

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 1570 Session of 2012

INTRODUCED BY EARLL, EICHELBERGER, WAUGH, PICCOLA AND BROWNE,  
AUGUST 16, 2012

REFERRED TO LOCAL GOVERNMENT, AUGUST 16, 2012

AN ACT

1 Amending the act of June 24, 1968 (P.L.237, No.111), entitled  
2 "An act specifically authorizing collective bargaining  
3 between policemen and firemen and their public employers;  
4 providing for arbitration in order to settle disputes, and  
5 requiring compliance with collective bargaining agreements  
6 and findings of arbitrators," further providing for right to  
7 enter into collective bargaining, for duty to exert  
8 reasonable effort to settle, for date for collective  
9 bargaining to commence, for appointment of board of  
10 arbitration, for powers of arbitrators, for determination of  
11 board of arbitration and for costs and expenses; and making  
12 editorial changes.

13 The General Assembly of the Commonwealth of Pennsylvania  
14 hereby enacts as follows:

15 Section 1. Section 1 of the act of June 24, 1968 (P.L.237,  
16 No.111), referred to as the Policemen and Firemen Collective  
17 Bargaining Act, is repealed:

18 [Section 1. Policemen or firemen employed by a political  
19 subdivision of the Commonwealth or by the Commonwealth shall,  
20 through labor organizations or other representatives designated  
21 by fifty percent or more of such policemen or firemen, have the  
22 right to bargain collectively with their public employers  
23 concerning the terms and conditions of their employment,

1 including compensation, hours, working conditions, retirement,  
2 pensions and other benefits, and shall have the right to an  
3 adjustment or settlement of their grievances or disputes in  
4 accordance with the terms of this act.]

5 Section 2. The act is amended by adding sections to read:

6 Section 1.1. Short title.

7 This act shall be known and may be cited as the Policemen and  
8 Firemen Collective Bargaining Act.

9 Section 1.2. (Reserved).

10 Section 1.3. Right to bargain collectively.

11 (a) General rule.--Except as otherwise provided in  
12 subsection (b), policemen or firemen employed by a political  
13 subdivision of the Commonwealth or by the Commonwealth shall,  
14 through labor organizations or other representatives designated  
15 by 50% or more of its active members, have the right to bargain  
16 collectively with their public employers concerning the terms  
17 and conditions of their employment, including compensation,  
18 hours, working conditions, retirement, pensions and other  
19 benefits, and shall have the right to a settlement of their  
20 grievances or disputes in accordance with the terms of this act.

21 (b) Exception.--Where there are one or two active members,  
22 then the labor organization or other representative must be  
23 designated by, as the case may be, one or both of the active  
24 members.

25 (c) Restriction.--Under no circumstances shall  
26 postretirement health or pension benefits that are not  
27 statutorily required or any other term or condition of  
28 employment that is specifically exempted from collective  
29 bargaining be considered a term of condition of employment  
30 subject to collective bargaining under this act.

Section 3. Sections 2, 3, 4, 5, 6, 7 and 8 of the act are amended to read:

Section 2. [It shall be the duty of public] Duty to exert reasonable effort to settle.

(a) General rule.--Public employers and their policemen and firemen employes [to] shall exert every reasonable effort to settle all disputes by engaging in collective bargaining in good faith and by entering into settlements by way of written agreements and maintaining the same.

(b) Noncompliance.--If a public employer or a bargaining unit composed of police or fire personnel fails to meet and bargain in good faith, such party shall be subject to an unfair labor practice charge, the jurisdiction over which shall lie in the Pennsylvania Labor Relations Board. A party that fails to meet and bargain in good faith, as determined by the Pennsylvania Labor Relations Board, shall be prohibited from engaging in arbitration under this act until it satisfies its good faith bargaining obligation.

Section 3. Date for collective bargaining to commence.

