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City of Erie v. International Association of Fire Fighters, Local 293, AFL-CIO

Erie County Legal Journal

*Reporting Decisions of the Courts of Erie County
The Sixth Judicial District of Pennsylvania*

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Calendar of Events and Seminars

TUESDAY, JULY 20, 2010

Common Estate Planning Blunders - How to Correct and Avoid Them
PBI Groupcast

Erie County Bar Association

9:00 a.m. - 1:30 p.m. (8:30 a.m. reg.)

\$224 (member) \$204 (admitted after 1/1/06)

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Early Registration - If you register more than 2 days before this presentation you will qualify for this Early Registration Fee:

\$199 (member) \$179 (admitted after 1/1/06) \$219 (nonmember)

3 hours substantive / 1 hour ethics

WEDNESDAY, JULY 21, 2010

Understanding Easements in Pennsylvania

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Pension Problems, Pitfalls and Solutions

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CITY OF ERIE, Petitioner,
v.
INTERNATIONAL ASSOCIATION OF FIREFIGHTERS,
LOCAL 293, AFL-CIO, Respondent

LABOR AND EMPLOYMENT

"Interest Arbitration" occurs when an employer and employee are unable to agree on the terms of a collective bargaining agreement.

LABOR AND EMPLOYMENT

The Court may not question the reasonableness of an Arbitrator's interpretation of a collective bargaining agreement.

LABOR AND EMPLOYMENT

In matters arising under the Act authorizing collective bargaining between policemen and firemen and their public employers, the preliminary question of arbitrability is itself a question to be determined by the Arbitration. 43 P.S. §§ 217.7-217.10.

LABOR RELATIONS

In dispute between public employer and its police officers and firemen, the Board of Arbitrators:

1. May not order employer to perform illegal acts;
2. Is limited to requiring that employer do that which it could do voluntarily; and
3. Must craft award that only encompasses terms and conditions of employment.

43 P.S. § 217.1 et seq.

MUNICIPAL CORPORATIONS

While Municipal Pension Plan Funding Standard and Recovery Act does not extend a certain amount of latitude to municipalities by allowing benefit plan modification, it mandates that such change be preceded by a cost estimate describing the impact upon the Plan.

53 P.S. §§ 895.101 - 895.803.

MUNICIPAL CORPORATIONS

Municipal Pension Plan Funding Standard and Recovery Act requires an actuarial report that the pension plan is actuarially sound when a pension plan is modified.

53 P.S. § 895.302.

LABOR RELATIONS

Arbitration panel exceeded its authority when it awarded a Deferred Retirement Option Program (DROP) for firefighters' pension plan and arbitration between City and Firefighters Union pursuant to statute governing disputes between a public employer and its police and firefighters, where a record did not contain an actuarial report that pension plan would be actuarially sound when pension plan was so modified, as required by a Municipal Pension Plan Funding Standard and Recovery Act.

43 P.S. §§ 217.1 - 217.10; 53 P.S. § 895.302.

IN THE COURT OF COMMON PLEAS OF ERIE COUNTY,
PENNSYLVANIA CIVIL ACTION No. 10777-2009

Appearances: Richard W. Perhacs, Esq., Attorney for City of Erie
Richard G. Poulson, Esq., Attorney for International
Association of Firefighters

OPINION

Connelly, J., December 8, 2009

This matter is before the Court pursuant to a Petition to Review Arbitration Award filed by City of Erie (hereinafter "Petitioner"). International Association of Firefighters, Local 293, AFL-CIO (hereinafter "Respondent") opposes.

Procedural History

On February 20, 2009, Petitioner filed a Petition to Review Arbitration Award asking that the Court review an Arbitration Award entered January 24, 2009. Respondent filed an Answer to the Petition to Review Arbitration Award on March 23, 2009, which included Affirmative Defenses. On April 2, 2009, Petitioner filed a Reply to Affirmative Defenses. The case was first assigned to the Honorable John Garhart. Judge Garhart issued an Order March 20, 2009, recusing himself from the case. *Order, Garhart, J., March 20, 2009*. The case was next assigned to the Honorable Michael E. Dunlavey. Judge Dunlavey issued an Order on April 9, 2009, recusing himself from the case. *Order, Dunlavey, J., April 9, 2009*. The matter was subsequently assigned to this Court. An oral argument was held on July 28, 2009 before this Court. Finally, on August 19, 2009, Petitioner filed a supplemental brief in support of its Petition.¹

Statement of Facts

The instant dispute stems from an Act 111² Arbitration Award issued January 24, 2009 following a dispute between Petitioner and Respondent. *Petition to Review Arbitration Award*, ¶¶ 4-8. The Award established the terms of a new Collective Bargaining Agreement (hereinafter "CBA") to be effective from January 1, 2008 through December 31, 2011. Petitioner and Respondent were parties to a Collective Bargaining Agreement (hereinafter "CBA") that expired on December 31, 2007. *Id.* at ¶ 4. Pursuant to Act 111, the parties engaged in collective bargaining to resolve the terms of a successive CBA. When resolution could not be

¹ Petitioner failed to file this supplemental brief with the Prothonotary's office and therefore it does not appear on the instant docket.

² Act 111 is codified at 43 P.S. §§217.1 *et. seq.* and is also known as the Policemen and Firemen Collective Bargaining Act.

attained, Respondent invoked the arbitration provisions of Act 111. *Id.*

A panel of Arbitrators was subsequently selected and hearings were conducted on April 7 and 8 and May 21, 2008. Petitioner argues the Court should vacate portions of the Arbitration Award because the Arbitrators exceeded their jurisdiction and authority. Specifically, Petitioner asks that Paragraphs 5(A), 5(B) and 10(A) of the Arbitration Award be vacated. *Brief in Support, p. 29.*

The disputed provisions of the arbitration award read as follows:

5. **Safety and Staffing:** In order to ensure the safety of all bargaining unit members, amend the Agreement to provide the following provisions:
 - A: Dual Companies: The City will discontinue the utilization of dual companies effective January 1, 2010.
 - B. Minimum Safe Deployment:
 1. Six Fire Companies. Effective January 1, 2010, in the event the City elects to deploy six (6) or fewer engine and/or tower companies, each fire company will operate subject to a 5-fire-fighter apparatus minimum.
 2. More Than Six Companies. Effective January 1, 2010, in the event the City elects to deploy more than six (6) engine and/or tower fire companies, each company will operate subject to a 4-firefighter apparatus minimum.

