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COMMONWEALTH OF PENNSYLVANIA
HOUSE OF REPRESENTATIVES

SENATE LOCAL GOVERNMENT COMMITTEE
AND
HOUSE LOCAL GOVERNMENT COMMITTEE

MILLERSVILLE UNIVERSITY
STEINMAN HALL AT THE WARE CENTER
42 N. PRINCE STREET
LANCASTER, PENNSYLVANIA

THURSDAY, JUNE 12, 2014
10:05 A.M.

PUBLIC HEARING

SENATE BILL 1111, PN 1539 (EICHELBERGER)
HOUSE BILL 1845, PN 3240 (KAUFFMAN)
REFORM AND MODERNIZE THE POLICEMEN AND FIREMEN COLLECTIVE
BARGAINING ACT (ACT 111 OF 1968)

BEFORE: HONORABLE KATE HARPER, REPUBLICAN CHAIRMAN
HONORABLE ROB KAUFFMAN
HONORABLE RICK MIRABITO
HONORABLE MARK PAINTER
HONORABLE KEVIN SCHREIBER
HONORABLE JESSE TOPPER
HONORABLE JERRY KNOWLES
HONORABLE MINDY FEE

HONORABLE JOHN EICHELBERGER
HONORABLE ROB TEPLITZ
HONORABLE LLOYD SMUCKER
HONORABLE SCOTT HUTCHINSON

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CHAIRMAN HARPER: Good morning. Thank you for coming to Lancaster for our hearing of the Local Government Committee. It's a joint hearing of the Senate and the House. My name is State Representative Kate Harper. I represent part of Montgomery County and I am Chair of the House Local Government Committee. I'd like to recognize Senator Eichelberger for remarks.

SENATOR EICHELBERGER: Thank you, Representative Harper. It's nice to be here today. We appreciate the hospitality from the school. Beautiful facility here and it's nice to be in Lancaster. We had a hearing in the Senate on the Senate legislation. We have companion legislation in the House. So it's nice to have a joint hearing and get perspectives and information from members of both chambers in the legislature. I appreciate all those that came out to testify today. I'm anxious to hear what they have to say. The bills are actually pretty straightforward. We haven't had a lot of cooperation from the FOP and the state troopers and the firefighters in trying to arrange any legislation affecting Act 111. Maybe today we can get some resolution on some of the points that are covered in the bills and work our way to some resolution so that we have a fair process in Pennsylvania moving forward. Thank you.

1 CHAIRMAN HARPER: Thank you, Senator. I think it
2 would be helpful for those who are watching if each of the
3 members and staff, everybody who's up here, introduces
4 ourselves to you before we start. I would like to say that Act
5 111 is a big concern both to the FOP and to our local municipal
6 government, and for that reason we need to talk about it.
7 That's why we're here today and we're going to have
8 representatives from both local government and also from the
9 Fraternal Order of Police. And we're going to hear from them
10 and we're going to talk about these issues and see if we can
11 find some common ground. So I'm going to start at the far
12 right and ask my colleagues to introduce yourself and say what
13 county you're from. Go ahead, Rob.

14 REPRESENTATIVE KAUFFMAN: I'm Representative Rob
15 Kauffman from Franklin and Cumberland County in the 89th
16 District.

17 REPRESENTATIVE MIRABITO: I'm Representative Rick
18 Mirabito from Lycoming County, representing the 83rd District.

19 REPRESENTATIVE PAINTER: Mark Painter from
20 Montgomery County, representing the 146th District.

21 REPRESENTATIVE SCHREIBER: Kevin Schreiber from York
22 County, representing the 95th District.

23 REPRESENTATIVE TOPPER: Jesse Topper. Bedford,
24 Fulton and Huntingdon Counties in the 78th District.

25 CHAIRMAN HARPER: Thank you. And you know I'm

1 Representative Kate Harper, but my colleague on the Democratic
2 side of the aisle, Bob Freeman, has a medical issue this
3 morning and is not able to be with us and sends his regards.

4 SENATOR EICHELBERGER: John Eichelberger. I
5 represent the 30th District, which is Blair, Bedford,
6 Huntingdon, Fulton and a piece of Mifflin.

7 SENATOR TEPLITZ: Rob Teplitz. I represent the 15th
8 Senatorial District, which includes parts of Dauphin and York
9 Counties. I'm also the Democratic Chair of the Senate Local
10 Government Committee.

11 SENATOR SMUCKER: Good morning. I'm Lloyd Smucker.
12 I represent the 13th District, which you are sitting in now.
13 And in fact, I'll take the liberty of making just a few
14 comments and welcome all of you to my district, the 13th
15 District. Very much appreciate the Chair choosing Lancaster as
16 the place to hold this hearing and appreciate Senator
17 Eichelberger choosing for the Local Government Committee to be
18 part of this hearing, as well. It's an important topic. But
19 we hope while you're all here that you take some opportunity to
20 enjoy what we have to offer here in Lancaster. There's a great
21 revitalization taking place here in the city. Lancaster has
22 become an arts destination and it's very well known for its
23 restaurants and a lot of other amenities here in the city. So
24 we're proud of what's happening and hope you have an
25 opportunity to take some time and see and experience Lancaster

1 for yourself. Thank you.

2 CHAIRMAN HARPER: Thank you, Senator.

3 SENATOR HUTCHINSON: Senator Scott Hutchinson, 21st
4 Senatorial District, which includes all or part of six counties
5 in northwestern Pennsylvania. I live in Venango County. I
6 also represent Clarion, Forest, Warren, part of Erie and a big
7 portion of Butler County. Glad to be here. Thank you.

8 CHAIRMAN HARPER: Thanks very much for coming.
9 Although I was hoping you'd come in from Harrisburg and not
10 home last night; right?

11 SENATOR HUTCHINSON: Uh-huh (yes). Uh-huh (yes).

12 CHAIRMAN HARPER: Okay. Good. Senator Teplitz,
13 would you like to make a few opening remarks as the Minority
14 Chair of the Senate Committee?

15 SENATOR TEPLITZ: Yes, thank you. Thank you to you
16 and to Senator Eichelberger for having this hearing. This is
17 an important issue. There's no doubt that there are struggling
18 municipalities across the Commonwealth, and we in the Local
19 Government Committee, on the Senate side and on the House side,
20 have been working to address the many causes of those
21 struggles. And there are many causes. I think it's important
22 that we have an open and honest debate about Act 111 and these
23 bills. I know that there was a hearing a few years ago, but
24 I'm happy to participate in this one as a new Senator. I think
25 what's important throughout this discussion is that, you know,

1 while we are open and transparent about the discussion, that we
2 have it in a civil manner. And I know that that's how the
3 previous hearing was conducted and I look forward to having
4 this hearing conducted in the same manner. Thank you.

5 CHAIRMAN HARPER: Thank you, Senator. Now, we have
6 the bills which were introduced by Senator Eichelberger and
7 also Representative Kauffman, who are both here and both have
8 time on this agenda, if you would like to explain your bill or
9 have the staff members explain your bill. What do you prefer?
10 You want to go first? Okay.

11 SENATOR EICHELBERGER: I can go over the bill
12 briefly. Rob, do you want to start?

13 REPRESENTATIVE KAUFFMAN: You go right ahead.

14 SENATOR EICHELBERGER: Okay. I appreciate Rob
15 working with me on this legislation so we have representation
16 in both chambers. The bill came about --- first of all, a
17 little history about the bill. The bill came about because we
18 had a hearing a few years ago and Senator Earll, who's retired
19 since then, and Chris Ross, I think, was on the House side. It
20 was a joint hearing.

21 CHAIRMAN HARPER: I think so.

22 SENATOR EICHELBERGER: And we went through a lot of
23 information with what was affecting cities primarily and
24 municipalities in general with financial distress. And one of
25 the major issues that was identified and since then has been

1 deemed a priority by all the municipal associations is Act 111
2 and the problems resulting from the arbitration awards that
3 they have, which have been just incredible in some respects.
4 And, of course, we've all seen what happened in the City of
5 Scranton since the Supreme Court decision there. We've had to
6 go back and address that specifically. But given that
7 hearing's information, Senator Earll first drafted a bill and
8 we've worked on it since. And then I became its sponsor after
9 she retired from the Senate.

10 Act 111 is a bill that simply is the process that
11 spells out how binding arbitration is conducted. Police and
12 firefighters in Pennsylvania, constitutionally, are not
13 permitted to strike, so there's a process involved to settle
14 disputes for their unions. And this is the binding arbitration
15 process. It was developed in 1968, I believe. Yes, June 24th,
16 1968. It's never been updated since then. It's about 46 years
17 old. And we felt that it has gotten out of hand with some of
18 the arbitration decisions. The unions choose the arbitrators.
19 They choose the neutral arbitrator, rather they choose one for
20 themselves. They also choose the neutral. The municipalities
21 are paying two-thirds of the cost, plus. We'd like to see that
22 changed and the bill addresses making that equitable to a 50/50
23 split, having a fair process in selecting the neutral
24 arbitrator with a coin toss, making sure that the arbitrators
25 do not include in their decisions anything that is outside the

1 scope of state or federal law, and believe it or not, we have
2 arbitrators now making decisions that are outside the scope of
3 the law.

4 I've had complaints when I met with both parties
5 about the timelines involved in the arbitration process. Both
6 claim that the other is dragging their feet, so we tightened up
7 the timelines. We made them very reasonable and we also have
8 language in here that if they --- if one party goes outside the
9 timelines, the other can file an unfair labor practice charge
10 against them, which is a pretty serious charge. We have a
11 larger pool of arbitrators to choose from and we also ask that
12 at least one of the arbitrators come from the local area, if at
13 all possible, so that they have a better understanding of the
14 people in that area, the economy, the issues and so on, and
15 have more of a stake in it.

16 In this day and age, transparency is very important
17 in government. This process is a closed process now. We'd
18 like to open that up and make sure that the public, including
19 the press, has access to the hearing portions of arbitration.
20 Certainly negotiations would still be confidential, but the
21 hearings would be opened up for transparency's sake.

22 And importantly, the decisions that have been
23 reached in the past, according to the municipalities, have not
24 always reflected the financial position of the municipality at
25 the time the decision was rendered. So many municipalities

1 today are in tough shape, financially. We would change how the
2 order would be issued from the arbitrators so that it would be
3 a Finding of Fact and that would entail having the award spell
4 out how the award would be paid for by the municipality. So
5 that it would put the burden on the arbitrator to spell out
6 that the award would be within a reasonable amount of money for
7 the municipality to pay and that they would have the means to
8 pay that award. Now, it seems that --- some claim anyway, that
9 awards are granted without any consideration of what the
10 municipality can pay. So that's a thumbnail sketch of the bill
11 and that's most, if not everything. And Rob might follow-up
12 with some intent or something else that he wants to discuss.

13 CHAIRMAN HARPER: Representative Kauffman, do you
14 want to add?

15 REPRESENTATIVE KAUFFMAN: Well, just very briefly,
16 because I recognize that we're already behind on the schedule.
17 But I think it is important to note that what Senator
18 Eichelberger already mentioned, that this law is almost 50
19 years old. And I know that there are many who'd like to ignore
20 that and say, you know, nothing needs changing, but I think in
21 this age, in 2014, there are many things that are different in
22 America. And there are many things that are different in this
23 commonwealth. And there are municipalities that are going
24 under, that are struggling dramatically, and I think there
25 needs to be a recognition that this is something that at least

1 could be discussed. And there's been an attempt to avoid any
2 discussion simply by, very frankly, calling names. I've seen
3 correspondence that very frankly doesn't address one issue in
4 this legislation, but simply tries to indicate somehow that
5 myself, Senator Eichelberger or anyone who would cosponsor the
6 bill is against those in our public safety areas of the public
7 government and that could be farther from the truth. I think
8 it's --- you know, able to be said that all of us around this
9 table support our public safety unions and public safety
10 employees. It's just a matter of the times are different.

11 We must look at how we can change things, because
12 very frankly, when the municipalities are struggling and going
13 under, I don't think anyone wants to point the blame at awards
14 from the arbitration decisions. So I can't help but strongly
15 encourage us who simply want to avoid discussion to come to the
16 table and talk about these things to see where we can possibly
17 agree. Because the end result of avoiding any discussion is
18 not going to be good for the Commonwealth or the municipalities
19 or the public safety unions that are involved either. So I
20 appreciate the Chairman for having this open hearing today and
21 giving the availability for truly airing the issue and
22 discussing it in depth. Thank you.

23 CHAIRMAN HARPER: Thank you very much,
24 Representative. I do want to point out that our list of
25 speakers this morning includes I think all the stakeholders or

1 representatives thereof, so hopefully, we'll have a full and
2 frank discussion on the issues involved here. I would like to
3 recognize Representative Jerry Knowles, who's here. Jerry,
4 what county are you from?