Collective bargaining shall begin at least [six] ten months before the start of the fiscal year of the political subdivision or of the Commonwealth, as the case may be, and any request for arbitration, as hereinafter provided, shall be made at least [one hundred ten] 180 days before the start of said fiscal year.

Section 4. Appointment of board of arbitration.

(a) Right to request.--

(1) If in any case of a dispute between a public employer and its policemen or firemen employes the collective bargaining process reaches an impasse and stalemate, or if the appropriate lawmaking body does not approve the agreement

1 reached by collective bargaining, with the result that [said]  
2 the employers and employes are unable to effect a settlement,  
3 then either party to the dispute, after written notice to the  
4 other party containing specifications of the issue or issues  
5 in dispute, may request the appointment of a board of  
6 arbitration.

7 (2) For purposes of this section, an impasse or  
8 stalemate shall be deemed to occur in the collective  
9 bargaining process if the parties do not reach a settlement  
10 of the issue or issues in dispute by way of a written  
11 agreement within [thirty] 60 days after collective bargaining  
12 proceedings have been initiated.

13 (3) In the case of disputes involving political  
14 subdivisions of the Commonwealth, the agreement shall be  
15 deemed not approved within the meaning of this section if it  
16 is not approved by the appropriate lawmaking body within one  
17 month after the agreement is reached by way of collective  
18 bargaining.

19 (4) In the case of disputes involving the Commonwealth,  
20 the agreement shall be deemed not approved within the meaning  
21 of this section if it is not approved by the [Legislature]  
22 General Assembly within [six months] 180 days after the  
23 agreement is reached by way of collective bargaining.

24 (b) Composition.--

25 (1) The board of arbitration shall be composed of three  
26 persons, one appointed by the public employer, one appointed  
27 by the body of policemen or firemen involved, and a neutral  
28 third [member] arbitrator to be agreed upon by the public  
29 employer and such policemen or firemen. The members of the  
30 board representing the public employer and the policemen or

1 firemen shall be named within five days from the date of the  
2 request for the appointment of such board.

3 (2) If, after a period of ten days from the date of the  
4 appointment of the two arbitrators appointed by the public  
5 employer and by the policemen or firemen, the neutral third  
6 arbitrator has not been selected by them, then, within five  
7 days, either arbitrator may request the American Arbitration  
8 Association, or its successor in function, to furnish a list  
9 of [three members of said association] seven members who are  
10 residents of Pennsylvania from which the neutral third  
11 arbitrator shall be selected. [The arbitrator appointed by  
12 the public employer shall eliminate one name from the list  
13 within five days after publication of the list, following  
14 which the arbitrator appointed by the policemen or firemen  
15 shall eliminate one name from the list within five days  
16 thereafter. The individual whose name remains on the list  
17 shall be the third arbitrator and shall act as chairman of  
18 the board of arbitration.]

19 (3) In the case of a political subdivision, the American  
20 Arbitration Association, or its successor in function, shall  
21 publish a list, where a list has been requested as provided  
22 in paragraph (2), that contains the names of seven  
23 arbitrators. One of the names on the list, if feasible and  
24 practical, shall be a resident of the municipality, county or  
25 a county contiguous to the county in which the public  
26 employer is located.

27 (4) Starting with the arbitrator appointed by the labor  
28 organization or representative of the policemen or firemen  
29 and then the arbitrator appointed by the employer, each  
30 arbitrator shall engage in alternate strikes of arbitrator

1 names from the list until only one arbitrator name remains on  
2 the list. The remaining arbitrator name shall become the  
3 neutral third arbitrator. The neutral third arbitrator shall  
4 serve as chair of the board of arbitration. This process  
5 shall be completed within ten days after publication of the  
6 list.

7 (5) The board of arbitration [thus] established shall  
8 commence the arbitration proceedings within ten days after  
9 the neutral third arbitrator is selected and shall make its  
10 determination within [thirty] 60 days after the appointment  
11 of the neutral third arbitrator.

