

# **The Bucks County Consortium of Communities**

***Presents:***

***POLICE CONTRACT NEGOTIATIONS  
IN 2013 & BEYOND: WHAT TO EXPECT  
(AND HOW TO ACHIEVE RESULTS)***

**Warrington Township  
852 Easton Road  
Warrington, PA 18976**

**September 5, 2013**

## **PRESENTERS:**

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## I. Statutory Time Requirements

### A. Time Limit to Commence Bargaining:

- 1) Collective bargaining must commence at least six months before the start of fiscal year.
- 2) Commencing bargaining can be accomplished through the submission of a letter generally stating an intent to negotiate a new collective bargaining agreement.
- 3) For 2013, a demand to commence bargaining was required to have been submitted on or before *Friday, June 28, 2013*. If your police union did not meet this deadline, it has waived the right to proceed to arbitration this year.
- 4) For 2014, a demand to commence bargaining is required to be submitted on or before *Monday, June 30, 2014*.

### B. Time to Demand Arbitration:

- 1) Under Act 111, either party may demand to proceed to arbitration if negotiations have reached an *impasse*.
- 2) Negotiations are deemed to be at an *impasse* after the expiration of at least 30 days after bargaining has been requested.
- 3) Notwithstanding the above, a request for arbitration must be made at least 110 days before the start of the fiscal year. For 2013, the last day on which either party can demand to proceed to arbitration is *Thursday, September 12, 2013*.

For 2014, the 110-day deadline will be *Friday, September 12, 2014*.

- 4) Both the time limit to commence bargaining and to demand arbitration are mandatory, and police and fire unions lose their right to proceed to interest arbitration if they fail to meet either of the time provisions of Act 111. E.g., Plymouth Township Police Department v. Plymouth Township Commissioners, 366 A.2d 316 (Pa. Cmwlth. 1976).

### C. Declaring Impasse and Response

- 1) A declaration of *impasse* must include the following:
  - a) The identity of the party's partial arbitrator for interest arbitration purposes

- b) A brief identification of the party's issues in dispute
  - c) Some issues, such as changing healthcare carriers/providers, must be set out with more specificity.
- 2) Within five days of receipt of the demand for arbitration, the opposing party must respond including the following information:
  - a) The identity of the party's partial arbitrator
  - b) A brief identification of the party's issues in dispute (subject to the same rules of specificity as above)
- 3) If the responding party fails to reply within five days, an argument exists that that party has failed to preserve its issues in dispute.
- 4) Union responses to issues in dispute.

## **II. Preparing for Negotiations**

### **A. Review your Collective Bargaining Agreement to identify the following:**

- 1) Any illegal provisions such as a minimum manning/no layoff clause, required matching municipal contribution to deferred compensation/457 plan
- 2) A list of problematic contract language that has resulted in an adverse grievance arbitration decision or excessive payment of overtime, for example or union approval for changing healthcare carriers or plans

### **B. Review all pension documents by comparing the pension ordinance, collective bargaining agreement language and terms of the Plan document.**

- 1) Have a competent actuary evaluate the Pension Plan's wage and interest assumptions
- 2) Are the officers contributing 5% of their salary? If not, why not?
- 3) Review the prospects for the Plan's growth
- 4) Does the Plan actuary anticipate a change in the level of employee contributions?
- 5) Has the Act 600 Killed-In-Service Benefit been revised to reflect the provisions of Act 51 of 2009?

- 6) Is the Plan's work-related disability benefit at a level where a future disability pension could undermine the soundness of the Plan?
  - 7) If the Plan is covered under the Pennsylvania Municipal Retirement Law, how is the municipality allocating any excess interest?
  - 8) Does the Plan comply with state pension laws and are any pension audit findings outstanding?
  - 9) Do the provisions in the collective bargaining agreement match those in the plan documents?
- C. If you provide post-retirement benefits, have you had a study completed costing the requirements of those benefits pursuant to GASB-45?
- D. Prepare a list of issues for negotiations - Do not rewrite the collective bargaining agreement including your proposals. Simply generate a list of issues identifying the changes which the municipality is seeking. Except in the case of initial contracts, presenting a redrafted collective bargaining agreement at the bargaining table generally is a waste of time and effort and generates distrust on the other side because the other party almost never sits down and compares word for word, the old contract language with the proposed new contract language. Deception generally backfires in this case. It is best to present a clear and concise list of items to be sought through negotiations.