...

10. Pension:

A: Deferred Retirement.

Article 11 of the Agreement will be amended to require immediate restoration of the Partial Lump Sum Distribution Option that was eliminated by the City in December 2006.

Arbitration Award, ¶¶ 5(A), 5(B), and 10.

Petitioner makes three main arguments in support of its Petition to review. First, Petitioner asserts Paragraphs 5(A) and 5(B) involve matters of fundamental managerial prerogative over which the Arbitrators lacked jurisdiction and authority to render an award. Second, Petitioner asserts the issue of staffing levels was never presented as an issue in dispute by Respondent prior to arbitration. Third, Petitioner argues the Arbitrators exceeded their authority by requiring Petitioner to implement the pension plan in Paragraph 10(A) in violation of Act 205. Finally, Petitioner asserts the provisions in Paragraph 10A were never proposed by Respondent or identified as an issue in dispute before Arbitration and therefore were not within the jurisdiction of the Panel.

Respondent asserts Petitioner failed to state a claim upon which relief can be granted, has failed to exhaust its remedies pursuant to the Award and Petitioner's claims are barred because the Award is consistent with longstanding Commonwealth judicial precedents and labor policy. *Respondent's Answer to Petition, Affirmative Defenses*, ¶¶ 1-3.

The Court shall consider these arguments in light of the applicable Pennsylvania law.

Findings of Law

There is no statutory right of appeal for an interest arbitration award. Although Section 7(a) of Act 111, 43 P.S. § 217.7(a), states that no appeal shall be allowed to any court from the determination of a board of arbitration, courts have limited jurisdiction, in the form of narrow *certiorari*, to review arbitration awards. *City of Scranton v. Fire Fighters Local Union No. 60*, 923 A.2d 545 (Pa. Cmwlth. 2007). Thus, a court's review is limited to questions concerning: (1) the arbitrators' jurisdiction; (2) the regularity of the proceedings; (3) an excess of the arbitrators' powers; and (4) deprivation of constitutional rights. *Id.* An arbitrator who mandates that an illegal act be carried out exceeds his or her powers. *Id.* See also, *City of Scranton v. E.B. Jermyn Lodge No. 2 of the F.O.P.*, 965 A.2d 359 (Pa. Cmwlth. 2009) (affirming a trial court's order vacating a provision of an interest arbitration award between the city and the union because the award violated the city's 2002 Recovery Plan from designation as a financially distressed city).

Therefore, an arbitrator: (1) may not order the employer to perform an illegal act; (2) is limited to requiring that a public employer do that which it could do voluntarily; and (3) must craft an award that only encompasses the terms and conditions of employment. *City of Butler v. Fraternal Order of Police, Lodge # 32*, 780 A.2d 847 (Pa. Cmwlth. 2001), *appeal denied*, 792 A.2d 1255 (Pa. 2001). An error of law alone is not sufficient to reverse an award under this narrow standard of review. *Id.*

A dual standard of review applies in Act 111 appeals. *Pennsylvania State Police v. Pennsylvania State Troopers' Association*, 840 A.2d 1059 (Pa. Cmwlth. 2004) *appeal denied*, 853 A.2d 363 (Pa. 2004). Where resolution of an issue turns on a pure question of law, or the application of law to undisputed facts, the court's review is plenary. However, where it depends upon fact-finding or upon interpretation of the collective bargaining agreement, reviewing courts apply the extreme standard of deference applicable to Act 111 awards; that is, they are bound by the arbitrator's determination of these matters even though the reviewing court may find them to be incorrect. *Id.*

As a result of these cases, courts are required to give great deference to an arbitrator's award. In 2006, the Pennsylvania Supreme Court noted

the very limited judicial review available in interest arbitration awards furthers the legislative intent of not bogging awards down in litigation. *Town of McCandless v. McCandless Police Officers Association*, 901 A.2d 991, 998 (Pa. 2006).

I. Paragraphs 5(A) and 5(B) of the Arbitration Award

Petitioner's first argument asserts that because Paragraphs 5(A) and 5(B) of the Arbitration Award involve matters of fundamental managerial prerogative, the Arbitrators lacked jurisdiction and authority to render an award. *Brief in Support*, p. 6. Specifically, Petitioner argues eliminating the use of dual fire companies and mandating different staffing and deployment touch on matters of inherent managerial policy that bear no rational relationship to working conditions or safety of the firefighters. Petitioner contends under Act 111, a topic traditionally reserved as a matter of managerial policy or action is bargainable only where the union is able to establish that it bears a "rational relationship" to the working conditions of the employees. *Id.* at p. 7, *relying on*, *City of Clairton v. Commonwealth of Pennsylvania*, 528 A.2d 1048, 1049 (Pa. Cmwlth. 1987).

Respondent asserts that safety is indisputably a working condition and Act 111 mandates collective bargaining over all matters affecting the wages, hours and working conditions of fire fighters. *Brief in Opposition*, p. 25. Petitioner asserts because Respondent's proposal with respect to staffing and deployment requested that Petitioner "deploy fire fighters in compliance with National Fire Protection Association ("NFPA") Standard 1710" and the arbitration panel did not comply with NFPA 1710, Paragraph 5(B) bears no rational relationship to fire fighter safety and touches, instead, on matters reserved for the discretion of management. *Brief in Support*, p. 8.

An arbitrator cannot exceed his authority and render decisions on matters specifically relegated to the city. However, Act 111 does not expressly provide for the reservation of management rights. In cases arising under Act 111 a management decision or "action is deemed bargainable where it bears a rational relationship to employees' duties." *City of Clairton*, 528 A.2d at 1049-50. The Commonwealth Court held in *Philadelphia Fire Fighters Union, Local 22 v. City of Philadelphia*, "Essentially, if the acts the arbitrator mandates the employer to perform are legal and relate to the terms and conditions of employment, then the arbitrator did not exceed her authority." *Phila. Fire Fighters Union, Local 22 v. City of Philadelphia*, 901 A.2d 560, 566 (Pa. Cmwlth. 2006).

