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The PLRB's New Jurisdiction for Police and Firemen

*Kurt H. Decker**

INTRODUCTION

By 1937, the right of Pennsylvania labor to collectively bargain was generally protected by federal legislation in the National Labor Relations Act¹ and by state legislation in the Pennsylvania Labor Relations Act.² Public employees, however, were specifically excluded from coverage of the statutes.³ Indeed, in Pennsylvania, collective bargaining by employees in the public sector was thought to violate public policy because of the danger posed to the general welfare.⁴ But in the past decade, the Pennsylvania legislature granted policemen, firemen, and all other public employees the right to organize and bargain collectively. What is commonly known as Act 111,⁵ enacted in 1968, generally provides for collective bargaining between policemen and firemen and their public employers; Act 195,⁶ passed in 1970, provides for comprehensive collective bar-

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1. National Labor Relations (Wagner) Act, 29 U.S.C. §§ 151-169 (1970).

2. Pennsylvania Labor Relations Act, PA. STAT. ANN. tit. 43, §§ 211.1-.13 (Purdon 1964 & Supp. 1977-1978) [hereinafter referred to as the Pennsylvania Labor Relations Act].

3. See 29 U.S.C. § 152(2) (1970) (term "employer" as used in the statute does not include a state or political subdivision thereof); PA. STAT. ANN. tit. 43, § 211.3(c) (Purdon 1964) (term "employer" as used in statute does not include the Commonwealth of Pennsylvania or a political subdivision thereof).

4. See *Philadelphia Fire Officers Ass'n v. PLRB*, 470 Pa. 550, 553, 369 A.2d 259, 260 (1977). It was considered to be part of the American tradition that there was "no right to strike against the public safety by anybody, anywhere, anytime." *Broadwater v. Otto*, 370 Pa. 611, 613-14, 88 A.2d 878, 880 (1952). Cf. *De Blasio v. Cecil Township*, 42 Wash. Co. R. 193, 28 Pa. D. & C.2d 450 (C.P. 1963) (strikes by public employees might cripple an important governmental function to the detriment of the public at large); PA. STAT. ANN. tit. 43, § 215.2 (Purdon 1964) (partially repealed, PA. STAT. ANN. tit. 43, § 1101.2201 (Purdon Supp. 1977-1978)) (prohibits strikes by public employees).

5. The Act of June 24, 1968, No. 111, 1968 Pa. Laws 237 (Act 111), established the rights of police and firemen to organize and bargain collectively through selected representatives. PA. STAT. ANN. tit. 43, §§ 217.1-.10 (Purdon Supp. 1977-1978) [hereinafter referred to as Act 111].

6. All Pennsylvania public employees other than policemen and firemen were given the right to organize and bargain collectively by the Act of July 23, 1970, No. 195, 1970 Pa. Laws

gaining by all other public employees.

The Pennsylvania Labor Relations Board (PLRB) was expressly given jurisdiction to administer labor relations involving public employees covered by Act 195.⁷ The legislature, however, never specifically extended the PLRB's jurisdiction to policemen and firemen. Thus, Act 111 has functioned without an agency to administer its provisions,⁸ and disputes over application and interpretation of the Act have been referred directly to the courts for resolution.⁹

Recently, in *Philadelphia Fire Officers Association v. PLRB*,¹⁰ the Pennsylvania Supreme Court altered the administration of Act 111. By finding Act 111 to be in *pari materia*¹¹ with the Pennsylvania Labor Relations Act, the court conferred jurisdiction upon the PLRB to conduct police and firemen representation elections.¹² Difficult questions are now arising concerning the parameters of the PLRB's newly acquired jurisdiction: does its jurisdiction extend beyond representation elections and encompass unit determination, unfair labor practices, and other representation matters?

In focusing on the problems presented by *Fire Officers'* extension of PLRB jurisdiction, this article will examine (1) the court's decision in *Fire Officers*, (2) the concept of *in pari materia*, upon which the *Fire Officers* decision is based, and (3) possible interpretations of the PLRB's Act 111 jurisdiction, from which predictions of Act 111's new course can be formulated. This analysis suggests that the court may have judicially created a new collective bargaining stat-

563 (Act 195). PA. STAT. ANN. tit. 43, §§ 1101.101-.2301 (Purdon Supp. 1977-1978) [hereinafter referred to as Act 195].

7. *Id.* at § 1101.501.

