[J-106-2006]
IN THE SUPREME COURT OF PENNSYLVANIA
WESTERN DISTRICT

WESTMORELAND INTERMEDIATE UNIT #7,	:	No. 51 WAP 2005
Appellee	:	Appeal from the Order of the Commonwealth Court entered June 22, 2005, at No. 1782 CD 2004, affirming the Order of the Court of Common Pleas of Westmoreland County entered August 3, 2004, at No. 4799 of 2003.
v.	:	
WESTMORELAND INTERMEDIATE UNIT #7 CLASSROOM ASSISTANTS EDUCATIONAL SUPPORT PERSONNEL ASSOCIATION, PSEA/NEA,	:	
Appellant	:	ARGUED: September 11, 2006

CONCURRING OPINION

MR. JUSTICE SAYLOR **DECIDED: DECEMBER 27, 2007**

In this case, I have some difficulty with the lead Justices' decision to overrule prior decisions without reference to the doctrine of stare decisis, requiring respect for precedent. In this regard, I agree with the United States Supreme Court's approach to matters of statutory construction, which recognizes that legislative bodies are in the best position to address judicial holdings with which they disagree, and thus, accords stare decisis "special force." See Shambach v. Bickhart, 577 Pa. 384, 406, 845 A.2d 793, 807 (2004) (Saylor, J., concurring) (quoting Patterson v. McLean Credit Union, 491 U.S. 164, 172-73, 109 S. Ct. 2363, 2370 (1989)); cf. In re Burtt's Estate, 353 Pa. 217, 231, 44 A.2d 670, 677 (1945) ("A statutory construction, once made and followed, should never be altered upon the changed views of new personnel of the court.").

Nevertheless, although I certainly understand the concerns that led majorities of this Court to adopt the core functions doctrine in the context of the otherwise deferential essence test, I believe that the Court has remained unsuccessful in the attempt to reconcile that doctrine with a reasoned application of the essence test. See Greene County v. District 2, United Mine Workers of America, 578 Pa. 347, 364-65, 852 A.2d 299, 310 (2004) (Saylor, J., concurring). Thus, I support the present holding, because I believe that the circumstances meet a narrow exception to the requirement to adhere to precedent. See Mayhugh v. Coon, 460 Pa. 128, 136, 331 A.2d 452, 456 (1975).[1]

Further, I have no objection to the separate adoption of a public policy exception to the essence test, in alignment with federal jurisprudence, with the understanding that the exception is exceptionally narrow, consistent with this Court's prior explanations. See Eichelman v. Nationwide Ins. Co., 551 Pa. 558, 563, 711 A.2d 1006, 1008 (1998) ("As the term 'public policy' is vague, there must be found definite indications in the law of the sovereignty to justify the invalidation of [an award] as contrary to that policy. . . Only dominant public policy would justify such action. In the absence of a plain indication of that policy through long governmental practice or statutory enactments, or of violations of obvious ethical or moral standards, the Court should not assume to declare [an award] . . . contrary to public policy." (quoting Hall v. Amica Mut. Ins. Co., 538 Pa. 337, 347-48, 648 A.2d 755, 760 (1994))).

[1] Indeed, unlike the present lead opinion, the Court in Greene County did not classify the core functions doctrine as an exception to the essence test, but rather, couched the analysis in terms of whether the arbitration award rationally derived from the collective bargaining agreement. See Greene County, 578 Pa. at 362, 852 A.2d at 309.