

**[J-94A-D-2010] [MO: Saylor, J.]
IN THE SUPREME COURT OF PENNSYLVANIA
MIDDLE DISTRICT**

CITY OF SCRANTON,	:	No. 35 MAP 2010
Appellee	:	
	:	Appeal from the Opinion and Order of
	:	Commonwealth Court at No. 2314 CD
v.	:	2007, Dated January 23, 2009,
	:	Affirming the Order of the Lackawanna
	:	County Court of Common Pleas at No.
	:	06 CV 3131, Dated October 23, 2007
FIRE FIGHTERS LOCAL UNION NO. 60,	:	
OF THE INTERNATIONAL ASSOCIATION	:	
OF FIRE FIGHTERS, AFL-CIO,	:	
Appellant	:	964 A.2d 464 (Pa. Cmwlth. 2009)
	:	
COMMONWEALTH OF PENNSYLVANIA,	:	
DEPARTMENT OF COMMUNITY AND	:	ARGUED: November 30, 2010
ECONOMIC DEVELOPMENT AND ACT	:	
47 COORDINATOR FOR THE CITY OF	:	
SCRANTON, Intervenors	:	
	:	
CITY OF SCRANTON,	:	No. 36 MAP 2010
Appellee	:	
	:	Appeal from the Opinion and Order of
	:	Commonwealth Court at No. 213 CD
v.	:	2008, Dated January 23, 2009,
	:	Affirming the Order of the Lackawanna
	:	County Court of Common Pleas at No.
	:	06 CV 3131, Dated January 15, 2008
FIRE FIGHTERS LOCAL UNION NO. 60,	:	
OF THE INTERNATIONAL ASSOCIATION	:	
OF FIRE FIGHTERS, AFL-CIO,	:	
Appellant	:	964 A.2d 464 (Pa. Cmwlth. 2009)
	:	
COMMONWEALTH OF PENNSYLVANIA,	:	
DEPARTMENT OF COMMUNITY AND	:	ARGUED: November 30, 2010
ECONOMIC DEVELOPMENT AND ACT	:	
47 COORDINATOR FOR THE CITY OF	:	
SCRANTON, Intervenors	:	

CITY OF SCRANTON,

Appellee

v.

E.B. JERMYN LODGE NO. 2 OF THE
FRATERNAL ORDER OF POLICE,

Appellant

COMMONWEALTH OF PENNSYLVANIA,
DEPARTMENT OF COMMUNITY AND
ECONOMIC DEVELOPMENT AND ACT
47 COORDINATOR FOR THE CITY OF
SCRANTON, Intervenors

CITY OF SCRANTON,

Appellee

v.

E.B. JERMYN LODGE NO. 2 OF THE
FRATERNAL ORDER OF POLICE,

Appellant

COMMONWEALTH OF PENNSYLVANIA,
DEPARTMENT OF COMMUNITY AND
ECONOMIC DEVELOPMENT AND ACT
47 COORDINATOR FOR THE CITY OF
SCRANTON, Intervenors

: No. 37 MAP 2010

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: Appeal from the Memorandum Opinion
: and Order of Commonwealth Court at
: No. 2322 CD 2007, Dated February 6,
: 2009, Affirming the Order of the
: Lackawanna County Court of Common
: Pleas at No. 06 CV 2255, Dated
: October 23, 2007

: ARGUED: November 30, 2010

: No. 38 MAP 2010

:
: Appeal from the Memorandum Opinion
: and Order of Commonwealth Court at
: No. 232 CD 2008, Dated February 6,
: 2009, Affirming the Order of the
: Lackawanna County Court of Common
: Pleas at No. 06 CV 2255, Dated
: January 15, 2008

: ARGUED: November 30, 2010

DISSENTING OPINION

MR. CHIEF JUSTICE CASTILLE

DECIDED: October 19, 2011

Respectfully, I dissent. I view this as a close case, and Mr. Justice Saylor has accurately described the competing positions, and has expressed a cogent analysis. For my part, however, I would affirm the Commonwealth Court's decision that Section 252 of the Municipalities Financial Recovery Act ("Act 47")¹ applies to awards in Policemen and Firemen Collective Bargaining Act ("Act 111")² interest arbitration, albeit on different grounds.