### **III. Making the Case in Arbitration**

- A. "Almost" distressed is not enough, nor is it sufficient to claim poverty or financial hardship. Although arbitrators continue to recognize the dire financial circumstances in which public employers find themselves, they still want to hear and see how the financial crisis has impacted your municipality, and, as important, what you are doing to address it.
- B. An effective interest arbitration presentation is going to include the following from one or more municipal witnesses with knowledge on the issues:
- 1) Current budget overview including historical shortfalls and surpluses, if any
  - 2) Discussion of revenue sources and their stability
  - 3) Are there restrictions on the use of any municipal accounts/funds? If so, what are the restrictions and when can they be used?
  - 4) What are the municipality's expenses going forward in terms of capital projects and other infrastructure/equipment purchases?

- 5) What are your current tax rates and fees for various services? Can they be increased and, if not, why not?
  - 6) Are any increases in taxes collected the result in change in the tax collection laws or as the result of increasing tax revenue?
  - 7) What are your current labor costs by department?
  - 8) How has the issue of healthcare costs impacted the municipality and what has the municipality done to address it?
- C. Given the current economic climate, most municipalities should have little difficulty highlighting financial hardship/difficulty to some degree. However, that is not enough. Arbitrators will also examine and consider what the response of the municipality has been to these problems. For instance:
- 1) Has the municipality frozen hiring or reduced its force, either in the police department or in other areas and/or has it outsourced services?
  - 2) What wage increases, if any, has the municipality provided to other unionized employees and non-union employees?
  - 3) Have the wage increases been percentage based or flat dollars not rolled into base pay?
  - 4) What are the current deductibles, co-payments, premium sharing and plan design for other employees within the municipality?
  - 5) Has the municipality changed the benefit structure for healthcare or retirement for newly hired municipal employees?
  - 5) What steps has the municipality taken to increase its revenues or decrease its expenses for outside services?
- D. Comparable municipalities. Comparable municipal data from similar municipalities clearly has taken a back seat to economic issues, but it should not be ignored. To do so leads to the perception that the municipality is "hiding" the information or realizes that it would support a larger expansion of current wages and benefits. Municipalities should be aware of what other similar public employers are doing and should be prepared to address how seemingly "comparable" municipalities are not so, whether because of economic, geographic or other reasons.
- E. Handling the personalities of the parties

#### **IV. What to Expect in Negotiations/Arbitration**

##### **A. Wages**

- 1) Historically, before the financial crisis, the average annual wage increase in arbitration was 3.5% to 4.5%.
- 2) Although many things go into a wage increases, recent settlements have been in the area of 2.75% per year to 3.75%. Some arbitration awards

have been slightly above and slightly below this level depending upon the unique facts of the case.

#### B. Healthcare Benefits

- 1) Premium Contributions – Arbitrators are still evidencing a hesitance to award significant premium sharing; before doing so, many arbitrators want to be convinced that the municipality has exhausted other options.
- 2) Most premium sharing that is being awarded is in incremental dollar amounts, *i.e.*, \$30/pay, \$60/month, increasing in subsequent years.
- 3) Arbitrators continue to focus on whether a municipality has imposed and/or negotiated premium sharing on its administrative and public works employees.
- 3) Arbitrators continue to demonstrate a willingness to consider plan design changes, such as instituting/increasing deductibles and co-payments for services and prescriptions.
- 4) Municipalities are also making headway with “high deductible” plans and offering “buy up” plans to officers. However, be careful of the union proposal to “self insure” for the higher deductibles. It can be an economic pitfall and lead to coverage issues as well.

#### C. Pension

- 1) The days of no pension contributions appear to have ended, as arbitrators have been awarding increasing pension contributions in their awards.
- 2) Arbitrators have not been providing very many enhancements, given the corresponding costs associated with them. However, some awards which have included pension enhancements have been expressly conditioned upon the unionized employees “paying” for them through increased pension contributions.

#### D. Post-Retirement Benefits

- 1) Very few awards have contained significant increases in existing post-retirement medical coverage.
- 2) Some, though not all, arbitrators have indicated a willingness to eliminate these types of benefits for new hires.

#### E. Union Strategies

- 1) Over the past year, initial union wage proposals seem to have been reduced from the 8% per year initial starting proposal to approximately 5% to 6%.

- 2) Many union advocates have been utilizing "expert" economic witnesses who are attempting to redefine whether or not a community is "well off."
- 3) With respect to healthcare benefits, unions are attempting to counteract buy-ups by requesting "bonuses" for switching to cheaper healthcare plans.
- 4) To get additional pension benefits, some bargaining units are also attempting to contribute toward the cost of the enhancement.

[ON MUNICIPAL LETTERHEAD]

[DATE]

[NAME AND ADDRESS OF LOCAL UNION REP.]

