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COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT
CIVIL ACTION
NO. 07-0140G

MIGUELANGELO PIRES & another¹

vs.

COMMONWEALTH OF MASSACHUSETTS BOARD OF HIGHER EDUCATION &
another²

Notice sent
9/29/2010
J. M. B.
S. G.
J. A. R. G.
A. S. R.
G.R.
& G.

MEMORANDUM OF DECISION AND ORDER ON THE PARTIES' CROSS-MOTIONS
FOR SUMMARY JUDGMENT

(sc)

INTRODUCTION

The plaintiffs, Miguelangelo Pires ("Pires") and Glen Gerrans ("Gerrans"), bring this declaratory judgment action against the Commonwealth of Massachusetts Board of Higher Education ("Board") and the Town of Wellesley ("Town"), alleging that the defendants have wrongfully failed to certify their master's degrees as eligible for educational incentive pay increases under G. L. c. 41, § 108L, the Quinn Bill.³ Both parties have moved for summary judgment based on their interpretation of the 2002 grandfather clause to the Quinn Bill. For the following reasons, the plaintiffs' motion is ALLOWED, and the Board's motion is DENIED.⁴

¹Glen Gerrans

²Town of Wellesley

³The court notes that the parties do not seek judicial review of an agency decision under G. L. c. 30A, § 14 or G. L. c. 249, § 4 under which statutes an agency's exercise of discretion is entitled to heightened deference.

⁴The court does not consider the plaintiffs' G. L. c. 249, § 5 claim. "[M]andamus is a remedy for [administrative] inaction and [is] not available where action has already been taken." Doherty v. Retirement Board of Medford, 425 Mass. 130, 134 (1997). Here, there is no evidence of inaction on the part of the Board, and the court has no reason to believe that the Board will refuse to

BACKGROUND

The following undisputed facts are taken from the summary judgment record. The Quinn Bill, G. L. c. 41, § 108L, establishes an educational incentive program for police officers known as the Police Career Incentive Pay Program ("PCIPP"). Municipalities that adopt the Quinn Bill agree to pay police officers a percentage of their base pay if they obtain qualifying degrees. For example, the Quinn Bill provides police officers who receive an associate's degree in criminal justice a 10% base salary increase, those who receive a bachelor's a 20% increase in base salary, and those who receive a master's or law degree a 25% salary increase. The Commonwealth reimburses municipalities for 50% of the incentive pay increases.

In July 2002, the Massachusetts Legislature amended the Quinn Bill to include the following quality guidelines relating to the approval of degree-granting programs:

Notwithstanding any other provision of this section to the contrary, the board of higher education shall establish quality guidelines, including, but not limited to, standards and review processes, for programs pursued for police career incentive pay increases under this section. Any such degree shall have been earned through a program approved by the board of higher education as meeting or exceeding academic standards established by the above-mentioned guidelines. Under no circumstances, shall said board certify any program which grants credits for the following: life experience; courses taught by instructors lacking appropriate educational degrees as determined by said board; and courses lacking appropriate concentration on academic and scholarly research. For the purposes of fulfilling the duties and obligations set forth in this section, the board of higher education shall have the authority to conduct periodic reviews of criminal justice or law degree programs offered by independent regionally accredited colleges and universities. The board of higher education shall only certify career incentive pay increases earned through the completion of programs that meet the board's guidelines, but police officers enrolled, prior to the implementation of the quality guidelines, in degree granting programs in order to receive career incentive base salary adjustments shall, upon attainment of said degree, be eligible for

comply with the court's decision as to the Quinn Bill.

certification by the board of higher education to receive career incentive base salary increases pursuant to the provisions of this section in effect prior to the quality guidelines established pursuant to this paragraph. Police officers receiving career incentive base salary adjustments prior to the implementation of the quality guidelines shall continue to receive such base salary adjustments, as certified by said board, pursuant to the provisions of this section in effect prior to the quality guidelines established pursuant to this paragraph.

The Board implemented the quality guidelines specified by the July 2002 amendment on January 1, 2004.⁵ Accordingly, the Board developed a new list of Approved Law Enforcement/Criminal Justice Programs. This list did not include Boston University's Master's Program in Criminal Justice.

Pires works as a police officer within the City of Boston Police Department. He applied for admission to Boston University's Master's Program in Criminal Justice in fall 2003. Boston University offered Pires admission to this program by letter dated November 24, 2003. Pires accepted the offer by letter on November 26, 2003. On December 16, 2003, Pires selected two courses for the Spring 2004 semester by filling out a registration form.

Pires received the degree from Boston University on September 25, 2005. Pires applied for a salary increase. The City of Boston Police Department denied his request by letter dated January 12, 2006, stating that the Board had not certified Pires' degree-granting program. Pires requested that the Board reverse its determination by letter on January 24, 2006. The Board responded to Pires' letter on March 20, 2006, stating that Pires was not enrolled in the Master's

⁵Only graduates of: (1) criminal justice or law enforcement programs that meet or exceed the guidelines for criminal justice and law enforcement programs, as set forth by the board of higher education and implemented on January 1, 2004; or (2) law schools that are New England Association of School and Colleges accredited . . . shall be eligible for police career incentive pay program.
St. 2004, c. 149, § 93.