12 Section 5. Service of notice.

13 Notice by the policemen or firemen involved under section 4  
14 shall, in the case of disputes involving the Commonwealth, be  
15 served upon the Secretary of the Commonwealth and, in the case  
16 of disputes involving political subdivisions of the  
17 Commonwealth, shall be served upon the head of the governing  
18 body of the local governmental unit involved.

19 Section 6. Powers of arbitrators.

20 (a) General rule.--Each of the arbitrators selected in  
21 accordance with section 4 [hereof] shall have the power to  
22 administer oaths and compel the attendance of witnesses and  
23 physical evidence by subpoena.

24 (b) Open meetings and public records.--

25 (1) Except as otherwise provided under paragraph (2),  
26 any hearing at which evidence of record is presented by any  
27 party or witness under this act shall be open to the public  
28 and all documents and evidence of record submitted by any  
29 party at such public hearing shall be public records subject  
30 to the act of February 14, 2008 (P.L.6, No.3), known as the

1 Right-to-Know Law. A stenographic recording shall be made of  
2 any such hearing.

3 (2) Paragraph (1) shall not apply to a bargaining  
4 session, executive session or other meeting between the  
5 arbitrators and conducted before or after the hearing.

6 Section 7. Determination of board of arbitration.

7 (a) Finality.--

8 (1) The determination of the majority of the board of  
9 arbitration thus established shall be final on the issue or  
10 issues in dispute and shall be binding upon the public  
11 employer and the policemen or firemen involved. Such  
12 determination shall be in writing and a copy thereof shall be  
13 forwarded to both parties to the dispute. [No appeal  
14 therefrom shall be allowed to any court. Such determination  
15 shall constitute a mandate to the head of the political  
16 subdivision which is the employer, or to the appropriate  
17 officer of the Commonwealth if the Commonwealth is the  
18 employer, with respect to matters which can be remedied by  
19 administrative action, and to the lawmaking body of such  
20 political subdivision or of the Commonwealth with respect to  
21 matters which require legislative action, to take the action  
22 necessary to carry out the determination of the board of  
23 arbitration.]

24 (2) No appeal may be taken from the determination of the  
25 board of arbitration to any court, except for any of the  
26 following reasons:

27 (i) The board of arbitration exceeded its powers and  
28 duties.

29 (ii) The board of arbitration issued an award that  
30 requires an unconstitutional act or results in the

1 deprivation of a constitutional right.

2 (iii) The proceedings were irregular.

3 (iv) The board of arbitration exceeded its  
4 jurisdiction.

5 (v) The board of arbitration failed to include in  
6 its determination:

7 (A) A detailed explanation that is supported by  
8 substantial evidence, which must be evidence of  
9 record submitted at the hearing and before the close  
10 of the record, that justifies each provision of the  
11 determination and explains that each provision is  
12 based on evidence of record and that identifies the  
13 evidence of record.

14 (B) The calculations that are correctly based on  
15 the criteria under subsection (a.1).

16 (a.1) Required criteria.--

17 (1) The board of arbitration shall formulate, its award  
18 based on the total new costs, in any year of the award. The  
19 total new costs may not exceed the positive percentage change  
20 in the Consumer Price Index for All Urban Consumers (CPI-U)  
21 as published by the United States Department of Labor, Bureau  
22 of Labor Statistics, or its successor, for the period June to  
23 June contained within the immediately preceding two years  
24 prior to the first year of the award, and any increase in  
25 total new costs may not exceed three percent.

26 (2) The CPI-U analysis shall be performed and based on a  
27 calculation of all of the combined total new costs in each  
28 individual provision in the award, including any automatic  
29 increase in the costs of terms and conditions of employment  
30 that existed prior to the award, and shall be calculated as a



1 percentage of the preexisting base rate of a policeman or  
2 fireman having five years of experience in the relevant  
3 municipality.

