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Loosening the Grip of Binding Arbitration

In a recent interview, the mayor of Pittsburgh disclosed that the 2001 contract he negotiated with firefighters was not politically motivated nor out of line. In fact, according to him, he was only giving them what they would have achieved through arbitration under the state's collective bargaining law for police and fire personnel, Act 111 of 1968. Such a comment will give taxpayers little confidence they will see public safety costs be brought under control anytime soon.

The arbitration system in Pennsylvania is clearly favorable to the police and fire unions in Pittsburgh, who now have contracts extending through 2004 and 2005, respectively. Each won generous pay increases and the police union will end its contributions to health care coverage in 2004, a benefit now enjoyed by the firefighters. In fact, round after round of arbitration has produced benefits for one union that gets matched by the other on the next negotiation, constantly ratcheting up the cost of public safety.

In a trend we documented in *Policy Brief 3-35*, public safety expenditures rose from 33 percent of the general fund budget in 1984 to over 50 percent in 2002. It is a primary reason why the City is in its present shape and is pleading with state lawmakers to permit it expanded taxing powers. If state lawmakers want to help the City, it would be far more productive to amend Act 111 than to grant additional taxing powers that will do nothing to stop the spiraling public safety budget.

The City has expressed frustration with Act 111 and was urged by the Pittsburgh 21 panel to seek changes to the law. The primary change the City wants is to allow financial status to be taken into consideration when arbitration is used. While that is an important change, it is not nearly sufficient to fix the problem and restore balance to the system. If the City is able to get a new start but has to operate under the same arbitration system, it won't be long before another financial crisis develops. Additionally, the financial status of the employer will always be viewed as having little or no relevance so long as there is an opportunity to raise tax revenues. The lesson from teacher negotiations has demonstrated that point time and again.

The two fundamental changes that must occur to make Act 111 much better in the long-term concern; first, the selection and qualifications of the arbitrators and second, the requirement that objective, measurable criteria be used to determine contract awards.

The present system for selecting the arbitrators under Section 4(b) is a shared arrangement: the public employer selects one, the union chooses one, and those two appointees then select the third. While this arrangement provides representation for both negotiating parties, it is a virtual guarantee that the public safety unions will get the better end of the deal. After all, if the public employer is predisposed to spend public funds on a variety of non-essential functions and

outlandish development schemes, why would it suddenly reverse course and exhibit a tight control on a basic government function?

A far better system of selecting arbitrators would have the following components:

- State oversight: A pool of arbitrators would be housed in the state's Department of Labor and Industry and be classified as civil servants, free of political pressure. Panels of arbitrators would be appointed from the pool to hear cases around the state.
- Neutrality: Arbitrators would have no interest or connection to the dispute. No arbitrator could participate in a case in the county where he or she resides.
- Professionalism: Arbitrators would be certified by a professional organization/association and would be qualified to hear cases involving workplace matters for police and fire personnel and their employers.
- Accountability: A review panel should oversee the arbitrators' decisions and have the final say on the award.

Second, once arbitration has commenced, the board should have freedom to craft an award, even if it means starting from zero. This process must be guided by objective, measurable criteria, including, but not limited to:

- Comparison with similarly sized cities to see what their police and fire personnel earn and the benefit package they receive.
- Examination of staffing levels.
- Examination of productivity level changes.
- Examination of hours worked per-week.
- Inflation since the approval of last contract and projected for the term of the contract.
- Average income growth in the municipality.

Clearly, as far as possible, market forces should factor into how wages are determined and what type of benefits should be awarded. There should never be a provision that shields employees from layoffs in times of financial distress. Adopting these measures is the only way to ensure that pay increases are compatible with market forces and that any burden of benefits that are not enjoyed elsewhere are placed on taxpayers that fund the system. These changes would help move the present collective bargaining system from one in which outcomes are basically decided before arbitration is convened to one where there is a chance that public safety unions won't automatically get everything they want.

So rather than complaining about the problematic and unfair nature of arbitration under Act 111, perhaps elected officials and the civic leadership of Pittsburgh will unite behind a drive to change this law.

Jake Haulk, President

Eric Montarti, Policy Analyst

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<p>Allegheny Institute for Public Policy 305 Mt. Lebanon Blvd. * Suite 208* Pittsburgh PA 15234 Phone (412) 440-0079 * Fax (412) 440-0085 E-mail: aipp@alleghenyinstitute.org</p>
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