5 REPRESENTATIVE KNOWLES: I am from the 124th
6 legislative district. I represent a portion of Schuylkill and
7 a portion of Berks Counties.

8 CHAIRMAN HARPER: Thank you very much for coming.
9 I'd also like to give a shout out to the members of the
10 Pittsburgh Chamber of Commerce and the Lancaster Chamber of
11 Commerce who are actually our hosts today here at the Ware
12 Center. So if anybody's in the room, thank you very much for
13 hosting us. It's an important discussion we have to have.

14 First up is a panel discussion. If the members
15 would come up and take seats. We should have Jeffery
16 Stonehill, manager of the Borough of Chambersburg; Stephanie
17 Teoli Kuhls, of Middletown Township, an old friend from my part
18 of the world. Hello, Steph. Patricia Brogan, Chief of Staff
19 to Mayor Gray, City of Lancaster. Thanks for hosting us. John
20 McLaughlin, Esquire, a Partner of Ballard Spahr and Tom
21 Baldrige, President and CEO of the Lancaster Chamber. Thanks
22 for hosting.

23 I guess you folks have divided your time among
24 yourselves. Before you begin speaking, because we are taking
25 notes here, if you could just introduce yourself and which

1 entity you're with. I think that would be helpful to get a
2 good set of notes of the testimony. Okay? All right. Who
3 would like to start?

4 MR. BALDRIGE: I'll start. I'm Tom Baldrige,
5 President and CEO of the Lancaster Chamber. I will mirror
6 Senator Smucker's welcome to Lancaster and raise the
7 expectations for you to engage in commerce as soon as this
8 activity's over. But I do greatly appreciate you coming to
9 Lancaster and we are pleased that you cared enough to take the
10 time to look at this issue a little bit.

11 Very quickly, all I want to do is give some context
12 to what will follow me after this panel. About four years ago,
13 a group of chambers got together and they started to discuss
14 concerns about the urban areas that we were a part of,
15 Lancaster City being one of those areas of concern. And what
16 we found in our discussions at that was that all of us had
17 similar concerns about the future of our cities, particularly
18 based on the cost factors, many of which are associated with
19 the state mandates. And as the discussion continued, the
20 concerns became more unifying for us as a chamber and we all
21 realized that we were in this together and that it wasn't
22 impacting one area necessarily more or less than another, but
23 it was just a combination of impacting us all.

24 At the same time, Pennsylvania League of
25 Municipalities was looking into this issue with all of their

1 constituencies and coming to the same conclusion. And about
2 two plus years ago, the two organizations got together and
3 talked about forming a coalition, which has now become the
4 Coalition for Sustainable Communities. That coalition is now
5 30-plus chambers and state-wide associations strong and it is
6 committed to trying to prohibit cost drivers that are
7 significantly impacting the future of not just our urban areas,
8 but our municipalities throughout the state. As the Act 47
9 concerns continue to grow, we think that this issue becomes
10 more and more acute. And we are more and more committed to
11 trying to do something about it.

12 In that regard, we identified three primary issues
13 as our overarching concerns. One is pension reform at the
14 local level. I know they discussed it at the state level. My
15 hope is that the local level does not get lost in the
16 discussions. Two is Act 47 reforms, some of which has been
17 enacted, some of which we still think could be helpful. And
18 then the third piece is the Act 111 reforms. All of those cost
19 drivers are significant drags on our local municipalities and
20 we strongly believe that before we can consider revenue
21 enhancements, we need to make sure that we are getting control
22 of the cost drivers. And those three that I've outlined are
23 major ones in that regard.

24 As it relates to the people that follow me,
25 obviously, they all support the changes that are being

1 recommended. And you'll hear more details about that. But on
2 a broader sense, I do want to reiterate what has been said, as
3 well. And that is how much we appreciate the fact that this
4 issue, at least the issue, is getting the attention and
5 discussion it deserves and the recognition that it's not
6 something that's insignificant to the future of our
7 municipalities and more broadly to the future of the
8 Commonwealth.

9 The final piece I just want to say is that the role
10 in our chambers is going to be a unique one in its relationship
11 and partnership with local governments throughout this entire
12 process. But I think it's just indicative of how much we on
13 the chamber's side are committed to this issue, being that it
14 has a significant impact on the economic health of
15 Pennsylvania's long-term future. Thank you.

16 CHAIRMAN HARPER: Thank you very much, Tom. Next?
17 For the members, I think it would be more efficient if we let
18 the whole panel talk before we ask questions, because we got a
19 big schedule this morning and we're already behind.

20 MR. STONEHILL: I'll try to be brief then. Thank
21 you very much for the opportunity to come before you today. My
22 name is Jeffery Stonehill. I'm the Borough Manager of the
23 Borough of Chambersburg, Franklin County. I'm here today to
24 represent my elected officials of the town council of the
25 Borough of Chambersburg. And the first thing I wanted to point

1 out, as you know, the issues that we're here to discuss today,
2 specifically reforms of Act 111, are not partisan issues. My
3 council is made up of people of both elected parties. They
4 stand in unity together for purpose of trying to get approval
5 from government. It has nothing to do with which side of the
6 ballot you're on. In fact, it's not even a matter of --- we
7 believe very strongly in the Borough of Chambersburg in a well
8 managed local government and an Act 111 process that works for
9 all, the city's management, the tax payers and the municipal
10 employees themselves. And we're very much in support of the
11 union process. We have a number of labor unions in the Borough
12 of Chambersburg, and we're proud we are making history in
13 Chambersburg.

14 Finally, to add to some of the comments that were
15 made, this is in no way to be seen as disparaging our local
16 public servants, police officers and firefighters, who perform
17 admirably for our communities. We want nothing more than to
18 provide them with the wages and benefits they deserve and also
19 that the community can afford to deliver to them. And what
20 we're really talking about today is an improvement of the
21 system that's been around, as you heard, since 1968. You might
22 want to call it a tweak. It's not a major overhaul. In fact,
23 there are those who, in the past, have talked about major
24 changes to the collective bargaining process. That's not what
25 we're talking about today. We're talking about minor

1 improvement that will really improve the system and maybe
2 better it for everybody. And that's really what our goal is.

3 We have the testimony of my Borough Council in your
4 packet, so I won't go into great length on it. I will say that
5 there are a couple particular things that came out of our
6 experience with Act 111 that we wanted to bring to your
7 attention, which we think are represented well in the proposed
8 legislation. First, we don't believe, in Chambersburg, that
9 the process should be as secretive as it has become. We
10 believe in transparency in government. We believe that's
11 crucial to the process and we believe that it's good for
12 everybody participating. Unfortunately, too much of Act 111 in
13 the process of infrastructure takes place behind closed doors.
14 And we believe that the citizens of our community, as well as
15 the representatives of the news media have a right to know the
16 things that go on in the Act 111 process. I know that the
17 state had moved dramatically for government transparency over
18 the last few years. We think that this is something that
19 really needs to reach to the Act 111 process.

20 Obviously, you can't negotiate contracts in public.
21 Negotiations never work well in the public arena, but hearings
22 themselves, just like any judicial process, that's something
23 that can be done in public and probably would benefit from the
24 public participation and seeing really what's going on.

25 And in Chambersburg, we believe that if those

1 hearings were held in the public record, that those hearings
2 would go better. It would actually work better. And that the
3 testimony given by both sides, management and the labor union,
4 would be better if it was scrutinized by the public. The
5 public has a right to know what goes on in the Act 111 hearing
6 process. So we're very much in favor of that attribute in the
7 proposed law. Let's open the doors and let's air things out
8 publicly and allow transparency in our process.

9 The second thing that we would very much like ---
10 and we think this is a benefit for the proposed legislation.
11 We'd like the arbitration findings to have some basis in fact,
12 basis in law. Like any quasi-judicial findings, they should be
13 tied to the law, tied to the financial ability of the community
14 to pay and we think that that kind of logic, that makes sense.
15 If my employers on the Borough Council of the Borough of
16 Chambersburg said X and the labor union is saying Y, that's
17 fine. But when Z is the decision of the arbitration panel, we
18 think that those --- that conclusion, that Z conclusion, should
19 have their basis in fact, basis in law and should be explained
20 in a document just like any quasi-judicial decision.

21 And those two things are really just tweaks. It
22 doesn't change the process. It doesn't throw it out. It
23 doesn't amend it. It really just opens it up and adds some
24 logic to it. And so we very much support, in Chambersburg, the
25 proposed legislation and the improvements in the Act 111

1 process and we hope that you all consider that today. So thank
2 you very much.

3 CHAIRMAN HARPER: Thank you.

4 MS. BROGAN: Good morning, my name is Patricia
5 Brogan. I'm Mayor Gray's Chief of Staff. He's the Mayor of
6 Lancaster and he asked me to express his regret in regards to
7 his not being able to join you here today. I will read his
8 testimony, but first, I'd like to thank all of you for being
9 here today and for choosing Lancaster as the location of these
10 important hearings. And I know the mayor would thank Senator
11 Smucker for always supporting Lancaster, but also always
12 promoting Lancaster. So ---.

13 CHAIRMAN HARPER: Which he did.

14 MS. BROGAN: Yeah, he did. Enjoy our community of
15 commerce out here today. I think when you go around the city,
16 you'll probably notice that Lancaster is not a distressed
17 municipality yet and that's not to say we don't struggle. But
18 our taxpayers, like most taxpayers across the state, are
19 struggling and they are distressed. So I think when we talk
20 about stressed municipalities, maybe we need to instead talk
21 about distressed taxpayers, because that's what this is really
22 all about. I will read Mayor Gray's testimony. And before I
23 start, I want to also thank the members of the local
24 Firefighters Union 319 for being here today. That's the
25 Lancaster Firefighters Union. And I note that their presence

1 here today will support the Mayor's position. Okay. Ever
2 hopeful.

3 Municipalities that rely on full-time police and
4 fire personnel have long recognized that failure to update the
5 Act 111 arbitration process adopted nearly half a century ago,
6 severely undermines the fiscal health and autonomy of local
7 governments. Let me be clear. We support the right of public
8 and private sector workers to unionize and engage in collective
9 bargaining. Senate Bill 1111 and House Bill 1845 do nothing to
10 restrict these rights. Instead, these bills propose
11 reasonable, common sense reforms to the Act 111 contract
12 arbitration process.

13 In Lancaster, police and fire contracts determine
14 roughly 65 percent of the city's annual operating budget.
15 Moreover, Act 111 arbitration awards, combined with defined
16 pension mandates have caused police and fire budgets to
17 increase in spite of reductions in force levels. From 2007
18 until 2012, police personnel expenses in Lancaster increased by
19 more than 8 percent in spite a 14 percent reduction in the
20 number of sworn officers. During the same time period, fire
21 personnel expenses increased by 13 percent while the number of
22 firefighters declined by 15 percent. This trend will continue
23 until the General Assembly addresses the problems inherent to
24 the Act 111 contract arbitration process.

25 First, the Act 111 process for resolving contract

1 disputes discourages meaningful contract negotiations between
2 city management and uniformed bargaining units. In fact, the
3 arbitration process actually serves as an incentive for public
4 safety unions to declare an impasse in contract negotiations.
5 Senate Bill 1111 establishes a requirement that both parties
6 engage in good faith negotiations or be subject to unfair labor
7 practice charges before the Pennsylvania Labor Relations Board.
8 Thus, providing both sides with an incentive to present more
9 reasonable demands during the negotiation process so that
10 contracts can be resolved without arbitration.

11 In the current Act 111 process, the so-called mutual
12 arbitrator is chosen from among three candidates. The proposed
13 legislation allows parties to choose from among seven arbiters.
14 In addition, the cost of the neutral arbitrator is borne by the
15 municipality. For Lancaster, direct expenses related to Act
16 111 arbitrations have averaged between \$55,000 and \$75,000.
17 These bills would require that costs be shared equally by both
18 parties.

19 Act 111 arbitrators too often do not take into
20 account the ability of a municipality to pay when awarding
21 salaries and benefits. The average annual salary for
22 Lancaster's uniformed police and fire personnel is \$65,000, two
23 times Lancaster's median household income of just under \$33,000
24 a year. These bills would mandate that arbitration awards
25 contain Findings of Fact and would place a limit on the ability

1 of the arbitrator to impose new costs.

2 Arbitrators must be held accountable for meeting
3 deadlines for the issuance of arbitration rulings. An
4 arbitration award for Lancaster's current police contract was
5 issued nearly 18 months after the contract had expired. Keep
6 in mind, arbitration awards are retroactive to the start of the
7 contract period. Thus, like other municipalities, Lancaster
8 has been forced to prepare successive budgets with no
9 information as to the costs of public safety personnel.

