

THE PUBLIC SECTOR LEADER

A quarterly publication of Cafardi Ferguson Wyrick Weis + Stotler, LLC.
A full service public and private business law firm.



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WAGE AND BENEFIT TIERS:

Breaking the “Ever Upward” Trend in Act 111 Arbitration

by: Christopher Gabriel

Act 111 has been around for 50 years. In that time the arbitration process it sets up has rightly gained a reputation as a very favorable forum for police officer and fire fighter employees. Too often, unions representing those groups refuse to negotiate their contract demands, resorting instead to arbitration, assuming they will do better there than at the bargaining table. This is so true that sometimes the only way to generate any meaningful discussion is for management to make concessions.

The consequence of 50 years of that situation is that it is now ordinary for pay and benefit packages enjoyed by police and fire fighter employees to far exceed those of other municipal employees. What sometimes comes as a surprise, however, is that municipal police and fire fighter pay and benefits very often exceed those available to the taxpayers who support them as well –sometimes by a lot. This presents an opportunity that municipalities should take advantage of in arbitration.

A typical Act 111 arbitration hearing begins with the union arguing on behalf of the employees that it has found other local governments who pay more for police or fire services. There is almost always someone who pays more, and the union has to mount some argument, but this is not necessarily a winning position. A very

effective counter point is to show the wages of an average police officer or fire fighter employee in your bargaining unit versus the median household income in your community, which is available from the Census Bureau. You, the employees, and the union might be surprised at what you find. In many cases, a single police officer or fire fighter will earn about the same (or sometimes more) than the typical two-earner family in your community. That means that pound for pound, they have about twice the earning power of the taxpayers supporting them. Following this information by pointing out that those taxpayers do not have access to a guaranteed retirement benefit, anything like the job security of public employees, or the generous paid vacation benefits makes the argument even more effective. Those taxpayers also shell out on average about \$5,000 annually for family health insurance coverage.

None of this is necessarily new, but this is: in some communities the “Ever Upward” trend has created a situation where arbitrators (and even some unions) now agree that municipalities need relief. Recently we have had success at achieving lower wage and benefit tiers for newly-hired employees, coupled with only modest wage improvements for incumbents. An example agreement gave wage increases of 2.5% for incumbents in each of the next four years, but also established a permanent lower wage and benefit tier for new hires. The new tier

All article citations can be found at www.cfwws/psleader.



THE COUNTY & MUNICIPAL BEE



DEPUTY SHERIFFS IN SCHOOLS



AROUND THE COMMONWEALTH



INTER-GOVERNMENTAL COOPERATION ACT



WORKPLACE BULLYING

SOLICITOR'S CORNER



+ On March 7, 2019, the United States Department of Labor announced a Notice of Proposed Rulemaking that would increase the salary threshold for overtime exempt employees from \$455 per week to \$679 per week or \$35,308 annually. The current level was set in 2004, and you may recall in 2016 preparing to implement an annual increase to nearly \$48,000. However, that rule was struck down by a Texas federal court in late 2016. The new rule does not have the automatic increases that were part of the 2016 rule nor does it change the duties tests for your exempt positions. The Department is currently accepting public comments at <http://www.regulations.gov/> which will be considered in developing a final rule.

+ Mars Borough has one of the State's most unique festivals. Beginning on March 21, Mars has its Mars New Year Celebration with unique and fun activities running all the way through June 22 (and

ending with a Brew Fest featuring local beers!). With presentations and Q&A with NASA scientists, food trucks, local brews, fireworks, an Earth Wind & Fire tribute band and much more, this is an event worth checking out. Go to marsnewyear.com to find out more.

+ At the end of 2018, the **EEOC and the DOJ agreed to coordinate efforts to enforce their Title VII mandates against local governments.** If you haven't received a wake-up call to date regarding your sex harassment policies and training, this should be it. At a minimum, public employers should:

- Update and revise your sexual harassment policy and make sure it is understood by your employees. **Distribute. Explain. Train.**
- **Train supervisors.** The mistake most commonly made is failing to hold supervisors accountable for the implementation and enforcement of the policy requirements.
- **Enforce policy violations** by conducting investigations and remediating any issues.

+ WHERE IS IT?

This iconic landmark is the largest refrigerated building in North America. It is open to the public and to commercial buyers and is an amazing shopping experience with 21 independent merchants selling fruits and vegetables from all over the world.



Can you guess where it is?
(Find the Answer on the last page.)

STRONGER TOGETHER: THE INTERGOVERNMENTAL COOPERATION ACT

By: Lynne L. Finnerty



The legislature realized that when local governments work together on certain issues, we are all better off. This makes sense in a state with more than 2400 municipalities of all shapes and sizes. Hence, it enacted the Intergovernmental Cooperation Act. The Intergovernmental Cooperation Act offers a process for local governments⁹ to work together "in the exercise or in the performance of their respective governmental functions, powers or responsibilities."¹⁰ This language allows local governments to cooperate with one another on a wide range of topics. For example, governments may cooperate to purchase items or services, share police services, share equipment, or form a council of governments.

