

COMMONWEALTH OF MASSACHUSETTS

SUPREME JUDICIAL COURT
FOR THE COMMONWEALTH

No. SJC-10861

DANIEL J. ADAMS, 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

AMICUS BRIEF OF THE MASSACHUSETTS COALITION
OF POLICE, IUPA, AFL-CIO, AND NATIONAL ASSOCIATION OF
POLICE ORGANIZATIONS, INC.

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I. INTEREST OF AMICI CURIAE

A. Massachusetts Coalition of Police

With more than 3,500 police officers and public safety employees located across approximately 110 communities and jurisdictions, the Massachusetts Coalition of Police, IUPA, AFL-CIO ("MCOP") is the largest labor organization in the Commonwealth dedicated to representing police and public safety officers. MCOP, a statewide affiliate of the international labor organizations International Union of Police Associations and AFL-CIO, is an unincorporated labor association founded to organize all police officers within the Commonwealth into one unified group to better the livelihoods of its members. Through collective bargaining, organizing, and legislative activity, MCOP aggressively works to establish better working conditions for law enforcement officers.

The overwhelming majority of MCOP communities has adopted the Quinn Bill and provide educational incentive pay to eligible police officers. Of these communities, a substantial number have negotiated collective bargaining agreement provisions similar to the provision at issue in this case. These provisions purport to allow the employer to reduce Quinn Bill

payments in the event of the Commonwealth's failure to provide partial reimbursement as required by G.L. c. 41, § 108L. The outcome of this case will have a substantial financial impact on the hundreds, if not thousands of MCOP members serving in these communities.

B. National Association of Police Organizations

The National Association of Police Organizations ("NAPO") is a coalition of police unions and associations from across the United States that serves to advance the interests of America's law enforcement officers through legislative and legal advocacy, political action and education.

Founded in 1978, NAPO is now the strongest unified voice supporting law enforcement officers in the United States. NAPO represents more than 2,000 police units and associations, 241,000 sworn law enforcement officers, 11,000 retired officers and more than 100,000 citizens who share a common dedication to fair and effective crime control and law enforcement and maintaining and improving wages and benefits for police officers and their families.

Both the Boston Police Patrolmen's Association, which is the labor organization to which the plaintiffs belong, and the Massachusetts Coalition of Police, are members of NAPO, and the outcome of this case will therefore have a significant financial impact on a great many members of NAPO.

II. STATEMENT OF THE CASE

MCOP adopts the Statement of the Case and the Statement of Facts of Plaintiffs-Appellants Daniel J. Adams, et al. in their Brief.

III. SUMMARY OF ARGUMENT

Because the Quinn Bill requires certain payments and is not listed in G.L. c. 150E, § 7(d), it supersedes collectively bargained provisions that purport to allow the City of Boston to pay less than the statute requires. (Pp. 4-6.)

During the history of the Quinn Bill, the Commonwealth's reimbursement obligation has eroded, but the statute has not been amended to change the obligations of municipalities to pay incentives. (Pp. 6-10.)

Changes to the Quinn Bill, whether by amendment, judicial interpretation, or appropriations, are bind-

ing on the municipalities that have adopted the statute. (Pp. 11-18.)

Parties may bargain over subjects covered by statutes not listed in § 7(d), as long as their agreements do not conflict with the statute. (Pp. 18-23.)

Parties may collectively bargain over the Quinn Bill. Their agreements are valid and enforceable through arbitration, unless a provision conflicts with the Quinn Bill, in which case courts will vacate the arbitration decision. (Pp. 23-25.)

The issue in this case is not whether municipalities are likely to adopt the Quinn Bill but whether the goals of the Quinn Bill - a more educated police force - are realized. (Pp. 26-28.)