10 Finally, the Act 111 arbitration process is not
11 transparent. We absolutely support confidential and private
12 contract negotiations. That said, we believe that contract
13 arbitration hearings should be open to the public and subject
14 to Right-to-Know requirements. These proposed reforms would
15 ensure a transparent process in which public sector employers
16 and employees are accountable to the public. As a matter of
17 fairness and common sense, taxpayers should have access to
18 these proceedings, the outcome of which will determine how more
19 than two-thirds of their tax dollars are spent.

20 Across the Commonwealth, local governments struggle
21 under the weight of crushing financial burdens, finite sources
22 of revenue and increasing demand for services. So do
23 taxpayers. We can agree that police and fire personnel deserve
24 all the financial and moral support we can muster. Their
25 service is critical, their courage is commendable and their

1 commitment to this community is unquestionable. The same can
2 be said for our taxpayers. The reforms proposed in this
3 legislation offer reasonable balance between the value placed
4 on our uniformed public safety personnels and the finite
5 resources of the taxpayers. I appreciate this opportunity to
6 speak to the committee today on behalf of Mayor Gray in regard
7 to this legislation. Thank you.

8 CHAIRMAN HARPER: Thank you. Stephanie?

9 MS. TEOLI KUHLS: Good morning. Hello, I'm
10 Stephanie Teoli Kuhls. I'm manager of Middletown Township in
11 Bucks County. I'm also here today in my capacity as president
12 of the Association for Pennsylvania Municipal Managers, APMM,
13 which is an organization of 350 municipal managers representing
14 communities from across the Commonwealth.

15 I appreciate you giving me the opportunity to speak
16 to you about Middletown Township's experience with the Act 111
17 arbitration process and to allow me to advocate for the passage
18 of these two bills, what I believe are real common sense
19 reforms to legislation which hasn't been changed in more than
20 45 years.

21 As my colleague had mentioned, I want to add that
22 our support of this legislation by no means indicates that we
23 do not support the unions that represent the men and women who
24 work for our police department in Middletown Township.

25 Our experience with Act 111 binding arbitration is

1 simply that the process is fatally flawed at this point. It is
2 unwieldy in its timing. It is slanted towards the unions, in
3 our opinion. And it is unnecessarily costly to the taxpayers
4 of our community. Middletown is a township of the second
5 class. We have 45,000 residents, the third largest community
6 in Bucks County. Our police department is an accredited agency
7 with 54 active police officers serving our community. Our
8 budget is \$11.4 million. That is 69 percent of our general
9 funds budget in Middletown.

10 Middletown is not a financially distressed
11 community, nor is it an affluent community. According to the
12 2010 census, our average resident makes just over \$52,000.
13 Although our community boasts large commercial and retail
14 customers and taxpayers including Sesame Place and the Oxford
15 Valley Mall, we have been significantly impacted by the
16 economic downturn. Our written testimony provides some
17 background on some of the budget concerns the township has been
18 faced with. I'll just make a few key points.

19 The average wage of a police officer in Middletown
20 Township in 2014 is \$107,000. That is two times --- nearly two
21 times what the average taxpayer makes. And our minimum
22 municipal obligation into our pension plan is 2014 in more than
23 \$2 million. That is driven largely by the number of service
24 connected disabilities that we have in Middletown Township. In
25 2014, because of revenue problems in our general fund, the

1 Board of Supervisors implemented for the first time an earned
2 income tax. And so our arbitration awards, you know, directly
3 is linked to the Board having to raise taxes.

4 Our story about Act 111 is really unlike the stories
5 that you've heard today and across the Commonwealth. The
6 process is simply broken. It drags on for far too long, in our
7 case, two years. It is extraordinarily expensive for the
8 taxpayers and it requires commitment of vast quantities of
9 municipal resources. Perhaps one of the most significant
10 problems with Act 111 in terms of its slant towards unions, in
11 our opinion, is the fact that the entire process is placed in
12 the hand of a neutral arbitrator with no real big picture
13 understanding of our community and without any level of
14 accountability or justification for actions.

15 Looking at timing, our inability to find common
16 ground in our negotiation processes was reached in the spring
17 of 2011. Our arbitration award was received in May of 2013, a
18 full two years later. During this two-year time period, two
19 budget cycles passed. The management of the police budget and
20 the management of the overall budget was basically in a holding
21 pattern as we waited for this limited decision. I mean, we
22 really were starting to live in fear, not knowing if this award
23 could mean a tax increase, it could mean a reduction in
24 service.

25 One of the other, you know, major problems we talked

1 about is the fact that the union does not share in the cost of
2 the arbitration, and therefore, there's no real motivation to
3 settle. Middletown Township paid more than \$20,000 to the
4 neutral arbitrator in this most recent process. The selection
5 process does also favor the union when you combine the fact
6 that the list of neutral arbitrators includes only three
7 possibilities with the requirement that a municipality must
8 make the first strike to the list, you end up with a process
9 that always gives the union the final say in the selection.
10 Expanding the list to include seven as proposed by the
11 legislation and starting it off with a coin toss is a common
12 sense reform that would really level the playing field.

13 Another important factor to consider is that these
14 individual neutral arbitrators, their income is tied to be
15 elected time and time again. And this results in a process
16 that is motivated by the desire to not offend the side that
17 gives the arbitrator the most repeat business, typically the
18 union. There's really a common perception that the process is
19 fine and that arbitrators don't want to be seen as giving
20 favorable management awards.

21 We talked also about accountability. The hearing
22 and executive session are held behind closed doors and that's a
23 grounding factor of the public oversight. And so awards are
24 issued that don't necessarily include justifications. In the
25 Middletown Township case, one of the components of our award

1 was restoration of a management right that allowed us to really
2 control overtime costs. To compensate for providing that in
3 the award, the neutral arbitrator granted a rank differential,
4 an item that had never been part of the union proposal and was
5 not part of the testimony during the hearing itself.

6 Again, we talk about the cost, exorbitant, beyond
7 the value of countless hours of staff time invested over two
8 years, there are also the costs for consultants, labor
9 attorneys and the neutral arbitrator. In our case, we spent
10 more than \$200,000 on all of those services. Just a final
11 note, that arbitration award included 14.25 percent increases
12 over four years and that amounts for us to more than \$700,000
13 in costs. And so I would just like to conclude that these two
14 bills that are before you right now will help to fix a system
15 that we believe is broken and it will still provide a fair
16 process for collective bargaining and arbitration for the
17 important safety employees that serve our communities. Thank
18 you very much.

19 CHAIRMAN HARPER: Thank you, Stephanie. Mr.
20 McLaughlin?

21 MR. MCLAUGHLIN: Thank you. I want to thank the
22 committee for the opportunity to speak here today, as well.

23 I was looking through the comments of our colleagues
24 on the other side this morning when I got here, and it seems
25 like one of the themes of their comments is why is there a need

1 to change this bill at all. Well, the fact of the matter is
2 --- the real question is why weren't these changes made years
3 ago? Because frankly, a lot of these towns wouldn't be in the
4 current state they're in if they were. Consider the fact that
5 most municipalities have public safety departments. The cost
6 of public safety is anywhere from 60 to 80 percent, sometimes a
7 little less, sometimes a little more, of the total budget.
8 Personnel costs are probably at least 80 percent of that
9 percentage of public safety costs.

10 So when you have a unionized workforce, the only way
11 to deal with those costs is through an effective collective
12 bargaining. And in Pennsylvania, we have Act 111. And right
13 now, it is not an effective way to deal with those costs.
14 These municipalities don't go with Act 111 all the time. In
15 fact, they try to resist it for a number of reasons. They
16 don't use it. Probably the majority of the municipalities
17 don't, but that's irrelevant. That is totally irrelevant.
18 That's a red herring argument, because we need Act 111. It's
19 like a life raft. You need it. There's nothing worse than
20 jumping in the water and the life raft is out there and what
21 happens? Well, that's what a municipality is going through
22 because that's the current situation with Act 111. There has
23 been a life boat which has holes and it's not getting very far.
24 It's completely ineffective the way it is right now.

25 And this bill is actually --- I'm shocked. I think

1 it inspires confidence, because this bill is a surgical
2 approach to fixing the current problems in Act 111. I've heard
3 --- I've read comments somehow --- I'm not quoting, but somehow
4 the anti-union, anti-collective bargaining units or we make a
5 solemn promise that was made back in 1969. Well, the fact of
6 the matter is this bill is so surgical. It deals with very
7 specific issues that need to be changed. And it deals with
8 them in a very reasonable way.

9 I say that this bill actually enhances collective
10 bargaining, protects public safety workers and protects the
11 service. Because the issue here that this bill will be
12 designed --- this is not about collective bargaining. It's not
13 about unions. It's not about public safety, frankly. Well, it
14 is about public safety. It's about sustainability of public
15 services, police services, fire services, all services, because
16 when --- it's danger in a lot of ways. Unless you feel --- and
17 I hope nobody on this panel does --- that the taxpayers are an
18 infinite source of revenue, then there's some danger. What you
19 take from one area, what you give to public safety, you have to
20 take in somewhere else. It's just the way it works. And
21 that's why municipalities constantly, in the past few years,
22 have been laying off public workers, delaying --- non-union
23 public workers, delaying repairs to parks, closing pools, all
24 these things are what was expected of a municipality. If I'm
25 living in a municipality, I want a police department if it's a

1 sizable municipality, but I also want to be able to send my
2 kids to the library. I want to be able to send my kids to a
3 pool. I don't want to have to get an alignment every few
4 months because the roads are out of whack. I want other
5 services. And unless this bill is fixed, that's not going to
6 be possible.

7 So to take the bills at issue, I would like to talk
8 about a few key areas that have been touched on before, but I'd
9 like to give an example. The first one and to me the heart of
10 this bill is the requirement that arbitrators have to basically
11 explain what they're doing and why they're doing it and most
12 importantly, what kind of impact it will have on the public and
13 the public finances. What we're talking about here is not a
14 piece of paper. It's not a collective bargaining unit. What
15 we're talking about is the impact to the taxpayers. And
16 currently, taxpayers, for a lot of reasons and Act 111 is one
17 of them, are just getting year, after year, after year
18 increases and it's got to stop sooner or later. The money's
19 got to come from somewhere. It's not a business. Basically,
20 it's got to raise the prices, raise the taxes. And that's not
21 a good thing. But this --- currently under Act 111, an
22 arbitrator gives an award after a hearing, doesn't have to say
23 anything about why he or she is doing it or whether it's
24 reasonable or whether the municipality can pay for it.

25 And I'll give you a couple of examples. And these

1 are --- we didn't necessarily represent these places, but
2 they're --- it's called the ---. In the City of Chester, an
3 Act 47 community in southeastern Pennsylvania, they had --- and
4 I'm not going to go through all of these, but they had over
5 \$100 million of unfunded liabilities for police and fire
6 pensions and post-retirement health care. They had, if they
7 were going to pay, an annual required contribution to fund
8 those post-retirement benefits of \$8 million a year as well as
9 they had to pay \$2 million on a pay as you go basis. That
10 means they pay \$2 million in premiums for those that weren't in
11 their services anymore.

12 They went through a way to address those issues in
13 Act 111. And what happens? The arbitrator doesn't address one
14 of them. What the arbitrator does instead for the firemen is a
15 ten year reward, five years retroactive, increases rate of pay
16 from three to four percent. Basically the total increase is 34
17 percent wage increase. And to boot, to address those serious
18 cost concerns, they implemented a minimum manning provision ---
19 a new minimum manning provision, modified the old one, provided
20 more days off and increased pension benefits. Not one
21 consideration was given --- not one word in the order dealt
22 with why he was doing it.

23 Don't get me wrong, we're not saying that they
24 should not be awarded those provisions. I don't think it
25 should have been in that case, but this law is not going to say

1 you award any pension benefits or you can't award this or that.
2 It's going to say --- all it's going to require --- the only
3 thing it's requiring is that the arbitrator says I'm awarding
4 this and this will have this impact on the municipality
5 considering whatever it wants to consider. And currently,
6 municipalities provide that information. It's not going to
7 increase costs on the municipalities at all because they
8 already provide the financial status of the municipality. The
9 information's all right there. Unions do it as well. So
10 there's really no additional presentation requirement. All the
11 arbitrator has to do is basically garner that evidence and
12 decide and explain it. And they have to give a detailed and
13 accurate explanation of why he or she awarded a certain
14 increased benefit or increased salary and what effect it will
15 have.