Degree program in Criminal Justice until January 12, 2004, based on information obtained from Boston University.

Gerrans is a sergeant employed by the Town of Wellesley Police Department. Gerrans applied for admission to Boston University's Master's Program in Criminal Justice on November 2, 2003. He received an offer of admission the same day, and accepted on November 5, 2003. On December 1, 2003, Gerrans registered for two classes for the Spring 2004 semester. Gerrans obtained his degree from Boston University on September 25, 2005. Gerrans applied for a pay increase under the Quinn Bill through the Town of Wellesley Police Department. His request was denied because the Board did not certify his degree-granting program. Gerrans obtained a letter from an associate professor of Criminal Justice at Boston University that verified his enrollment in the Master of Criminal Justice Program on November 5, 2003. Gerrans sent this letter to the Board on October 31, 2005. On February 7, 2006, Gerrans' attorney appealed the Board's decision not to certify Gerrans' master's degree. On March 20, 2006, Gerrans received a letter from the Board stating that based on information obtained from Boston University, he was not enrolled in the Criminal Justice Program until January 12, 2004.

Both Pires' and Gerrans' attorneys requested a meeting with Board representatives regarding their clients' master's degrees. At the May 11, 2006 meeting, the Board rejected Pires' and Gerrans' request to certify their master's degrees.

The Board takes the position that the term "enrolled" requires registration and attendance of classes. In taking this position, the Board relies on a memorandum generated in 1977, which provides that "[e]nrollment shall constitute 'taking courses' in a degree program. Application

and acceptance into a program will not be considered as 'enrolled' in a program."⁶ The Board also asserts that educational institutions' interpretation of this term is consistent with its 1977 memorandum, in that these institutions usually calculate enrollment numbers in October, after the fall semester begins. The Board supports this assertion with letters of enrollment verification status from Boston University that state that Pires and Gerrans were enrolled on January 14, 2004.

The Board concedes that it has promulgated no regulations as to its administration of the PCIPP program. It contends, however, that it has issued guiding memoranda to participating municipalities and interested parties which support the 1997 memorandum's interpretation of the term "enrolled" in the Quinn Bill. Every year, on or about July 1, the Board sends out memoranda to the participating municipalities with specific information and instruction as to certification and reimbursement of applications for PCIPP. The Board's application forms for PCIPP benefits, which are sent to participating municipalities, inquire as to an applicant's dates of attendance, rather than the dates of registration. The Board also posts information about the application process and eligibility on its website in the "Frequently Asked Questions" section.

DISCUSSION

Summary judgment is properly granted when there is no genuine issue as to any material fact, and where the moving party is entitled to judgment as a matter of law. Mass. R. Civ. P. 56(c). A fact is material if it would affect the outcome of the case. *Carey v. New England*

⁶In 1976, the Legislature amended the Quinn Bill to provide that police officers who had not been certified as of September 1, 1976, or who were not "enrolled" in a program prior to July 1, 1976 were to be awarded benefits according to new guidelines. The Board issued the memorandum on which it now relies to the Police Chiefs of the municipalities participating in the Quinn Bill PCIPP.

Organ Bank, 446 Mass. 270, 278 (2006). A dispute of fact is genuine if the evidence would permit a reasonable fact finder to return a judgment for the non-moving party. *Flesner v. Technical Commc'ns Corp.*, 410 Mass. 805, 809 (1991). The moving party may prevail on its motion by demonstrating by reference to materials properly in the summary judgment record, unmet by countervailing materials, that the party bearing the burden of proof at trial has no reasonable expectation of proving an essential element of its case. *Carey*, 446 Mass. at 278, citing *Kourouvacilis v. General Motors Corp.*, 410 Mass. 706, 716 (1991). To withstand summary judgment, the non-moving party must set forth specific facts with affidavits, deposition testimony, answers to interrogatories, or admissions on file showing that a genuine issue of fact exists. Mass. R. Civ. P. 56(e); *Ng Bros. Constr., Inc. v. Cranney*, 436 Mass. 638, 644 (2002).

Summary judgment is appropriate here because the facts are undisputed and resolution of the case turns on the statutory construction of the term “enrolled” within the grandfather clause of the Quinn Bill below:

The board of higher education shall only certify career incentive pay increases earned through the completion of programs that meet the board's guidelines, but police officers *enrolled*, prior to the implementation of the quality guidelines, *in degree granting programs* in order to receive career incentive base salary adjustments shall, upon attainment of said degree, be eligible for certification by the board of higher education to receive career incentive base salary increases pursuant to the provisions of this section in effect prior to the quality guidelines established pursuant to this paragraph.

G. L. c. 41, § 108L (emphasis added). The plaintiffs take the position that the plain language of the Quinn Bill's grandfather clause is clear, and that the term “enrolled” is commonly defined as registered. The Board, however, defines “enrolled” as registering and taking classes based on its 1977 memorandum, and other informal guidance. Based on review of the record and the

principles of statutory construction, the court determines that the Board's interpretation of enrolled attempts to alter the plain language of the Quinn Bill's grandfather clause, and as such, cannot stand.