IV. ARGUMENT

A. CONTRACT PROVISIONS ALLOWING MUNICIPALITIES TO PAY POLICE OFFICERS LESS THAN FULL EDUCATIONAL INCENTIVES ARE INVALID BECAUSE THEY CONFLICT WITH THE QUINN BILL'S MANDATE THAT OFFICERS RECEIVE SPECIFIED INCENTIVE PAYMENTS.

The Amici MCOP and NAPO support the argument of the Appellants that the collective bargaining agreement provisions at issue - which allow the City of Boston to reduce its Quinn Bill incentive payments in response to the Commonwealth's failure to provide 50%

reimbursement - are invalid because they materially conflict with the Quinn Bill local option statute, G.L. c. 41, § 108L ("Quinn Bill"). The conflict here is simple: the Quinn Bill requires municipalities that adopt it to pay certain base salary increases to qualified police officers in municipalities that adopt the statute. Officers receive increases of 10% (associate's), 20% (bachelor's) and 25% (master's/law) for degrees in law enforcement and law. But the collective bargaining agreement provisions being challenged allow officers to receive less than the mandated percentage increases. As a matter of dollars and cents, the conflict could not be clearer.

Because the Quinn Bill is not one of those statutes listed in G.L. c. 150E, § 7(d) ("§ 7(d)"), it supersedes any conflicting provisions in collective bargaining agreements.

The tortured arguments and twisted statutory interpretation of Appellee City of Boston ("City") and Amicus Curiae Massachusetts Municipal Association ("MMA") cannot overcome the straightforward language-based directness of the Appellants' argument: (1) The Quinn Bill is not listed in "§ 7(d)"; (2) The collective bargaining agreement provisions allowing reduced

educational incentive payments materially conflict with the Quinn Bill's mandated base salary increase percentages; (3) therefore, the Quinn Bill supersedes the collective bargaining agreement provisions.¹

B. THE HISTORY OF THE QUINN BILL SUPPORTS THE POLICE OFFICERS' POSITION.

As MMA points out, the Quinn Bill has had a long history, both in the legislature and in judicial and administrative review of its provisions, since its 1970 enactment. St. 1970, c. 835. Early in the life of the statute, a June 17, 1971 opinion of Attorney General Robert H. Quinn established that (1) Quinn bill salary increases would have ancillary effects on overtime, pensions and other benefits that are based on officers' salaries; but that (2) the Commonwealth's reimbursements were limited to increases in base salary only, and the municipalities would have to bear the costs of the ancillary effects. Rep. A.G., Pub. Doc. No. 47, at 119 (1971). (A copy of the Attorney General's opinion is included in the Addendum.)

¹ The only court that has so far rendered a decision on this issue reached the same conclusion. See *Teamsters Local Union 25 v. Town of North Reading*, Middlesex CA No. MICV2009-2856 (MA Superior 12/17/2010).

Contrary to the MMA's analysis, this fact actually supports Appellants' argument, to the extent that it shows that municipalities have long been aware that the Quinn Bill does not necessarily provide full 50% reimbursement to cities and towns. Despite being aware of this apparent disconnect between the language of the statute and the reality, cities and towns continued to adopt the Quinn Bill.

If there was any doubt that 50% reimbursement was not guaranteed, it was dispelled by the Legislature's failure to reimburse municipalities the full 50% during fiscal years 1988-1991, followed by *Milton v. Commonwealth*, 416 Mass. 471 (1993), which affirmed the Legislature's actions. From then on, municipalities knew that despite the seemingly mandatory language of the Quinn Bill ("shall be reimbursed"), the Constitution of the Commonwealth made any such reimbursements subject to the appropriations process. The Legislature did not amend the Quinn Bill after *Milton* to allow cities and towns to pay less than the mandated percentage pay increases. Instead, cities and towns (and their police unions) bargained provisions into their collective bargaining agreements to protect against the consequences of the *Milton* case. As this