Petitioner asserts "[I]f the Union agreed that the NFPA Standard was one which the City should be made to comply with, it can not now argue that the Arbitrators' Award mandating an increase to *five* fire fighters, depending on the number of fire companies, is necessary or even rationally related to preserving the safety of the firefighters which they

represent." *Brief in Support*, p. 8. NFPA Standard 1710 notes that both engine and ladder companies shall be staffed with a minimum of four on-duty personnel. The standard also notes that in jurisdictions with tactical hazards, high hazard occupancies, high incident frequencies, geographical restrictions, or other pertinent factors ... these companies shall be staffed with a minimum of five or six on-duty members. *NFPAS 1710*, 5.2.2 - 5.2.2.4. The Court finds that NFPA 1710 does not limit the number of firefighters deployed to four, but rather sets four as the minimum permissible. Therefore, the arbitrators were not in violation of NFPA Standard 1710 as Petitioner avers.

Petitioner also contends Paragraph 5 unlawfully attempts to control the overall size and operation of Petitioner's fire department, matters fundamentally reserved to the discretion of management. *Brief in Support*, p. 9. The Commonwealth Court held in *City of Erie v. IAFF Local 293*, an interest arbitration panel properly awarded fire company minimum staffing levels, because they were directly related to fire fighter safety. *City of Erie v. IAFF Local 293*, 459 A.2d 1320 (Pa. Cmwlth. 1983). The Commonwealth Court reasoned courts that have dealt with the issue have drawn a very fine line in distinguishing between the total number of persons on the force (not arbitrable), and the number of persons on duty at a station, or assigned to a piece of equipment, or to be deployed to a fire (all arbitrable because they are rationally related to the safety of the firefighters). "The safety of a fire fighter is far more rationally related to the number of individuals fighting a fire with him, or operating an important piece of equipment at a fire, than it is to the number of members of the entire force." *Id.* at 1321.

Petitioner contends the instant case is easily distinguishable from the earlier *City of Erie* case. Petitioner asserts that "even a brief, cursory review of the Award" reveals the Arbitrators' intent and the effect of the Award is to control and mandate the number of employees Petitioner maintains on its force, *Brief in Support*, p. 10. "The net effect of these provisions is not to guarantee fire fighter safety by setting a fixed number of fire fighters to be deployed with equipment in response to a call. Instead, these provisions have the effect of mandating the City to increase the size of its fire department workforce." *Id.* at p. 11. Petitioner argues if the five fire fighter minimum per apparatus was awarded on the basis of fire fighter safety when responding to a call, it should make no difference how many fire companies the City is running. *Id.*

Respondent notes the arbitration panel was presented with nearly two full days of testimony regarding the direct relationship between fire deployment and fire fighter safety. *Brief in Opposition*, p. 31. Respondent also notes it presented expert testimony and evidence at the arbitration hearing indicating that staffing the fire department with fewer than eight (8) fire companies and consequently deploying fewer fire fighters to fire

scenes was unsafe. *Id.* at p. 36. The arbitrators heard testimony from two former City of Erie fire chiefs that increasing the number of fire companies would help with fire fighter safety. *Id.*

The Arbitration Panel, by increasing apparatus minimums in the event the City chose to operate six (6) or fewer fire stations, appears to have simply insured an adequate number of fire fighters were available to respond to fire calls. Simply because the arbitration panel chose to frame the Award in such a way does not automatically imply the Panel was attempting to encroach on Petitioner's managerial prerogative. Here, the conditions attached to Paragraph 5(A) and 5(B) do not appear, as Petitioner avers, a way to force the City to hire more firefighters, but rather are directly related to the safety of the fire fighters.

The Arbitration Panel did not mandate that the city hire more firefighters nor tell them how many fire fighters to assign to a department. Instead, the Arbitration Award sought to increase fire fighter safety by insuring that an adequate number of fire fighters were deployed to a call. In doing so, the Award presented Petitioner with a choice as to how to fulfill that goal. This choice does not negate the intent of the Arbitration Panel to insure that a sufficient number of fire fighters responds to any given call to enhance safety. The Court does not find Paragraph 5(B) of the Award constitutes a minimum staffing requirement or a backdoor attempt to meet minimum staffing requirements as Petitioner avers. Rather, the Court finds Paragraph 5(B) is a permissible means of establishing how many firefighters respond to a fire call. Such issues are arbitrable as they are rationally related to fire fighter safety. *See, City of Erie*, 459 A.2d at 1321.

Petitioner's final argument that Paragraph 5(B) of the Arbitration Award should be vacated asserts the issue was not presented as an issue for consideration and therefore the Arbitrators had no authority to include it with the award. Petitioner avers that in the "Specification of the Issues in Dispute" submitted by Respondent prior to the Arbitration, Respondent specified only two issues with respect to staffing: (1) the deployment of fire fighters in compliance with NFPA Standards and (2) the staffing and maintaining of not less than eight full time fire companies, not less than two which must be tower or ladder companies. *Brief on Behalf of Petitioner*, p. 15. Petitioner argues that because neither party gave notice that it wished to have the apparatus deployment issue resolved, it was not within the Arbitrator's authority to craft an Award referencing this. *Id.*

An Act 111 interest arbitration panel may award provisions only as to those issues that the parties themselves have placed in dispute. *City of Wilkes-Barre v. City of Wilkes-Barre Police Benevolent Association*, 814 A.2d 285, 291 (Pa. Cmwlth. 2002). "Once the parties surrender control over the bargaining to the arbitrators, they empower the arbitrators to craft a fair resolution of the submitted issues within the total context of the

award. The arbitrators are not restricted to selecting specific proposals; rather they may award any fair resolution on issues submitted." *Id.* at 291.

Here, Respondent submitted a proposal prior to the arbitration stating "[t]he City will deploy fire fighters in compliance with NFPA Standard 1710 and will be permitted to vary from this standard only with the consent of the Union." *Exhibit B, Brief on Behalf of Petitioner*. The Respondent's proposal put at issue safe deployment levels. While neither party's pre-arbitration proposal requested the exact outcome contained in Paragraph 5(B) of the Award, the matter was most definitely put before the Panel for consideration. Moreover, Petitioner was on notice of this issue when Respondent submitted its "Specification of Issues in Dispute."

Therefore, because the Arbitrators merely crafted a fair resolution of the issues before them based upon the proposals of the parties, the panel properly exercised authority over the issues before it and Paragraph 5(B) of the Arbitration Award should not be vacated.