16 And I did --- we all do that all the time. It may
17 sound silly, but if you go out to buy a cup of coffee, you look
18 in your pocket, you see you have \$2, well, I'm going to have to
19 go to Dunkin Donuts, not Starbucks. You know, I'm going to
20 have to go to --- we all make that analysis every day. This is
21 assuming every day. Every agreement that they get in --- they
22 enter into they're going to make that analysis, the impact it's
23 going to have long-term and short-term on a business and in the
24 business world every day or every --- in their own finances.
25 Why shouldn't municipalities?

1 Probably the most important role of a municipality
2 --- one of the most important roles is spending public money.
3 And all this requirement does is make it clear that --- it
4 makes it be spent in a responsible way. And you're delegating
5 that responsibility to somebody, male or female arbitrator,
6 who's coming in there from somewhere and leaving, not subject
7 to votes like a supervisor or council meeting would if they
8 decided to give these benefits without an award. Not something
9 that's a democratic process.

10 All we're doing through this legislation is saying
11 when you issue what benefit you give, you have to determine the
12 impact. And that's only reasonable. In fact, I can't
13 understand why anybody would oppose this, why anybody would say
14 that's an unreasonable proposal. It's not. It's just common
15 sense.

16 We're talking about the City of Chester. Bristol
17 Township as well, they had incredible \$85 million in unfunded
18 liabilities. They got pay increases, that was not addressed.
19 They got pay raises of three and a half to four percent, a
20 minimum --- police minimum manning requirement, a DROP. Today
21 these unfounded liabilities are over \$90 million and the police
22 force is smaller in size. And that's because the money's got
23 to come from somewhere. They can't keep raising taxes. And so
24 that's why these measures will enhance public safety. We're
25 not in 1969 anymore. I mean, it's really just not 1969. It's

1 2014. Wages and benefits for public service personnel are not
2 where they were in 1969. They're very generous and they're
3 going to stay there. With this, we're not trying to take
4 anything away. We're just saying it has to be justified.

5 And there are examples in my notes --- in the
6 written testimony. And again, these have lasting --- these
7 awards have lasting impacts. It talks about an award in 2004
8 in Allentown. Pension provisions were outrageous. They're
9 held unlawful, they're excessive, they're outrageous and today
10 --- in a couple years, the City of Allentown will have to pay
11 25 percent, one-quarter, of its general funds to fund pensions
12 unless it takes other actions, which is what it's going to have
13 to do, which would mean selling a valuable asset.

14 So this provision only makes it --- it's only common
15 sense. It puts the taxpayer in the litigation. The taxpayer
16 and the sustainability issue should be part of the Act 111
17 equation and right now it's not. If you don't make the
18 arbitrator do something, a lot of times it's like a Supreme
19 Court judge, they're not going to do it. If they don't have to
20 tie their shoe, they won't. And this will require that to be
21 done simply because I think the second point is this law, it
22 keeps the current appeal process --- appeal standard, scope and
23 review parameter, which is very narrow.

24 If the arbitrator doesn't look into the financial
25 analysis --- the financial analysis requirement, then that can

1 be appealed. And it has to be that way. I know people would
2 say that's terrible, you're tampering with the collective
3 bargaining process. Well, my response to that is two things.
4 One, if you're going to give teeth to a financial analysis, you
5 have to make the appeal --- you have to put ramification in
6 there if it's not done. It's got to be done. It's only
7 responsible. Two, Act 111 binding interest arbitration is not
8 collective bargaining. There's no collective bargaining. You
9 don't have a third party --- you're not going to have a party
10 come in and basically issue --- they decide what it's going to
11 be. It's just not. I'm not saying it's a bad process or it's
12 inappropriate for here. I'm just saying it's not traditional
13 collective bargaining. So then when you're dealing with the
14 public purse, you need someone --- you've got to have some kind
15 of safeguard when this third party they don't elect is coming
16 in and making decisions. And that appeals area does that.

17 The other issue in question, keep your --- some of
18 the comments say that, you know, it really --- it hurts the
19 collective bargaining process to make the union pay its share
20 of the neutral arbitrator. Well, the fact of --- and somehow
21 those small unions can't pay that money. Well, you know,
22 that's a double-edged sword because there are very small
23 municipalities that to pay that money is a pretty sizeable
24 burden as well. Why should the employer --- why should the
25 public have to pay for all the neutral arbitrator? I mean,

1 just from a philosophical standpoint, it makes no sense. It's
2 an important case, but it's an important case to both sides.
3 It's not always --- I would say it's rarely the employer's
4 fault of going into Act 111 interest arbitration. But what it
5 is rate. You know, whose fault it is doesn't matter or how it
6 is. Both parties are going, both parties should share the cost
7 of that neutral arbitrator.

8 And in other areas of collective bargaining,
9 grievances, they share, too, and in discharge cases. What's
10 more important than an employee losing their job? The union
11 shares half --- unless they agree otherwise, the union shares
12 half plus. There's no reason --- this is important, too.
13 There's no reason why the union shouldn't share half that
14 burden.

15 And it will also enhance collective bargaining.
16 Example, just recently --- a couple of days ago, I got a call
17 from a lawyer of collective bargaining. The police union is in
18 there literally ten minutes. Ten minutes and says I see you
19 don't agree because they didn't like the proposals. Well, if
20 they had to pay half of the neutral arbitrator, do you think
21 you're going to take that mutual decision? And this is in a
22 relatively significant municipality. But ten minutes? And
23 that's not enough from our perspective. Now and this
24 municipality hasn't won arbitration before. But that doesn't
25 matter. The fact is they need to --- in that situation, that's

1 a collective situation because you need arbitration to make a
2 decision. You need an arbitrator to come in and make decisions
3 because members aren't going to talk to you in a reasonable
4 fashion. So therefore, they should split the costs. But you
5 need arbitration. And whether it's once or twice in a
6 lifetime, you need it.

7 Finally, this provision here at the end of the ---
8 towards the end of the bill dealing with unlawful pension
9 benefits, I want to say two things about this. One, again,
10 I've read comments of the union that somehow this prevents an
11 arbitrator from awarding only statutorily or essentially
12 minimum pension benefits. That's just not true. That's just
13 not the way I read the bill. And I want to mention something.
14 If they want to take that position, fine. I'll be glad to do
15 that. But the fact is that's not what the bill says. The bill
16 says statutorily required, which would be minimum, or
17 authorized benefits, which would be getting into the area where
18 there were optional benefits you can give or minimum benefits
19 from a --- minimum benefits and optional benefits. What some
20 of the opponents have been saying is that this bill will
21 prevent an arbitrator from giving optional benefits. It
22 wouldn't. It would allow it. It would authorize benefits.
23 They're just not required. It would still allow those benefits
24 to be provided, so that's just not an issue.

25 And as an aside, this section for minimum benefits

1 are very, very handsome. I think most members of the public
2 would want those or most members of the public that don't have
3 a pension would take those any day. So ---.

4 CHAIRMAN HARPER: Can we wrap it up so that we
5 can ---?

6 MR. MCLAUGHLIN: Sure. And the other aspect is
7 where the auditor general has determined that --- a court has
8 determined that a pension benefit is unlawful or excessive.
9 Excessive doesn't just mean the auditor general thinks it's a
10 lot more. It means that it's not authorized by law. And in
11 those cases, an arbitrator couldn't renew those benefits in an
12 Act 111 interest award. Currently, it's common that the
13 arbitrator finds the benefits unlawful. So you have to get the
14 collective bargaining. You go to arbitration and the
15 arbitrator doesn't get it out of the collective bargaining
16 agreement, so then you're stuck with it for another three or
17 four years. The auditor general comes back again and says I
18 told you to get this out of the collective bargaining
19 agreement. And the employer just can't get rid of it. It
20 needs the arbitrator to do it all, and so that's why it would
21 be important for that as well.

22 CHAIRMAN HARPER: All right. Thank you very much.
23 I know the members of the --- some members of the panel have
24 some questions. We're going to start with Representative
25 Topper. Do you have any questions?

1 REPRESENTATIVE TOPPER: Just a follow-up. When we
2 talk about the arbitrators would have to present the Findings
3 of Fact, Conclusion of law, all the written analysis, so who
4 determines whether, in fact, they have done a good job at that?
5 I mean, can either side then appeal it if they feel that, well,
6 the arbitrator has not really provided a reasonable explanation
7 for the award? Help me understand that process a little more,
8 somebody?

9 MR. BALDRIDGE: Well, the way --- the arbitrator did
10 not get --- yes. I think either side could.

11 REPRESENTATIVE TOPPER: All right. That's my
12 question.

13 CHAIRMAN HARPER: Great. Senator Teplitz?

14 SENATOR TEPLITZ: Thank you. I think it was Ms.
15 Kuhls you stated in your remarks that the process is slanted
16 towards unions, I think those were the words that you used.
17 Putting whether that's true or not aside --- and this somewhat
18 relates to Mr. McLaughlin's comments as well. It's my
19 understanding that there was an agreement made back in the late
20 1960s where in exchange for the current Act 111 process, the
21 unions gave up their right to strike because it wouldn't be in
22 the public interest if police or firefighters or others that
23 were subject to that process engaged in that right that exists
24 for other unions. Putting aside the specific context here, I'm
25 troubled by not complying with that agreement. And my view of

1 it is that, you know, the tradeoffs that were made were made at
2 that time, and just as a practical matter, substance aside,
3 ideology aside, as a practical matter, would it be rational for
4 the unions to accept any changes to Act 111 because --- without
5 getting something in return because this agreement had been
6 made and we've lived under it for 45 years. And so I guess I
7 pose the question to all of you, are there tradeoffs that you
8 are willing to make to the unions in exchange for some movement
9 of their position, you know, on these changes?

10 CHAIRMAN HARPER: Does anybody want to answer that?

11 MS. TEOLI KUHL: Well, I guess since the Senator
12 referenced me by name and my comments, you know, I can't really
13 comment about the circumstances in 1968 and what the decisions
14 were. But I would argue that we're not going back on any
15 agreement that may have been made then by making these common
16 sense reforms. I don't see that --- anyone taking away their
17 right to binding arbitration. We're just recognizing that in
18 45 years, much has changed.

19 MR. MCLAUGHLIN: I was nine years old in '69, so I
20 really wasn't a part of that agreement, but the question that
21 really --- I don't think we're going back --- first of all, I
22 don't think you're going back on any promise assuming a promise
23 was made of some sort. Because what's --- they still have Act
24 111. It's actually as good, if not better. I don't know what
25 change that they would be complaining about that somehow it's

1 going back on that promise, assuming that it was made.

2 But the question, I think, from a public policy
3 perspective and legislative perspective is sustainability.
4 Sustainability would be services. And you're still allowing
5 Act 111 and it's still there, pretty much in the same form that
6 it's in now. You're just requiring an arbitrator essentially
7 to say why he or she is doing what they're doing. I think the
8 public deserves that because they're paying the bill. And I
9 think there's really no backtracking on any promise whatsoever.

10 I just don't understand that whole argument that
11 somehow there's a promise that we're reneging on. I mean, if
12 you make a promise to your kid to get something and you can't
13 afford it or you can't afford --- you've got to make changes
14 for your kid, then you've got to make those changes. I mean,
15 again, it's a reality we're dealing with here and we're not
16 backtracking on any promises. The promise is still there. You
17 have Act 111 binding interest arbitration, the same way. It's
18 just one, you have to pay for your half of the arbitrator. I
19 guess that's the worst thing to happen. I mean, this is not
20 like Ohio or Wisconsin, which I know can't bargain anymore.
21 I mean, that would solve the problem in two seconds. But
22 that's not what this bill is. And it's no where close to that.
23 We all know what that type of legislation is. And it's not
24 this.

25 CHAIRMAN HARPER: Okay. Hold on. I think Mr.

1 Stonehill has something he wanted to say.

2 MR. STONEHILL: Just one brief point. I agree with
3 what the gentleman's saying. I think in no way does this
4 diminish our promise that was made to the labor unions. We
5 agree, and I always agree, that the Act 111 binding arbitration
6 process should exist. What we discussed was really adding
7 transparency to the process, and as we all know, a lot has
8 changed since 1968-'69 in terms of government transparency.
9 And now with this requirement, there's just an expectation that
10 the public will be involved in the process. And that might not
11 have been true in 1969, but adding that component doesn't
12 diminish the promise that we made. It doesn't remove what Act
13 111 is. What it does it actually enhances it, tweaks it, makes
14 it better, and preserves it for future generations.