case demonstrates, they chose the wrong forum to seek protection. If the cities and towns wanted to protect themselves from the Commonwealth's failure to reimburse them for Quinn Bill payments, they had three options: (1) petition the Legislature to amend the Quinn Bill; (2) petition the Legislature to amend § 7(d) to add the Quinn Bill to the list of statutes that can be superseded by collective bargaining; or (3) revoke acceptance of the Quinn Bill, if possible, through the appropriate mechanism. Instead, without regard to the mandate of § 7(d), they chose a fourth, ultimately ineffective, option: collective bargaining. Despite the baseless insinuations of the City and MMA, all the evidence indicates that both municipalities and police unions bargained in good faith for these provisions, but good faith cannot supersede the mandate of § 7(d).

In fact the *Milton* case arose from the Legislature's first reductions of the reimbursement payments to cities and towns in 1988-1991. This latest round of reductions is even more severe, with, as MMA points out, zero funding for the latest fiscal year. It is important to note that none of these funding reductions has resulted from amendments to the Quinn Bill

statute; they are all the result of the annual appropriations process.

Although neither the Attorney General's opinion, the *Milton* case nor the fluctuating appropriations measures involved amendments to the Quinn Bill, there have been numerous such amendments since the statute's enactment. St. 1970, c. 835. Of these, three sets of amendments had the widest impact. First, in 1976, the Legislature overhauled the pay incentive structure and the educational basis of the program. St. 1976, c. 283, § 38; St. 1976, c. 480, § 9. Prior to these amendments, police officers received benefits for degrees in many different academic subjects. After 1976, benefits would be awarded only for degrees in law enforcement or law. Also the pay incentives were reduced from a many-tiered program based on points and reaching 30% base salary increase for a master's degree to a simpler three-step system: 10% for an Associate's degree or 60 points toward a Bachelor's; 20% for a Bachelor's degree; and 25% for a Master's degree or degree in law. These amendments simplified the pay structure, reduced the highest incentive, and narrowed the educational focus of the law to law enforcement.

The next major revisions took place in 2004, when concerns about the quality of the academic programs police officers were attending led the Legislature to impose a strict set of guidelines for educational institutions wishing to grant degrees that would be certified as Quinn Bill eligible. St. 2004, c. 149, § 93. These guidelines required, *inter alia*, more qualified professors and a prohibition on course credit for life experience. These amendments sought to ensure that each officer receiving benefits had earned a rigorous education.

The most recent and most drastic amendment to the statute took place in 2009, when the Legislature made officers hired after July 1, 2009 ineligible for Quinn Bill benefits, thus guaranteeing (absent future action) the slow death of the program by attrition. St. 2009, § 2, item 8000-0040, § 128. This amendment both preserved the existing system for current police officers while eliminating it for new employees.

This history indicates that, in amending the Quinn Bill, the Legislature's focus has been on the academic side of the statute, not the funding mechanism. For the most part, the financial issues have been addressed outside the amendment process, through

the Attorney General, the courts and the appropriations process. The conclusion to be drawn from these financial decisions is that the primary responsibility for paying Quinn Bill educational incentives is on municipalities, and reimbursement is not guaranteed.

C. THE QUINN BILL IS BINDING ON THE CITIES AND TOWNS THAT HAVE ADOPTED IT; THERE IS NO REQUIREMENT OF 'FRESH ACCEPTANCE.'

The notion, suggested by City of Boston and picked up by MMA, that cities and towns have the right to reduce Quinn Bill payments even without a collective bargaining provision, is absurd. The MMA's theory is based on language in cases holding that, in general, amendments to local option laws are binding on the municipalities who had adopted those laws prior to amendment. See *Broderick v. Mayor of Boston*, 375 Mass. 98, 102 (1978). The MMA relies on language in the cases indicating that there may be exceptions to this general rule, in which case amendments to local option statutes would not apply without a "fresh acceptance" by the municipality. According to MMA, the failure to fund reimbursements constitutes an exception and only municipalities that re-adopt the Quinn bill under these new circumstances are obligated to pay 100% of the educational incentives.