Interpretation of the language in the grandfather clause of the Quinn Bill is governed by the recognized principles of statutory construction. The court begins with the fundamental principle that "a statute must be interpreted according to the intent of the Legislature ascertained from all its words construed by the ordinary and approved usage of the language, considered in connection with the cause of its enactment, the mischief or imperfection to be remedied and the main object to be accomplished, to the end that the purpose of its framers may be effectuated." Fleet Natl. Bank v. Commissioner of Rev., 448 Mass. 441, 448 (2007); see also Sullivan v. Brookline, 435 Mass. 353, 360 (2001). Statutory language that is clear and unambiguous reflects the Legislature's intent. Martha's Vineyard Land Bank Commn. v. Board of Assessors of West Tisbury, 62 Mass. App. Ct. 25, 27 (2004). Where words are not explicitly defined within a statute, the court interprets them as consistent with their "usual and accepted meanings from sources presumably known to the statute's enactors, such as their use in other legal contexts and dictionary definitions." Seideman v. City of Newton, 452 Mass. 472, 477-478 (2008).

Where an agency has promulgated a regulation interpreting the statute it is responsible for administering, the regulation has the same force as law and must be given deference by the court. See Global NAPs v. Awiszus, 457 Mass. 489, 496-497 (2010).⁷ However, where an agency has

⁷ Where the Board is charged with the administration of the Quinn Bill, its interpretation of this statute is entitled to some consideration. See Palmer v. Selectmen of Marblehead, 368 Mass. 620, 628 (1975). See also Amherst-Pelham Regional Sch. Dist. v. Department of Educ., 376 Mass. 480, 491 (1978) (stating that "[w]hile an administrative or executive interpretation cannot bind the courts, weight should be given to any reasonable construction of a regulatory statute

issued informal guidelines relating to interpretation of this statutory language, these guidelines are only persuasive. Id.; see also Town of Northbridge v. Town of Natick, 394 Mass. 70, 76 (1985). Moreover, “[t]he court can only interpret according to the common and approved usages of the language the words used, without enlargement or restriction and without regard to its own conceptions of expediency.” M. H. Gordon & Son, Inc. v. Alcoholic Bevs. Control Commn., 371 Mass. 584, 588-590 (1976) (reasoning that agency cannot amend the plain meaning of unambiguous statutory language to comport with its policy preferences).

Here, the term “enrolled,” although not explicitly defined within the Quinn Bill, is clear and unambiguous. The common meaning of “enrolled” is “registered, recorded.” See Black’s Law Dictionary, 9th Ed., p. 610 (2009); see also Webster’s Third World International Dictionary, p.755 (2002) (“to insert, register, or enter in a list”). This definition is also consistent with treatment of the term in other legal contexts. See e.g. Prudential Ins. Co. v. Superior Court, 98 Cal. App. 4th 585, 599-601 (2002) (applying principles of insurance contract interpretation to the phrase “Enrolled as a Full-Time Student in a School,” and finding persuasive the meaning of “enrolled” as “registered”); Sarah M. v. Weast, 111 F. Supp. 2d. 695, 699-701 (U.S. Dist. Md. 2000) (interpreting the term “enroll” in MD. Code. Education § 80413(j)(1999) as consistent with the dictionary definition of “register”). The Board’s interpretation of “enrolled,” then, is contrary to the common meaning of the term.

Here, the Board has promulgated no regulation providing guidance as to the meaning of

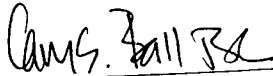
adopted by the agency charged with . . . [its] enforcement”); Molly v. Commissioner of Dept. of Mental Retardation, 69 Mass. App. Ct. 267, 280 (2007) (“Courts have long and consistently accorded ‘substantial deference to a reasonable interpretation of a statute by the administrative agency charged with its administration [and] enforcement.’”).

this term. Instead, the Board relies on a thirty-year old memorandum of limited distribution, along with other forms of informal guidance, which express a policy preference that "enrolled" be defined in a restrictive way, as registered and taking classes. The Board's interpretation and policy preference is unreasonable because it seeks to limit the scope of the Quinn Bill's grandfather clause by appending the additional requirement of "and taking classes" to the word "enrolled." The Board lacks authority to modify the plain language of the Quinn Bill's grandfather clause through the informal sources of guidance on which it relies, the 1977 and subsequent memoranda, its internal forms, and information on its website. Accordingly, the meaning of "enrolled" is limited to registration, and as such, reflects the intent of the Legislature to permit police officers who have registered for degrees in criminal justice programs certified by the Board prior to January 1, 2004 to benefit from their efforts toward obtaining further education.

ORDER

For the reasons discussed, the plaintiffs' motion is **ALLOWED**, and the Board's motion is **DENIED**. The plaintiffs shall file a proposed form of Judgment by October 31, 2010.

September 29, 2010



Carol S. Ball
Justice of the Superior Court