

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF LABOR RELATIONS

In the Matter of the Arbitration Between: *

TOWN OF ATHOL *

-and- *

ARB-14-3431, 14-3432

NEW ENGLAND POLICE BENEVOLENT *

ASSOCIATION (NEPBA) *

Arbitrator:

Helen M. Bowler, Esq.

Appearances:

Albert R. Mason, Esq. - Representing Town of Athol

Thomas E. Horgan, Esq. - Representing NEPBA

The parties agreed to submit these consolidated cases to the undersigned arbitrator based on stipulated facts and exhibits, waiving their right to a hearing. I have considered the issues, and, having studied and weighed the evidence presented, conclude as follows:

AWARD

The Town did not violate Article 28 of the collective bargaining agreement when it failed to include Quinn Bill pay in the calculation of Injured on Duty pay pursuant to G.L. c. 41, section 111F for Sergeant Richard Aucoin and Officer Craig Deveneau, and the grievances are denied.



Helen M. Bowler, Esq.

Arbitrator

December 12, 2014

INTRODUCTION

On January 27, 2014, NEPBA (Union) filed two unilateral petitions for Arbitration. Under the provisions of M.G.L. Chapter 23, Section 9P, the Department of Labor Relations (Department) appointed Helen M. Bowler, Esq. to act as a single neutral arbitrator with the full power of the Department.¹ The two arbitration case arose out of essentially the same set of operative facts and the parties agreed to consolidate the two matters for hearing. The parties also agreed to submit the cases to the arbitrator based on stipulated facts and exhibits, waiving their right to a full hearing on each matter.

The parties filed briefs on September 30, 2014.

THE ISSUE

Whether the Town violated Article 28 of the collective bargaining agreement when it failed to include Quinn Bill pay in the calculation of Injured on Duty pay pursuant to G.L. c. 41, section 111F for Sergeant Richard Aucoin and Officer Craig Deveneau?

If so, what shall be the remedy?

RELEVANT CONTRACT LANGUAGE

The parties' Collective Bargaining Agreement (Agreement) contains

¹ Pursuant to Chapter 145 of the Acts of 2007, the Department of Labor Relations "shall have all of the legal powers, authorities, responsibilities, duties, rights, and obligations previously conferred on the ... the board of conciliation and arbitration ... including without limitation those set forth in chapter 23C, chapter 150, chapter 150A, and chapter 150E of the General Laws."

the following pertinent provisions:

Article 4 Employees' Rights

1. The Employer agrees that all rights and privileges enjoyed by the employees will remain in effect unless specifically abridged or modified by this Agreement.

Article 5 Stability of the Agreement

2. No amendments, alterations, or variation of the terms or provisions of this Agreement shall bind the parties hereto unless made and executed in writing by said parties.
3. Any portion of this Agreement found to be in conflict with any town by-law or statute now in effect, or introduced at a later date, will be null and void. However, all other portions of this Agreement will remain in effect.

Article 7 Grievance Procedure

2. g)The decision of the arbitrator shall be binding on all parties. The arbitrator may not alter the terms of this agreement and will render no decision which is contrary to law.

Article 28 Injury Leave

1. An officer who is injured while responding to a call for police service, or while providing such service when appropriate or required to do so by department rules, regulations, policies or procedures may, subject to the following, be eligible for leave without loss of pay for the duration of any resulting disability which precludes such officer from performing his/her normal duties or any assignment which the chief may make which is not inconsistent with the officer's training and/or ability.
6. In computing the pay to which a disabled officer is entitled, base pay only will be used.
 - a) Compensation will not include education incentive, specialist pay, shift differential, holiday pay, hazardous duty pay, longevity, other extra pay which an officer might otherwise have been entitled in addition to base pay.

- b) No uniform allowance will be paid to, or on behalf of officers absent on injury leave for more than six (6) months.
9. It is recognized that certain provisions of this article are at variance with the terms of M.G.L. c. 41 section 111F, pursuant to M.G.L. ch. 150E, sec. 7 (d). The provisions of this article will therefore, supersede and modify certain aspects of ch. 41, sec. 111F. In all other aspects the provisions of ch. 41, sec. 111F will still apply.

STIPULATED FACTS

1. The Town of Athol (Town or Employer) is a public Employer within the meaning of Section 1 of M.G.L. c. 150E.
2. The New England Police Benevolent Association (NEPBA or Union) is an employee organization within the meaning of Section 1 of M.G.L. c. 150E.
3. The Union is the exclusive bargaining representative for permanent full-time police officers and sergeants (NEPBA Local 59) within the Town.
4. The Town and the Union are presently parties to a Collective Bargaining Agreement dated July 1, 2012 through June 30, 2015.
5. The Town voted to adopt M.G.L. c. 41, sec. 108L in 1971 and currently it remains in full force and effect within the Town.
6. It is a fact that since 1996 police officers receiving M.G.L. c. 41, section 111F payments had M.G.L. c. 41, sec. 108L payments included in their base pay.
7. It is also a fact that the contract by its terms, excludes Educational Incentive pay from M.G.L. c. 41, section 111F pay.

