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Labor Law - Judicial Enforcement of City's Obligation to Pay Public Employee Benefits under Collective Bargaining Agreement

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LABOR LAW—JUDICIAL ENFORCEMENT OF CITY'S OBLIGATION TO PAY PUBLIC EMPLOYEE BENEFITS UNDER COLLECTIVE BARGAINING AGREEMENT—The Commonwealth Court of Pennsylvania has held that where funds appropriated for disability benefits under an arbitration agreement will not meet the expected obligation, the public employer can be ordered to raise the money needed.

Tate v. Antosh, 3 Pa. Comm. Ct. 144, 281 A.2d 192 (1971).

A collective bargaining agreement between the city of Philadelphia and its employees became effective February 20, 1968. Upon expiration it was twice renewed for an additional period through June 30, 1971. The city appropriated $2,725,000 for the fiscal year July 1, 1970, to June 30, 1971, for disability benefits payable to city employees resulting from job connected injuries as prescribed by Civil Service Regulation 32.[1] In January of 1971, the city realized that the budgeted funds would be wholly allocated before June and notified the eligible employees that no payments would be made once the funds were exhausted. This communication led to multiple equity suits[2] in the Court of Common Pleas of Philadelphia County. The city's sole contention was that precedent indicated that it could not be compelled to appropriate more funds, as had been held by the Pennsylvania Supreme Court in *Baxter v. Philadelphia*[3] and *O'Donnell v. Philadelphia*.[4]

The rationale behind these cases is historical. Not only did the older statutes preclude such a remedy, but prior decisional law precluded enforcement of contracts between governmental bodies and third parties for which there were insufficient or no appropriations.[5] The focal point of the city's position was stated in *Thiel v. Philadelphia*[6] wherein the court stated that: "Without an appropriation there can be no payment of salaries. This is too well settled to admit of argument."[7]

1. 3 Pa. Comm. Ct. 144, 147, 281 A.2d 192, 194 (1971). Regulation 32 specifies the amounts, conditions, and duration of benefits for the employees who qualify.
2. Suits were brought on behalf of the uniformed (policemen and firemen) and non-uniformed workers by their respective unions. In these actions, the mayor of the city, its fiscal officers, and members of the council were named defendants.
3. 385 Pa. 424, 123 A.2d 634 (1956).
4. 385 Pa. 189, 122 A.2d 690 (1956). In *O'Donnell*, the Pennsylvania Supreme Court held that where city council never made any appropriation to provide for overtime pay for city workers, those employees could not recover pay for work performed in excess of forty hours. The *Baxter* case is similar but for the fact it specifically concerned members of the Philadelphia Police Department.
5. *See, e.g.*, Thiel v. Philadelphia, 245 Pa. 406, 91 A. 490 (1914); Miller v. Philadelphia, 231 Pa. 196, 80 A. 68 (1911); Perrot v. Philadelphia, 83 Pa. 479 (1877); Bladen v. Philadelphia, 60 Pa. 464 (1869).
6. 245 Pa. 406, 91 A. 490 (1914).
7. *Id.* at 408, 91 A. at 491.

The employees countered with two arguments: (1) *administration of justice* as mentioned in *Commonwealth ex rel. Carroll v. Tate*,[8] and the public interest required a contrary result, and (2) the claims were based on negotiated contracts under new statutory law[9] which rendered *O'Donnell* and *Baxter* obsolete.

The lower court enjoined discontinuation of payments and ordered appropriations to meet the benefits, relying mainly on appellees' second argument. The city took consolidated appeals to the Pennsylvania Commonwealth Court[10] which affirmed in part and reversed[11] in part.