Petitioner asserts Paragraph 5(A) falls outside the scope of the arbitrator's authority as a matter of managerial discretion not within the scope of collective bargaining. Petitioner argues that while there is no case law to support its argument, the right to control the number and structure of fire companies can be clearly compared to other matters inherently reserved to management. *Brief of Petitioner*, p. 13. Specifically, Petitioner argues the utilization of dual fire companies by the City is the result of the City's decisions with respect to the method and level of offering fire protection and the decision came as the result of consolidating four of its previously separate engine and ladder companies into two consolidated, dual companies to save money. *Id.* at p. 14.

Respondent asserts it generated overwhelming testimony and documentary evidence at the arbitration hearing on the safety risks posed by the dangerous dual-company formation utilized by Petitioner. Specifically, Chief Robert Giorgio testified that his similarly sized department discontinued the use of dual companies because they posed significant safety risks for firefighters. *Brief in Opposition, Exhibit C*, pp. 167-68. He also testified that Erie's continued use of dual fire companies increased the likelihood of firefighter injury or death. *Id.* at p. 182. "It is not a safe way to use a fire-force. ... It places people in jeopardy longer and raises risk." *Id.* Former Erie Fire Chief Russell Smith also noted that the utilization of dual companies was dangerous because there were fire fighters who were forced to use equipment they were not comfortable operating (i.e. when a crew of trained ladder company firemen are required to utilize equipment designed specifically for engine companies). *Id.* at p. 233.

The Arbitration Award notes "[i]n rendering this Award, the Panel has carefully balanced the two primary considerations raised by the

parties in this proceeding - [Petitioner's] desire to continue the progress already made in stabilizing and improving the City's fiscal condition and [Respondent's] desire to secure reasonably safe working conditions for all bargaining unit members." *Arbitration Award*, p. 2, *Exhibit F, Petition to Review Arbitration Award*. The Award also states "the Panel has concluded the City's current fire deployment, particularly the use of dual companies, poses significant safety risks for fire fighters." *Id* at p. 5.

Petitioner relies on *City of Philadelphia v. PLRB* to make its point. *City of Philadelphia v. PLRB*, 588 A.2d 67 (Pa. Cmwlth. 1991) (holding the implementation of a first responder program was a matter of managerial prerogative not subject to collective bargaining, but the city had a duty to bargain over the effects of the implementation of the first responder program). Petitioner argues that similar to *City of Philadelphia*, the utilization of dual companies by the City of Erie is the result of the City's decisions with respect to the method and level of offering fire protection to the City. However, the instant case is easily distinguishable from *City of Philadelphia*. First, Petitioner fails to note that in the *City of Philadelphia*, the union failed to establish a rational relationship between the program and firefighter safety. *City of Philadelphia*, 588 A.2d at 70. Here, Respondent presented a substantial amount of evidence regarding the rational relationship between fire fighter safety and the dual company program. Moreover, in *City of Philadelphia*, the Commonwealth Court upheld the implementation of the program, however the court held the city did have an obligation to bargain with the union under Section 1 of Act 111 as to the effects of the implementation of the first responder program on the fire fighters' wages, hours and working conditions. *Id*.

As the Commonwealth Court held in *City of Scranton*,

The courts that have dealt with this issue have drawn a *very* fine line in distinguishing between the total number of persons on the force (not arbitrable), and the number of persons on duty at a station, or assigned to a piece of equipment, or to be deployed to a fire (all arbitrable because they are rationally related to the safety of the fire fighters). However, this Court finds merit in that distinction, because the result still leaves in the municipality the ultimate decision concerning what level of fire protection it wishes, or can afford, to provide to the citizens. If it finds that the arbitrable situations cause an imbalance in certain areas of the force, it retains the authority to decide whether to hire more employees, close stations, revamp the force, or take some other managerial action. Since the method of resolving the imbalance may have far-reaching political and economic implications, especially if taxes must be raised, it should remain within the purview of those who were elected and/or appointed to make such decisions.

IAFF, Local 669 v. City of Scranton, 429 A.2d 779, 781 (Pa. Cmwlth. 1981).

The Court, being mindful of the fine line drawn by the Commonwealth Court in *City of Scranton* and its brethren and the deference given to an arbitration award, finds that the Arbitration Panel did not exceed its authority when it called for the discontinuation of the dual company system. The Panel was presented with ample evidence indicating Petitioners use of the dual company system was dangerous.

The Court finds that the issue of dual companies is directly related to firefighter safety and therefore within the authority of the Arbitrators. Therefore, for the reasons stated above, the Petition to Vacate Paragraphs 5(A) and 5(B) of the Arbitration Award is denied.

II. Paragraph 10(A) of the Arbitration Award

Petitioner asserts the Arbitrators exceeded their authority by requiring the City to implement the pension plan in Paragraph 10(A) of the Award in violation of Act 205³ at 53 P.S. §895.305. *Brief on Behalf of Petitioner, p. 21*. Paragraph 10(A) provides for immediate restoration of the Partial Lump Sum Distribution Option (hereinafter "PLSDO"). Petitioner argues, first, that because the PLSDO was never proposed to the panel, it was not within the jurisdiction of the arbitrators to award the PLSDO. Petitioner also avers based on 53 P.S. §895.305 any change in the adoption or formulation of a pension fund, including the reinstatement of a previously used plan, requires the consideration of a cost estimate by the municipality and here the report presented by Respondent fails to satisfy the statute. Therefore, Petitioner argues Paragraph 10(A) requires Petitioner to unlawfully modify its pension plan. *Brief on Behalf of Petitioner, p. 22*.

53 P.S. § 895.305 provides, in relevant part:

- (a) Presentation of cost estimate - Prior to the adoption of any benefit plan modification by the governing body of the municipality, the chief administrative officer of each pension plan shall provide to the governing body of the municipality a cost estimate of the effect of the proposed benefit plan modification.

- (e) Contents of cost estimate - Any cost estimate of the effect of the proposed benefit plan modification shall be complete and accurate and shall be presented in a way reasonably calculated to disclose to the average person compromising the membership of the governing body of the municipality, the impact of the proposed benefit plan, the modification

³ Act 205 is codified at 53 P.S. §895.305.

on the future financial requirements of the pension plan and the future minimum obligation of the municipality with respect to the pension plan.

