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## **Prepare for the Act 111 Interest Arbitration Deadline**

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Don't look now, but September 12<sup>th</sup> is right around the corner. To most people, September 12<sup>th</sup> is just another day on the calendar, but for municipal managers and elected officials, it is the all-important deadline for demanding interest arbitration under Act 111, and as such, one of the most important dates of the calendar year relating the municipality's budget and fiscal health. With that date fast approaching, municipalities that are bargaining with uniformed personnel must be thoroughly prepared to take action by either properly demanding interest arbitration or responding in a timely and proper manner to a union's demand for interest arbitration.

Either the municipality or the union can demand impasse and interest arbitration, but Act 111 mandates that any such demand must: (1) be in writing; (2) identify the demanding party's partial arbitrator, and, (3) specify the issues in dispute. When such a demand is received, the receiving party, which is often the municipality, has five (5) days to respond, and that response also must be in writing and it should identify the responding party's partial arbitrator and issues in dispute. While arbitration is typically demanded by unions, municipalities not only have the legal ability to do so, municipalities should consider doing so if a contractual change is needed. If arbitration is not properly demanded by either party in a timely manner and in accordance with the requirements of Act 111, the collective bargaining agreement (CBA) remains status quo for the following year. Negotiations and binding interest arbitration can take place in the following calendar year but only according to the timelines and requirements of Act 111.

To fully protect itself, a municipality should put procedures in place to ensure that (a) if it wants to demand interest arbitration, it does so properly and timely; and, (b) if it receives a demand for arbitration from the police or fire union, the municipal manager and labor counsel are immediately alerted so that it can respond properly and timely. It is imperative that the municipality respond within the five (5) day time period and in a proper manner that meets the requirements of Act 111, and is consistent with the municipality's overall strategy and theme that it wants to present at an interest arbitration hearing. If a municipality fails to do so, it will automatically find itself on the defensive and having to battle an argument that the municipality waived its rights because it did not comply with the requirements of Act 111.

In the context of demanding or responding to a demand for interest arbitration, delay in preparation is a critical mistake. By this time, municipalities should be ready to either demand interest arbitration or respond to the union's demand for arbitration. Municipalities must avoid the mistake of waiting until it receives an interest arbitration demand or just before it wants to send its interest arbitration demand to develop its issues in dispute. Ideally, those issues were developed well before negotiations started, but if not, municipalities that are in negotiations should do so immediately. It is

important that experienced labor counsel, such as the attorneys at Campbell Durrant, are fully involved in drafting the issues in dispute to ensure that the proper detail and specificity is included in certain issues. The detail and specificity of a municipality's issues in dispute is a legal matter, but it also involves important strategy and tactical decisions, and labor counsel should be part of that drafting process.

It is important to remember that in a bad economy or in times such as these when the economic future is, at best, uncertain, unions make a tactical decision to not demand arbitration. In such cases, the union had determined that its members are better served by maintenance of the status quo. This is particularly true when the union is aware that management will be seeking significant changes to health insurance cost sharing or changes to pensions. All municipal employers should be prepared for this possibility and consult with labor counsel in order to demand arbitration. Allowing a CBA to roll over from year-to-year is often not in the best interests of the taxpayers when dealing with the CBAs for most uninformed personnel in Pennsylvania.

While no municipality should enter negotiations with the goal of going to interest arbitration, none should fear arbitration either. The fact is that arbitration is often the only way to obtain needed change; however, municipalities must approach arbitration properly and with the proper experienced public sector labor counsel. The one-time cost of arbitration typically pales in comparison to both the compounding effect of the changes and savings obtained through arbitration and the compounding effect of even the small cost increases avoided by going through arbitration.

Campbell Durrant attorneys have been representing public employers in Act 111 bargaining and interest arbitration for more than 30 years, and they have been through this process hundreds of times. Municipalities who are in negotiations with police or fire personnel should consult with experienced public sector labor counsel immediately in order to thoroughly develop issues in dispute, and ensure that everything that needs to be addressed through the Act 111 process is properly raised.