

County Salary Boards and their Role in Collective Bargaining

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The structure, organization and division of authority for County government are codified in the County Code. Counties, like other forms of government, embody the living application of the “separation of powers” concept – the concept of separate but equal branches of government and the checks and balances that coincide. In the County government structure, the lines that divide the branches of government (the legislature, the executive and judiciary) are often confused – who is the employer, who gets to bargain, who pays?

The County Commissioners are responsible for setting the budget and managing the finances for all County departments, including the Courts and row offices. The County Commissioners decide how big the budget will be and the appropriate amount to allocate to each department. The only exception to this general rule is where County Commissioners fail to allocate appropriate resources to County Courts and consequently threaten the “administration of justice.” Under those circumstances, County Courts can seek additional funding through the filing of a mandamus action.

Section 1620 of the County Code describes the role of the County Commissioners for purposes of collective bargaining. In pertinent part, it provides the County Commissioners with the “sole power and responsibility to represent judges of the court of common pleas, the county and all elected or appointed county officers having any employment powers” for purposes of collective bargaining. However, the Code also notes that the “exercise of such responsibilities by the county commissioners shall in no way affect the hiring, discharging and supervising rights and obligations with respect to such employees as may be vested in the judges or other county officers.” 16 P.S. § 1620. The balance between County Commissioners who are charged with the lofty duty to maintain fiscal responsibility as the legislative body and the judiciary/elected officials to hire and retain qualified employees is largely played out through the Salary Board.

The County Code establishes a Salary Board, which is comprised of the three county commissioners, the controller (or county treasurer if there is no controller) and the head of the agency/department/court under consideration. The Board is delegated with the authority to “fix the compensation of all appointed county officers, and the number and compensation of all deputies, assistants, clerks and other persons whose compensation is paid out of the county treasury.” 16 P.S. § 1622-5. Despite the Salary Board’s statutory authority to “fix” the number of positions, there is no mandate that the County Commissioners fund the positions created by the Salary Board. Again, the County Commissioners, not the Salary Board, is ultimately responsible for the County’s budget. While the Salary Board’s act of “fixing” the compensation of County employees is presumed to be annual (and likely done in conjunction with the County’s budgetary process), it may be possible for a Salary Board to approve a compensation scheme that involved employees moving automatically through a grid as to some of their compensation. In such a case, one would not expect each move to be individually approved by the Salary Board.

The Courts have described the Salary Board as the “watchdog agency” over the County Commissioners. Reiver v. Kraines, 838 A.2d 814 (Pa. Commw. 2003) (citing Penska v. Holtzman, 620 A.2d 632 (Pa. Commw. 1993)). In theory, the Salary Board (consisting of five (5) members) could interfere with the objective of a two (2) member majority of the County Commissioners by aligning with the minority Commissioner and casting three votes in opposition. Other Courts have described the Salary Board as merely an attempt to “establish an orderly and rational employment procedure.” Luzerne County Board of Commissioners v. Flood, 874 A.2d 687 (Pa. Commw. 2005) (quoting Simon v. Del Vitto, 403 A.2d 1335 (Pa. Commw. 1979)). In either case, the Salary Board has been used by different branches of County government to accomplish divergent goals.

In Luzerne County Board of Commissioners, 874 A.2d 687, the County Controller sought to rescind pay increases for management level employees not approved through the Salary Board. The Pennsylvania Commonwealth Court agreed with the County Controller and held that the Commissioners were required to process the pay increases through the Salary Board prior to the increases being approved through legislative action and implemented. *See also* Reiver, 838 A.2d 814 (directing Controller to pay salary increases approved by Salary Board even though Controller asserted that she was denied necessary information by other Salary Board members); Penska, 620 A.2d 632 (holding that the County Commissioners could not create new positions outside the Salary Board); Curtis v. Cleland, 586 A.2d 1029 (Pa. Commw. 1991) (finding the Court was barred from using state funds to provide a bonus to Court employees because the authority to permit payment of such bonuses rested exclusively with the Salary Board); Lavelle v. Koch, 617 A.2d 319 (Pa. 1992) (finding that the Court could not compel specific budgetary allocations be made by the County); Simon, 403 A.2d 1335 (finding it within the Salary Board’s authority to determine number of deputy sheriffs, not the elected County Sheriff); Leahey v. Farrell, 66 A.2d 577, 580 (Pa. 1949) (finding that a Court could not mandate, by Order, an increase in the salary provide to its staff); Compare Jefferson County v. Jefferson County Court of Common Pleas, 738 A.2d 1077 (Pa. Commw. Ct. 1999), *aff’d*, 763 A.2d 376 (Pa. 2000) (holding that the President Judge could provide bonuses to Court personnel from a fund that was maintained separate from the County treasury and within his sole discretion to allocate disbursements).