The first problem with this theory is insurmountable: the Legislature has not amended the Quinn Bill, which is the only local option law involved in this case. For the MMA to attempt to broaden the rule to include not just amendments but also any "legislative action", which would presumably encompass the appropriations process, has no basis in case or statute. The problems with such an expansion are formidable. Unlike a statutory amendment, which is permanent unless appealed, the appropriations process takes place anew every year. Thus we would have the spectacle of hundreds of municipalities annually adopting, re-adopting, and failing to re-adopt, depending on which way the fiscal winds were blowing. The general rule would be swallowed by the exception and the purpose of the statute would not be served. Equating amendments with appropriations has neither legal basis nor practical usefulness.

Even cursory scrutiny of MMA's theory, then, reveals its deep and fatal flaws. It makes no sense for the City to re-adopt the Quinn Bill in 2011 (or, more likely, fail to re-adopt) based on the 2010 or 2009 appropriations bill that reduced Quinn Bill funding; not one word of the statute has changed with regard to

the funding mechanism. The language of the statute still requires the municipality to pay 10%, 20%, or 25%, as applicable. The failure of the appropriation of funds for reimbursing the municipalities, while a change in the factual context, is not an amendment to the Quinn Bill, a distinction with a very significant difference.

The general rule is that amendments are binding without fresh acceptance, so when change comes not from an amendment but from a judicial decision, such as *Milton*, the municipality is also bound by the new interpretation. In *Medfield Police League v. Board of Selectmen of Medfield*, 10 Mass. App. Ct. 265 (1980), the Appeals Court found that a judicial interpretation of certain local option laws which significantly altered the parties' understanding of their meaning was binding on the municipality without a fresh acceptance. The Town of Medfield had adopted local option laws G.L. c. 41, § 111D and G.L. c. 147, §§ 16C and 17, which provided certain vacation benefits to police officers, in 1957. In 1970, the SJC interpreted those provisions in *Holyoke Police Relief Ass'n v. Mayor of Holyoke*, 358 Mass. 350 (1970) to provide seven days off for each week of vacation. The municipal-

ity stated that it was not bound by *Holyoke* because its adoption of the local option law preceded the decision.

The court rejected the argument, noting the "settled rule that once a statute is accepted by a local municipality, it becomes 'applicable statute law, subject to change, as in the case of other statutes, only by subsequent action of the Legislature.'" 10 Mass. App. Ct. at 268, quoting *Brucato v. Lawrence*, 338 Mass. 612, 616 (1959). The Court also rejected as "without merit" the Town's argument (reminiscent of the City's here) that "had the result in [the *Holyoke* decision] been foreseen, the town would not have accepted the statutes." *Id.* A judicial decision, then, even one that significantly alters the interpretation of a statute, is not sufficient to create an exception to the rule that municipalities must accept local option laws as they change over time. Just as a judicial interpretation of a local option law is binding, the action of the Legislature in appropriating (or failing to appropriate) funds for a local option law is also binding.

Interesting, neither the City nor MMA argue that the 2009 amendment to the statute, which reduces fu-

ture eligibility for the program, to zero requires a fresh acceptance. To say that the failure to make a fresh acceptance after the Legislature fails to appropriate all (or any) of the reimbursement excuses municipalities from their statutory obligations stretches the jurisprudence of local option laws too far. Under that theory, a municipality could abandon its obligations under any local option law that requires an appropriation, if the Legislature reduces funding in a "drastic" way.

