Testimony of Michael McAuliffe Miller
Local Government Committee
Pennsylvania House of Representatives
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Members of the Committee, thank you for the opportunity to appear and be heard. My name is Michael McAuliffe Miller and I am a Partner in the Labor and Employment Practice of the law firm of Eckert Seamans Cherin & Mellott. My Partners and I represent municipalities across the Commonwealth. We have been the long-time Act 47 coordinator for the City of Pittsburgh, we represent counties, cities, boroughs and townships and routinely deal with the issues created by the current statutory scheme regarding collective bargaining.

We are also the statewide labor counsel for the Pennsylvania State Association of Boroughs and routinely represent counsel and speak to borough officials regarding Act 111. I can tell you from personal experience that boroughs are beginning to have to make a choice between the cost of public safety and the cost of other services because the risk of arbitration falls disproportionally on the municipalities. I speak both of the risk of outcomes and the cost.

If one looks at the median income of residents of most boroughs in Pennsylvania and compare that to the median income of police officers in the same community (without taking into account post-retirement benefits), one finds that the cost of public safety services has outstripped the means of the community to pay for it. In addition, one finds that the total compensation for a uniformed employee exceeds the median income of the taxpayers in the communities that they are serving.

Please know that collective bargaining for police and fire units is not an isolated incident. Based on the information I have been able to obtain, since 1998, parties have requested an arbitration panel under Act 111 an average of 94 times a year. While we do not have the

statistics on the number of those cases that reach completion, we know from our own practice that it is more than a handful.

I have heard my colleagues from the other side of the aisle discuss the need for paid police and firefighters to have a statute that preserves the right of binding arbitration as a substitute for the right to strike denied to those employees. However, even if that were true, the statute itself needs to be amended to ensure that the proposition of fundamental fairness which my colleagues seem to want to preserve is preserved for everyone.

Currently, Act 111 requires that the municipality pay for the entire cost of the arbitration proceeding. This provides no incentive for the employees to seek a resolution since they have no "skin in the game" and nothing to lose. Consider this, if the municipalities are required to pay for everything, what risk does a union representing fire fighters and police officers have if they simply chose not to bargain at all and go straight to arbitration?

Under the *New Cumberland* case, a party seeking to arbitrate must request bargaining and thirty (30) days after the request may declare impasse and proceed to arbitration even if there has been no bargaining and no attempt at bargaining. Consider this for a second. If one wishes, one can send a list of demands, resist a meeting for thirty days and proceed to arbitration at the sole cost of the municipality without any meaningful attempt to reach settlement. No other group, including teachers under Act 88, have this benefit or disproportionate power.

In addition, the statute indicates that the party seeking to declare impasse must identify its partial arbitrator, its issues in dispute and send those both, in writing, to the other side (almost always the municipality). The other side must respond within five (5) days by identifying their partial arbitrator. This does not even permit a municipality to meet as a body to discuss a response to the demand for impasse or respond in any organized fashion.

Although the statute seems clear, there has been a fair amount of debate as to whether the statute also requires that a responding party provide its issues in dispute as well at the time of response. I have heard the argument made that a failure on the part of the responding party to provide issues in dispute should result in that party being precluded from presenting any issues at hearing.

What this leads to is confusion as part-time elected officials scramble to receive this notice, contact counsel to respond and respond in a timely manner. It permits the unions to set the time, the tone and the initiation of arbitration all at a municipality's cost.

The Bills specifically permit a coin flip to determine which party starts the strike process to determine an arbitrator. As it stands, it is almost always the union—the party that does not pay—who makes the last determination between the two remaining names on the list. This provision is welcome in that it provides some small opportunity for the municipality to have a chance to avoid, perhaps, an arbitrator that they believe will not render a completely fair decision.

We would suggest and support revisions to this part of the statute requiring that the parties to an arbitration proceeding under Act 111 be required to split the cost of the impartial arbitrator as well as any costs for transcription equally. We would further suggest and support revisions to the statute requiring actual negotiations prior to a declaration of impasse. We believe that the time frame for responding to a declaration of impasse should be lengthened and this Committee should discuss and debate a mechanism for the later submission of issues in dispute by both parties so that a real consideration and framing of the issues be accomplished.

I have spoken thus far of the manner in which impasse is reached. Once arbitration occurs, the power vested in an arbitration panel is significant. While arbitration is supposed to

provide for the quick and economical resolution of industrial disputes, the reality is that the thirty (30) day time frame for an award has never, to my knowledge, been observed for an interest arbitration.

Further, there are few, if any, limits on the power of the panel to craft an award. As this Committee is no doubt aware, a panel has the opportunity to consider the terms and conditions of employment which include wages, pension, equipment, successorship, retiree healthcare, shifts, schedules and (in the case of paid firefighters) issues related to manning. With two votes, a panel can adopt language in the guise of safety which tells safety personnel how to act or places on a municipality the requirement to spend money on items or infrastructure for which it may not be able to pay.

As such, the Bills make a substantial improvement to the present playing field. Specifically, the requirement that each award contain specific findings of fact and conclusions of law with regard to each of the issues presented to the board by the parties will provide greater stability and transparency to the elected officials tasked with implementing these awards.

As I read the Bills, the requirement that each award including an analysis of 1) the cost of the award to the political subdivision; 2) the impact it will have on the finances and services provided by the political subdivision; 3) the relationship between projected revenues of the political subdivision and the ability of the political subdivision to pay all the costs of the award, including any cost increases which may result from pre-existing terms and conditions of employment which are allowed to continue under the award; and 4) the impact of the award on the future financial stability of the political subdivision is a requirement that the award's real world impact be known and documented. This would, I hope, provide a road map to appellate courts and taxpayers regarding how the decision was reached. Further, it would provide a

template to insure that decisions are not reached for reasons which are either arbitrary or capricious.

A great deal of the difficulty arising from the use of Act 111 is the impact on benefits for retirees. These Bills prohibit the award of pension benefits or provisions that have been found to be unauthorized, unlawful or excessive by the Department of the Auditor General or any court of law. This will be of particular assistance in dealing with matters like the backloading of sick leave into the determination of final average salary and, therefore, inflating the payment of pensions by permitting multipliers which are not salary or payment for work.

There is a tendency to attempt to parse the people for whom a community is responsible to the present employees but the reality is that the real cost of a police officer must also include those people who are retired from service. As such, there is a pressing need to give communities the tools to insulate themselves from the risk of outcomes in arbitration which lock in retirement benefits which are illegal or excessive.

I wish to thank the Committee for permitting me to appear and be heard. I thank the Committee not only on my behalf but also on behalf of the cities, counties, boroughs and townships which we are privileged to represent. Let me be clear, we support the goals of Senate Bill 1111 and House Bill 1854 which seek, as we see it, not the destruction but the re-alignment of the collective bargaining process so that all parties will reach a fair outcome and provide for sustainable communities.