ADDITIONAL FACTS²

In December, 2013, Officer Craig Deveneau (Deveneau) and Sergeant Richard Aucoin (Aucoin) were injured on duty and absent from work due to work-related injuries. Each officer submitted a claim for pay pursuant to G.L. c. 41, sec. 111F³ for Injured on Duty pay (IOD pay). The Town accepted their claims. However, the Town paid each officer only base salary during leave without any additional compensation normally paid to an officer reporting for regular duty. The Town specifically excluded police career incentive pay, otherwise known as "Quinn Bill" (Quinn Bill)⁴, from the officers' pay. Initially, the Town had included Quinn Bill pay in the calculation of IOD pay due the officers and subsequently excluded Quinn Bill pay, which decreased the IOD pay. This adjustment precipitated the filing of the grievances.

In January, 2008, another officer, Lee Gutkopf, was absent due to a work related injury and received his Quinn Bill benefits as part of IOD pay. As the parties stipulated, the Town had a practice of including Quinn Bill pay in IOD pay calculations.

On December 4, 2013, Deveneau submitted a grievance claiming that the Town wrongly excluded Quinn Bill payments as part of IOD pay. The

² The additional facts are summarized from the exhibits submitted by the parties.

³ M.G.L. c. 41, sec. 111F provides for leave "without loss of pay" for municipal police officers and firefighters injured on duty through no fault of their own.

⁴ M.G.L. c. 41, sec. 108L is a local option statute, adopted in 1971 by the Town of Athol, which provides for certain increases in base pay for police officers who attain educational degrees in law enforcement.

Town similarly denied Quinn Bill pay to Aucoin and he filed a grievance on January 4, 2014.

POSITIONS OF THE PARTIES

THE UNION

The Town violated Article 28 when it failed to include Quinn Bill pay in the calculation of IOD pay in December, 2013 for Deveneau and Aucoin. The parties have a longstanding, unequivocal and mutually accepted past practice to pay Quinn Bill pay when an officer is out injured and receiving IOD pay. This past practice can be relied on to interpret the ambiguous language of Article 28, Section 6 of the Agreement which refers to “educational incentive pay” but not specifically to Quinn Bill pay. According to the Union, there is a difference between Quinn Bill pay under G.L. c. 41 section 108L and “educational incentive pay” as used in Article 28. Quinn Bill pay is a statutory mandate that the Town is obligated to pay notwithstanding the contract language which excludes educational incentive pay from an officer’s pay when out on IOD leave, and the parties’ past interpretation of the contract language supports the Union’s reading of the language. If the parties had intended to exclude Quinn Bill payments from IOD pay, they would have said so in their contract.

Legally, the Town is obligated to pay officers Quinn Bill under the terms of G.L. c. 41, section 108L and the decision of the Massachusetts Supreme Judicial Court in Adams v. City of Boston, 461 Mass. 602 (2012). To the extent that Article 28, section 6 can be interpreted to relieve the Town

from paying their portion of Quinn Bill benefits to an officer on IOD leave, such reading would materially conflict with the statutory provisions of 108L and be rendered null and void pursuant to G.L. c. 150E, section 7(d) and Article 5, section 2 of the Agreement. M.G.L. c. 41, section 108L is not enumerated in c. 150E, section 7(d), and therefore cannot be superseded by a collective bargaining agreement. The arbitrator has the authority to apply external law when to do otherwise would render the agreement unlawful. To deprive an officer absent due to a work-related injury from one hundred percent of his pre-injury pay would be contrary to public policy and the legislative intent of the statute.

Therefore, the arbitrator should find a violation of the Agreement and statute and restore Quinn Bill pay to each officer during his period of absence due to IOD status.

THE EMPLOYER

The language of Article 28, section 6 is clear and unambiguous and cannot be changed by an administrative practice to the contrary which only came to light when the Town Manager retired. The past practice that occurred was in error and contrary to the explicit language of the Agreement. Past practice cannot supersede specific contract language. Article 28, section 6 clearly excludes "educational incentive pay", which is the same thing as Quinn Bill pay, from the calculation of IOD pay, and the express terms of the Agreement should be applied by the arbitrator.

The terms of the Agreement limit the arbitrator's authority to rule contrary to the specific language of the Agreement. Article 7, section 2 of the grievance procedure states that, "The arbitrator may not alter the terms of this agreement...." In addition, Article 5, entitled "Stability of Agreement", states in pertinent part, that "No amendments, alterations, or variation of the terms or provisions of this Agreement shall bind the parties hereto unless made and executed in writing by the parties." Therefore, the plain language of the Agreement limits the scope of the arbitrator's authority to the express terms of the contract.