8. In Pennsylvania, the legislature established a specialized agency for administering private and public sector collective bargaining statutes. The Pennsylvania Labor Relations Act, Act of June 1, 1937, No. 294, 1937 Pa. Laws 1168, created the Pennsylvania Labor Relations Board (PLRB) and charged it with administering private sector labor relations. PA. STAT. ANN. tit. 43, § 211.4 (Purdon 1968). In 1970, the legislature extended the PLRB's jurisdiction in Act 195 to include all public employees, except police and firemen. See note 7 and accompanying text *supra*.

9. See, e.g., *Hartshorn v. County of Allegheny*, 460 Pa. 560, 333 A.2d 914 (1975); *Venneri v. County of Allegheny*, 5 Pa. Commw. Ct. 105, 289 A.2d 523 (1972).

10. 470 Pa. 550, 369 A.2d 259 (1977).

11. *In pari materia* is a statutory interpretation technique whereby a statute's legislative intent, when ambiguous from the language, is gleaned from other statutes dealing with the same subject matter. See generally 2A C. SANDS, SUTHERLAND STATUTORY CONSTRUCTION § 51.01-.08 (4th ed. 1973) [hereinafter cited as SUTHERLAND].

12. A "representation election" involves balloting by employees for the purpose of choosing a bargaining agent or unseating one previously recognized. BUREAU OF NATIONAL AFFAIRS, PRIMER OF LABOR RELATIONS 106 (19th ed. 1973).

ute for Pennsylvania's policemen and firemen—something not originally contemplated by the legislature.

I. THE DECISION

The controversy in *Fire Officers* arose when the PLRB dismissed for lack of jurisdiction a petition filed by a firemen's association seeking a representation election.¹³ On appeal, the Court of Common Pleas of Philadelphia County affirmed,¹⁴ as did the commonwealth court.¹⁵ The supreme court reversed, holding that the PLRB has jurisdiction to conduct representation elections among police and firemen whose collective bargaining is governed by Act 111.¹⁶ The court reached this conclusion by reading Act 111 in pari materia with the provisions of the Pennsylvania Labor Relations Act that empower the PLRB to conduct representation elections.¹⁷

The court relied on the Statutory Construction Act of 1972, title 1, section 1932(b) of the Pennsylvania Consolidated Statutes Annotated, which provides that "statutes in pari materia shall be construed together, if possible, as one statute."¹⁸ Since both the Pennsylvania Labor Relations Act and Act 111 are collective bargaining statutes, the court held them to be in pari materia and construed them together. The Pennsylvania Labor Relations Act generally governs the subject of collective bargaining and provides detailed and explicit provisions for the determination of collective bargaining representatives, but it excludes public employers from the generally imposed duty to bargain collectively.¹⁹ Act 111, however, required public employers to bargain collectively with policemen and firemen, and, while lacking specific provisions on the conduct of labor relations, repealed "all parts of acts inconsistent therewith."²⁰

13. In the Matter of The Employes of City of Philadelphia, Philadelphia Fire Department, 2 Pa. Pub. Empl. Rep. 23 (1972).

14. Philadelphia Fire Officers Ass'n v. PLRB, Civil No. 361 (C.P. Phila. Co., Pa. Sept., 1973), *aff'd*, 18 Pa. Commw. Ct. 487, 336 A.2d 477 (1975), *rev'd*, 470 Pa. 550, 369 A.2d 259 (1977).

15. Philadelphia Fire Officers Ass'n v. PLRB, 18 Pa. Commw. Ct. 487, 336 A.2d 477 (1975), *rev'd*, 470 Pa. 550, 369 A.2d 259 (1977).

16. Philadelphia Fire Officers Ass'n v. PLRB, 470 Pa. 550, 369 A.2d 259 (1977).

17. PA. STAT. ANN. tit. 43, § 211.7 (Purdon 1964).

18. 1 PA. CONS. STAT. ANN. § 1932(b) (Purdon Supp. 1977-1978).