In rejecting the employees' first argument, the court held that public employees (even policemen) are not within the *administration of justice*[12] as portrayed in *Carroll*. The court also felt that the threat of a public employee strike vis-à-vis the public interest did not present sufficient grounds for ruling against the city. The court was quite explicit in this regard:

> While sympathetic to the potential disruption . . . caused by a public employees strike, we are without power to direct the City to pay . . . on the basis of such a threat standing alone.
> [W]e cannot accept appellees' first argument. . . .[13]

The court responded to the employees' second argument and held that the collective bargaining agreement governed the non-uniformed employees' rights.[14] However, the court realized there was difficulty with regard to the enforceability of such rights since this was not a private labor agreement.[15] Historically, public employees, while never achieving the level attained by private employees in labor relations,

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8. 442 Pa. 45, 274 A.2d 193 (1971). This case involved a suit brought on behalf of all judges of the Court of Common Pleas of Philadelphia to compel the city to appropriate additional funds requested by them for the necessary administration of the court. The Pennsylvania Supreme Court held that the judicial branch of government has inherent power to determine what funds are reasonably necessary for its effective and efficient operation.

9. Public Employee Relations Act, PA. STAT. ANN. tit. 43, § 217.1-.10 (Supp. 1972) (relating to policemen and firemen).

10. 3 Pa. Comm. Ct. 144, 281 A.2d 192 (1971).

11. The reversal merely concerned the lower court's mandate that the payments must be made regardless of any appropriation. This court held there must first be an appropriation, then the payments may be continued.

12. *Supra* note 8.

13. 3 Pa. Comm. Ct. at 151, 281 A.2d at 196.

14. The court disposed of the case as to uniformed employees (policemen and firemen) by way of special rights from Article III, section 31 of the Pennsylvania Constitution of 1968, utilized in conjunction with the Public Employee Relations Act, and Philadelphia's Home Rule Charter. *See* 3 Pa. Comm. Ct. at 152-57, 281 A.2d at 197-99.

15. *Contra*, Building Service Employees Local 252 v. Schlesinger, 440 Pa. 448, 269 A.2d 894 (1970); Shaw Electric Co. v. IBEW Local 98, 418 Pa. 1, 208 A.2d 769 (1965).

have been striving for equal treatment.[16] Because the employer in the present case was a municipal corporation, the *O'Donnell* and *Baxter* holdings seemed to dictate nonpayment of the disability benefits. Since city council made no appropriation to provide for overtime compensation in *O'Donnell* and *Baxter*, recovery was barred because judicial redress would have been an unauthorized (hence, unlawful) delegation of power that rests solely with the governing body. The appellants urged that the above reasoning be controlling in the present case.

The court, in holding that the necessary appropriation could be legally effected,[17] distinguished *O'Donnell* and *Baxter* by noting that *Antosh* involved "bargained-for" benefits.[18] To bolster its holding the court alluded to a "public interest" argument[19] and cited the Public Employee Relations Act[20] as formalizing this doctrine. The public interest is hampered when policemen and firemen strike,[21] yet the court specifically spurned this fact and ruled for the uniformed employees solely on the basis of statutory mandates.[22] Then, after rejecting the public interest as a rationale, the court drew heavily upon it to support its holding as to the non-uniformed employees.

While recognizing this apparent inconsistency, this note will look to the propriety of the court's decision. The court, having no statutory grounds upon which it could rule for the non-uniformed workers, was placed in an awkward position. It would have been unwise to rule

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16. *See* Beaird, *Labor Relations Policy for Public Employees: A Legal Perspective*, 4 GA. L. REV. 110 (1969), where the author points out the disparities found between both sectors that have led to widespread indignation by the public employee.

17. Philadelphia had the power by virtue of its Home Rule Charter to meet emergency funding as to unforeseen financial difficulties pursuant to a collective bargaining process. 3 Pa. Comm. Ct. at 159, 281 A.2d 199.

18. *Id.*

19. The court stated:

> The realities of modern urban life in the City of Philadelphia compels us to recognize that the government itself is not the only representative of the *public interest* but that equal modicums of *public interest* and benefit may be discovered in both the duties and responsibilities of the public employer and the public employees as a group. Certainly a *public interest* is best served by having a viable and active force of public service employees protected against unilateral disregard for their rights by the public employer.

