

POLICY BRIEF
An electronic publication of
The Allegheny Institute for Public Policy

December 4, 2007

Volume 7, Number 65

City's Hotel Policy Not Very Hospitable

Pittsburgh City Council is caught up in a dispute between a union seeking to organize workers at a soon to be constructed hotel and the developer of the project, who is the recipient of a tax increment finance package to assist the development. The quarrel can be traced to an ordinance that attempts to govern labor relations at hotels built with financial assistance from the City.

City Code section 161.30.1 basically states that if a hotel is built with City incentives, the employer will become party to a collective bargaining agreement. The union agrees not to picket, engage in a work stoppage, or interfere with the operations of the hotel so long as the project's debt is being retired. The language further states that "...all disputes relating to employment conditions or the negotiation thereof shall be submitted to final and binding arbitration".

The dispute that has raised the spirit of this language involves the Bakery Square development in the East End of the City. The developer is planning a multi-use project with retail, office space, and a parking garage at the old Nabisco site. They also plan to add a 120 room hotel at the site, which, as described in the TIF proposal, "will be constructed in conjunction with the project in the air rights above the newly constructed retail space. The hotel is not part of the proposed TIF district". The union seeking to organize does not buy this argument, and therein lies the source of the controversy.

Unless there is a last minute accord, Council's decision may come down to determining whether or not a hotel is or is not really part of the development. Rest assured that a legal battle is likely to come about either way it decides.

The last instance where the ordinance was an issue was not at all pretty either. The City Council passed the language at the same time it was awarding a tax increment finance package to the company converting the old Fulton Building to the new Renaissance Hotel in 1999. The company filed a grievance with the National Labor Relations Board against the ordinance; City Council approved the financing, then decided to take it away because of non-compliance with the ordinance; then the mayor negotiated a neutrality agreement that would allow an organizing drive with the City acting as a third-party referee, but even that fell into dispute over how the organizing drive would be conducted (card check or secret ballot). A demonstration by the union outside of the hotel followed, and the whole episode serves as another black mark on the City's history in labor-management discord.

However the Bakery Square issue plays out, it is surprising that the Code language has not yet been struck down by the courts or received a re-examination by City government. First, the Pennsylvania Constitution, Article 3, Section 31 mentions final and binding arbitration in conjunction with police and fire employees but does not allow the Legislature to require binding

arbitration in any other area, especially for any private entities. Surely, municipalities do not have authority denied to the state Legislature.

Secondly, the Code singles out the hospitality business. It does not cover any other type of enterprise (retail, warehouse, banking, etc.) which are also built with tax incentives. It is questionable how the City could enact legislation that places collective bargaining requirements on just one industry when it hands out subsidies. If the overarching purpose of the ordinance is to have fair labor relations at hotels, note that the ordinance does nothing at the hotels built without their assistance, such as the Convention Center hotel that will be partially funded by gambling tax revenues.

In addition, complications arise if the project—like Bakery Square—has a small hotel component as part of a larger development. The union requirements for the hotel do not apply to the retail and office workers, but has served as a technicality that has delayed the project. And the “working men and women” that Council wants to stand up for get unequal treatment if the ordinance does apply. The hotel workers get an extra level of unionization opportunity, yet the workers in a neighboring restaurant or retail complex do not. That’s how it would affect this multi-structure complex. But imagine too how it would affect the PNC Three Tower, which will have “an upscale hotel with 150 rooms” along with its 361,000 square feet of office space, a ballroom, and a fitness center among other amenities. Employees who are mere floors apart are treated unequally by the Code language. It will be interesting to see if Council imposes similar mandatory union requirements on PNC office workers in the new building—after all they also are beneficiaries of City subsidies.

As we have argued before, tax increment financing ought to be used to ameliorate real blighted areas and be used for projects that deliver positive impacts for the local economy. It is not supposed to serve as a vehicle for unionization or any other extraneous perceived public good. Just as a TIF project is supposed to receive scrutiny, unions should have to make their case on merit as well.

Lesson to be taken from this: Perhaps companies should be prepared to put up with obnoxious requirements when they ask for government subsidies. It is amazing that the developer would not have foreseen this controversy and dealt with it before final papers were signed. They are certainly not entitled to sympathy now that they are embroiled in this brouhaha.

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