15 CHAIRMAN HARPER: Thank you.

16 SENATOR TEPLITZ: If I could just make a ---.

17 CHAIRMAN HARPER: One quick?

18 SENATOR TEPLITZ: --- make a comment? Yes, very
19 quickly.

20 CHAIRMAN HARPER: By the way, you don't look like in
21 1968 you were born. I'm just saying.

22 REPRESENTATIVE KNOWLES: How about me?

23 CHAIRMAN HARPER: Jerry was very old when that ---.

24 SENATOR TEPLITZ: I'm almost as old as the law. I'm
25 not here to advocate or negotiate on behalf of the unions. My

1 point was, though, as a practical matter, substance aside, if
2 you are asking a party to give up some right, whether you
3 believe that they should or not, I think it is more productive
4 as part of the discussion and part of, you know, getting that
5 other party on board with a change to offer something in
6 return. Whether it's within the context of this bill or
7 something else. I mean, I've been advocating --- when I was at
8 the auditor general's office, advocating for consolidation of
9 local pensions. I think that would go a long way towards
10 addressing concerns. And I know that that's been an issue that
11 we've faced resistance from at the local level. So that's my
12 larger point.

13 MR. BALDRIGE: You just took a --- half of the
14 community --- of the Coalition for Sustainable Communities is
15 that it has always been our intent to have dialogue and
16 discussions and negotiations. And we have been unsuccessful in
17 doing that part. So we are certainly willing, as far as the
18 coalition at least, to explore other options. But that has
19 been a difficult discussion, if at all.

20 CHAIRMAN HARPER: Well, we're all here now. Do you
21 have something you have to say or can we go to the next
22 question?

23 MS. BROGAN: I think that Mayor Gray would expect me
24 to say that we've been very clear that this is not, Senator
25 Teplitz, anybody asking the unions to give up their rights. So

1 it's a question of modernizing the process. That's all.

2 CHAIRMAN HARPER: Thank you. I want to go to
3 Representative Schreiber. Keep the process moving. I have a
4 number of people who have asked me to speak this morning and we
5 have many more witnesses to testify, so ---.

6 REPRESENTATIVE SCHREIBER: Thank you. I have a very
7 quick question and it probably will be directed to Mr.
8 McLaughlin or even maybe the maker --- the sponsor of the bill.
9 The bill calls for the impact of the award on the future
10 financial stability of the political subdivision. Mr.
11 McLaughlin, you mentioned the arbitrator having to list a
12 better understanding of why they're making their decision to
13 give the awards. How, in terms of clarifying the
14 implementation of this stability's impact? If stability is
15 recognized as, you know, municipalities understand what the
16 costs are going to be, what the remedy's going to be, are they
17 --- do you envision that the arbitrator would have to outline
18 the costs associated with the award and then actually make a
19 projection on how the municipalities pay for it? Whether
20 that's --- municipalities, as many of us know, have far too few
21 revenue options, so it's either raising taxes or cutting their
22 services and cutting programs. So just trying to get an
23 understanding if an arbitration award comes out, it lists the
24 benefits, it lists why they have decided to do those awards,
25 but how are they actually referencing what that impact to

1 stability is?

2 MR. MCLAUGHLIN: Well for example, say an arbitrator
3 issued post-retirement benefits. He or she would have to say
4 that okay, it would have to be funded in this way. This would
5 be the funding requirement. It would be X amount based on ---
6 that evidence could be presented. That X amount would do X ---
7 you know, you have to do something to the municipality's budget
8 which would cause it to be over its current revenue, then there
9 would be revenue projection presented at the hearing to see
10 where things fidget. And also, that would be a --- it would
11 determine the amount of funding that the municipality would
12 have to provide, which is not --- today, it's not recognized.
13 It would be recognition that every year, you're going to have
14 to fund \$100,000, \$60,000, \$6,000,000 to those benefits.

15 REPRESENTATIVE SCHREIBER: And would also then --- I
16 imagine that that would show recognition of an increase or
17 decrease to the MML?

18 MR. MCLAUGHLIN: Correct.

19 REPRESENTATIVE SCHREIBER: Okay.

20 CHAIRMAN HARPER: Thank you. Senator Eichelberger?

21 SENATOR EICHELBERGER: I have a few comments here
22 and ask a question. We had talked about sustainability, we
23 talked about the threat of arbitration and the cost of
24 arbitration if it gets that far, and where we are with
25 somebody's testimony about how fewer officers and firefighters

1 we've had in the last --- that was a brief period, I think a
2 five-year period that was cited in that testimony. Is there
3 anybody on this panel that has more police officers and/or
4 firefighters than they did ten years ago in their communities?

5 CHAIRMAN HARPER: Okay.

6 SENATOR EICHELBERGER: I've asked for those figures
7 twice ---.

8 CHAIRMAN HARPER: No?

9 SENATOR EICHELBERGER: I've asked for those figures
10 twice from the FOP and from the Firefighters' Association and
11 they haven't given them to me. My position would be that we
12 are negotiating against our communities and your only
13 alternative then is to lay people off. So the communities are
14 suffering with less people on the street, less people to fight
15 fires, because of the very generous packages that the
16 arbitrators are putting down due to Act 111 awards. Thank you.

17 CHAIRMAN HARPER: Thank you, Senator. I'd like the
18 panel's response to be noted in the record as none of the
19 participants said they had an increase. Senator Smucker?

20 SENATOR SMUCKER: Thank you. Before I ask a
21 question, I do want to note for the record that I have a prior
22 engagement that was scheduled well before this hearing, so I'll
23 be leaving shortly. I am very interested in the testimony of
24 other panels that will be before us and I'm looking forward to
25 reading that testimony, and again, I'm very much appreciative

1 that you've scheduled here. My question is this. I'm going
2 back up in response to some of the comments that have been
3 made. You know, I don't think that anyone is trying to change
4 the promise that has been made and I do think that it is
5 reasonable to, after decades of an Act being in place, to look
6 at it again to see whether there are changes that could be
7 made. And that's not unusual for the legislature to look to
8 that area of the law. So you know, I'm glad that we're holding
9 this hearing.

10 One of the things that I found most interesting
11 about this is this idea that an arbitrator can take issues
12 beyond what are raised by the parties themselves and change the
13 awards. And I have a little bit of experience, not much, but a
14 little, having served as a township supervisor and been the
15 negotiator for the police contract at that point, you know.
16 And it took a while and we eventually got there by just
17 gradually working on broader issues and then narrowing it down
18 and ultimately we did not have to go to arbitration. But I
19 would, you know, if I'm setting up a system like this, I would
20 think you really want to encourage that kind of negotiations to
21 take place between the municipality and the unions and only go
22 to the arbitrator in the --- then you need the arbitrator, I
23 think, as sort of a safety valve. But you only want the
24 discussions to go there in the event that you simply cannot
25 resolve it.

1 And I would think you --- any arbitration, generally
2 you would be looking at the remaining things that haven't been
3 able to be resolved. And so it just seems --- I don't know if
4 it's unusual in arbitration, but it certainly seems to me like
5 it would go beyond the spirit of what we're really trying to
6 accomplish by having an arbitrator. And I think you had
7 mentioned --- both of you had talked about situations where an
8 arbitrator simply took aspects of the compensation package and
9 added it to the award. How does that work and are there any
10 limitations as to what an arbitrator can include?

11 MR. MCLAUGHLIN: Well, when I was talking, I was
12 talking in terms of evidence presented versus whether he or she
13 justified the awards. I think the other issue we're talking
14 about is where an arbitrator awarded something that isn't a
15 party demand. I think that's what Stephanie referred to. Now
16 technically, an arbitrator can't do that. I mean, under law,
17 he can't jump out of his jurisdiction to address issues that
18 aren't part of the case. However, that is broad --- what is
19 within his jurisdiction? What's within the issue of --- that's
20 part of his jurisdiction is defined broadly so that possibly
21 --- you know, rank differential I think was referred to was
22 awarded. But if wages were part of the case so that a court
23 would say, well, that's compensation, so therefore, that's an
24 issue.

25 SENATOR SMUCKER: So by that interpretation, they

1 could take any wage or benefit issue?

2 MR. MCLAUGHLIN: You could look at it that way. And
3 it's not completely unlimited. They are limits to it. It's
4 broadly defined, I think. And that's probably where the
5 problem comes in, but the courts have defined what is an issue
6 in dispute very broadly to include now the issue of a no layoff
7 clause versus --- you could say, well, that's a part of wages.
8 But the other issue there is even if to get the --- the
9 arbitrator would have to --- I'm sorry. The municipality would
10 have to appeal that to the court, which would be another ---
11 would be, you know, a compounded cost of the arbitration
12 overall. So whether that issue would be part of the
13 jurisdiction, it may be and it may not be worth risking, you
14 know, X amount of thousands of dollars on appeal to decide that
15 issue.

16 CHAIRMAN HARPER: All right. I think Stephanie's
17 testimony was it had happened. In other words, it happens from
18 time to time; right?

19 MS. TEOLI KUHLS: And I've certainly heard stories
20 of it happening in other municipalities. I can no longer speak
21 to our circumstances. I think Mr. McLaughlin just pointed out
22 where legally it might fit into the category. We could
23 perceive it as not part of the --- you know, they have a list
24 and the township has a list; right? The union side has a list
25 and the township side has a list.

1 CHAIRMAN HARPER: And this was outside of your list?

2 MS. TEOLI KUHL: It wasn't a specific item on the
3 list, but wages was on the list.

4 MR. MCLAUGHLIN: And I'm not condoning that analysis
5 that it would be --- something like that would be part of the
6 issues in dispute. I think if that happened to me, what's this
7 guy doing. We're issuing a rank differential that wasn't an
8 issue. But the court may be ---.

9 CHAIRMAN HARPER: Right. Okay, Senator?

10 SENATOR SMUCKER: Yes.

11 CHAIRMAN HARPER: I'd like to move on to our next
12 panel. Representative Mirabito has graciously agreed to hold
13 his question until later. I really want to thank all of you
14 for coming. I think it was very important for us to hear your
15 perspectives on it and we'll get the next panel up. Thank you
16 all for coming. We appreciate that very much. Next looks like
17 some second class township representatives. We have Elam Herr,
18 Assistant Executive Director of the Pennsylvania State
19 Association of Township Supervisors. We have Ralph Hutchison,
20 manager of East Lampeter, and we have Dan Zimmerman, manager on
21 Warwick. Are they in the room? Well, I know Elam is here.
22 Okay. We're already behind. Just, can each of you introduce
23 yourselves so that our court reporter can get your name and
24 position?

25 MR. HUTCHISON: Yes. I'm Ralph Hutchison and I'm

1 the Township Manager in East Lampeter Township.

2 MR. ZIMMERMAN: Dan Zimmerman. I'm the Manager for
3 Warwick Township.

4 MR. HERR: Elam Herr, Assistant Executive Director
5 of the State Association of Township Supervisors.

6 CHAIRMAN HARPER: Okay. Great. Who wants to start?

7 MR. HUTCHISON: I guess that's me. So good morning.

8 BRIEF INTERRUPTION

9 CHAIRMAN HARPER: Pull that mike close to you and
10 talk right into it, please.

11 MR. HUTCHISON: Is that better?

12 CHAIRMAN HARPER: She needs to hear you, okay?

13 MR. HUTCHISON: Yes, I understand that. Is it just
14 my voice or is the microphone?

15 BRIEF INTERRUPTION

16 MR. HUTCHISON: Okay. Good morning, Chairman
17 Harper, members of the House Local Government Committee,
18 Chairman Eichelberger and members of the Senate Local
19 Government Committee. Thank you for this opportunity to
20 testify today regarding Senate Bill 1111 and House Bill 1845.
21 This legislation, if enacted, will make some common sense
22 improvements to Act 111 and will address issues within the
23 current law which have been problematic since the enactment of
24 Act 111 in 1968.

25 As I said earlier, my name is Ralph Hutchison. I am

1 currently the Township Manager of East Lampeter Township,
2 Lancaster County. I have served in this position since
3 December of 1991 and I have served in this position and in
4 similar Pennsylvania borough positions for a total more than 30
5 years. Our police department in East Lampeter is an accredited
6 agency and we are very proud of the service that the men and
7 women of our police department provide to the community.
8 Through an intermunicipal agreement with our neighboring
9 township, our police department also serves Upper Leacock
10 Township. East Lampeter Township is also home to the Lancaster
11 County barracks of the Pennsylvania State Police and we enjoy a
12 cooperative relationship with them as well. These law
13 enforcement professionals are important members of our
14 community and we value their commitment to serving our
15 community.

16 Unfortunately, the collective bargaining process
17 that Act 111 requires municipalities and police officers to
18 participate in does not serve either the officers or their
19 communities in a way which fosters cooperation and it does not
20 produce results which are sustainable for either side. Some of
21 the changes included in the proposed legislation would require
22 that the collective bargaining process begin earlier than
23 currently required, that more time to negotiate before an
24 impasse is deemed to have occurred and also require that a
25 request for arbitration must be made farther in advance of the

1 end of the fiscal year.