The Act does have specific requirements for this type of cooperative arrangement. Each local government must first pass an ordinance through its governing body.¹¹ The Act requires certain topics to be addressed in the ordinance, such as, the duration of the agreement and the purposes of the agreement.¹² An agreement, adopted through the Ordinance, must be entered into for two or more local governments to cooperate through the provisions of the Act.¹³ If the agreement is between a local government and either the Federal Government, the Commonwealth, or any other state or government of another state, then the Local Government Commission must have the opportunity to review and comment on the agreement before entering into the agreement, subject to certain exceptions.¹⁴ In utilizing the Act, municipalities must be mindful that ancillary laws regulating municipal activity still apply. For instance, if local governments desire to use the Act to jointly purchase items, the governments must abide by monetary threshold requirements for bidding similar to those contained in the separate municipal codes and the County Code.¹⁵

In a lesser utilized provision of the Act, an intergovernmental cooperation agreement can be initiated by the electors instead of the governing body.¹⁶ A petition containing a proposal for a referendum may be filed with the appropriate election official at least 90 days prior to the next election.¹⁷ The petition must be executed by 5% of the number of electors voting for the office of Governor in the last gubernatorial election in the area affected.¹⁸ The proposal is then placed on the ballot for a decision by referendum at the next election.¹⁹ If the referendum passes, then the local government must adopt an ordinance entering into the agreement.²⁰ After the adoption of an agreement by all participating parties, the agreement is binding and can be enforced by appropriate remedy.²¹

The Act presents a clear process for local governments to join together to accomplish their goals. The next time your local government is considering working with one or more other governments, remember that the Intergovernmental Cooperation Act can provide a route to enact an enforceable agreement.



WORKPLACE FOCUS: HOW TO IDENTIFY AND STOP BULLYING

By: Stephanie Fera & Christopher Gabriel

Workplace bullying is repeated abuse that creates a power imbalance between the bully and the target. Over time, it can cause real, physical and psychological harm to the target, and can also impact overall workplace morale and productivity. One incident or argument does not constitute workplace bullying. The key is that bullying is a repeated course of conduct that is being used as a tool, a means to an end, for the bully to create a situation in which the bully feels strong and the target feels weak. A workplace bully can target one person, or a number of people. It is not unusual to find one bully, well, bullying an entire office.

One of the most difficult things about workplace bullying is that it is hard to identify. The word “bully” makes most of us think of the schoolyard, and so supervisors often don’t take it seriously. But workplace bullying is real and can cause real problems. Sometimes it’s useful to think of it using different terms: Do you know someone in your workplace who is often terrible to deal with, or has to be approached in just the right way or he or she will “blow up?” Is there one person in the office around whom everyone has to walk on eggshells, or feels uncomfortable around for fear that they will become angry at some perceived slight? That does not mean that every such person is a workplace bully, but follow those questions with one more: Does this person use this situation to try to get what he or she wants? If so, you may in fact have a workplace bully on your hands.

Workplace bullies create a power imbalance because they want to use that situation to get what they want. It could be more favorable assignments. It could be less work. It could be shifting the focus away from their own poor performance. It could be almost anything, but the common thread will always be that they use the situation of picking on someone else to hide some perceived difficulty or failing about themselves or are trying to gain an advantage that they cannot achieve by their own work or merit.

The reverse is also true: While bullies tend to be emotionally weak, using their bullying behavior to make themselves feel better or to cover up some personal or professional failing, their targets normally do not fit this profile. Bullies often target strong performers, those that are better liked, or those that have more technical skill at the job. This is because these people are perceived as threats and the bully often feels like they will be eclipsed by a better performer if they cannot put that person in his or her proper place.

There are two key steps to remedying the situation of workplace bullying. The first is simply being able to identify behaviors that may constitute bullying. Look for instances of one employee constantly insulting or belittling others, or yelling, or interrupting them, or invading their personal space. Also keep an eye out for one who constantly highlights the mistakes of others, or who attacks the honesty or integrity of co-workers, or who sets others up for failure, or refuses to share credit. Once again, one

isolated incident on this list does not make a bully, but repeated conduct of this type does.

Once you have identified a bully, the next (and hardest) part is confronting them about their behavior and setting the conditions so that the bullying stops. No one likes confrontation, and the bully counts on this. Bullies have mastered the uncomfortable situation and use other people’s natural tendency to avoid conflict as their cover, their means to fly under the radar and keep their power over their targets. But this is where the example of the schoolyard bully actually rings true: Bullies appear strong because they have constructed a situation to make themselves look exactly that way, but this is a façade. In fact, they are weak, and generally will crumble pretty easily if handled in the right way.

Ending workplace bullying means deciding that you are willing to confront the issue. This means a direct conversation with the bully. Either the target of the bullying or a supervisor must sit down with the bully and describe their conduct specifically. It is important actually to use the word “bully” and to describe several examples of their bullying conduct. The focus of the conversation must be kept on the bully, and on those several examples of the bully’s bad behavior. The bully will attempt to deflect blame to others, or to move the conversation to friendlier ground (“I’ve worked here a long time and you know I am a good worker.”) You must close those escape routes by pointing out that the conversation is not about the conduct of others (“Nothing he or she did justifies your behavior.”) and that bullies are, in fact, bad workers, not good ones (“Being a good employee includes not bullying your co-workers.”).

Identifying bullying and then handling the difficult conversation that must occur to make the conduct stop are important skills for supervisors. This does not come naturally. Employers should make sure that some training on workplace bullying is included in the annual or semi-annual lineup of information presented to supervisors. Remember that supervisors very often came up through the ranks of the workforce to get their position. This means that they are reliable and relatively skilled at the work itself, but supervising others is a different skill set. It is important that they be provided the opportunity to understand what those skills are and to develop them. This will have a tremendously good effect on them as supervisors, on the morale of your workforce, and on the bottom line.

WHERE IS IT ANSWER:

This is the main atrium at the Philadelphia Wholesale Produce Market, at 6700 Essington Avenue, Philadelphia, PA 19153. www.pwpm.net Anyone in the area from individual members of the public up to large-scale buyers of produce can stop in and take a look!



This quarterly publication is brought to you by Cafardi Ferguson Wyrick Weis + Stotler, LLC.

Christopher Gabriel, Editor

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