The cases of *Dudley v. City of Cambridge*, 347 Mass. 543, 545-546 (1964) and *Broderick v. Mayor of Boston*, 375 Mass. 98 (1978) do not support MMA's argument. *Broderick* stands for the proposition that, in general, amendments to local option laws are binding on municipalities that adopted those laws previously. 375 Mass. at 102. The MMA would have you think otherwise. In *Broderick*, the City adopted a local option law, which was later amended. The City argued that it must newly adopt the amendment (or, more precisely, the newly-amended statute), but the Court disagreed. In this case, the Court ruled, the amendment was not a 'drastic incursion' on the original statute, and so the original adoption was sufficient. The Court's impli-

cation was that, in some case in the future, it might find an amendment to a local option law that was so drastic an incursion that a second adoption was required. In such a case, the amendment would have to be so extensive as to be "not germane to the subject of the original." 375 Mass. at 102. No subsequent case has arisen addressing those specific facts.

In *Dudley v. City of Cambridge*, 347 Mass. 543, 545-546 (1964), a City sought to reduce firefighters' hours consistent with an amendment to a local option law the City had adopted prior to the amendment. Under the pre-amendment local option law, such a reduction would not have been permitted. The Court struck down the City's hours ordinance. Although the Court did discuss the practical effect of the City's action, it first focused on language in the amended local option law, which read, "*Nothing in this act shall be construed as operating to rescind acceptance heretofore made in any city or town.*" 347 Mass. at 345. According to the SJC this language "affirms the 'acceptance heretofore made' by the city of [the local option law] as it read on November 7, 1950", that is, before the amendment. 347 Mass. at 346. In *Dudley*, then, the practical impact of the reduced hours was

not the deciding factor. What mattered most to the Court was the statutory language, which said, in effect, that the new amendment would only apply if there were a fresh acceptance. See also *Broderick*, 375 Mass. at 102 ("The *Dudley* case shows that the form of the subsequent legislation may be indicative as to whether renewed acceptance by the localities is called for.") There is no similar language in the Quinn Bill or any other relevant document, so the general rule applies that amendments are binding without fresh acceptance. See also *Chief of the Fire Dep't of Lynn v. Allard*, 30 Mass. App. Ct. 128 (1991) (amendment to local option sprinkler law is binding without fresh acceptance, even though lawsuit filed before amendment date, where injunction issued after amendment).

The MMA takes the dictum in *Broderick* about an amendment to a local option law and attempts to apply it to the Quinn Bill. First, as noted, there is a crucial flaw in the analogy - the Quinn Bill has not been amended to reduce the reimbursements - these reductions took place in the appropriations process, while the text of G.L. c. 41, § 108L remained the same. If any amendment occurred, it was the judicial gloss in the *Milton* case, which pointed out the Con-

stitutional restrictions on the reimbursement language in the Quinn Bill. Yet, as the Court in *Town of Medfield* made clear, changes brought about by judicial decisions do not require fresh acceptance. Furthermore, as Appellants point out in their brief, the collective bargaining agreement provisions at issue here were adopted long after *Milton* was decided, so the idea of a fresh acceptance makes no sense, even if we did stretch the definition of amendment to include an appellate court decision.

D. PARTIES TO COLLECTIVE BARGAINING AGREEMENTS MAY BARGAIN OVER SUBJECTS NOT LISTED IN § 7(d) AS LONG AS THE AGREEMENTS DO NOT MATERIALLY CONFLICT WITH THE STATUTE.

The MMA's discussion of the role of bargaining over subjects covered in statutes not listed in Section 7(d) relies on a fundamental misunderstanding about the relationship between statutes and collective bargaining agreements. Despite the implications of MMA's argument, parties to collective bargaining agreements must still avoid material conflicts with statutes not listed in § 7(d) and when those conflicting bargained provisions are challenged, courts have invalidated them. MMA cannot cite to a single case in which a court has allowed a collective bargaining

agreement provision that materially conflicts with a non-§ 7(d) statute to stand.

