits due him under the Quinn Bill. His grievance request was denied. When the plaintiff's attempt to pursue the next step of the grievance process was denied as untimely, he filed suit charging the town, *inter alia*, with violating G. L. c. 41, § 108L. Yarmouth's collective bargaining agreement with its police union included a mandatory arbitration clause for grievances. The plaintiff claimed that the dispute was not subject to the arbitration provision because it concerned his statutory and constitutional rights, and that, in any event, arbitration was not his exclusive remedy.

The arbitration clause of the Yarmouth collective bargaining agreement contained the following language: "The Arbitrator shall not have any authority . . . to determine violations of law or statute except to the extent, if any, that such law or statute has been

specifically incorporated herein by the parties.” Id. at 486. The Court found that the agreement specifically incorporated G. L. c. 41, § 108L, id. at 487, n. 2, and that the plaintiff’s claim was a grievance as defined by the collective bargaining agreement, which required resolution by an arbitrator. Id. at 491. Because the union had agreed to fully incorporate the provisions of G. L. c. 41, § 108L into its collective bargaining agreement, the arbitrator had the authority to interpret the statute to determine whether or not the town had violated it by withholding salary benefits from the plaintiff. Id. at 492. The plaintiff did not have “a personal, substantive, nonwaivable statutory guarantee that he is free to enforce judicially notwithstanding the incorporation of § 108L into the collective bargaining agreement,” nor any independent statutory rights in § 108L beyond those incorporated into the agreement. Id. The Court concluded that the plaintiff had failed to exhaust his administrative remedies because “the union effectively waived any right Rooney may have had to judicial relief based on § 108L.” Id. at 494.

Here, however, as the Union correctly points out, the parties did not fully incorporate § 108L into the CBA; to the contrary, they sought to modify its express provisions. Additionally, the Union is not claiming that the terms of the CBA were violated, nor is it requesting interpretation or application of those terms. Rooney, therefore, is not dispositive, because “employees need not submit to arbitration disputes based on independent statutory rights that are not addressed and encompassed by the collective bargaining agreement.” 410 Mass. at 491 (citations omitted).

It is for the court to determine “whether an arbitration clause in a concededly binding contract applies to a particular type of controversy.” Sheriff of Suffolk County v. AFSCME Council 93, Local 419, 75 Mass. App. Ct. 340, 341 (2009), quoting Howsam v.

Dean Witter Reynolds, Inc., 537 U.S. 79, 84 (2002). To resolve the question of arbitrability, the court must determine whether the subject matter of this dispute is one that the parties agreed to submit to arbitration. Sheriff of Suffolk County v. AFSCME Council 93, Local 419, 75 Mass. App. Ct. 340, 341 (2009). Because the declaratory relief sought here does not involve an alleged violation of the CBA or interpretation or application of its terms, it is not a proper subject for arbitration. In other words, the subject matter of this dispute is not one that the parties agreed to submit to arbitration, as “it may be said with positive assurance that the arbitration clause is not susceptible of an interpretation that covers the asserted dispute.” Sheriff of Suffolk County, 75 Mass. App. Ct. at 343; Local No. 1710, International Association of Firefighters, AFL-CIO v. Chicopee, 430 Mass. 417, 421 (1999). Accordingly, the question as to whether Article X, section 3 of the CBA and the Side Letter of Agreement conflict with G. L. c. 41, § 108L and are therefore null and void is not arbitrable and is properly before this court.

#### IV. Validity of the Side Letter of Agreement

The Union contends that the agreements conflict with, and are therefore superseded by, G. L. c. 41, § 108L. General Laws c. 150E, § 7(d) addresses conflicts between collective bargaining agreements and statutory provisions, and states:

If a collective bargaining agreement reached by the [public] employer and the exclusive representative contains a conflict between matters which are within the scope of negotiations pursuant to section six of this chapter and . . . any of the statutory provisions or rules or regulations made thereunder . . . the terms of the collective bargaining agreement shall prevail.

Under § 7(d), the provisions of a collective bargaining agreement regarding terms and conditions of employment that conflict with any of the enumerated statutes will supersede the applicable statute. National Association of Government Employees v.

Labor Relations Commission, 17 Mass. App. Ct. 542, 544 (1984). Conversely, where “a statute specifically mandating certain terms and conditions of employment is not listed in § 7(d), the statute *cannot be superseded by a bargaining agreement.*” Id. (emphasis supplied). See also City of Somerville v. Somerville Municipal Employees Association, 451 Mass. 493, 497 (2008) and cases cited. Chapter 41, § 108L mandates certain terms and conditions of employment by establishing a system for incentive salary increases based upon police officers’ level of education, and it is not one of the statutes listed in § 7(d). Therefore, to the extent that § 108L conflicts with the collective bargaining agreement, the terms of the statute must prevail.