4 (3) For purposes of this subsection, the term "total new  
5 costs" shall include any increase in the costs of the terms  
6 and conditions of employment that existed prior to the award,  
7 the cost of all new wages or wage increases and other forms  
8 of direct, indirect and deferred compensation contained in  
9 the award or that existed prior to the award; the cost of the  
10 annual funding for all postretirement benefits, including  
11 pension and health care benefits based on Statement 45, or  
12 its successor, of the Government Accounting Standards Board;  
13 and any other costs associated with complying with the award  
14 which requires the direct or indirect expenditure of public  
15 funds, including any grants and donations from any source.  
16 The award shall include a calculation establishing that this  
17 requirement is satisfied based on the evidence of record  
18 provided during the hearing and executive session process. In  
19 averaging the costs of the award with respect to costs for  
20 any year encompassed by the award for which such increase may  
21 not be known at the time the award is issued, for example,  
22 the cost for all forms of insurance or annual pension costs,  
23 the board of arbitration shall make a good faith estimate  
24 projection based on existing facts and historical increases  
25 known at the time when the award is issued.

26 (a.2) Prohibition.--A board of arbitration may not include  
27 in any award, determination or settlement and shall be required  
28 to remove from any existing collective bargaining agreement or  
29 pension plan ordinance any pension benefit or provision that has  
30 been found to be or defined as either unauthorized, unlawful or

excessive by the Department of the Auditor General or any court of law. Should the Department of the Auditor General or any court of law make any such finding during the term of any collective bargaining agreement, such provision shall be deemed removed by the parties to the collective bargaining agreement and such pension benefit or provision shall be null and void.

(b) Matters requiring legislation.--With respect to matters which require legislative action for implementation, such legislation shall be enacted, in the case of the Commonwealth, within [six months] 180 days following publication of the findings, and, in the case of a political subdivision of the Commonwealth, within [one month] 30 days following publication of the findings. The effective date of any such legislation shall be the first day of the fiscal year following the fiscal year during which the legislation is [thus] enacted.

Section 8. Costs and expenses.

[The compensation, if any, of the arbitrator appointed by the policemen or firemen shall be paid by them. The compensation of the other two arbitrators, as well as all stenographic and other expenses incurred by the arbitration panel in connection with the arbitration proceedings, shall be paid by the political subdivision or by the Commonwealth, as the case may be.]

(a) General rule.--The public employer and the policemen or firemen employed by the public employer who are engaged in the collective bargaining shall bear the costs of their respective appointed arbitrators, witnesses, including any actuary or expert witness, and attorneys in any arbitration proceeding.

(b) Neutral third arbitrator and other expenses.--The reasonable fees and costs billed by or associated with the neutral third arbitrator and the stenographic and other expenses

incurred by the board of arbitration in connection with the arbitration proceedings or incurred as a result of or associated with the arbitration proceedings shall be divided. One-half of such fees and costs shall be paid by the public employer and one-half shall be paid by the policemen and firemen who are engaged in the collective bargaining.

Section 4. The act is amended by adding a section to read:  
Section 8.1. Construction.

Any reference to a determination of the board of arbitration or award in this act shall be construed as a final and binding arbitration award, determination or settlement by a board of arbitrators that was issued pursuant to this act prior to the effective date of this section and to any other law that mandates binding interest arbitration to determine the terms and conditions of employment for any public employer.

Section 5. Sections 9, 10, 11 and 12 of the act are amended to read:

Section 9. Applicability.

The provisions of this act shall be applicable to every political subdivision of this Commonwealth notwithstanding the fact that any such political subdivision, either before or after the passage of this act, has adopted or adopts a home rule charter.

Section 10. Severability.

If any provision of this act or the application thereof to any person or circumstances is held invalid, the remainder of this act and the application of such provision to other persons or circumstances, shall not be affected thereby, and to this end the provisions of this act are declared to be severable.

Section 11. Inconsistent repeals.

1 All acts or parts of acts inconsistent herewith are hereby  
2 repealed.

3 Section 12. Effective date.

4 This act shall take effect immediately.

5 Section 6. This act shall take effect in 60 days.