

PSBA v. Commonwealth Association of School Administrators¹

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Act 105-1996² authorized collective bargaining for the school administrators of the Philadelphia School District. It also included binding arbitration for resolution of impasses in the collective bargaining process (“interest arbitration”). The Court of Common Pleas of Philadelphia County declared the Act to be unconstitutional. In July, the Pennsylvania Supreme Court reversed. You may have heard about this decision and wondered if it could be the basis for a crusade to replace Act 93 with the collective bargaining procedures that teachers enjoy together with the bonus of the right of binding interest arbitration. Unfortunately, the reasons given by the Court to permit Act 105 are not transferable to any other school district except Philadelphia.

The major ground for challenging Act 105 was the non-delegation provision in the Pennsylvania Constitution.³ Act 105 encompasses two types of arbitration in which the arbitrator’s award may require the board to act. The first is grievance arbitration with which you are familiar under Act 195. If an administrator has an issue that is arguably in violation of the collective bargaining agreement, such an issue will go through several levels of grievance and, then, to an arbitrator for decision. In addition, there is interest arbitration that empowers an arbitrator to resolve an impasse between the parties during bargaining and effectively write a portion of the collective bargaining agreement.

The Philadelphia School District is a school district of the first class and has been governed by an appointed school board, rather than an elected one, since its creation. The court relied on the difference between an elected school board, which is accountable for its actions at the polls, and an appointed school board, which is not. The Supreme Court also relied on an earlier decision (*Wilson*)⁴ striking down legislation that granted the Philadelphia School District the power to levy taxes.

In another case cited as precedent, the court upheld a statute because it did not require the City of Erie to follow an arbitration panel’s recommendation.⁵ The panel’s recommendation to establish a pension plan needed the city to enact an ordinance to create the pension plan. The court allowed the legislation because it did not require the city to enact the ordinances requested. In *Erie Firefighters*, the statute did not expressly state that the panel’s findings were to be considered binding on the lawmakers.

Employing *Erie Firefighters*’ logic, the court held that the power delegated to the arbitrators in Act 105 is simply administrative. The entity affected by the arbitration, that is, the School District of Philadelphia, is not an elected legislative body like other school districts in Pennsylvania. The arbitrator’s decision is “*a mandate to the superintendent of schools . . . with respect to matters which can be remedied by administrative action, to take action necessary to carry out the determination of the Board of Arbitrators.*” Harking back to *Wilson*, the court held that the purpose of the non-delegation clause is to protect against the exercise of the taxing power by officials not subject to the control of the people. Considering the arbitration only binds the Philadelphia School District, which has no independent taxing power, Act 105 is not inconsistent with the Pennsylvania Constitution.

In summary, the reason that Act 105 was constitutional is based on the fact that the Philadelphia School District is unlike any other in Pennsylvania. The decision implies that had the school board had the authority to levy taxes or had Act 105 required Philadelphia City Council to act to fund or to pass ordinances to comply with the panel’s award, then the result would have been that the Act was unconstitutional.⁶

The court makes it clear that it is dealing only with whether the Act is facially invalid; the holding does not prevent an attack on an application that might violate the Constitution. Translated, this means that an arbitrator’s decision could not be used to mandate the city to levy taxes or to enact legislation.

¹ 2002 WL 1551629 (Pa. July 16, 2002).

² 71 P.S. §371.

³ Article III, Section 31 provides, in pertinent part, as follows: “The General Assembly shall not delegate to any special commission, private corporation or association, any power to make, supervise or interfere with any municipal improvement, money, property or affects, whether held in trust or otherwise, or to levy taxes or perform any municipal function whatever.”

⁴ *Wilson v. Philadelphia School District*, 195 A.2d 90 (Pa. 1937).

⁵ *Erie Firefighters Local No. 293 v. Gardner*, 26 Pa. D. & C.2d 327, aff’d per curiam, 178 A.2d 691 (Pa. 1962).

⁶ However, the court leaves a door open in footnote 11:

. . . Based on case law unrelated to the particular constitutional provision at issue, the Legislative Interveners further assert that school districts in general do not perform municipal functions and, therefore, are not protected by Article III, Section 31, Prohibition Against Non-Delegation.

We agree that the school district’s lack of independent taxing authority distinguishes this case from *Erie Firefighters* because Act 105 is not binding on a city council and cannot compel the adoption of an ordinance or the levy of a tax. However, we save for another day, the issue of whether school districts of the first class, specifically, or school districts in general, may be afforded protection under Article III, Section 31 in the appropriate case.