The Public Employees Relations Act (“PERA”) is the state statute which provides all public employees, including County employees, with the right to organize and bargain collectively for purposes of wages and benefits. 43 P.S. § 1101 *et seq.* Generally, the collective bargaining process culminates in an agreement between the employer and the bargaining unit as to employee wages. Where employee wages are decided via collective bargaining, the Salary Board’s function is essentially eliminated.

A critical component of PERA is the right of employees to engage in a labor strike or work stoppage. Due to the critical nature of the work performed, some government employees are precluded from engaging in a strike or work stoppage. Instead, the legislature provided those employees with the right to resolve labor disputes through binding interest arbitration. In counties, those groups of employees prohibited from striking are court employees and employees working in a County jail.

Where employees (who are precluded from striking) and the County cannot agree on terms and conditions for a new collective bargaining agreement, those parties are required to settle their dispute in binding interest arbitration. Interest arbitration panels or arbitrators

(despite their broad authority) are not given unfettered power. They cannot, for example, award benefits or compensation that would require the County to raise taxes to fund. Franklin County Prison Board v. Pennsylvania Labor Relations Board, 417 A.2d 1138 (Pa. 1980); Article III, Section 31 of Pennsylvania Constitution; 43 P.S. § 1101.805. This concept is codified in Section 805 of PERA which provides that an interest arbitration award “shall be final and binding upon both parties with the proviso that the decisions of the arbitrators which would require legislative enactment ... shall be considered advisory only.” 43 P.S. § 1101.805.

In Franklin County Prison Board, 417 A.2d 1138, the Prison Board refused to implement provisions of an interest arbitration award asserting that the award required legislative action and was merely advisory. The Union, contesting the Board’s determination, filed an unfair labor practice charge. The charge was sustained by the Pennsylvania Labor Relations Board and the matter was appealed through the Courts. The Pennsylvania Supreme Court found that the Prison Board improperly refused to implement the interest arbitration award (with respect to wages and compensation) by asserting that those benefits required legislative action of the Salary Board. The Court noted that the act of “fixing” salaries was not “legislative.” However, the Court cautioned that if the arbitration award required the County to raise taxes or appropriate funds it would be advisory and not enforceable. *See also* PLRB v. Clarion County, 442 A.2d 374 (Pa. Commw. 1982) (finding that the Salary Board is required to implement arbitration awards and rejecting County’s assertion that award was advisory because it required action by Salary Board); Indiana County, 14 PPER ¶ 14221 (Proposed Decision and Order, 1983) (Salary Boards are required to implement arbitration award); APSCUF v. Kline, 427 A.2d 684 (Pa. Commw. 1981) (finding that “all arbitration awards calling for an increase in compensation and benefits are automatically advisory... would be an absurd conclusion”); Cadue v. Moore, 646 A.2d 683 (Pa. Commw. 1994) (holding that County Commissioners may not be compelled to implement salary increases fixed by Salary Board where payment of raises would result in overdrawing amount budgeted for salaries and would require board to transfer funds from elsewhere in budget).

Most recently, the scope of authority of County Salary Boards has been challenged in Jefferson County Court Appointed Employees Association v. Pennsylvania Labor Relations Board, 912 A.2d 894 (Pa. Commw. 2006), appeal granted, 938 A.2d 985 (Pa. 2007). At issue is the Union’s assertion that the County’s Salary Board could not eliminate positions which were specifically assigned and designated in the collective bargaining unit. The Union’s argument is that by virtue of including the employees’ names in the contract, the County guaranteed their employment throughout the duration of the contract. The Pennsylvania Commonwealth Court was not impressed with the argument and the matter is now pending appeal in the Pennsylvania Supreme Court.

The lesson to be learned from this case law is that the role of the Salary Board in setting fixing the number and setting the salaries of County employees cannot be ignored. It can neither be used as shield to avoid an unfavorable arbitration award nor as a sword to outmaneuver an opponent. What is (somewhat) certain is that Pennsylvania Courts will neither undermine nor expand the statutory role of Salary Boards. The role of the Salary Board is statutorily provided and cannot as a matter of law play any role other than those previously described.