ALLEGHENY INSTITUTE FOR PUBLIC POLICY

October 24, 2011 **Policy Brief: Volume 11, Number 55**

Supreme Court Undermines Act 47 Coordinators' Authority

A recently announced momentous decision of the Pennsylvania Supreme Court has severely limited the power of Act 47 to impose steps aimed at helping financially distressed municipalities return to fiscal stability. With only one justice dissenting, the Court ruled that Act 47 language prohibiting an "*arbitration settlement*" from violating the provisions of a recovery plan did not extend to "*arbitration awards.*" In its ruling on an appeal of a suit brought by public safety employees against Scranton and Act 47 coordinators, the high Court overturned lower court decisions that had upheld the notion that both settlement and award were implied in the language of the distressed municipalities act—Act 47.

Moreover, the Supreme Court, having ruled that the language in the statute could not be interpreted such that "award" could be covered by "settlement", ordered the reinstatement of arbitration awards that had been set aside by the City and the Act 47 team back in 2003 and 2007.

Obviously, this high Court ruling has far reaching consequences. Two basic problems are apparent. First, there can be little doubt that unions and their attorneys in all 19 municipalities currently under Act 47 supervision are busily scouring records to see if terms of arbitration awards have been set aside in the period since the community was declared to be "financially distressed" by the Department of Community and Economic Development. If there are such instances, motions to have terms of the award reinstated will be forthcoming in very short order.

Second, the Supreme Court ruling has created a very powerful incentive for public safety unions—who have the right under Act 111 to force negotiations into arbitration—to refuse to accept any settlement offer and thereby give an arbitration panel the power to "award" the terms of a contract. Since awarded contracts have tended to favor the unions over the municipalities, the unions now have every reason to refuse any compromise that does not meet their wishes and demands.

In short, for municipalities under Act 47 supervision, the ability to curb public safety expenditures just became much more difficult. The Mayor of Scranton, while not fathoming a guess as to what the retroactive arbitration decisions would cost, did state

bluntly, but without specifics that "there will be layoffs and tax increases". If reinstatement of award provisions includes all back wages and benefits as well as reinstating any layoffs that might have resulted from the failure to adopt the awarded contract, going back eight years could easily run into millions of dollars. A state official quoted in the *Scranton Times Tribune* concluded that communities in financial trouble might try to avoid Act 47 and proceed right to Chapter 9 bankruptcy

Clearly, the onus is on the General Assembly and the Governor to act quickly to amend Act 47 language so that "awards" are covered as well as 'settlements". The language cannot be retroactive so that the damage done in Scranton and any other communities that have awards set aside is locked in. But, for the future it is imperative that the legislation be put in place before any other contract negotiations in Act 47 municipalities head to arbitration.

It should be noted that Pittsburgh has the unique situation of being both in Act 47 and under the direction of the ICA (oversight board). The statute creating the oversight board contains language describing how a board of arbitration established pursuant to Act 111 must craft an award. That section of the law says that the arbitration panel has to take into consideration the approved financial plan for the City as well as market factors such as "the financial situation of the assisted city, inflation, productivity, size of the work force, and pay and benefit levels in economically and demographically comparable political subdivisions". Thus the oversight board is legally empowered to set conditions on any award. However, in the unlikely but possible case in which the Act 47 team decided an oversight approved award was not acceptable, it no longer has the power to set the award terms aside. Still, Pittsburgh is a special case because of the ICA with its legal authority can, if it chooses, severely limit the generosity of arbitration panels.

The legislative remedy is quite simple. A few word changes should do the job. It is a question of how soon the revised legislation can get before a committee and onto the floor of both chambers. It will be very interesting to see if the unions and their supporters put up a big fight and get the bill delayed until more contract negotiations can be sent to arbitration and awards given. The need for the Legislature to move as rapidly as possible cannot be more clear.

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