53 P.S. § 895.305 (a), (e).

Petitioner relies on two earlier cases involving the City of Erie to make its point. Petitioner contends that in *City of Erie v. IAFF, Local 293*, the Commonwealth Court held the arbitration panel had exceeded its authority by awarding a Deferred Retirement Option Program (hereinafter "DROP") because the arbitration award mandated the institution of a pension program for which no actuarial or statistical data was presented. *City of Erie v. IAFF, Local 293*, 836 A.2d 1047, 1051 (Pa. Cmwlth. 2003). Petitioner also relies on *City of Erie v. Hass Memorial Lodge #7, F.O.P.*, which held an Act 111 arbitration panel exceeded its authority by mandating enhancements to a municipal pension plan for police officers without first considering a cost estimate and an actuarial report regarding the impact of the changes. *City of Erie v. Hass Memorial Lodge # 7, F.O.P.*, 811 A.2d 1071, 1075 (Pa. Cmwlth. 2002), *appeal denied*, 825 A.2d 640 (Pa. 2003).

Respondent counters it presented the Panel with reasonably calculated evidence from an approved actuary of their proposed deferred retirement benefit's impact on the pension plan which included references to the changes in the plan's financial requirement and the City's minimum municipal obligation (hereinafter "MMO"). *Brief in Opposition*, p. 44. Respondent did in fact present a January 2007 valuation that set forth the DROP plan's financial requirements and MMO for 2008. Respondent also presented testimony from Joseph Duda, an actuary, who estimated the proposed deferred retirement benefits would increase the City's MMO by between \$356,000 and \$903,000 and would result in increases in the plan's overall liabilities. *Brief in Opposition*, p. 45, *Exhibit C*, pp. 404-405.

Petitioner presented testimony from its own actuary, Donald Boetger, who gave the panel another estimate of the deferred retirement benefit's impact on the pension plan. Mr. Boetger also testified that there was no real economic difference between the proposed DROP plan and the Partial Lump Sum Distribution Option or reverse DROP (hereinafter "PLSDO"). *Brief in Opposition, Exhibit C*, p. 428.

Respondent asserts it presented the Panel with reasonably calculated evidence from an approved actuary of its proposed deferred retirement benefit's impact on the pension plan that included reference to the changes in the plan's financial requirements and the City's MMO. *Brief in Opposition*, p. 44. Respondent also avers "the degree of thoroughness in the proofs submitted to the Act 111 Panel here was present in none of the cases cited by [Petitioner] in its challenge." *Id.* at p. 47. The Court notes Respondent did present ample evidence to the Panel of the

implications of its proposed pension plan (DROP), however, the plan ultimately awarded by the panel was the PLSDO, which had different financial implications.

Alternatively, Respondent argued at the oral argument there is nothing stopping the City from performing an Act 205 actuarial study before adopting the pension change awarded by the Arbitration Panel. However, the Commonwealth Court has held that an arbitrator may not order an employer to perform an illegal act. *City of Butler*, 780 A.2d at 850. Moreover, a grievance arbitrator who awards a modification of a pension plan in the absence of an Act 205 cost estimate requires an illegal act necessitating vacation. *Upper Merion Township v. Upper Merion Township Police Officers*, 915 A.2d 174, 175 (Pa. Cmwlth, 2006), *appeal denied*, 929 A.2d 647 (Pa. 2007). In *City of Erie v. Haas Memorial Lodge #7*, the Commonwealth Court held there needed to be clear record evidence that the provisions of Act 205 were followed. *City of Erie v. Haas Memorial Lodge #7*, 811 A.2d 1071 (Pa. Cmwlth. 2002), *appeal denied*, 825 A.2d 640 (Pa. 2003).

Here, the cost estimate presented to the Arbitration Panel for review was an estimate for the DROP plan proposed by Respondent. Just as Petitioner avers, the Panel was never presented with an estimate of the cost or MMO of the PLSDO, which they awarded. All of the implications were prepared with the proposed DROP plan in mind. However, the Arbitration Panel awarded the PLSDO.⁴ Because the Panel awarded a pension plan in the absence of an Act 205 cost estimate, the Court is constrained to find the Arbitrators mandated that the City perform an illegal act and as such Paragraph 10(A) of the Award must be vacated.

ORDER

AND NOW, TO-WIT, this 8th day of December, it is hereby **ORDERED, ADJUDGED, and DECREED**, the City of Erie's Petition to Review Arbitration Award is **GRANTED** in part and **DENIED** in part for the reasons stated in the foregoing opinion.

The City of Erie's Petition to Review Arbitration Award as to Paragraphs 5(A) and 5(B) of the Award is **DENIED**. The Petition to Review Arbitration Award is **GRANTED** as to Paragraph 10(A) and Paragraph 10(A) of the Award is hereby **VACATED**.

BY THE COURT:

/s/ **Shad Connelly, Judge**

⁴ Respondent asserts the Arbitration Panel had enough information to infer what the costs of the PLSDO would be, however, this is not sufficient pursuant to Act 205.

CHANGE OF NAME NOTICE
IN THE COURT OF COMMON
PLEAS OF ERIE COUNTY,
PENNSYLVANIA

DOCKET NO. 12872-10

In Re: KIRSTIN ELLEN
BRUNNER-MARTINEZ

Notice is hereby given that on
June 29, 2010, a Petition was filed
in the above named court requesting
an order to change the name of
Kirstin Ellen Brunner-Martinez to
Kirstin Ellen Brunner.

The Court has fixed the 12th day
of August, 2010, at 9:30 a.m. in
Courtroom No. B of the Erie County
Courthouse, 140 W. 6th Street, Erie,
PA, 16501 as the time and place for
the hearing on said Petition, when
and where all interested parties may
appear and show cause, if any, why
the prayer of the Petitioner should
not be granted.

Jul. 16

INCORPORATION NOTICE
ERIE CATHOLIC PREPARATORY
SCHOOL has been incorporated under
the provisions of the
Pennsylvania Nonprofit Corporation
Law of 1988, as amended.
Knox McLaughlin Gornall
& Sennett, P.C.
120 West Tenth Street
Erie, Pennsylvania 16501

Jul. 16

INCORPORATION NOTICE
Robert M. Glenn Funeral Home,
Inc. has been incorporated under
the provisions of the Business
Corporation Law of 1988.