19. PA. STAT. ANN. tit. 43, § 211.3(c) (Purdon 1964).

20. See Philadelphia Fire Officers Ass'n v. PLRB, 470 Pa. 550, 554 n.5, 369 A.2d 259, 260 n.5 (1977). The court noted in footnote 5: "We cannot find that this repealer provision of Act

The court concluded that the repealer section pro tanto repealed the exclusion of "public employers" from the Pennsylvania Labor Relations Act's definition of employer. Consequently, the court decided that, when the legislature in Act 111 provided for collective bargaining by policemen and firemen through "labor organizations or other representatives designated by fifty percent or more"²¹ of the employees, it meant a labor organization designated by the provisions and procedures established in the Pennsylvania Labor Relations Act and administered by the PLRB.²² This conclusion was supported by the Statutory Construction Act of 1972, title 1, section 1922(1) of the Pennsylvania Consolidated Statutes Annotated, providing that the legislature must be presumed not to intend "absurd," "impossible of execution," or "unreasonable results."²³ The court noted that Act 111, by requiring collective bargaining while lacking procedures for representation elections, would be "unreasonable," if not "absurd," unless read in *pari materia* with the Pennsylvania Labor Relations Act.²⁴

II. IN PARI MATERIA

The court found a legislative grant of jurisdiction to the PLRB over Act 111 representation elections by construing Act 111 in *pari materia* with the Pennsylvania Labor Relations Act. An understanding of this statutory interpretation technique, therefore, is necessary to accurately define the jurisdictional parameters of the PLRB under the *Fire Officers* decision. When a statute is ambiguous, other statutes dealing with similar subject matter, i.e. statutes in *pari materia*, may be referred to for assistance in interpretation.²⁵ Generally, statutes or statutory provisions relating to the same per-

No. 111 was ever reproduced in Purdon's Pennsylvania Statutes Annotated, 43 P.S. § 217.1 *et seq.*" *Id.* An examination of the Purdon's Pennsylvania Statutes Annotated's "Tables" volume reveals that Act 111's § 11 was never codified. Tables (Cumulative Supplement) PA. STAT. ANN. 181 (Purdon Supp. 1977-1978). Generally speaking, "repealer" and "effective date" sections of the original statute are never codified in Purdon's Pennsylvania Statutes Annotated. *See, e.g.*, Tables PA. STAT. ANN. (Purdon 1963). Act 111's original § 11 provides: "All acts or parts of acts inconsistent herewith are hereby repealed." Act of June 24, 1968, No. 111, § 11, 1968 Pa. Laws 237.

21. PA. STAT. ANN. tit. 43, § 217.1 (Purdon Supp. 1977-1978).

22. 470 Pa. at 555, 369 A.2d at 261.

23. 1 PA. CONS. STAT. ANN. § 1922(1) (Purdon Supp. 1977-1978).

24. 470 Pa. at 556, 369 A.2d at 262.

25. SUTHERLAND, *supra* note 11, at § 51.01.

son or thing, or to the same class of persons or things, or to the same or closely allied subject or object are in *pari materia*.²⁶ Statutes which are part of the same general scheme or aimed at the accomplishment of similar results are also in *pari materia*.²⁷ The statutes need not have been passed at the same time nor at the same legislative session, nor need they refer to each other to be in *pari materia*. Statutes may be in *pari materia* even though one is special or specific and the other is general.

In construing statutes which are in *pari materia*, the object is to ascertain and carry out legislative intent. This interpretation technique proceeds upon the rationale that statutes with a parallel scope and purpose are governed by a similar policy intending consistency and harmony. Statutes in *pari materia* are not considered isolated fragments, but parts of a great, connected, homogeneous system;²⁸ thus, each is construed in light of, with reference to, or in connection with other statutes or provisions. Specifically, when statutes dealing with a particular subject consist of related general provisions indicating a settled policy, new enactments on that subject are regarded as intending to fit into the existing scheme.²⁹ Thus, the homogenous system approach assures that statutes are interpreted consistently, unless a different purpose is plainly shown.

By finding the Pennsylvania Labor Relations Act and Act 111 in

26. See, e.g., *Department of Transp. v. Gehris*, 19 Pa. Commw. Ct. 287, 339 A.2d 639 (1975), *rev'd*, 471 Pa. 210, 369 A.2d 1271 (1977); *McFarland Estate*, 377 Pa. 290, 105 A.2d 92 (1954) (laws are in *pari materia* when they relate to the same persons or things or to the same classes of persons or things); *Williams v. Meredith*, 326 Pa. 570, 192 A. 924 (1937) (statute providing for service of process on Secretary of Revenue in action against nonresident was construed with statute providing that all actions for damages arising from use of vehicles may be brought in county where damages were sustained); *Metcalf's Estate*, 319 Pa. 28, 179 A. 587 (1935) (statute relating to payment of estate claims must be read in *pari materia* with statute relating to precedence of claims for support); *Commonwealth v. Sweeney*, 281 Pa. 550, 127 A. 226 (1924) (two statutes prescribing minimum and maximum sentences must be read together); *Hoffman's Estate*, 209 Pa. 357, 58 A. 665 (1904) (act providing for persons unable to care for themselves should be read in *pari materia* with lunacy acts).