Chapter 41, § 108L imposes upon municipalities that have adopted it a legal duty to pay the full amount of incentive salary increases due their police officers. G. L. c. 41, § 108L; Palmer v. Selectmen of Marblehead, 368 Mass. 620, 629 (1975). Once it has done so, the municipality may then seek reimbursement from the state upon certification by the Board of Higher Education. Rooney, 410 Mass. at 495, 496. This unambiguous provision of § 108L conflicts directly and materially with the Side Letter of Agreement and with Article X, section 3 of the CBA, which purport to reduce the percentage of the Town’s payment obligations under § 108L. Therefore, the statute must supersede the agreements, rendering the latter null and void.

V. “Unclean Hands”

The Town contends that equitable relief should be denied under the doctrine of “unclean hands” because the Union’s actions are “tainted with inequitableness or bad faith relative to the matter in which [it] seeks relief.” Fidelity Management & Research Co. v. Ostrander, 40 Mass. App. Ct. 195, 200 (1996). The Town points to the undisputed

facts that extensive negotiations preceded the parties' agreement regarding the language of Article X, section 3 as well as the Side Letter of Agreement and that the Union membership ratified the CBA. Essentially, the Town claims that the Union should be estopped from asserting that the collective bargaining provisions are unlawful because it failed to raise that issue during the negotiation and ratification process. That argument is unpersuasive. There is evidence in the record that Mari only became aware of the possibility that the collective bargaining provision was unenforceable after discussion with Union members and conferring with the Union's counsel just prior to notifying the Town of the Union's position that the Town was required to pay the full amount of Quinn Bill benefits to its officers. There is no evidence that would tend to support an inference that the Union negotiated in bad faith; rather, it appears on this record that neither party was aware that the negotiations concerned matters that were beyond the scope of permissible bargaining under the CBA. Under these circumstances there is no basis to apply an "unclean hands" analysis. See, e.g., Amerada Hess Corp. v. Garabedian, 416 Mass. 149, 156 (1993).

VI. Town's obligation to pay its police officers their full education incentives notwithstanding the lack of an appropriation

The Union contends that because the Town adopted Chapter 41, § 108L, it has a legal duty to pay one hundred percent of the incentive salary increases due its police officers, even though it failed to appropriate sufficient funds for that purpose. G. L. c. 41, § 108L; Palmer v. Selectmen of Marblehead, 368 Mass. at 629.

Relying primarily on the case of Town of Milton v. Commonwealth, 416 Mass. 471 (1993), the Town argues that it cannot be held to pay incentive benefits over and above the amount it appropriated. Milton, however, does not support the Town's

position. It holds only that the Commonwealth is not statutorily or contractually liable to municipalities for Quinn Bill reimbursements beyond the amount appropriated by the Legislature. *Id.* at 473. Milton does not address the issue raised here: whether a municipality may be obligated beyond the amount it has appropriated in order to fulfill an obligation incurred as the result of the adoption of G. L. c. 108L.

Although this issue has not been specifically addressed by our appellate courts, the case of Doherty v. Mayor of Everett, 13 Mass. App. Ct. 202, 207 (1982) is instructive. There, the Appeals Court held that once the City of Everett adopted the Quinn Bill, its mayor was “duty bound . . . to submit to the city council recommendations for sums sufficient to cover career incentive pay increases earned by full-time members of the police department in Everett.” Additionally, our Supreme Judicial Court has held that “where [municipal employees’] salary increases are provided for by a valid ordinance, it is incumbent on the mayor and the city to pay the increases, and the fact that the city has failed to make the necessary appropriations constitutes no defense in an action to recover wages.” Boston Teachers Union, Local 66 v. Sch. Comm. of Boston, 386 Mass. 197, 208 (1982), citing Rock v. Pittsfield, 316 Mass. 348 (1944). Likewise, the failure of the Town to make an appropriation adequate to cover the full amount of incentive pay due under the Quinn Bill should not be a defense simply because the Town erroneously believed that it could bargain to decrease its obligations.


The Town also contends that the doctrine of laches should bar the Union from arguing that the Town had an obligation to appropriate one hundred percent of the Quinn Bill benefits due. As the Union notes, however, the facts and circumstances as set forth

in the summary judgment record do not support an inference that the Union unlawfully delayed its challenge to the appropriation.

**ORDER FOR JUDGMENT**

For the foregoing reasons, it is hereby **ORDERED** that the motion of the plaintiff, Teamsters Local Union 25, for summary judgment is **ALLOWED** and the cross-motion of the defendant Town of North Reading for summary judgment is **ALLOWED** insofar as it relates to the claims against the Town Administrator and Board of Selectmen, and otherwise **DENIED**. The claims against the Town Administrator and the Board of Selectmen are hereby **DISMISSED**. Judgment shall enter in favor of the plaintiff, Teamsters Local Union 25, declaring that it is impermissible under G.L. c. 150E, § 7(d) for the Town and the Union to negotiate collective bargaining provisions that supersede G. L. c. 41, § 108L; that Article X, section 3 of the “Memorandum of Agreement Between the Town of North Reading and Teamsters, Local 25” with effective dates of July 1, 2009 through June 30, 2010 and the Side Letter of Agreement dated April 8, 2009 are therefore null and void; and that the Town is obligated to pay its police officers their full educational incentives under the Quinn Bill, effective July 1, 2009.

Dated: December 17, 2010

  
Kathe M. Tuttmann  
Justice of the Superior Court