



The Commonwealth of Massachusetts

AUDITOR OF THE COMMONWEALTH DIVISION OF LOCAL MANDATES

A. JOSEPH DENUCCI
AUDITOR

10 WEST STREET, 6TH FLOOR
BOSTON, MASSACHUSETTS 02111

TEL. (617) 727-0980
1-800-462-COST
FAX (617) 727-0984

September 5, 2003

Mr. David Baier
Massachusetts Municipal Association
60 Temple Place
Boston, MA 02111

RE: Binding Arbitration: Initiative Petition No. 03-13

Dear David,

At Ken Marchurs' request, I am enclosing two letters on Binding Arbitration. The 1993 letter states Auditor DeNucci's position that Binding Arbitration would be a subject controlled by Article 115 of the Massachusetts Constitution. Attached to this letter is a copy of the "Cambridge" case which (on page 169 and 170) refers to Article 115 as the "specific constitutional provision" applicable to binding arbitration.

Also enclosed is Auditor Finnegan's 1984 letter expressing the opinion that Binding Arbitration is subject to the Local Mandate Law, G. L. c. 29, s. 27C. Please note that this opinion was formed prior to the "Cambridge" case or any other guidance from the courts regarding the applicability and scope of the mandate law.

Emily Cousens is reviewing the issue of ongoing applicability of Article 115 to the Binding Arbitration proposed by the initiative and would welcome any legal concerns or questions MMA may have. Let's stay in touch.

Sincerely,

A handwritten signature in black ink that appears to read "Tom".

Thomas F. Collins, Director
Division of Local Mandates

TFC:



The Commonwealth of Massachusetts

AUDITOR OF THE COMMONWEALTH

STATE HOUSE, BOSTON 02133

A. JOSEPH DeNUCCI
AUDITOR

TEL. (617) 727-207

May 18, 1993

The Honorable Thomas F. Birmingham
Chairman
Senate Ways and Means Committee
State House, Room 213C
Boston, MA 02133

RE: 1993, HOUSE NO.S 378, 973, 1182, 1734, 1741 AND 1894.

Dear Chairman Birmingham:

This letter is in response to your request for an opinion on what level of government would be responsible for the costs associated with the above-referenced bills. Each relates to final and binding arbitration of labor disputes for various employee organizations as part of the collective bargaining process. Although the Division of Local Mandates has no specific authority to make a dispositive interpretation of Article 115 of the Amendments to the Massachusetts Constitution, it is our opinion that Article 115 would set the parameters for the assumption of the costs associated with a law compelling a city or town to fund an arbitrator's final award without approval of the local legislative body.

Article 115 essentially provides that any "...law imposing additional costs upon two or more cities and towns by the regulation of the compensation, hours, status, conditions or benefits of municipal employment..." will be subject to local acceptance unless one of two standards is met. Such a law may be binding if the Commonwealth assumes its cost, or the law is enacted by a two-thirds vote of each branch of the Legislature.

The Supreme Judicial Court's review of the background and purposes of Article 115 in the Cambridge case provides a strong indication that these bills are precisely the type of state regulation of municipal labor relations that Article 115 is designed to govern. See enclosure: City of Cambridge v. Attorney General, 410 Mass. 165 (1991). In this context, the

The Honorable Thomas F. Birmingham
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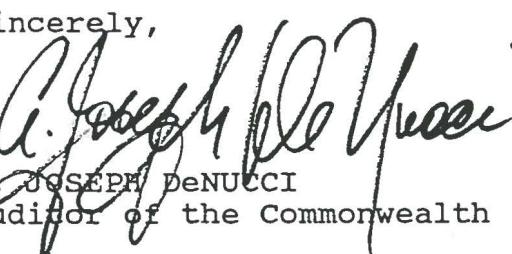
Court discussed a prior ruling that the former compulsory and binding arbitration law for police officers and firefighters did not violate Article 89 of the Amendments to our Constitution, the Home Rule Amendment. Although that law was repealed by Proposition 2 1/2 in 1980, the Court stated that Article 115 provides the "specific constitutional provision ... to overcome the binding arbitration law." (See Cambridge, p. 389.)

Accordingly, financial responsibility for a binding arbitration award which a municipality is powerless to refuse would depend upon the final form and enactment of the legislation. Article 115 allows three possible results:

1. Final and binding arbitration of labor disputes could be imposed if the Commonwealth funds every local binding arbitration award in the first instance and in each successive year the award is in effect.
2. The Legislature could impose the cost of such awards upon cities and towns if the law were enacted by a two-thirds vote of each branch.
3. In the absence of full state funding or the two-thirds vote standard, such a law would be subject to local acceptance under Article 115.

Thank you for the opportunity to comment on these bills. Your concerns for the impact of state mandated costs on cities and towns is appreciated. Please feel free to contact my office if you need further assistance.

sincerely,


A. JOSEPH DeNUCCI
Auditor of the Commonwealth

AJD:dm

Enclosure