2 In 2011, East Lampeter Township and our police
3 officers' association engaged in collective bargaining because
4 the agreement that was in place at that time was set to expire
5 on December 31st, 2011. Negotiations failed to result in an
6 agreement and the officers demanded arbitration as provided for
7 in Act 111. We followed the required process and named our
8 arbitrators. They then selected the neutral and began working
9 to select a date for the arbitration hearing. Compared to what
10 you heard earlier, this might sound like a very quick process
11 for us, but the arbitration hearing was held in late February
12 2012. The arbitration decision was finally issued in mid-May
13 2012. Of course, the township had to prepare and adopted a
14 2012 budget before the end of 2011. The Board of Supervisors
15 had to adopt the budget without the benefit of knowing what the
16 wages and benefit costs were going to be in 2012. Our
17 personnel costs, like in most municipalities, make up about 70
18 to 75 percent of all our operating costs and so having this
19 amount of our police budget as an unknown made the budget
20 adoption process very uncertain and difficult.

21 When the award was issued in May of 2012, we had to
22 calculate these costs retroactively to January 1 and figure out
23 how we were going to pay for them. This meant that we had to
24 make difficult choices to cancel and delay important projects
25 and find other creative ways to reduce costs in other areas of

1 township operations in order to pay for the police wages and
2 benefits ordered by the neutral arbitrator. Not only did these
3 changes impact our operations in 2012, they also significantly
4 impacted our budgets for 2013 and '14 due to the amounts
5 awarded and the need to address the unplanned changes to 2012
6 operations. Although the proposed changes would require that
7 bargaining begin earlier, allowing more time before an impasse
8 is deemed to have occurred and requiring that requests for
9 arbitration be made farther in advance, these alone will not
10 guarantee that negotiations will conclude or that arbitration
11 decisions will be issued before the annual budget must be
12 adopted. However, they will make it more likely and we view
13 this as a positive change to Act 111.

14 The next sections of the proposed legislation that I
15 would like to speak to are the provisions that would require
16 arbitration decisions to include Findings of Fact, Conclusions
17 of Law and detailed analysis of the costs of an award as well
18 as the impact that an award will have on the municipality.
19 This analysis is proposed to also include an analysis of the
20 municipality's ability to pay the costs of an award, including
21 the costs of increases that result from pre-existing terms in
22 the current agreement.

23 When East Lampeter Township went through the
24 arbitration in 2012 and was presented with the arbitrator's
25 decision, the decision provided no findings, no analysis of the

1 costs and no indication that the township's ability to pay the
2 costs of the award were considered in any way. I have provided
3 the members with copies of this decision. I hope you'll read
4 it.

5 CHAIRMAN HARPER: Thank you.

6 MR. HUTCHISON: When the arbitration hearing was
7 conducted, it was clear to all who participated that both the
8 officers' association and the township had spent considerable
9 time to prepare and present information to the arbitrators.
10 This information included detailed information on East Lampeter
11 Township in terms of its size, population, median family
12 incomes, size of the police department, current pay and benefit
13 levels, number of police calls, unfunded actuarial accrued
14 pension liabilities, township tax levels and increased rates,
15 property assessment value trends, building permit activity
16 trends, fund balances, comparisons of pay and benefit levels
17 with other municipalities, comparisons of pay and benefit
18 levels with other township employees and more. As you can see
19 from the arbitrator's decision, there is no mention of any kind
20 that the neutral arbitrator considered this information in any
21 way. As a result, there is no way for either side to come to
22 an understanding of why the arbitrator ruled in the way that
23 was ruled. This makes for a very frustrating and unsatisfying
24 result. The proposed provisions that will require more in the
25 way of reasoning from the arbitrator, very reasonable and will

1 prove to be very helpful to both the officers' associations and
2 the municipalities involved in arbitrations in the future.
3 Requiring that their thought process is provided in writing
4 with a detailed explanation of their reasoning will be
5 beneficial to all involved.

6 The last section of the legislation that I wish to
7 address in my testimony is the section on issues that are to be
8 excluded from arbitration awards. In my view, these are very
9 important provisions and should be included in the changes to
10 Act 111. The trends in collective bargaining with police and
11 fire personnel at the local level are making it more and more
12 difficult for local communities to sustain the levels of
13 services needed. Changes in the economy which have affected
14 private enterprise have also had significant impacts on the
15 budgets of governmental agencies at all levels. Two of the
16 areas where sustainability is being challenged greatly are the
17 areas of post-retirement healthcare and pension costs. These
18 areas represent very significant and long-term increases in
19 municipal expenses. For East Lampeter Township, health care
20 costs have increased annually at double digit rates in most
21 years. We participate in an insurance buying municipal
22 cooperative where we partially self-fund these expenses. These
23 expenses for older employees, including retired police
24 officers, can be expected to be and have in reality been higher
25 than our expenses for younger employees.

1 When arbitration decisions are issued which grant
2 post-retirement that are not required or authorized, the impact
3 upon the municipal budget can be dramatic. These impacts are
4 long term and can do great damage to the municipality's ability
5 to sustain services to the community. Additionally, when
6 arbitration decisions grant pension benefits which are not
7 required or authorized, the long-term sustainability of
8 municipal pension plans can be destroyed. The proposal to
9 exclude these kinds of benefit awards is a very good idea.
10 Most recently with the significant economic challenges that we
11 have all faced beginning in roughly 2009, East Lampeter
12 Township has had to increase the real estate tax rate several
13 times, add new taxes, cancel and delay projects and
14 significantly cut staff in order to try to control costs to the
15 tax payers and meet our budgetary obligations including
16 obligations created by an arbitration decision out of the
17 current Act 111 process.

18 In my 30-plus years of municipal management
19 experience, I have seen these as constant and continuing
20 challenges in the local government arena. The most recent
21 period is just the most recent example. In the case of our
22 police department, we have, since 2010, reduced the number of
23 police officers from 40 to 35 through resignations and
24 retirements. We have not hired a new police officer since
25 2008. So these challenges have also had an impact on our

1 police officers. In order to control the most significant
2 driver of municipal operational costs, costs for personnel must
3 be controlled. The proposed changes to Act 111 will hopefully
4 help all involved to achieve collective bargaining results
5 which create sustainable results for the benefit of police
6 officers and the taxpayers that they serve. The East Lampeter
7 Township Board of Supervisors has adopted a resolution in
8 support of this legislation. I have provided that to the
9 committee members. They hope that you will vote favorably on
10 this proposal and that it will become law in the near future.
11 Thank you.

12 CHAIRMAN HARPER: Thank you. We'll hold questions
13 until the whole panel speaks. We're a little bit behind,
14 so ---.

15 MR. ZIMMERMAN: Well I'm going to be very brief,
16 so ---

17 CHAIRMAN HARPER: Okay.

18 MR. ZIMMERMAN: --- I hope that will help out. And
19 again, I submitted some testimony, but the comments I would
20 make, through Act 111, the process, you know, can benefit or be
21 at a disadvantage for both sides, whether it's a municipality
22 or the unions themselves. But here we got a piece of
23 legislation that's been effect for 40 years, so I think there
24 is a responsibility to occasionally look at that process. And
25 look at it and say is it working the way it's supposed to? And

1 I heard comments from the one Senator. And I think you need to
2 weigh in that. But I think here the proposed legislation has
3 been carefully crafted. I think there's really --- they've
4 done an outstanding job of still protecting the rights of the
5 unions, but at the same time bringing back a degree of fairness
6 and transparency. The processes and the issues that it's
7 dealing with today in arbitration versus what you were dealing
8 with in the 1960s have changed.

9 And so there's this evolutionary process of what,
10 you know, the benefits and the salaries for uniformed officers
11 and firefighters at this point. To tweak the process, and
12 that's what you're doing in this legislation, you're simply
13 tweaking the process to allow for more efficiency --- and
14 that's really the responsibility we all have. As a local
15 official, I probably have been faced with many levels of
16 government and the public does want to understand. They want
17 to understand if these impacts --- they make the payment from
18 those changes.

19 The transparency portion is very important so they
20 can understand a little bit better. They no longer accept,
21 well hey, that's how the process is. That's certainly not
22 cutting it anymore. They want to take the time or effort to
23 find out and they want to have the ability to look at that.
24 But they also want to understand how the efficiency of
25 government is working and I think this legislation allows that

1 to take place.

2 So I support --- I mean, I think it's a great
3 balancing act that you have here that you don't in any
4 way throw out the old days. You're simply tweaking the process
5 that does need to be tweaked, but at the same time, maintaining
6 a fair approach to maintain the rights of both sides. Thank
7 you.

8 CHAIRMAN HARPER: Elam?

9 MR. HERR: Madame Chairman, thank you. Again, I
10 will not read my testimony. Everyone has it and I will ask
11 that you just read it at your convenience. We'll go from
12 there. I do want to thank both committees for the
13 representatives and their committees for being here today and
14 allowing myself as well as all the other proponents to this
15 legislation, to speak on this important issue. It is something
16 that needs to be discussed. First I want to say that those of
17 us who are supporting this legislation, the panel before us,
18 are not being disrespectful to the police or the fire personnel
19 that we have that protect us. But we're here to say that the
20 system itself needs to be fixed. The people who spoke before
21 me have given you a fairly good picture of the issues that are
22 facing municipalities due to this Act not being amended since
23 1968. In 1968, I had hair on my head, things do change. I can
24 tell you that.

25 I know that you will hear today that this Act is and

1 that it has stood the test of time. I will contend that no Act
2 is perfect. I know there are times it needs to be tweaked,
3 improved and in some cases repealed. And I will also admit to
4 the Acts that I have worked on do not --- are not perfect
5 pieces of legislation and should be reviewed from time to time.
6 These bills do not repeal the law that's out there, and I think
7 you've heard the previous panel, and I think I can speak for
8 the two gentlemen beside me. We aren't asking that Act 111 be
9 repealed. What we are saying is that it needs these changes to
10 be made to make the process fair and equitable to both parties
11 that participate in the process. For nearing 30 years, I've
12 been asking for these changes to this law and today it's even
13 more relevant than it ever was, with public service costs
14 becoming the single largest budget item in many municipalities.
15 Not only those that I represent, but in this case all
16 municipalities within the Commonwealth.

17 CHAIRMAN HARPER: And you represent second
18 class ---.

19 MR. HERR: I represent townships of second class and
20 there's 1,454 of those. Some have police, some do not have
21 police. But the policy that was adopted at our annual
22 conference and was readopted is to give --- those
23 municipalities that go through collective bargaining, 111, does
24 support it.

25 SR323 of 2010, the report on --- the mandate which

1 was sponsored by Senator Eichelberger recognized that the
2 current law has one of the main problems facing municipalities
3 with a direct impact on the municipal level --- municipal
4 budgets. So what are we asking for in this legislation? To
5 require both parties to bargain in good faith and allow either
6 party to be taken under unfair labor practice to the Labor
7 Relations Board. It's not a major change. Everyone should go
8 into the collective bargaining with the idea that they're going
9 to bargain. To start the bargaining process earlier in the
10 cycle, so that it can be concluded in time in order to include
11 the costs of awards in the budgetary process. Mr. Hutchison
12 just spoke about even a relatively fast process, but it still
13 creates a problem with the budgetary process.

14 That the list of arbitrators be increased to seven
15 potential candidates with a coin toss to see who strikes first.
16 That both parties equally fund the cost of an arbitrator. Also
17 in my testimony, I attached a report from one township
18 explaining their arbitration process and the costs that are
19 associated with that. Again, I ask you to look at that in your
20 convenience. But the arbitrator now holds evidentiary hearings
21 as public meetings that include Findings of Fact, Conclusions
22 of Law and the issues involved in the negotiations. I won't
23 get into that previous matter --- spoken very highly on that
24 and it is very true, as far as the negotiations go. That the
25 awards be based on Findings of Fact and Conclusions of Law. We

1 should know where and how they came to that conclusion. It's
2 going to cost the taxpayers. I can honestly say it doesn't
3 cost my supervisors any money except their taxes that they pay.
4 It costs the taxpayers what results from an arbitration
5 process.

6 And then there's the removal of allowing
7 non-authorized post-retirement benefits to be negotiated. And
8 again, it's not stating --- as, again, the previous panel said,
9 it's not prohibiting post-retirement benefits. It's basically
10 saying that it's the non-authorized ones that will be
11 prohibited. So we content these changes are not revolutionary,
12 but needed to make the process fair, especially to the
13 taxpayers that have to fund the outcome. Again, I would ask
14 that you read the testimony and the attachments describing one
15 township's experience with the process. And again, on behalf
16 of the gentlemen beside me, I want to thank you for taking this
17 time to address this very important issue.