Re: [NAME OF MUNICIPALITY] Act 111

Dear [INSERT LAST NAME OF UNION REP.]:

In response to your [INSERT DATE OF UNION'S LETTER] declaring impasse and identifying your partial arbitrator for interest arbitration purposes, please be advised that [NAME OF MUNICIPALITY] designates **[Ryan J. Cassidy, Esquire or Scott E. Blissman, Esquire]** as its partial arbitrator for interest arbitration purposes. Mr. **[Cassidy's or Blissman's]** contact information is as follows: Eckert Seamans Cherin & Mellott, LLC, Two Liberty Place, 50 South 16<sup>th</sup> Street, 22<sup>nd</sup> Floor, Philadelphia, PA 19102. The phone number is (215) 851-8400.

The [TOWNSHIP/BOROUGH]'s issues in dispute are as follows:

- 1.
- 2.
- 3.
- 4.
- 5.
- 6.
- 7.
- 8.
- 9.
- 10.
11. The [TOWNSHIP/BOROUGH] demands the removal of any and all illegal provisions within the contract which are not authorized by statute.
12. The [TOWNSHIP/BOROUGH] demands the removal of any and all provisions which impinge upon the municipality's managerial rights.
13. The [TOWNSHIP/BOROUGH] reserves the right to present counter-proposals to any proposal made by the union.



**[OPTIONAL]** This letter will confirm that the parties have agreed to continue negotiating in the hopes that further discussions will result in an amicable resolution to the dispute. Obviously, in the event that either party determines that further discussions are fruitless, they may contact the American Arbitration Association and request a list of arbitrators.

Sincerely,

**[NAME], Municipal Position**

**Ryan J. Cassidy**

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**Ryan Cassidy** is a Partner in Eckert Seamans' Philadelphia office and practices exclusively on management-side labor and employment law in both the public and private sector. He previously served as a judicial law clerk to the Honorable Joseph T. Doyle, the former President Judge of the Commonwealth Court of Pennsylvania.

Mr. Cassidy has represented numerous cities, counties, municipalities, state-wide agencies, municipal authorities and regional police departments in the context of grievance and interest arbitration hearings, collective bargaining negotiations, pension-related issues, state and federal administrative agency proceedings and employment-related litigation and day-to-day counseling.

Mr. Cassidy frequently lectures on a variety of topics for municipal solicitors and attorneys and regularly serves as a presenter at Pennsylvania Bar Institute ("PBI") programs. He was the course planner and co-author of "What Every Municipal Solicitor Should Know About Labor & Employment Law" which was held in May 2004, October 2010 and November 2010 and is scheduled again in March 2012. In June 2011, Mr. Cassidy presented at the PBI course "2011 Municipal Law Colloquium, Public Employee Speech Issues: The More Things Change, the More They Stay the Same", and in November 2008 he presented at the PBI Labor Symposium on the topics of "County Bargaining" and "Relevant Act 47 Provisions". Additional lectures are listed at the end of Mr. Cassidy's biography.

Mr. Cassidy has also been published on a wide variety of labor and employment law topics, including the Policemen and Firemen Collective Bargaining Act (Act 111), the Public Employee Relations Act (Act 195), the Pennsylvania Labor Relations Act, the Police Pension Fund Act (Act 600), the Police Tenure Act, the Heart & Lung Act, civil service rules and procedures, the Local Agency Law, as well as other areas of law relating to personnel administration, public employee benefits and human resources practices.

Prior to joining Eckert Seamans in May of 2011, Mr. Cassidy was an attorney and partner at Reed Smith for many years, and served as firm-wide Deputy Chair of Reed Smith's labor and employment group.

**Practice Groups**

Labor and Employment  
Employee Benefits

**Education**

J.D., WIDENER UNIVERSITY SCHOOL OF LAW, 1996, *with honors*, Executive Managing Editor – *Law Review*, created and managed "The Annual Survey of Pennsylvania Administrative Law," an annual supplement to the *Widener Journal of Public Law*

B.A., RUTGERS UNIVERSITY, 1993

## Admissions

U.S. Supreme Court  
Pennsylvania  
New Jersey  
New York  
U.S. District Court for the Eastern District of Pennsylvania  
U.S. Court of Appeals for the Third Circuit  
U.S. District Court – District of New Jersey  
U.S. District Court for the Eastern District of New York  
U.S. District Court for the Southern District of New York

## Special Recognition

- HEARING COMMITTEE OF THE DISCIPLINARY BOARD OF THE SUPREME COURT OF PENNSYLVANIA: Hearing Committee Member (July 2005-June 2008); Senior Member (July 2008 to June 2011).
- THE WHARTON SCHOOL, University of Pennsylvania: *Executive Leadership Program*, September 2006; and *Business Development Program*, October 2006.
- LEADERSHIP PHILADELPHIA: September 2006 to June 2007 (selected as the Firm's "core class" attendee for the 2006-2007 Leadership Program).
- Named among the "Top 50 Lawyers Under 40" in Pennsylvania by the *Pennsylvania Law Weekly* and *Legal Intelligencer* (Fall 2002)
- Named "Super Lawyer - Rising Star" (Fall 2006 & 2007)