27. See, e.g., *Fuellhart v. Thompson*, 11 Pa. Super. Ct. 273 (1899) (statutes that are not inconsistent and that relate to the same subject are in *pari materia* and should be construed together).

28. See, e.g., *Commissioner of Immigration v. Gottlieb*, 265 U.S. 310 (1924) (Court decided case by construing act which enumerates classes of aliens to be excluded from immigration to the United States with a statute that limits number of aliens in the United States); *Commonwealth ex rel Gettman v. A.B. Baxter & Co.*, 235 Pa. 179, 84 A. 136 (1912) (statute providing that writ of foreign attachment may be issued in all tort and contract actions must be read into an act providing for writ of foreign attachment against foreign corporation).

29. See SUTHERLAND, *supra* note 11, at § 51.02.

pari materia, the *Fire Officers* court presumed that the legislature enacted Act 111 with the Pennsylvania Labor Relations Act "in mind,"³⁰ intending the two be harmonized. The court reasoned that the ambiguity in Act 111—requiring a public employer to collectively bargain with representatives of its policemen and firemen without detailing how the collective bargaining agent would be ascertained—could be resolved by referring to the specific election procedures in the Pennsylvania Labor Relations Act. The statutory interpretation technique of in pari materia thus supplied the court with the needed ingredient to transform Act 111 into a workable collective bargaining statute with a representation procedure. The transformation was feasible because both statutes deal with the same subject matter, were apparently enacted in the same spirit and for the same policy reasons, and intend similar results.³¹ Moreover, collective bargaining in both the private and public sectors is a settled policy in Pennsylvania. To preserve legislative conformity in the collective bargaining statutes, the court will construe new

30. On the assumption that persons both in and out of legislatures would naturally tend to think about and have their thinking influenced by other statutes on the same subject when faced with the necessity of making a judgment about what a legislative text means, statutes in pari materia are relevant to decisions in terms of either legislative intent or meaning to others as the criterion of decision.

Id. at § 51.01.

31. In its declaration of policy, the Pennsylvania Labor Relations Act states:

Under prevailing economic conditions, individual employes do not possess full freedom of association or actual liberty of contract. Employers in many instances, organized in corporate . . . forms . . . have superior economic power in bargaining with employes. This growing inequality of bargaining power . . . adversely affects the general welfare of the State by creating . . . instability in competitive wage rates and working conditions . . .

[I]t is . . . the public policy of the State to encourage the practice and procedure of collective bargaining and to protect the exercise by workers of full freedom of association, self-organization, and designation of representatives of their own choosing, for the purpose of negotiating the terms and conditions of their employment or other mutual aid or protection, free from interference, restraint or coercion of their employers.

PA. STAT. ANN. tit. 43, § 211.2 (Purdon 1964). Although Act 111 does not have an expressed declaration of policy, the title of the act does indicate a policy similar to that encompassed by the Pennsylvania Labor Relations Act: "An Act specifically authorizing collective bargaining between policemen and firemen and their public employers; providing for arbitration in order to settle disputes, and requiring compliance with collective bargaining agreements and findings of arbitrators." Act of June 24, 1968, No. 111, 1968 Pa. Laws 237. *Cf. Hartshorn v. Allegheny County*, 9 Pa. Commw. Ct. 132, 304 A.2d 716 (1973) (purpose of Act 111's providing police with the right to bargain collectively with public employers was to insure appropriate pay increases and additional fringe benefits to policemen and firemen by collective bargaining), *aff'd*, 460 Pa. 560, 333 A.2d 914 (1975).

collective bargaining enactments so as to fit into the existing statutory scheme, at least where a different purpose or intent is not present.

Thus, *Fire Officers* attempts to clarify Act 111 without endangering or disrupting labor relations between the police and firemen and their public employers. Nevertheless, supplementary legislation eventually may be required to ensure Act 111 efficiently functions in the representation area; a finding that statutes are in pari materia does not eliminate interpretation problems. The statutes are to be construed together and harmonized, but the complexion and the exact language of the harmonized statute remains to be interpreted.