3 Pa. Comm. Ct. at 160, 281 A.2d at 201 (emphasis added).

20. PA. STAT. ANN. tit. 43, § 217.1-.10 (Supp. 1972). In *Antosh* the court stated:

> The General Assembly of the Commonwealth of Pennsylvania declares that it is the *public policy* of this Commonwealth and the purpose of this Act to promote orderly and constructive relationships between all public employers and their employees subject, however, to the *paramount right of the citizens* of this Commonwealth to keep inviolate the guarantees for their health, safety, and welfare.

3 Pa. Comm. Ct. at 160, 281 A.2d at 201 (emphasis added).

21. *Supra* note 13, where the court clearly expressed its belief that the threat of strike was insufficient reason to warrant a favorable decision for the employees.

22. *Supra* note 14.

favorably for only one group (the uniformed workers) because of a statutory technicality as such a ruling might lead to animosity between public employees. This novel problem was squarely met. The court, in distinguishing precedent and citing no case law[23] to support its holding for the non-uniformed employees, had to innovate. At least one commentator would endorse the court's action[24] and another espoused the same view long ago.[25]

Private sector labor policy consists basically of guidelines set forth in the Norris-LaGuardia Act, the Wagner Act, the Taft-Hartley Act, and the Landrum-Griffin Act.[26] These statutes give private sector employees the right to form unions, the right to strike, and also require collective bargaining from private employers. But public employees are specifically excluded from their protection.[27] Since there is no direct federal supervision over state and local government concerning unfair labor practices, these polities are free to cope with their labor disputes individually.[28]

In *Harney v. Russo*[29] and *Amalgamated Transportation Union District 85 v. Port Authority*[30] the Pennsylvania Supreme Court has held that collective bargaining and compulsory arbitration legislation are constitutionally sound for all municipal employees. But nowhere do *Harney* and *Amalgamated* pose the problem of inadequate appropriations that fail to meet contractual obligations which occurred in *Antosh*.

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23. The commonwealth court stated:

> No City employee can be expected to undertake the colossal task of examining a proposed city budget . . . to assure himself that there will be sufficient funds. . . . He is not an individual making a contract with the City for his unique services but rather a part of a large and complex collective bargaining process *which renders former case law* on the subject of public employee labor contracts *inapposite* . . . .

3 Pa. Comm. Ct. at 159, 281 A.2d at 200 (emphasis added).

24. *See* Welch, *Municipal Collective Bargaining Agreements: Are They Ultra Vires?*, 20 CASE W. RES. L. REV. 637 (1969).

> It is incumbent upon the *judiciary* to overcome this hostility, to recognize the advantages of the collective bargaining and its compatability with public personnel administration, and to lend *judicial support* to the development of this process in municipal labor relations.

Id. at 651 (emphasis added).

25. *See* Shulman, *Reason, Contract and Law in Labor Relations*, 68 HARV. L. REV. 999 (1955).

26. Portions of the Wagner, Taft-Hartley, and Landrum-Griffin Acts, as amended, are commonly cited together as the Labor Management Relations Act, 29 U.S.C. §§ 151-68 (1970).

27. Labor Management Relations Act, 29 U.S.C. § 152(2)-(3) (1970).

28. Pennsylvania was one of the first states to create the duty in the public employer and public employees' union to engage in binding arbitration. *See* Public Employee Relations Act, PA. STAT. ANN. tit. 43, § 217.1-.10 (Supp. 1972).

29. Harney v. Russo, 435 Pa. 183, 255 A.2d 560 (1969).

30. Amalgamated Transp. Union District 85 v. Port Authority, 417 Pa. 299, 208 A.2d 271 (1965).

The court, faced with the issue of how to legally enforce this labor contract, placed great importance on the "bargained-for" benefits contained in the agreement.[31] Granted, early cases uniformly held that arbitration agreements by municipalities were unenforceable because of the unlawful delegation of legislative authority,[32] but today the contrary trend is evident as seen in *American Fed'n of State, County & Mun. Employees Local 1226 v. City of Rhinelander*.[33]

In *City of Rhinelander* a municipal employee was discharged by the city mayor. After submitting her problem to the grievance committee, action was taken by the union pursuant to the collective bargaining agreement. The city refused to arbitrate or follow the agreed upon procedures. The Supreme Court of Wisconsin reversed for the union. While requiring the employer-city to adhere to the agreement, the court held it was not an unlawful infringement of the city's legislative power.