First, the fact that a statute is not listed in § 7(d) does not prohibit collective bargaining over the subject matter of the statute. As *Rooney vs. Town of Yarmouth*, 410 Mass. 485, 495-496 (1991) made clear, the parties to a collective bargaining agreement may at the very least incorporate a benefit statute into their agreement. Doing so allows the parties to resolve disputes over the benefit through the Agreement's grievance and arbitration procedure. Second, as discussed below, parties may bargain over the subject matter of statutes not listed in § 7(d) as long as the provisions they bargain do not materially conflict with the statute. See *City of Leominster v. International Bhd. of Police Officers, Local 338*, 33 Mass. App. Ct. 121, 127 (1992).

The relevant statutory language is as follows:

If a collective bargaining agreement reached by the employer and the exclusive representative contains a conflict between matters which are within the scope of negotiations ... and [certain listed statutes, ordinances, rules and regulations]..., the terms of the collective bargaining agreement shall prevail.

G.L. c. 150E, § 7(d). See *Town of Dedham v. Dedham Police Ass'n (Lieutenants and Sergeants)*, 46 Mass. App. Ct. 418, 419-420 (1999) ("a collective bargaining agreement may not require a result that conflicts with a mandate of State law, unless the law is listed in § 7(d)"). See also *City of Fall River v. AFSCME Council 93, Local 3177, AFL-CIO*, 61 Mass. App. Ct. 404, 411 (2004) (where there is a "material conflict" between collective bargaining agreement and statute not listed in § 7(d), statute shall prevail); *City of Leominster v. International Bhd. of Police Officers, Local 338*, 33 Mass. App. Ct. 121, 127 (1992), citing *Rooney v. Yarmouth*, 410 Mass. 485, 493 n.4 (1991) (same).

When a Court finds a conflict, it will not hesitate to invalidate the collective bargaining provision. See, e.g., *Middleborough Gas & Elec. Dep't v. Town of Middleborough*, 48 Mass. App. Ct. 427, 434 (2000); *Massachusetts Org. of State Eng'rs and Scientists v. Commissioner of Admin.*, 29 Mass. App. Ct. 916 (1990); *Martell v. Teachers' Retirement Board*, 20 Mass. App. Ct. 188, 190-191 (1985); *City of Everett v. Teamsters, Local 380*, 18 Mass. App. Ct. 137, 140 (1984). See also cases cited in Appellants' Brief, p. 27 n.3.

The cases cited by the MMA hold no differently. In each of the cases cited by MMA regarding civil service, the court carefully examined whether there was a conflict between the collective bargaining agreement provision or practice at issue and the civil service statute. In each case, the court found no such conflict. See *City of Fall River v. AFSCME*, 27 Mass. App. Ct. 649 (1989) (collectively bargained promotion procedure does not conflict with Chapter 31); *City of Worcester v. Local 1009, Int'l Ass'n of Firefighters*, 32 Mass. App. Ct. 1122 (1992) (collectively bargained vacancy filling provision did not conflict with policy underlying G.L. c. 31, § 27)² *City of Worcester v. Local 378, Int'l Bhd. of Police Officers*, No. WOCV2003-01841, 22 Mass. L. Rptr. 600, 2007 WL 1977725 at *7 (Sup. Ct. Feb. 28, 2007) (promotion provision did not directly and substantially conflict with civil service law).

² The description of this case, which is cited in the Amicus brief of MMA, is taken from a single paragraph in *City of Worcester v. Local 378, Int'l Bhd. of Police Officers*, No. WOCV2003-01841, 22 Mass L. Rptr. 600, 2007 WL 1977725, at *6 (Sup. Ct. Feb. 28, 2007). No copy of the unpublished decision is available on Westlaw and no copy was attached to any of the briefs. The Massachusetts Appellate Reports at 32 Mass. App. Ct. 1122 (1992) contains merely a table entry indicating "Judgment Affirmed."