III. THE PLRB'S ACT 111 JURISDICTION

The unresolved issue arising from the *Fire Officers* decision is how restrictive or expansive the PLRB's jurisdiction over Act 111 will be. Thus, some of the questions facing the PLRB include: If the PLRB conducts Act 111 representation elections, should all or only some of the Pennsylvania Labor Relations Act provisions governing labor elections be encompassed in the court's "in pari materia" interpretation of Act 111? Does the PLRB have the authority to determine appropriate units under Act 111 or must the courts make this determination, or is the unit circumscribed by Act 111? If the PLRB has authority to make unit determinations, should there be a division between rank and file and supervisory and managerial personnel, given the regimented organization of police and firemen? Are representation unfair labor practices within the PLRB's jurisdiction? Finally, an even broader question, what provisions of the Pennsylvania Labor Relations Act in addition to the election provisions are contemplated within the PLRB's Act 111 jurisdiction? As noted, the court in *Fire Officers* indicated that the statutes were in pari materia, but failed to provide concrete guidelines for the PLRB; thus, the significance of these questions is evident. Three possible interpretations of the PLRB's Act 111 jurisdiction emanate from the *Fire Officers* decision; each will be examined with reference to the above-posed questions.

A. Restrictive PLRB Jurisdiction

Fire Officers decided only "that the Labor Board has jurisdiction under the [Pennsylvania Labor Relations Act] to conduct a repre-

sentation election in a unit composed of firemen and policemen whose collective bargaining with their public employers is governed by Act No. 111."³² The court added: "[N]othing said in this opinion is to be taken as resolving the difficult questions which the Labor Board, believing it had no jurisdiction, declined to decide."³³ Among the questions the court declined to answer were what is the appropriate bargaining unit and what is the status of a prior representative. The decision, then, did not grant the PLRB jurisdiction to entertain other representation questions or other Act 111 matters, but only conferred "limited" jurisdiction on the PLRB to conduct secret representation elections in police and firemen units. Viewed in this manner, *Fire Officers* results in restrictive PLRB jurisdiction.

The restrictive jurisdiction interpretation is buttressed by preexisting case law which the court refused to disturb in *Fire Officers*. In *Hartshorn v. County of Allegheny*,³⁴ county detectives invoked Act 111 seeking to compel their public employer to arbitrate after it failed to bargain collectively.³⁵ The county objected to court jurisdiction, asserting that the initial determination of whether the employees were "policemen" within Act 111 was a matter for the PLRB. The supreme court rejected the need for an initial PLRB determination and held the detectives to be "policemen" within the meaning of Act 111, referring to a state statute describing county detectives as police officers.³⁶ The court cited with apparent approval the commonwealth court's decision in *Venneri v. County of Allegheny*³⁷ holding that deputy sheriffs did not need a PLRB determination of whether they were covered by Act 111, but could and should seek a court determination.³⁸ In affirming the PLRB's dismissal of the election petition in *Fire Officers*, the commonwealth

32. 470 Pa. at 558, 369 A.2d at 263.

33. *Id.*

34. 460 Pa. 560, 333 A.2d 914 (1975).

35. Mandamus is the proper remedy for enforcement of policemen's and firemen's right to collectively bargain with their recalcitrant public employer. See *Hartshorn v. County of Allegheny*, 460 Pa. 560, 333 A.2d 914 (1975); *Venneri v. County of Allegheny*, 5 Pa. Commw. Ct. 105, 289 A.2d 523 (1972).

36. 460 Pa. at 563; 333 A.2d at 915. The court relied on the Second Class County Code, PA. STAT. ANN. tit. 16, § 4440(b) (Purdon 1964) which provides: "County detectives . . . shall be general police officers and shall have all powers now conferred on constables by existing laws of this Commonwealth . . ."

37. 5 Pa. Commw. Ct. 105, 289 A.2d 523 (1972).

38. 5 Pa. Commw. Ct. at 108, 289 A.2d at 524.

court cited *Hartshorn* as indicating that all representation questions under Act 111 were to be resolved by the courts.³⁹ Although the supreme court reversed the commonwealth court in *Fire Officers*, it did not overrule *Hartshorn*, but distinguished it factually. The court stated that *Hartshorn* did not involve a question of which labor organization was the designated representative of employees, but rather whether certain employees were "policemen" within the meaning of Act 111.⁴⁰ Since *Fire Officers* specifically avoided any reference to the PLRB's authority in Act 111 matters other than elections, *Hartshorn* arguably was left intact, and only the courts and not the PLRB will determine Act 111 police or firemen coverage. Given *Hartshorn's* continued vitality, *Fire Officers* arguably should not be interpreted as authority for expansive PLRB jurisdiction over Act 111.