18 CHAIRMAN HARPER: Thank you very much, panel. I'm
19 going to give Representative Mirabito the first crack. Do you
20 have a question or comment?

21 REPRESENTATIVE MIRABITO: Okay.

22 CHAIRMAN HARPER: All right. Since you graciously
23 before --- I want to recognize that Representative Mindy Fee is
24 here. Thank you, Mindy, for joining us. Go ahead.

25 REPRESENTATIVE MIRABITO: Thank you. And I want to

1 thank the other panel, also, because I think you all gave great
2 explanations. I think I guess labor relations --- I think one
3 of the questions that I have for you all is, the problems --- I
4 mean, there's definitely a problem, we can tell. But for
5 example, concerning the Findings of Facts, is part of the
6 problem that we start on our ---. Did we ever have Findings of
7 Fact that would show that the municipality's --- other than
8 raising taxes --- will have the ability to pay an arbitration
9 award? And I guess, correlating to that is part of the problem
10 that local elected officials, and I have the utmost respect for
11 them, they sometimes do not want to make the tough decisions in
12 negotiations of saying to the unions, look, you know, this is
13 our final offer.

14 CHAIRMAN HARPER: Does anyone want to answer that?

15 MR. ZIMMERMAN: Well, I don't think there's
16 negotiating in a tough decision, but then you're forced into
17 the process. I mean, you can make a stand and say here's our
18 fiscal constraints, and then in today's negotiations, if you're
19 doing a workload comparison to the --- typically it's a
20 comparable comparison of what everybody else is making. And
21 there's so many factors you have to take into consideration to
22 sort of get them worked out. We're going to go into
23 arbitration. And really at that point then it's a roll the
24 dice. I mean, you talk about, you know, things just get
25 trimmed up with the --- you have no idea that he's going to be

1 neutral. And then depending on who that is, some of them do
2 pay attention to facts and some of them don't, and it really is
3 see how this all plays out. And that's a terrible way to --- I
4 mean, what you're doing here is just bringing that process back
5 under a little bit more structured format and that I think it
6 makes sense.

7 MR. HUTCHISON: Yeah, I agree. I think local
8 officials, in my experience, haven't had any problems with
9 making tough decisions, and they make tough decisions all the
10 time. And they have no problem with making those decisions and
11 sticking with them when they can. The frustration with this
12 process is that the decision making process is just taken out
13 of their hands. And the result of those --- that decision
14 making process provides no explanation, provides no
15 justification for what the decision is and provides no
16 analysis. There's no indication that the arbitrator has an
17 understanding of what the municipality's facing and/or if they
18 have some suggestions of their own as to how this award is
19 going to be paid for. We are limited to --- there are limited
20 options for local officials to fall back on when you have to,
21 but making those decisions, not a problem at the local level.

22 REPRESENTATIVE MIRABITO: So you're saying that they
23 don't have any teeth that they need to be able back up the
24 decision he made with --- for example, if they had to split the
25 cost of the arbitration, it would give more power to the

1 municipality and might make the union question more about
2 whether they're going to go ahead and do the arbitration. Do
3 you think these changes will give you more teeth in the
4 negotiation?

5 MR. ZIMMERMAN: I don't know if it's a matter of
6 more teeth, but it's just more incentive to reach an amicable
7 solution, a settlement without going to that cost. You know,
8 if there's no cost to us, we're going to go into arbitration,
9 because we're going to show --- we have to pay for our own
10 attorney, the municipality pays for their own attorney plus the
11 neutral arbitrator. I mean, that is the goal. That is the
12 part of the negotiations, is to come to a good resolution which
13 is a compromise of the demands on both sides. And I think it
14 holds the whole process closer to that and realizing they have
15 to share that burden and maybe we're going to stay at the table
16 a little bit longer. I think that's a positive outcome.

17 REPRESENTATIVE MIRABITO: I don't know if you know
18 this, but in most states, the cost is split, I believe.

19 MR. HUTCHISON: And I believe that's true. To me
20 it's a question of fairness.

21 CHAIRMAN HARPER: Thank you, Representative.
22 Senator Teplitz has a question or comment.

23 SENATOR TEPLITZ: Thank you. Elam, you raised the
24 requirement in the bill that the parties negotiate in good
25 faith, which I think seems to be an obvious goal. It seems,

1 though, that, you know, one party's good faith may be the other
2 party's stubbornness and vice versa. You know, one party's
3 negotiating assertively and advocating for their members may be
4 viewed, you know, by the other side, whichever that other side
5 is, as not being in good faith. So, I mean, logistically, you
6 know, who defines what good faith is? How is it enforced?
7 What are the penalties? I mean, to what extent is that a
8 meaningful requirement in this bill?

9 MR. HERR: Well, first of all, I think in any
10 negotiation both parties should come in with a concept --- with
11 the thing that they're going to go in with good faith. What
12 they come in with --- I'm not arguing --- the union can say
13 what their proposal, the municipality comes back with, you
14 know, what they feel is legitimate. If the union comes in
15 with, you know, what a lot of people would think were extreme,
16 fine, they can come in. What the problem comes now is, as you
17 heard in the last panel, when you go in to the collective
18 bargaining and ten minutes later they say we're going to
19 arbitration. That's not good faith. That's not collective
20 bargaining. That's not even a discussion. And that's what, I
21 think, needs to happen. We hear it a lot in our office, or we
22 have over the years --- it's sort of fell off the last few
23 because of the economic situation, but we always hear where the
24 township contacted us and want to find somebody to represent
25 them on the arbitration panel, their representative. And

1 they're saying, you know, we went in, we gave them our side of
2 it and in the first negotiation they said arbitration. That's
3 what I'm saying.

4 SENATOR TEPLITZ: So good faith would be measured by
5 time on the clock? I'm just trying to get a sense ---.

6 MR. HERR: I don't know that it's time on the clock,
7 but I think that the rest of this, other parts of this bill,
8 which talks about the hearings being open --- it'd show are the
9 parties really coming in with the concept of we're going to
10 bargain face to face --- and we may after several sessions
11 disagree totally and we'll have to go to arbitration. And we
12 don't want to take that away. But what we're saying is if we
13 could, I think Mr. Zimmerman here said it, if we can get it
14 settled in the collective bargaining process before
15 arbitration, it will save both sides time and money. That's
16 all we're asking for.

17 SENATOR TEPLITZ: No, I don't disagree with that.
18 I'm just trying to understand that term in the bill. And the
19 second part of my question, which I don't think you answered,
20 was how do you enforce that then? I mean, I think that is a
21 goal --- everyone should operate in good faith, but how do make
22 that meaningful in the bill?

23 MR. HERR: The bill says that it will be enforced by
24 the Labor Relations Board.

25 SENATOR TEPLITZ: And then logistically, I mean

1 practically, what does that mean?

2 CHAIRMAN HARPER: The bill also contains earlier
3 start times and things like that, doesn't it?

4 SENATOR EICHELBERGER: Yeah, I didn't want to
5 interrupt, but that was my thinking there, Ron, was that I
6 heard from both sides that complained that others were dragging
7 their feet. If one had more money than the other, good times,
8 bad times, whatever the circumstances were, they both would
9 play games with the timeline. So we tightened up the timelines
10 and then put in the provision that they could file an unfair
11 labor practice if somebody was just playing games in the
12 process.

13 SENATOR TEPLITZ: What would be an example of some
14 kind of penalty that the Board would impose? I'm not trying to
15 make a point. I'm just asking the question.

16 MR. HERR: I can't answer the question for the Labor
17 Relations Board. They have broad powers. If they --- I
18 presume ---.

19 CHAIRMAN HARPER: And we do have an excellent labor
20 lawyer coming up as a speaker later on.

21 SENATOR TEPLITZ: Okay.

22 CHAIRMAN HARPER: I'm sure he could answer that
23 question.

24 SENATOR TEPLITZ: So be on notice. Okay. Thank
25 you.

1 CHAIRMAN HARPER: Representative Knowles?

2 REPRESENTATIVE KNOWLES: I'm going to waive off
3 that.

4 CHAIRMAN HARPER: Anybody else? Thank you very
5 much. I appreciate your coming here today and the Board ---
6 the committees, both committees, really appreciate it. Thank
7 you. Now we're going to hear from Les Neri, president of the
8 Pennsylvania Fraternal Order of Police and I understand that
9 Art --- I'm going to ruin your name ---.

10 MR. NERI: He's not here. Martin Harsh is here.

11 CHAIRMAN HARPER: Okay. Well, that's easier.
12 What's Marty's name?

13 MR. NERI: Martin Harsh.

14 CHAIRMAN HARPER: That's easy. Okay. From the
15 Professional Firefighters are coming up. Is Gary Lightman
16 coming up for this panel or later?

17 MR. NERI: Later.

18 CHAIRMAN HARPER: Later? Okay.

19 MR. NERI: And we also have Rick Poulson.

20 CHAIRMAN HARPER: And we have Rick Poulson? Okay.

21 Well we're going to do what we always do, which is have the
22 panel members --- when the court reporter's ready --- you doing
23 alright? Introduce yourself so that she can get your names
24 correctly before we start.

25 ATTORNEY POULSON: Good morning, Richard Poulson, P

1 as in Paul, O-U-L-S-O-N, with the firm of Willig, Williams and
2 Davidson, legislative counsel to the Pennsylvania State Lodge
3 and Fraternal Order of Police and the Pennsylvania Professional
4 Firefighters Association.

5 MR. NERI: Good morning. Les, L-E-S, Neri, N-E-R-I.
6 I'm the president of the Pennsylvania State Lodge Fraternal
7 Order of Police.

8 MR. HARSH: And good morning. My name is Martin
9 Harsh. I'm the legislative director for the PPFPA in
10 Harrisburg, and also I'm retired from Lancaster Local 319.

11 CHAIRMAN HARPER: Thank you. Martin, if you could
12 spell your last name, I think we'd all appreciate it.

13 MR. HARSH: H-A-R-S-H.

14 CHAIRMAN HARPER: Thank you. Who wants to go first?

15 MR. NERI: I'll go first. I'd like to thank the
16 Chair and the members of the committee for the opportunity to
17 come and speak with you today. It was good to hear the other
18 testimony of municipal officials respecting the tough job
19 police officers do every day, not only here in Pennsylvania,
20 but across this great country of ours. You'll notice I'm
21 wearing a black band around my badge today in honor of the ---
22 or in memory of the officers who were assassinated in Nevada.
23 In Pennsylvania over the past couple of weeks, in Bucks County
24 --- where, we had testimony from Middletown Township --- you
25 had an officer stabbed multiple times. Luckily he will

1 survive. A Dauphin County state trooper shot. City of
2 Chester, state trooper shot. And up in Canada, we've had
3 several officers shot and killed. This is just over the past
4 couple of weeks. So the job we do at times is very difficult.
5 We respect that is recognized by this committee, we know for
6 certain, and we had the testimony of others that testified
7 already.

8 I would like to make one correction on my testimony.
9 Page one, bottom of the page, where I talk about the number 70,
10 that's a typo. That number should be 90, 9-0. So there's two
11 areas where it's 70, it should be 90.

12 CHAIRMAN HARPER: Ninety (90) communities who have
13 requested arbitration?

14 MR. NERI: Right, just requested a list of
15 arbitrators as part of a procedural process. Both sides, the
16 police or municipal government, requesting those lists of
17 arbitrators. And most times, as we've heard, that arbitration
18 is not the process that we have to negotiate settlements. I'd
19 like to go over just a couple of things with you. Some
20 comments, observations and just give you an overall view of how
21 we view it as the men and women of law enforcement. I just
22 want to read a couple of lines to you from an article I read
23 earlier. The tactical police collective bargaining rights
24 decrease every day. Timelines every passing year have been
25 drawn very taught. Cities and smaller communities have joined

1 in a double barrel effort to reduce the effect of arbitration
2 awards by not hiring new officers and in some cities, the
3 actually furloughing of officers. The leaders of these
4 communities who are elected to lead their citizens cite the
5 cost of police services to the taxpayers. Now that public
6 census came from an article that was published March of 1976, a
7 mere eight years after the passage of Act 111.

8 For police officers, Act 111 is very, very important
9 to us. It's just not a piece of legislation. In 1959, police
10 officers had the right to collectively bargain in Pennsylvania.
11 And that right was lost. It was lost through a court case
12 where it was declared unconstitutional because it mandated
13 municipal officials to make certain changes in salaries and
14 benefits and costs that were involved, and that right was
15 strictly with the municipal officials. We're talking about the
16 constitution for Pennsylvania. Well, our members fought very
17 hard in 1959 and luckily in 1967, the Pennsylvania Constitution
18 was amended. And that is something that had not happened very
19 often. In fact, it only happened three times since our
20 constitution was enacted in 1776. That constitutional
21 amendment allowed the police officers to collectively bargain
22 and go to binding arbitration. And it put the burden on
23 municipal officials that if an arbitration award came down,
24 they had to follow that award.