On the other hand, when the courts have found a conflict between collective bargaining provisions and civil service law, they have not hesitated to declare the collectively bargained procedure invalid. See *City of Leominster v. International Bhd. of Police Officers, Local 388*, 33 Mass. App. Ct. 121, 127 (1992); *Massachusetts Org. of State Eng'rs and Scientists v. Commissioner of Admin.*, 29 Mass. App. Ct. 916 (1990). Similarly, while MMA implies that health insurance bargaining regularly flaunts Chapter 32B, courts have also struck down bargained provisions that conflict with that employee benefit statute. See *Middleborough Gas & Elec. Dep't v. Town of Middleborough*, 48 Mass. App. Ct. 427, 434 (2000); *Broderick v. Mayor of Boston*, 375 Mass. 98, 102 (1978).

Municipalities and police unions may certainly negotiate in good faith over a myriad of topics involving wages, hours and other conditions of employment. In some cases, perhaps, despite the best efforts of all concerned, their agreements may conflict with a statute not listed in § 7(d). Such a conflict may remain dormant until circumstances arise that lead one party or the other to challenge it. At that point, the proper action is for the reviewing court to

declare the conflicting provision invalid. MMA points to various collective bargaining provisions that appear to be in conflict with a statute not listed in § 7(d). Such a recitation, if accurate, does not mean that § 7(d)'s mandate no longer has the force of law, any more than the existence of speeding drivers on the Mass. Pike proves that the speed limit laws have been repealed. If you are the one pulled over, directing the officer's attention to the other speeders will not help you avoid a ticket.

E. PARTIES CANNOT NEGOTIATE AWAY THEIR RIGHTS UNDER THE QUINN BILL STATUTE, WHICH OBLIGATES MUNICIPALITIES TO PAY FULL BENEFITS REGARDLESS OF REIMBURSEMENT.

The City of Boston and the MMA err in seeing collective bargaining as the solution to the problem created when the Legislature failed to reimburse cities and towns for 50% of Quinn Bill salary increases. While municipalities and police unions have always been free to negotiate regarding educational incentives generally, and the Quinn Bill specifically, nothing about the current fiscal situation permits them to negotiate provisions that materially conflict with the Quinn Bill statute. That statute requires municipalities who have adopted the Quinn Bill to pay

10%, 20% and 25% base salary increases, as applicable, to qualified police officers. Put simply, collective bargaining agreements that permit the municipality to pay less than the statutory amounts conflict with G.L. c. 41, § 108L.

That an arbitrator has upheld such a provision is not surprising, given that the arbitrator's role is to interpret the agreement of the parties, not interpret statutory law or apply the conflict language of G.L. c. 150E, § 7(d). To the extent that the arbitrator in the *Rutland* award, cited by MMA, has opined on the issue of whether the provision at issue conflicts with the Quinn Bill, such an opinion is not relevant to the question of whether the collective bargaining agreement was violated. The question of such a conflict is for the Court and it is in court that such arbitration awards are routinely vacated when they conflict with a statute not listed in § 7(d).

Arbitrators will enforce the Quinn Bill when the parties incorporate it into their agreements. In cases in which the parties have not negotiated a provision that purports to allow the municipality to reduce Quinn Bill payments, arbitrators have found that such unilateral reductions violate the collective bargain-

ing agreement's Quinn Bill provisions. So, in *Medford Police Patrolmen's Ass'n and City of Medford*, AAA Case No. 11 390 01557 09 (June 9, 2010) (Holden, Arb.) and *Leominster Patrolmen's Union, MassCOP Local 364 and Leominster Superior Officers' Union, MassCOP Local 282 and City of Leominster*, AAA Case No. 11 390 02438 09 (Nov. 24, 2010) (Ryan, Arb.), both municipalities reduced Quinn Bill payments in response to state underfunding of reimbursements. (Copies of these arbitration awards are included in the Addendum.) The Unions grieved, and in both cases the arbitrators found that the municipalities were obligated to pay the full Quinn Bill incentives, regardless of expectation of reimbursement. Both arbitrators agreed that the *Milton* case, arising out of the Legislature's failure to fully reimburse in 1988-1991, changed the landscape, but that the parties were bound by the changing interpretation of the statute.