Restrictive PLRB jurisdiction coincides with an earlier PLRB position taken in *Local 1400, Chester City Fire Fighters Association v. Nacrelli*.⁴¹ In *Chester City Fire Fighters*, after the PLRB conducted a firemen's representation election and certified the bargaining agent, the city challenged its duty to bargain under Act 111, arguing that it was not an "employer" within the meaning of the act. The trial court held Chester City to be such an employer and recognized the PLRB representation election.⁴² The PLRB, however, never attempted to assert any broader jurisdiction over Act 111 matters than conducting elections, as in *Chester City Fire Fighters*, and, in fact, believed it lacked jurisdiction even to conduct representation elections in *Fire Officers*.

The restrictive jurisdiction interpretation limits the PLRB's Act 111 authority to conducting bargaining unit elections. Thus, Act 111 is read in pari materia only with section 7 of the Pennsylvania Labor Relations Act⁴³ governing representatives and elections, and specifically subsection (a) providing that representatives designated or selected by a majority of the employees shall be the exclusive collective bargaining agents,⁴⁴ and subsection (c) providing for the election and certification of employee representatives by the PLRB.⁴⁵

39. 18 Pa. Commw. Ct. at 490 & n.1, 336 A.2d at 479 & n.1.

40. 470 Pa. at 556-57, 369 A.2d at 262.

41. 52 Pa. D. & C.2d 34 (C.P. Del. Co. 1971).

42. *Id.* at 43.

43. PA. STAT. ANN. tit. 43, § 211.7 (Purdon 1964).

44. *Id.* § 211.7(a).

45. *Id.* § 211.7(c).

Subsection (b) would not be in *pari materia* since it grants the PLRB authority to make appropriate unit determinations.⁴⁶ Similarly, references in subsections (c) and (d) to the PLRB's authority to monitor unfair labor practices during representation campaigns would not be in *pari materia*.⁴⁷ Furthermore, as the court noted, the provisions of Act 111, since enacted later than the Pennsylvania Labor Relations Act, are controlling where the situation warrants.⁴⁸ This obviously applies to Act 111's provisions requiring binding arbitration in the event of a bargaining impasse.⁴⁹ It might also superimpose Act 111's language "representatives designated by fifty percent or more of such policemen or firemen"⁵⁰ over the Pennsylvania Labor Relations Act's language "representatives designated or selected . . . by the majority of the employes in [an appropriate] unit."⁵¹

A possible in *pari materia* reconstruction of Act 111,⁵² providing the PLRB jurisdiction only to conduct secret representation elections, might read:

Police and firemen representation elections

(a) Representatives designated by fifty percent or more of such policemen or firemen shall be the exclusive representatives of all the policemen or firemen for the purposes of bargaining collectively with their public employers concerning the terms and conditions of their employment, including compensation, hours, working conditions, retirement, pensions and other benefits, and such policemen and firemen, through their representatives, shall have the right to an adjustment or settlement of their grievances or disputes in accordance with the terms of this act.

(b) Whenever a question arises concerning the representation of policemen or firemen the PLRB may, and, upon request of a labor organization, or a public employer, or any group of policemen or firemen representing by petition thirty percent of such policemen or firemen, shall investigate and certify to the

46. *Id.* § 211.7(b).

47. *Id.* §§ 211.7(c) -7(d).

48. 470 Pa. at 558, 369 A.2d at 262.

49. *See* PA. STAT. ANN. tit. 43, §§ 217.3-.8 (Purdon Supp. 1977-1978).

50. *See id.* § 217.1.

51. *See* PA. STAT. ANN. tit. 43, § 211.7(a) (Purdon 1964).

52. *See* PA. STAT. ANN. tit. 43, § 217.1 (Purdon Supp. 1977-1978).

parties, in writing, the name or names of the representatives who have been designated or selected. In any such investigation, the PLRB shall provide for an appropriate hearing upon due notice and may utilize any suitable method to ascertain such representative, except that if either party to the controversy so requests, a secret ballot of policemen or firemen shall be taken within twenty days after such request is filed. Any certification of representatives by the PLRB shall be binding for a period of one year, or for a longer period if the contract so provides, even though the certified unit may have changed its labor organization membership.

This language attempts to characterize the court's holding in *Fire Officers* by setting forth the PLRB jurisdiction in concrete terms. It permits representation elections where requested by a labor organization, a public employer, or any group of policemen or firemen which demonstrates by petition that it represents thirty percent of "such policemen and firemen." This reconstruction of Act 111, however, does not authorize the PLRB to determine appropriate units, or policemen or firemen coverage, or to entertain unfair labor practices.