Finally, the Town contends that this is an issue for the arbitrator to decide under a harmonious reading of the Agreement, M.G.L. c. 41, section 111F and M.G.L. c.150E, section 7(d). The Town argues that the issue is compensation under the IOD statute, not the Quinn Bill law. G.L. c. 41, section 111F is one of the enumerated sections under G.L. c. 150E, section 7(d) and therefore subject to modification through the parties collective bargaining agreement. Article 28, Section 9 of the parties' contract recognizes this variance and acknowledges that the parties' have agreed to supersede certain aspects of the IOD law. The arbitrator should apply the plain language of the Agreement and deny the grievances.

OPINION

The issue before me is: whether the Town violated Article 28 of the Agreement when it failed to include Quinn Bill pay in the calculation of Injured

on Duty pay pursuant to G.L. c. 41, section 111F for Sergeant Richard Aucoin and Officer Craig Deveneau?

If so what shall be the remedy?

For all the reasons stated below, I find the Town did not violate the Agreement and the grievances are denied.

Article 28 of the parties' Agreement, entitled "Injury Leave", controls resolution of this dispute. This contractual article details an officer's eligibility for leave due to a work-related injury and compensation during the term of the leave. In addition, the parties negotiated a provision in Article 28 that addresses variance between the contract language and M.G.L. c. 41, sec. 111F, the statutory provision which governs injury leave of police officers and firefighters.

The Union, while acknowledging that Article 28 is controlling, argues that the provisions of this Article are ambiguous and susceptible to interpretation based on the parties' past practice of paying Quinn Bill pay to an officer on IOD leave. The Town claims that the contract language is clear and that the Union cannot introduce evidence of past practice to modify the express terms of the contract.

I agree with the Town that the contract language regarding payment of officers on IOD leave is clear and unambiguous. I also agree that the terms of the Agreement, specifically Article 5, section 1, "Stability of the Agreement" and Article 7, section 2 (g) "Grievance Procedure" limit the arbitrator's ability to deviate from the express terms of the Agreement if there is a finding that

the contract language is clear on its face. Therefore, I reject the parties' past practice as dispositive of this matter or clarification of ambiguous language, because the language is clear and unambiguous.

Article 28, section 1, mirrors the language of G.L. c. 41, section 111F and creates eligibility for "leave without loss of pay" during the term of a work-related absence. The parties, in section 6 of Article 28, define exclusions from "pay" when determining compensation under IOD leave. Among those exclusions are "educational incentive," which the Union contends is not the same as Quinn Bill pay.

However, the Union provides neither evidence, such as bargaining history, nor any reference within the confines of the agreement that would lead to a more expansive or different definition of educational incentive than Quinn Bill pay. There is no reference in the Agreement to any other type of educational incentive pay. The statutory definition of Quinn Bill , G.L. c. 41, section 108L, is a "career incentive pay program offering base salary increases to.....members...of town police departments,....as a reward for furthering their education in the field of policework." The terms "incentive" and "education" are both used in the statutory definition of Quinn Bill pay as well as the language of the Agreement. Absent evidence establishing the parties' intent to the contrary, Quinn Bill and educational incentive are synonymous terms.

Furthermore, Article 28 section 9 clearly establishes the intent of the parties to deviate from the statutory language of G.L. c. 41, section 111F.

Section 9 recognizes the potential conflict between c. 41, section 111F and the contract language by stating the parties' intent that the terms of the collective bargaining agreement supersede the statute and prevail. This language is consistent with the provisions of G.L. c. 150E, section 7(d) which state that collective bargaining provisions prevail over an enumerated statute they are in conflict with, such as G.L. c. 41, section 111F. Rein v. Town of Marshfield, 16 Mass. App. Ct. 519 (1983). Therefore, even if the exclusion of educational incentive or Quinn Bill pay represents a deviation from what is normally included in "pay" under the terms of the IOD pay pursuant to G.L. c. 41, section 111F, the parties have allowed that deviation to occur under Section 9 of Article 28.

The Union alternatively argues that this case is dispositive under the statutory Quinn Bill language, which under G.L. c. 150E, section 7(d) is not an enumerated statute and therefore prevails over the conflicting provisions of a collective bargaining agreement. The Quinn Bill statute, G.L. c. 41, section 108L is silent with respect to requiring a Town to pay an educational incentive while a police officer is out on IOD leave. Therefore, I cannot find that the contract language materially conflicts with section 108L. Adams v. City of Boston, 461 Mass. 602 (2012).

Having found that the clear and unambiguous language of the Article 28 of the Agreement permits the Town to withhold Quinn Bill pay in IOD pay calculations, the grievances are denied.

AWARD

The Town did not violate Article 28 of the collective bargaining agreement when it failed to include Quinn Bill pay in the calculation of Injured on Duty pay pursuant to G.L. c. 41, section 111F for Sergeant Richard Aucoin and Officer Craig Deveneau, and the grievances are denied.



Helen M. Bowler, Esq.
Arbitrator
December 12, 2014