In my view, the term "arbitration settlement," as used in Section 252, includes an Act 111 arbitration award. I am persuaded that the General Assembly intended this interpretation by a reading of Acts 47 and 111 *in pari materia*; by the objective to be attained by Act 47; by the presumption in favor of the public interest over the private interest; and by the consequences of the contrary interpretation. See 1 Pa.C.S. §§ 1921, 1922, 1932.

The Majority determines that Section 252 of Act 47 does not impinge on Act 111 interest arbitration awards, and remands to the Commonwealth Court for reinstatement of the 2003-2007 awards to the fire fighter and police unions ("Unions") in the City of Scranton ("City"). Section 252 states that "[a] collective bargaining agreement or **arbitration settlement** executed after the adoption of a plan shall not in any manner violate, expand or diminish its provisions." 53 P.S. § 11701.252 (emphasis added). The Majority finds that "arbitration settlement" is an ambiguous term which is distinguishable from an arbitration award in the context of Act 47. In the Majority's view,

¹ Act 47 of July 10, 1987, P.L. 246. See 53 P.S. §§ 11701.101-11701.501.

² Act 111 of June 24, 1968, P.L. 23. See 43 P.S. §§ 217.1-217.10.

the reference to “arbitration settlement” in Section 252 and extrapolations from Act 47 and the caselaw do not convey a clear legislative intent to displace the strong policies underlying resolution of labor disputes via Act 111 interest arbitration. For vindication of the City’s position, if there is to be vindication, the Majority leaves it to the General Assembly to amend Section 252 and explicitly include Act 111 arbitration awards within the ambit of legal relations affected by Act 47.

I agree that the term “arbitration settlement” in Section 252 of Act 47 is ambiguous and that application of the rules of statutory construction is therefore appropriate. I also agree that one viable interpretation of arbitration settlement is as shorthand for “the settlement of disputes by arbitration.” Majority Op. at 25. Act 111 confirms it: police officers and fire fighters have “the right to bargain collectively with their public employers” and “the right to **an adjustment or settlement of their grievances or disputes** in accordance with the terms of [Act 111].” 43 P.S. § 217.1 (emphasis added). I view an “arbitration award” as a term of art that, in labor relations, accomplishes an adjustment or settlement of grievances or disputes. Reading “arbitration settlement” as encompassing an “arbitration award” in the context of Section 252 of Act 47, in my view, is not contrary to the plain meaning of the phrase, nor is it in conflict with its use in Act 111, as the term is simply descriptive.³

The Unions argue that the absence of the term “arbitration award” from Section 252 is conclusive regarding the General Assembly’s intention to exclude such resolutions of contested arbitrations from Act 47 financial austerity plans. Yet, Act 111

³ Similarly, the label “determination” also seems to be used descriptively. See, e.g., 43 P.S. §§ 217.4(b), 217.7(a). The General Assembly has not provided any indication that the terms “determination” and “arbitration settlement” take a specialized or narrower meaning for the purposes of Acts 47 and 111, different from their common and approved usage in the English language.

also does not use this term of art, but, as the Unions explain, it certainly describes and bestows the right to binding resolution by arbitration of disputes with the public employer, as an offset for the prohibition against striking by police and firefighters. 43 P.S. §§ 217.4, 217.7(a), 215.2; Pa. State Police v. Pa. State Troopers' Ass'n, 741 A.2d 1248, 1251 (Pa. 1999); see Briefs of Unions at 40-41. Act 111 describes the goal or result of arbitration, *i.e.*, the award, alternately as “an adjustment or settlement of grievances or disputes” and as a “determination.” See, e.g., 43 P.S. §§ 217.2, 217.7. Both these phrases describe the resolution of an arbitration in more precise terms than “award.” Act 47’s use of these terms is, therefore, not surprising. In my view, a consistent reading of Acts 47 and 111 indicates that the term “arbitration settlement” should be read descriptively and broadly, to include resolutions of arbitration, whether negotiated or dictated by the arbitration panel.