Restrictive PLRB jurisdiction still presents problems; since all Act 111 representation matters are not centralized with one decision-making body, delays and needless litigation will arise. The issues of appropriate unit determinations, who are Act 111 policemen and firemen, and unfair labor practices during the election must be resolved by recourse to the courts through mandamus.⁵³

B. *Intermediate PLRB Jurisdiction*

Fire Officers can also be interpreted to support a more aggressive and viable PLRB role in representation elections. The court did not deny the PLRB authority in all Act 111 representation matters; it only declined to decide the PLRB's jurisdiction in other such matters.⁵⁴ Thus, the PLRB should be permitted to administer the entire

53. In the normal sequence of events, the government employer will refuse to bargain with the collective bargaining agent of the policemen or firemen when a disagreement arises over the appropriate unit, the coverage of Act 111, or the alleged commission of an unfair labor practice. The proper remedy for enforcement of the policemen's or firemen's right to collectively bargain is by mandamus, at which time the court will resolve the underlying question. See note 35 *supra*.

54. 470 Pa. at 558, 369 A.2d at 262.

representation process—determine Act 111 policemen or firemen coverage and appropriate units, regulate representation unfair labor practices, and conduct representation elections. At least three approaches are available to the PLRB in assuming jurisdiction over unit determinations. Relying on the court's statement that Act 111 provisions are controlling,⁵⁵ the PLRB could superimpose any Act 111 "appropriate unit" provision over similar provisions of the Pennsylvania Labor Relations Act. Act 111 implies that an appropriate unit is defined as "all" policemen and firemen.⁵⁶ Thus, the appropriate unit would be one large unit of policemen or firemen, regardless of rank and file or supervisory and managerial status.⁵⁷ Or, the PLRB might determine appropriate units by separating rank and file from supervisory and managerial personnel. Even if this unit separation is effected, collective bargaining rights would still exist for "all" policemen and firemen, i.e., for managerial personnel, since the Pennsylvania Labor Relations Act provides decisional authority for determining supervisory bargaining rights.⁵⁸ The third possibility would be to read Act 111 in *pari materia* with section 7(b) of the Pennsylvania Labor Relations Act which provides that the PLRB is to determine whether the appropriate bargaining unit is the "employer unit, craft unit, plant unit, or subdivision thereof."⁵⁹ The PLRB, of course, must determine how these categories relate to policemen and firemen. For example, an "employer unit" might be analogized to a public employer such as a city, municipality, or borough. A "craft unit" might be equated to a

55. The provisions of Act 111, "enacted later than the [Pennsylvania Labor Relations Act], are of course controlling where the situation warrants." *Id.* (citing 1 PA. CONSOL. STAT. ANN. § 1936 (Purdon Supp. 1977-1978)).

56. "Policemen or firemen employed by a political subdivision . . . shall, through . . . representatives designated by fifty percent or more of such policemen and firemen, have the right to bargain collectively . . ." PA. STAT. ANN. tit. 43, § 217.1 (Purdon Supp. 1977-1978). The natural implication from the failure to limit or segregate employees is that all employees of one employer form a single unit. Nevertheless, the use of the plural "representatives" may allow a determination of more than one unit.

57. In the past, chiefs of police have not been included in the unit. See *Barkley v. Borough of Latrobe*, 53 Westm. L.J. 41, 62 Mun. L. Rep. 199 (C.P. Pa. 1971).

58. *Supervisory Employees' Union v. Pittsburgh Rys.*, 93 Pitt. Leg. J. 47 (C.P. Pa. 1944). The PLRB determined that a group of supervisory employees was not an appropriate unit for collective bargaining and denied them bargaining rights. A petition to review the order was dismissed; the court indicated, however, that the PLRB had authority to determine supervisory bargaining rights affirmatively or negatively depending on each case's facts. *Id.* at 48.

59. PA. STAT. ANN. tit. 43, § 211.7(b) (Purdon 1964).

group of policemen or firemen possessing particular skills. For example, police assigned to special weapons and tactics teams may be separated from patrolmen. A "plant unit" might be possible in large cities or political subdivisions having many separate police or fire departments; each department would be its own bargaining unit.

Under the intermediate jurisdiction theory, the PLRB would also have jurisdiction over representation unfair labor practices. The proper procedures would be ascertained by reading Act 111 in pari materia with sections 7(c) and 7(d) of the Pennsylvania Labor Relations Act.⁶⁰

By granting the PLRB authority in "all" Act 111 representation matters, the court would avoid the problems presented by restrictive jurisdiction. Representation matters would not be handled by two forums—the courts and the PLRB. Instead, an administrative agency with expertise in labor relations would decide all representation questions. Furthermore, since the state administrative agency decides representation matters routinely, court delays would be avoided; courts are not equipped to confront such matters on a daily basis.