Jul. 16

LEGAL NOTICE
ATTENTION: RICKY SCOTT
INVOLUNTARY TERMINATION
OF PARENTAL RIGHTS
IN THE MATTER OF THE
ADOPTION OF MINOR MALE
CHILD (R.R.M.); DOB: 10-23-08
#93 IN ADOPTION, 2009

If you could be the parent of the
above mentioned child, at the
instance of Erie County Office of
Children and Youth you, laying
aside all business and excuses
whatsoever, are hereby cited to be
and appear before the Orphan's

Court of Erie County, Pennsylvania,
at the Erie County Court House,
Judge Brabender, Court Room F,
City of Erie on August 3, 2010,
at 9:30 a.m. and then and there
show cause, if any you have, why
your parental rights to the above
child should not be terminated,
in accordance with a Petition and
Order of Court filed by the Erie
County Office of Children and
Youth. A copy of these documents
can be obtained by contacting the
Erie County Office of Children and
Youth at (814) 451-7740.

Your presence is required at the
Hearing. If you do not appear at this
Hearing, the Court may decide that
you are not interested in retaining
your rights to your child and your
failure to appear may affect the
Court's decision on whether to
end your rights to your child. You
are warned that even if you fail to
appear at the scheduled Hearing,
the Hearing will go on without you
and your rights to your child may
be ended by the Court without your
being present.

You have a right to be represented
at the Hearing by a lawyer. You
should take this paper to your
lawyer at once. If you do not have
a lawyer, or cannot afford one, go
to or telephone the office set forth
below to find out where you can get
legal help.

Family/Orphan's
Court Administrator
Room 204 - 205
Erie County Court House
Erie, Pennsylvania 16501
(814) 451-6251

Jul. 16

LEGAL NOTICE
ATTENTION: KEVIN TATE
INVOLUNTARY TERMINATION
OF PARENTAL RIGHTS
IN THE MATTER OF THE
ADOPTION OF MINOR MALE
CHILD (K.C.T.); DOB: 06-22-98
#100 IN ADOPTION, 2009

If you could be the parent of the
above mentioned child, at the
instance of Erie County Office of
Children and Youth you, laying
aside all business and excuses
whatsoever, are hereby cited to be

and appear before the Orphan's
Court of Erie County, Pennsylvania,
at the Erie County Court House,
Judge Brabender, Court Room F,
City of Erie on August 3, 2010,
at 9:30 a.m. and then and there
show cause, if any you have, why
your parental rights to the above
child should not be terminated,
in accordance with a Petition and
Order of Court filed by the Erie
County Office of Children and
Youth. A copy of these documents
can be obtained by contacting the
Erie County Office of Children and
Youth at (814) 451-7740.

Your presence is required at the
Hearing. If you do not appear at this
Hearing, the Court may decide that
you are not interested in retaining
your rights to your child and your
failure to appear may affect the
Court's decision on whether to
end your rights to your child. You
are warned that even if you fail to
appear at the scheduled Hearing,
the Hearing will go on without you
and your rights to your child may
be ended by the Court without your
being present.

You have a right to be represented
at the Hearing by a lawyer. You
should take this paper to your
lawyer at once. If you do not have
a lawyer, or cannot afford one, go
to or telephone the office set forth
below to find out where you can get
legal help.

Family/Orphan's
Court Administrator
Room 204 - 205
Erie County Court House
Erie, Pennsylvania 16501
(814) 451-6251

Jul. 16

ESTATE NOTICES

Notice is hereby given that in the estates of the decedents set forth below the Register of Wills has granted letters, testamentary or of administration, to the persons named. All persons having claims or demands against said estates are requested to make known the same and all persons indebted to said estates are requested to make payment without delay to the executors or their attorneys named below.

FIRST PUBLICATION

**CULLATON, SHARON E.,
deceased**

Late of the City of Erie, County of Erie, Pennsylvania
Executor: Briar A. Cullaton, c/o 900 State Street, Suite 215, Erie, PA 16501
Attorney: Gregory L. Heidt, Esquire, 900 State Street, Suite 215, Erie, PA 16501

**DIANGI, CARMELLA, a/k/a
CARMELLA B. DIANGI,
deceased**

Late of the City of Erie, Erie County, Pennsylvania
Executors: Philip Guy DiAngi, 6140 Daggett Road, Girard, Pennsylvania 16417 and John R. Falcone, 135 East 6th Street, Erie, Pennsylvania 16501
Attorney: John R. Falcone, Esq., The Gideon Ball House, 135 East 6th Street, Erie, Pennsylvania 16501

**ECKHARDT, LILLIAN C.,
deceased**

Late of the City of Erie, County of Erie and Commonwealth of Pennsylvania
Executor: Lawrence R. Eckhardt, c/o Yochim, Skiba & Nash, 345 West Sixth Street, Erie, PA 16507
Attorney: Gary H. Nash, Esq., Yochim, Skiba & Nash, 345 West Sixth Street, Erie, PA 16507

**FIESLER, SALLY J.,
deceased**

Late of the Boro of Waterford, County of Erie, and Commonwealth of Pennsylvania
Executor: James R. Fiesler
Attorney: L. C. TeWinkle, Esq., Sciarino TeWinkle, Renaissance Centre, 1001 State Street, Suite 1220, Erie, Pennsylvania 16501

**GRAY, RICHARD L.,
deceased**

Late of Girard Township
Co-Executrices: Violet G. Sidman, 934 Oakmont Avenue, Erie, PA 16505 and William A. Gray, 4910 Crepe Myrtle Lane, Pasadena, TX 77505
Attorney: Brian Glowacki, Esquire, Knox McLaughlin Gornall & Sennett, P.C., 120 West Tenth Street, Erie, PA 16501

**LANG, JEREMIAH L.,
deceased**

Late of the City of Erie, County of Erie and Commonwealth of Pennsylvania
Executrix: Elizabeth A. Brown, c/o 504 State Street, 3rd Floor, Erie, PA 16501
Attorney: Michael J. Nies, Esquire, 504 State Street, 3rd Floor, Erie, PA 16501

**OLENIK, SARAH H., a/k/a
SARAH OLENIK,
deceased**

Late of the County of Erie, Commonwealth of Pennsylvania
Executrix: Linda M. Strong, 10384 Rt. 18., Albion, PA 16401
Attorney: None