Moreover, this interpretation of Section 252 is more congruent with the legislative purposes of Act 47. Act 47 provides for the adoption of a plan to alleviate the financial distress of a municipality meeting certain criteria. 53 P.S. § 11701.241. The stated intent of the General Assembly was to “[e]nact procedures and provide powers and guidelines to ensure fiscal integrity of municipalities” consistent with a public policy to “provide for the health, safety and welfare of their citizens; pay due principal and interest on their debt obligations when due; meet financial obligations to their employees, vendors and suppliers; and provide for proper financial accounting procedures, budgeting and taxing practices.” 53 P.S. § 11701.102. Elected officials have the principal responsibility to choose “the priorities for and manner of expenditures based on available revenues.” Id. Thus, the object of Act 47 is to ensure fiscal integrity, which consists of meeting governing and financial obligations to all interested actors, *e.g.*, the citizenry, creditors, employees, vendors, suppliers. The General Assembly explicitly

recognized that the failure of a municipality to ensure fiscal integrity adversely affects the health, safety, and welfare of citizens in the municipality and the Commonwealth. Id.

On balance, a distressed municipality's plan will cut costs to outpace stagnant or decreasing revenues. Public employees are explicitly affected, as Act 47 envisions changes in labor agreements and layoffs or furloughs. See 53 P.S. § 11701.241(3). As the City's *amici* point out, personnel costs are a significant expenditure for every local government, and a distressed municipality can make significant gains towards financial recovery by, *inter alia*, restructuring its labor agreements and reorganizing its personnel. The intent of Act 47 is to authorize and facilitate these actions, in this case, by the City. Like the Majority, I certainly recognize the importance of Act 111 in maintaining the historic balance between labor and municipal employers. But, Act 47 addresses circumstances of financial distress. I am not convinced that the General Assembly intended to charge elected officials with these difficult tasks, while simultaneously permitting certain discrete public employee unions to opt-out of terms with which they do not agree. It is precisely when the public employee unions and the municipal employer cannot agree that Act 47 provides elected officials with the tools needed to make necessary and difficult decisions. Act 47 clearly states that elected officials set priorities and direct expenditures. The contrary interpretation of Section 252 allows arbitrators to decide whether public employee unions should comply with the priorities and expenditure limits set by the distressed municipality plan. In my view, this interpretation is incompatible with the General Assembly's emphasis on elected officials' duties when an Act 47 plan is in effect.⁴

⁴ The Unions are understandably weary following nearly twenty years of financial austerity under the City's distressed municipality plan, and permitting the City to direct (continued...)

Setting aside any allegations of bad faith, the pressures of financial austerity are prone to induce disputes between public employee unions and municipalities, and to result in an increase in disputed arbitrations and non-negotiated adversarial resolutions. It is counterintuitive that in those most difficult of periods, the General Assembly would retract its preference for a coordinated plan of financial recovery directed by elected officials, and permit both labor and the municipality to continue with business as usual.

It is also counterintuitive that the General Assembly would exempt certain stakeholders, *i.e.*, certain public employees, from the collective tightening of the belt and the strictures borne by all other municipal stakeholders under Act 47. Act 47 clearly signals the intent to involve all stakeholders in seeking to ensure the financial well-being of a municipality. See 53 P.S. § 11701.241. Furthermore, the Unions' opt-out from compliance with a distressed municipality's plan, like the City's here, would increase the financial burden on other municipal stakeholders. The interpretation of Section 252 proposed by the Unions is dissonant with both the stated intent of Act 47 and with the presumption to favor public interest over private interests. See 53 P.S. § 11701.102; 1 Pa.C.S. § 1922.

For these reasons, I agree with the unanimous decision of the Commonwealth Court that Section 252 of Act 47 is applicable here. Accordingly, I respectfully dissent.

(continued...)

collective bargaining terms to the Unions under these circumstances undoubtedly can lead to abuse. Act 47 is a statute intended to operate in times of emergency and it probably should have been drafted with a sunset provision. Nonetheless, I am persuaded that the General Assembly intended Act 47 to apply equally whether or not public employee unions agree with a distressed municipality's plan terms affecting collective bargaining. Moreover, the interpretation of Section 252 forwarded by the Unions and embraced by the Majority would prevail in the first year no less than the twentieth year, eviscerating any but the most diluted Act 47 plans.