Collective bargaining is meaningless without good faith adherence to the terms of the contract. To compel governmental units to comply with the terms of negotiated contracts, a revised approach to labor relations in the public sector is needed.[34] Just four years ago a city unsuccessfully tried to refuse to appropriate funds necessary to support a collective bargaining agreement.[35] The Board saw this as a clear refusal to bargain in good faith and ordered compliance. *Antosh* goes farther. Utilizing the non-uniformed employees' "bargained-for" benefits together with public interest, public policy, and the emergency funding provisions in Philadelphia's Home Rule Charter, the court created a viable public labor agreement.

Whether the court's reasoning is weak is open to question. In *Carroll* it is seen to what extreme the state's highest court has gone in usurping legislative authority. Reasoned as a necessary exception to the separation of powers doctrine *Carroll* gave the judiciary power to compel cities to appropriate monies the court deemed necessary for its own

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31. 3 Pa. Comm. Ct. at 159, 281 A.2d at 200.

32. *See* Washington *ex rel.* Firefighters Local 350 v. Johnson, 35 L.R.R.M. 2434 (1955); Fellows v. LaTronica, 151 Colo. 300, 377 P.2d 547 (1962); Mugford v. Mayor & City Council, 185 Md. 266, 44 A.2d 745 (1945).

33. American Fed'n of State, County & Mun. Employees Local 1226 v. City of Rhinelander, 35 Wis. 2d 209, 151 N.W.2d 30 (1967). *See* AFSCME Local 953 v. School District, 66 L.R.R.M. 2419 (1967).

34. *See* Anderson, *Public Employee Collective Bargaining: The Changing of the Establishment*, 7 WAKE F.L. REV. 175 (1971).

35. New Milford v. Board of Labor Relations, 66 L.R.R.M. 2361 (1967).

administration. While *Antosh* does not come to the limits (if any) of *Carroll,* it can be said to be a timely decision. If there is a movement toward equality with the private labor sector by the public employee,[36] *Antosh* must be considered a significant step.

Jon J. Vichich

CONSTITUTIONAL LAW—CRUEL AND UNUSUAL PUNISHMENT—Confinement under conditions shocking to the conscience of reasonably civilized people—The Supreme Court of Pennsylvania has held that habeas corpus is available to seek relief from a confinement under conditions which amount to cruel and unusual punishment, even though the detention itself is legal.

Commonwealth ex rel. Bryant v. Hendrick, 444 Pa. 83, 280 A.2d 110 (1971).

Bryant was confined in Holmesburg State Prison on an indictment charging him with burglary, larceny, and receiving stolen goods. He was also subject to a military detainer. On a writ of habeas corpus, he complained that the *general conditions* of his confinement constituted cruel and unusual punishment in violation of his eighth amendment right.[1] The evidence indicated dirty and overcrowded cells which were infested with cockroaches and rats. Specifically, he alleged that he was in constant fear for his personal safety. Prisoners charged with serious crimes were confined with prisoners charged with lesser offenses. The prison ran on an open cell system whereby cells were left open during the day, allowing prisoners to walk freely from cell to cell. There was an insufficient number of guards in proportion to the prison population, and the guards were inadequately trained. The unsafe conditions were manifested by incidents of sexual assaults, possession of weapons, narcotics traffic, and theft. The medical staff was inadequate. And finally, the guards launched an oppressive campaign of violence after a prison riot. The court found the conditions "disgusting and degrad-

36. *See* Oberer, *The Future of Collective Bargaining in Public Employment,* 20 LAB. L.J. 777, 778 (1969).

1. U. S. CONST. amend. VIII. "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishment inflicted."