**PARKER, FLORENCE,
deceased**

Late of the City of Erie, County of Erie, Pennsylvania
Executrix: Joyce E. Parker, c/o 900 State Street, Suite 215, Erie, PA 16501
Attorney: Gregory L. Heidt, Esquire, 900 State Street, Suite 215, Erie, PA 16501

**STOUFFER, CONSTANCE L.,
deceased**

Late of the City of Erie, County of Erie, Commonwealth of Pennsylvania
Executor: Brenton A. Wilson, c/o Quinn, Buseck, Leemhuis, Toohey & Kroto, Inc., 2222 West Grandview Blvd., Erie, PA 16506
Attorney: Colleen R. Stumpf, c/o Quinn, Buseck, Leemhuis, Toohey & Kroto, Inc., 2222 West Grandview Blvd., Erie, PA 16506

SECOND PUBLICATION

**AMY, ROBERT J.,
deceased**

Late of the County of Erie, and Commonwealth of Pennsylvania
Executor: Michael J. Amy, c/o 900 State Street, Suite 104, Erie, PA 16501
Attorney: Sumner E. Nichols, II, Esquire, Nichols & Myers, P.C., 900 State Street, Suite 104, Erie, PA 16501

**GEORGE, MICHAEL IVAN,
deceased**

Late of the City of Erie, County of Erie, Commonwealth of Pennsylvania
Executor: Owen George, c/o Quinn, Buseck, Leemhuis, Toohey & Kroto, Inc., 2222 West Grandview Blvd., Erie, PA 16506-4508
Attorneys: Scott L. Wallen, Quinn, Buseck, Leemhuis, Toohey & Kroto, Inc. 2222 West Grandview Blvd., Erie, PA 16506-4508

**JOHNSON, FRANK H.,
deceased**

Late of the Township of Millcreek, City of Erie, Pennsylvania
Executor: Beverly Johnson, McCarthy, Martone & Peasley, c/o 150 West Fifth Street, Erie, Pennsylvania 16507
Attorney: Joseph P. Martone, Esq., McCarthy, Martone & Peasley, 150 West Fifth Street, Erie, Pennsylvania 16507

**KINNEY, MARY FRANCES,
deceased**

Late of the Township of Harborcreek, County of Erie and Commonwealth of Pennsylvania
Executrix: Maryanne B. Szymanowski, c/o 3305 Pittsburgh Avenue, Erie, Pennsylvania 16508
Attorney: Darlene M. Vlahos, Esquire, 3305 Pittsburgh Avenue, Erie, Pennsylvania 16508

**KURPIEWSKI, HELEN,
deceased**

Late of the City of Erie, County of Erie, and Commonwealth of Pennsylvania
Executor: Thomas Kurpiewski, 231 Wallace Street, Erie, PA 16507
Attorney: Thomas S. Kubinski, Esquire, The Gideon Ball House, 135 East 6th Street, Erie, PA 16501

**KWIATKOWSKI, CASIMER W.,
a/k/a CASIMIR W.
KWIATKOWSKI, a/k/a
CASIMER W. FLOWERS, a/k/a
CASIMIR W. FLOWERS,
deceased**

Late of the City of Erie
Executor: Gary A. Flowers, 3148 Lake Front Drive, Erie, PA 16505
Attorney: None

**MOORE, MARY A.,
deceased**

Late of the City of Erie, County of Erie, and Commonwealth of Pennsylvania
Executrix: Deborah Sinnott-Steves, 140 East 29th Street, Erie, PA 16504
Attorney: Gregory P. Sesler, Esquire, Sesler and Sesler, 109 East Tenth Street, Erie, PA 16501

**MORGAN, AUDREY L.,
deceased**

Late of the City of Erie, County of Erie and Commonwealth of Pennsylvania
Administratrix: Linda S. Post, c/o 3305 Pittsburgh Avenue, Erie, Pennsylvania 16508
Attorney: Darlene M. Vlahos, Esquire, 3305 Pittsburgh Avenue, Erie, Pennsylvania 16508

**RAMBISH, MARTHA GRACE,
deceased**

Late of the City of Erie, County of Erie
Executor: Gary Walter Rambish, c/o Thomas A. Testi, Esq., P.O. Box 413, Fairview, PA 16415
Attorney: Thomas A. Testi, Esq., 3952 Avonia Road, P.O. Box 413, Fairview, PA 16415

**ZONNA, DARRELL S.,
deceased**

Late of the City of Erie, County of Erie and Commonwealth of Pennsylvania
Executrix: Koreen P. Zonna
Attorney: Craig A. Zonna, Esquire, Elderkin, Martin, Kelly & Messina, 150 East 8th Street, Erie, PA 16501

THIRD PUBLICATION

**ALBERT, JASON DAMIAN,
a/k/a JASON D. ALBERT,
deceased**

Late of Millcreek Township, Erie County, Pennsylvania
Administrator: John David Albert, II, 5600 Swanville Road, Erie, PA 16506
Attorney: Randy L. Shapira, Esq., 305 West Sixth Street, Erie, PA 16507

**BOOKS, J. WESLEY,
deceased**

Late of North East Township, Erie County, North East, Pennsylvania
Executor: David McCune, III, c/o Edward Orton, 33 East Main Street, North East, Pennsylvania 16428
Attorney: Edward Orton, Esq., Orton & Jeffery, P.C., 33 East Main Street, North East, Pennsylvania 16428

**CARLSON, MARGARET
LOUISE ROBERTS, a/k/a
MARGARET L. ROBERTS
CARLSON,
deceased**

Late of the Borough of Girard, County of Erie and Commonwealth of Pennsylvania
Executor: Robin Roberts, 6 State Route 2044, Bentleyville, PA 15314
Attorney: None

**CARNES, MARY E., a/k/a
MARY B. CARNES, a/k/a
MARY ELIZABETH CARNES,
deceased**

Late of Harborcreek Township, County of Erie, Pennsylvania
Executor: Elaine Bollinger, 13012 Macedonia Rd., Wattsburg, PA 16442
Attorney: None