## Articles/Speeches/Presentations (Truncated List)

- *Course Planner & Co-author, WHAT EVERY MUNICIPAL SOLICITOR SHOULD KNOW ABOUT LABOR & EMPLOYMENT LAW, PENNSYLVANIA BAR INSTITUTE* (May 2004, October 2010, November 2010 & March 2012).
- *Presenter, Collective Bargaining & Interest Arbitration in a Down Economy, MONTGOMERY COUNTY ASSOCIATION of TOWNSHIP OFFICIALS* (Fall Convention, September 30, 2011).
- *Presenter, MONTGOMERY COUNTY CONSORTIUM of COMMUNITIES, Cutting Labor Costs & Outsourcing, Pros & Cons of Severance Agreements* (June 17, 2011).
- *Presenter, Contract Negotiations in 2011: What To Expect (and How to Achieve Results), BUCKS COUNTY CONSORTIUM of COMMUNITIES* (June 2, 2011).
- *Presenter, Public Employee Speech Issues: The More Things Change, The More They Stay the Same, 2011 MUNICIPAL LAW COLLOQUIUM, PENNSYLVANIA BAR INSTITUTE* (June 2011).
- *Presenter, "County Bargaining" & "Relevant Act 47 Provisions", LABOR LAW SYMPOSIUM, PENNSYLVANIA BAR INSTITUTE* (November 2008).
- Frequent speaker and author on a variety of labor and employment law topics including: the National Labor Relations Act; the Policemen and Firemen Collective Bargaining Act (Act 111); the Police Pension Fund Act (Act 600); the Public Employee Relations Act (Act 195); the Police Tenure Act; Civil Service under the Borough Code and First Class Township Code; and the Local Agency Law.



- *Co-author, THE MODEL HIRING MANUAL FOR PENNSYLVANIA MUNICIPALITIES*, published by the Pennsylvania Department of Community and Economic Development, Governor's Center for Local Government Service, 2003.
- *Contributing Editor, THE DEVELOPING LABOR LAW, Fifth Edition (2007) & CUMULATIVE SUPPLEMENTS*, Bureau of National Affairs Publications (2003-2012).
- *PENNSYLVANIA COUNTY NEWS, Employment Rights of Activated Military Reservists*, County Commissioners Association of Pennsylvania (November/December 2006).
- *NATIONAL LAW JOURNAL, Laws Protect Reservists' Civilian Jobs*, The New York Law Publishing Company (July 5, 1999) (discussing the legal obligations of employers under the Uniformed Services Employment & Reemployment Rights Act).
- *THE PENNSYLVANIAN, Model Police Contract Language* (May 2001) (discussing the essential components of a collective bargaining agreement in the public sector).
- *BOROUGH NEWS MAGAZINE (VARIOUS ISSUES): How to Negotiate a Police Contract* (March 2004) (discussing collective bargaining strategies); *How to Prepare for the New Overtime Regulations* (August 2004) (explaining and analyzing the new federal wage and hour regulations); March 2005, *Sexual Harassment: What Public Employers Must Look for Under the Current Legal Landscape* (March 2005) (discussing ways of creating and preserving a lawful work environment).

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**Scott Blissman** focuses his practice primarily on management-side public and private sector labor law, including collective bargaining, interest and grievance arbitration, and employment-related litigation. Scott previously served as a Judicial Law Clerk for the Honorable Joseph T. Doyle, President Judge of the Commonwealth Court of Pennsylvania.

### **Representative Matters**

- Provides legal guidance and counseling to municipalities on matters relating to the Policemen and Firemen Collective Bargaining Act (Act 111), the Police Pension Fund Act (Act 600), the Public Employee Relations Act (Act 195), the Police Tenure Act, the Borough Code, the First and Second Class Township Codes, Local Agency Law, civil service laws, as well as other areas of law relating to municipal affairs and administration.

### **Practice Groups**

Labor and Employment  
Employee Benefits

### **Education**

J.D., Widener University School of Law, 1996, *with honors*, served as the Executive Managing Editor of the school's official *Law Review*, managed "The Annual Survey of Pennsylvania Administrative Law," an annual supplement to the *Widener Journal of Public Law*

B.A., Millsaps College, 1993

### **Admissions**

Pennsylvania  
U.S. District Court - Eastern District of Pennsylvania  
U.S. Court of Appeals - Third Circuit

### **Community Involvement**

Member, Board of Overseers, Widener University School of Law