The result of these arbitrations underscores the limits of collective bargaining when dealing with statutes not listed in § 7(d). Arbitrators' limited authority is effective when there is no conflict between the statute and the agreement. Where such a conflict exists, an arbitrator is not necessarily em-

powered to address it, but will normally enforce the written terms of the agreement. It is for the courts to step in and vacate an award that runs afoul of § 7(d).

F. THE MOST DIRECT BENEFICIARIES OF THE QUINN BILL BENEFITS ARE THE POLICE OFFICERS, NOT THE MUNICIPALITIES; THE IMPACT OF THIS DECISION ON POLICE AND THE COMMUNITIES THEY SERVE WILL BE SIGNIFICANT.

The MMA raises the fear that, if the municipalities are required to pay the full Quinn Bill without guarantee of partial reimbursement, they will not adopt the Quinn Bill. This is certainly possible, but it does not affect the thousands of educated police officers in Boston and other cities and towns who already receive Quinn Bill benefits. They chose to serve the public in communities that provide them with financial incentives for their educational achievements; in turn, their communities benefit from highly educated police forces. It is not clear what will happen if communities are allowed to bargain their way out of their statutory obligations, but the resulting pay reductions of 5%, 10% or 12.5% are likely to be a motivating factor for educated officers to seek employment in other municipalities, or other fields al-

together. The financial impact of these illegal provisions is tangible and immediate, unlike the hypothetical worry of the MMA that cities and towns that have not already done so may be dissuaded from adopting the Quinn Bill. The MMA's emphasis on the incentives to municipalities, like the City's arguments about the importance of the reimbursement portion of the statute, take the focus away from the subject of the statute: providing citizens with a more highly educated police force. The key to achieving this goal is paying educated officers higher salaries. The primary object of the legislation is "to improve the educational level of the police force." *Palmer v. Selectmen of Marblehead*, 368 Mass. 620, 627 (1975). The means of achieving this goal, in this case, "cost-splitting" between the municipality and the Commonwealth, is secondary. The incentive to the municipalities (partial reimbursement) is subsidiary to the incentive to the officers (the base salary increases), which in turn is in service of the public good, public safety in particular.

Since the 2009 amendment, the Quinn Bill is a finite benefit that will shrink over time as more and more of the police force consists of officers hired

after July 1, 2009. Municipalities and police unions have already begun negotiating educational incentive plans for these new officers which do not rely on state reimbursement. During the remaining years of the statutory program, officers deserve to receive the full benefits mandated by the Quinn Bill statute - no bargain can take that away from them.

V. CONCLUSION

The Massachusetts Coalition of Police and the National Association of Police Organizations appreciate the power of collective bargaining to improve the lives of police officers and their families. This case, however, deals with the limits of collective bargaining when it conflicts with the will of the people, as expressed by the Legislature in the Quinn Bill police educational incentive law and its omission from the list of enumerated statutes in G.L. c. 150E, § 7(d). There is a conflict between a law that requires certain payments and a collective bargaining agreement that allows the City to pay only half as much. To resolve that conflict, the law provides an answer: the statute prevails and the conflicting provisions must be struck down.

These Amici therefore urge this Court to find that the City of Boston violated G.L. c. 41, § 108L when it reduced Quinn Bill payments to the Plaintiff-Appellants and to declare that the collective bargaining agreement provisions that purport to allow such reductions are null and void.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that I have this day, October 18, 2011, served two copies of the Brief of Amici Massachusetts Coalition of Police and National Association of Police Organizations, Inc., by first class mail, postage prepaid, upon the following:

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Dated: October 18, 2011

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CERTIFICATION PURSUANT TO MASS. R. A. P. 16(K)

I hereby certify that this brief complies with all rules of court pertaining to the filing of briefs, including but not limited to Mass. R. A. P. 16(a)(6), 16(e), 16(f), 16(h), 18 and 20.

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