**CROSS, MILDRED W.,
deceased**

Late of Erie, Pennsylvania (Erie County)
Administrator: BNY Mellon, N.A., Attention: Joseph M. Gray, Jr., One Mellon Center, Suite 3815, Pittsburgh PA 15258-0001
Attorney: Lisa M. Lassoff, Esquire, Dilworth Paxson LLP, 1500 Market Street, Suite 3500E, Philadelphia, PA 19102-2102

**MOUNTAIN, JAMES ROBERT,
a/k/a JAMES R. MOUNTAIN,
a/k/a JAMES R. MOUNTAIN, SR.,
deceased**

Late of the Township of Summit, County of Erie, Commonwealth of Pennsylvania
Executrix: Penny L. Conboy, 4702 Foxboro Ct., Erie, PA 16510
Attorney: Jeffrey G. Herman, Esq., Herman & Herman, 412 High Street, Waterford, PA 16441

**PETERSON, JEFFREY L., a/k/a
JEFFREY LEVI PETERSON,
deceased**

Late of McKean Township
Administratrix: Rebecca M. Peterson
Attorney: Norman A. Stark, Esquire, The Stark Law Firm, 100 State Street, Suite 210, Erie, PA 16507

**PIETSCH, ROBERT E., JR.,
deceased**

Late of the City of Erie, County of Erie and State of Pennsylvania
Executor: Karen E. Pietsch, c/o Denis W. Krill, P.C., 309 French Street, Erie, Pennsylvania 16507
Attorney: Denis W. Krill, Esquire, 309 French Street, Erie, Pennsylvania 16507

**SERAFIN, LAWRENCE J.,
deceased**

Late of the Township of Millcreek, County of Erie and Commonwealth of Pennsylvania
Executrix: Anita K. Serafin, c/o 3305 Pittsburgh Avenue, Erie, Pennsylvania 16508
Attorney: Darlene M. Vlahos, Esquire, 3305 Pittsburgh Avenue, Erie, Pennsylvania 16508

**SIMONSEN, GAY L., a/k/a
GAY L. WEBER,
deceased**

Late of Millcreek Township, Erie County, Pennsylvania
Executors: Sara M. Simmons and John T. Simmons, c/o 2580 West 8th Street, Erie, Pennsylvania 16505
Attorney: Ralph R. Riehl, III, Esq., 2580 West 8th Street, Erie, Pennsylvania 16505

**TARBOSSO, ANTOINETTE O.,
deceased**

Late of the County of Erie and State of Pennsylvania
Executor: Fred A. Tarbosso, Jr., c/o Edward J. Niebauer, Esquire, 558 West 6th Street, Erie, Pennsylvania 16507
Attorney: Edward J. Niebauer, Esquire, Talarico & Niebauer, 558 West 6th Street, Erie, Pennsylvania 16507



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CHANGES IN CONTACT INFORMATION OF ECBA MEMBERS

Adam E. Barnett ----- (814) 452-6232
Bernard & Stuczynski ----- (f) (814) 454-7488
234 West Sixth Street
Erie, PA 16507 ----- *Adam@BSlegalhelp.com*

Jason R. Owen ----- (814) 454-6345
Yochim, Skiba & Nash ----- (f) (814) 456-6603
345 West Sixth Street
Erie, PA 16507 ----- *JOwen@Yochim.com*

New Law Firm

Purchase & George, P.C.

J. Timothy George ----- (814) 835-0400
tim@purchasegeorge.com

Eric J. Purchase ----- (814) 833-7100
eric.purchasegeorge.com

2525 West 26th Street ----- (f) (814) 835-0401
Erie, PA 16506

New Email address

William F. Scarpitti, Jr. ----- *wscarpitti@gmail.com*

New Firm Address

Family Law Group, LLC (Kelly Mroz, Melissa Pagliari, Melissa Shirey) ----- (814) 456-6144
Frontier Place ----- (f) (814) 456-6143
1353 West Sixth Street
Erie, PA 16505

IF THERE ARE ANY NEW ATTORNEYS IN ERIE INTERESTED IN JOINING
THE ERIE COUNTY BAR ASSOCIATION, PLEASE
CALL 459-3111 AND AN APPLICATION WILL BE MAILED TO YOU OR GO TO OUR
WEBSITE AT WWW.ERIEBAR.COM AND FILL OUT THE ONLINE APPLICATION.

IF YOU KNOW OF ANY ADDRESS CHANGES
PLEASE CONTACT THE LEGAL JOURNAL OFFICE AT 459-3111
OR ADMIN@ERIEBAR.COM. THANK YOU.

ECBA Annual Charity Golf Tournament & Optional Scramble

**Wednesday, August 4
Lawrence Park Golf Club**



Join Us

WEDNESDAY, AUGUST 4TH

for the

**ERIE COUNTY BAR ASSOCIATION'S
ANNUAL CHARITY GOLF TOURNAMENT
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at the

LAWRENCE PARK GOLF CLUB

TOURNAMENT SCHEDULE

12:30 pm - Arrive at the Club and Register

1:00 pm - Shotgun Start

5:30 pm - Hors d'oeuvres & refreshments

6:00 pm - Dinner, brief awards ceremony

PRIZES & TROPHIES

ECBA Low Gross Trophies,
John E. Britton Trophy, Will
J. Schaaf Senior's Trophy,
Team Scramble, Callaway
Competition, Closest to the Pin,
Longest Drive and Longest Putt

**Cost: ECBA members - \$115
ECBA Young Lawyers - \$105**

(includes greens fee, 1/2 cart,
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cocktails & hors d'oeuvres after
golf, dinner and donation
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**Proceeds benefit the Erie County Bar Foundation
and its programs including the
Chief Justice Samuel J. Roberts Scholarship Fund**

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Hole in One Event

*Every Par 3 has a prize
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The "target hole" is #9 - Hole-in-One
wins \$10,000.

Other prizes on the Par 3s will be:

- ✓ Bose Sound System
- ✓ Nike Irons or Woods
- ✓ \$500 Visa gift card

**All participants will
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at dinner - must be
present to win -
ECBA members
only)

Please Note:

- ♦ Only ECBA members may participate and are eligible for trophies
- ♦ Summer law clerks are welcome on a space-available basis
- ♦ Dress code: no jeans, short-shorts, jean shorts; men must wear a collared shirt; all players must use "soft spikes"

Reservations due to the ECBA office by July 23!



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Gerald Nichols
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Benjamin Suchocki
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Jennifer Mazur
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