Problems arise, however, as the PLRB's Act 111 jurisdiction becomes more expansive. Reconstructing Act 111 in concrete terms becomes more difficult as the reconstructed act bears less and less similarity to Act 111 as enacted. Gaps are created as the PLRB assumes increasing jurisdiction over Act 111 without statutory guidelines and the possibility arises of conflicting interpretations of Act 111 and the Pennsylvania Labor Relations Act.

C. *Expansive PLRB Jurisdiction*

Fire Officers can be interpreted as conferring upon the PLRB Act 111 jurisdiction coextensive with its jurisdiction under the Pennsylvania Labor Relations Act. The court held that Act 111's repealer of all parts of acts inconsistent with it repealed the exclusion of "public employers" from the Pennsylvania Labor Relations Act's definition of employer.⁶¹ This language could be construed to authorize the PLRB to fill any Act 111 gap with the appropriate Pennsylvania Labor Relations Act provision including unfair labor prac-

60. *Id.* §§ 211.7(c)-7(d).

61. 470 Pa. at 556, 369 A.2d at 261. See notes 19-22 and accompanying text *supra*.

tices unrelated to representation elections.⁶² As noted,⁶³ the court did not explicitly prohibit such PLRB authority, but declined to decide it.

The expansive interpretation of PLRB jurisdiction, however, is probably not consistent with the court's decision in *Fire Officers* because harmonizing Act 111 and the Pennsylvania Labor Relations Act would be increasingly more difficult. After diminishing the gap between the PLRB's newly found authority and the original Act 111, the "reconstructed" Act 111 would become even less of an identifiable statute. Furthermore, accepting expansive PLRB jurisdiction would indicate that the court in *Fire Officers* did not simply apply a statutory interpretation technique. Conflicting decisions would be rendered under Act 111 and the Pennsylvania Labor Relations Act, eventually producing a common law collective bargaining statute for policemen and firemen without explicit statutory language for reference. The result of expansive PLRB jurisdiction would be the creation, through judicial fiat, of a new statute for policemen and firemen—something not contemplated by the legislature and something likely to have undesirable consequences.

CONCLUSION

The *Fire Officers* decision is significant for all policemen and firemen because the new PLRB jurisdiction affects Act 111's continuity and overall functioning. The court supplied the needed ingredient for bringing Act 111 closer to a workable statute; the act now has a procedure and an administrative means for conducting representation elections. The court's decision, however, failed to define how restrictive or expansive the PLRB's new jurisdiction is.

Whatever the PLRB's jurisdictional role, varied problems are presented. Under the restrictive interpretation, unnecessary delays may occur when the PLRB and the courts collide on representation matters, and under the more expansive interpretations, the potential exists for the judicial creation of a new police and firemen's collective bargaining statute. While these problems indicate the weakness of utilizing the technique of *in pari materia* to resolve anything other than the simplest interpretation questions, the court

62. See PA. STAT. ANN. tit. 43, §§ 211.6, 211.7(c)-.7(d), 211.8 (Purdon 1964).

63. See note 54 and accompanying text *supra*.

further complicated the matter in *Fire Officers*. The decision instructs that Act 111 is to be read in *pari materia* with the Pennsylvania Labor Relations Act, but it fails to provide concrete language for the PLRB to refer to. Much of the harmonization of Act 111 and the Pennsylvania Labor Relations Act, therefore, must be accomplished by PLRB or court interpretation.

The significance of the *Fire Officers* decision is the court's recognition that Act 111 is not a workable statute without reference to other legislation. Holding Act 111 to be in *pari materia* with the Pennsylvania Labor Relations Act, however, is not adequate to solve Act 111's deficiencies; it is, rather, only a beginning. Unless legislative action is taken, the coming months will see Act 111 further confused by potentially conflicting PLRB decisions and court rulings which will only contribute to disruptive labor relations. Any new legislation should ensure that Act 111 becomes a viable collective bargaining statute by including (1) a means for selecting bargaining representatives, (2) a delineation of unfair labor practices, and (3) a grant of jurisdiction to the PLRB over Act 111 matters. For the present, the PLRB and the courts should proceed cautiously to ensure the legislature is given sufficient time to act.