25 From that constitutional amendment, the following

1 year in 1968, Act 111 came through the legislature. Act 111
2 was passed by the Senate --- and actually it started as a
3 Senate Bill, on May 14th, 1968 and was voted out 48 to 1. And
4 it passed the House on June 17th, 1968, by a vote of 175 to 6.
5 It was signed by the Governor on June 24th. And that's the
6 status of Act 111 over the past 46 years. Sometimes people get
7 it right the first time. And that's what our position is. Act
8 111 works. It does what it's supposed to do. It went through
9 the legislature, there was a vote of the electorate for us to
10 have this benefit. So this was not something that just kind of
11 fell through and people didn't paying a lot of attention to and
12 there wasn't a lot of thought into the provisions that went
13 into this law. And police officers or firefighters have not
14 gone on strike nor should they ever, whether there's a law or
15 not. That's not what we're here to do. We're here to protect
16 and serve the public and my members take that very seriously.

17 Sitting here today, I was going to go through my
18 testimony, but hearing some of the things I've heard, I'll tell
19 you what, I've been involved in this process 32 years and I'm
20 totally confused by what I've heard today. The way I heard
21 testimony, the system's broke. Municipalities are being
22 slaughtered in arbitration and that there's an unfair advantage
23 and there's a playing field that's tilted. We recognize the
24 financial issues that municipalities face. We're protecting
25 and serving those communities, and to that extent, on a state

1 level, we've even joined with some of the municipal
2 organizations. We've had several meetings over the past year
3 with the Pennsylvania Municipal, looking at ways that we could
4 improve the pension situation, looking at ways to increase
5 revenue and we continue with those meetings because we have a
6 common interest. You know, my members are stakeholders not
7 only as employees but also as taxpayers in Pennsylvania ---
8 40,000 taxpayers and their tax paying families. So we
9 understand this and we do have concerns about that also.

10 But from the testimony I heard, you know, it sounds
11 like there's all of these major issues with Act 111. And
12 what's more confusing to me, by what I heard today, is the
13 Pennsylvania Municipal League has a service program called
14 PELRAS, Public Employer Labor Relations Advisory Service. And
15 PELRAS, once a year, does a seminar for several days ---
16 actually they just did one in March for this year --- where
17 they have municipal officials and township managers attend this
18 meeting, hundreds of them from across the commonwealth, so that
19 they can instruct and provide information as to the --- not
20 just bargaining. It's many, many issues. They have binders
21 this thick that they give out in these meetings.

22 I just want to read today, and maybe you'll
23 understand my confusion, from 2014 in March in their seminar,
24 some of the material that is put out on Act 111. And this is
25 2014 March Act 111 trends that they reported out. Since the

1 2008 recession, and a particularly slow recovery, arbitration
2 awards and trends have included elimination of or reduction of
3 returns and coverage for post-retirement health benefits for
4 new hires. Health care plan redesigned to increase co-pays and
5 contribution. Wage decrease for physically distressed
6 communities and municipalities. Raises in other municipalities
7 that are more in line with economic times. Decrease in pension
8 benefits to mandatory required minimums for new hires.
9 Elimination of unlawful rise in benefits. Spousal coordination
10 requiring spouses to take benefits at their employer if
11 available. However, uniformed personnel remain the outliers
12 and resist these trends. And the problems are most acute in
13 the wealthier municipalities.

14 Now that is from just this year. 2013. Again, the
15 report states arbitration as it pertains to Act 111. Things
16 have changed. Arbitration used to be a winning proposition
17 only for the employees and the right answer for employers was
18 to avoid it at all costs. That bracket of things began to
19 change. For the arbitrators, you have to recognize the need
20 for relief on health care and then other issues. Today it
21 makes sense for the employer to act as the aggressor in
22 arbitration. If you prepare for negotiations like
23 arbitrations, naturally you'll be more successful at the table.
24 Here are examples of the following good results employers are
25 now having that are very kind. Elimination of outlined

1 benefits for new hires, curtailment of really outlined benefits
2 for incumbents, requirements for substantial contribution
3 toward pension plans , requiring a substantial contribution for
4 healthcare benefits. Healthcare plan changes were designs that
5 reduced the cost. In fact, you're the missing boat. You have
6 now already achieved some of these, especially changes in your
7 health care agreement. You should not try to leave from
8 arbitration. The cost of arbitrating is often less than the
9 cost of not arbitrating as we shall see. And then there's
10 lists of about 20 different contract arbitrations in here where
11 there are frozen pay raises, minimal pay raises of under three
12 percent as examples. So that's 2013 --- this is the last one,
13 2012.

14 So again, what they are putting in up to three years
15 to their members. 2012, Act 111, the state of negotiations,
16 state municipal budget crisis, still major foreseeable future
17 and will be in the foreseeable future. More Commonwealth
18 budget cuts, several major third class city Act 111 awards in
19 2011 showed that the message was being received by arbitrators.
20 Need to maintain realistic negotiations. Relief is being
21 awarded, but not all at once. Arbitrators are providing many
22 necessary contract changes, but municipalities should be
23 reasonable and must be prepared to show why proposed or
24 justified or necessary.

25 Act 111 results, municipalities are achieving

1 significant savings through reasonable proposals and
2 preparations. Examples, City of Reading, City of Bethlehem,
3 City of Lancaster. And then there's reports, savings being
4 achieved, reduce wage increases, lump-sum payments not included
5 in the base in lieu of wages, pension plan increased
6 contributions and pension plan redesigns. Healthcare redesign
7 and increased cost sharing, elimination or lessening of
8 post-retirement benefits, particularly for new hires, and that
9 goes on and on and on listing the municipalities, the fire
10 award at Bethlehem, Bethlehem Police Agreement, frozen wage for
11 two years.

12 And when I hear these things, it's hard for me to
13 figure out what the balance is when this is information put out
14 to municipal managers, municipal officials, of how well things
15 are going with arbitrations. And it's better for you to go to
16 arbitration and get these awards. I see this, I know that's
17 what they're being trained and putting out to those officials,
18 and then I hear people testifying today about this terrible
19 system we have. And it's hard for me to understand --- and I'm
20 just given you my confusion. I'm sure --- I just have some
21 experts here to contact the municipal league and PELRAS and I'm
22 sure that ---.

23 CHAIRMAN HARPER: They're here.

24 MR. NERI: They will provide you with the full
25 information in case someone would, you know, think I was

1 explaining things one way or the other. You'll be able to see
2 the full information. So that's my confusion with exactly
3 what's the issue with Act 111.

4 CHAIRMAN HARPER: All right. So your position, if I
5 can just summarize it so we can move this along, your position
6 is there's nothing wrong with Act 111 and it doesn't need any
7 changes?

8 MR. NERI: That's correct.

9 CHAIRMAN HARPER: Okay. Thanks. Appreciate that.
10 Next? Let's try to keep it moving along.

11 MR. NERI: And I'm trying to do the best I can. And
12 it will surely be much shorter than the hour the municipal ---.

13 CHAIRMAN HARPER: I agree. But if I follow the
14 schedule and you end up at the end, so I apologize.

15 MR. NERI: I just need maybe another five, six
16 minutes. The vast majority of police and fire contracts are
17 settled by an agreement, not by arbitrations. Police and fire
18 bargaining of Act 111 reflect the overall economy. In good
19 times we see increases. In bad times we see concessions.
20 Pennsylvania already has a process in place for struggling
21 municipalities, Act 47. We have restricted bargaining rights
22 in those type of municipalities. And the Act 111 reforms will
23 result in more arbitrations and higher costs. You know, what I
24 almost wondered was a --- when I heard that number 175,000 for
25 Middletown Township for a labor attorney, I definitely should

1 have gone to law school. But if these reforms go into place, I
2 promise you that's exactly what you will see happen.

3 Let's just take a quick example. This is about a
4 good faith --- bargaining in good faith. It's already in Act
5 111. It says the parties must bargain in good faith. Read it.
6 It's right there. What happens if you don't? Well, you file
7 an unfair labor practice. What do you need to file that? You
8 need the attorney. It goes to the Labor Board. What's the
9 most the Labor Board does in unfair labor practices? Comes
10 back and says don't do that again. But Act 111 foresaw that
11 that could be an issue. So what Act 111 says, and someone
12 asked the question, I wasn't sure who --- is it tied to a time
13 limit? Okay. Tied to a time limit, whether you're bargaining
14 in bad faith. That's how the legislature addressed it. They
15 said you can get together and you'll bargain and we'll give you
16 30 days. If you can't get to a bargain in 30 days, an impasse
17 will have been deemed to occur. You don't have to go to the
18 Labor Board, go in and get scheduled for a hearing for a
19 hearing examiner to come down. He makes the decision. It
20 get's appealed. Sorry, I get little rammed up about it. It
21 gets appealed to the full Labor Board, it goes through there.
22 Now it goes to the Commonwealth Board. By the time you can get
23 back to negotiations, you're four years down the road. And I
24 see this happen again and again and again.

25 I can tell you now, I hear stories, we go in and the

1 police officers say ten minutes, that's it, we're done. We're
2 going to arbitration. Well, I've never seen that happen, but I
3 do believe that it probably does happen with inexperienced
4 people. But I guarantee you, I've been in a room personally
5 where I walked in with proposals and had a township manager say
6 to me I don't care if this makes us money, you're not getting
7 it. I've had a township manager say where do you think the
8 economy's --- we're in a recession. You have choices, accept
9 these proposals or see you in arbitration. These things
10 happen, I would assume, on both sides. So, you know, the fact
11 that the process has time limits, I think it has answered
12 already that there must be good faith bargaining.

13 And then the other major issue that I keep hearing
14 that I'd like you to have some perspective on. This where we
15 have the ability to pay and we have to show the ability to pay.
16 That's in every arbitration hearing there is right now.
17 Arbitrators decide things based on comparables and ability to
18 pay. They're the two factors that they look for. Now, what
19 does ability to pay --- does ability to pay mean we look at
20 what the municipality brings in in revenue and how much money
21 they have and the arbitrator says okay, well, this is how I
22 want you to spend it? Well, I can bet you that's not what the
23 municipal officials want as the ability to pay.

24 And when you talk about taxpayers, I guess you don't
25 want to talk about the ability to pay. You've got to kind of

1 change that to willingness to pay. I've been a taxpayer. I
2 understand that, too, but ability to pay, does that mean the
3 arbitrator looks at revenues and then sees where the municipal
4 officials have decided they want to spend their money because
5 that's their job to decide, police, fire, and then they get you
6 to look at whatever's left over after all expenses? Well, even
7 in the most legitimate situation, municipal officials are
8 having a hard time now. Police are funded with tax dollars.
9 If you're going in in next year's budget with a deficit and I
10 come in to bargain and I say well, look, I'd like us to have a
11 two percent pay raise, you're going to say not only can I not
12 give you a pay raise, I'm not going to ask you to give a
13 reduction, but no pay raise and you're going to have to start
14 paying \$50 a month towards your health care. Well, I still got
15 kids that go to college, a family to feed, just like everyone
16 of you do. So this ability to pay our --- I don't know how we
17 define it. I don't know where that goes.

18 And now you hand it to an arbitrator, like I think
19 the attorneys start churning again. I guarantee, if you put
20 anything that's a requirement of law in here that says you have
21 to explain why you gave it and how they're going to pay for it,
22 that is getting appealed every award that comes in.
23 Guaranteed. And those appeals will go on and on and on. So I
24 personally think, and on behalf of my 40,000 brothers and
25 sisters across the Commonwealth, in 1968, the legislature got

1 it right. In 1967, the state government and the electorate got
2 it right. And just because we're 46 years old with a piece of
3 legislation, doesn't mean it isn't working. So I thank you for
4 your time.

5 CHAIRMAN HARPER: Thank you very much. Do either of
6 you have anything to add?

7 MR. HARSH: I do have some testimony. I'm on behalf
8 of Art Martynuska, the president of the PFFFA. He regrets that
9 he can be here, but he would be willing to meet with anybody at
10 your office or back at their home office to discuss his
11 testimony.

12 Before I go on, I would like to just go over my 32
13 years. I'm not going to do all 32 years. But I want to just
14 explain how we differ here in Lancaster, so that everyone
15 understands how the process of Act 111 works for us here in
16 Lancaster City.

17 I am proud to say that I was a career firefighter in
18 the City of Lancaster from 1978 to 2010. During these years, I
19 was a member of Local 319, I served ten years as president, six
20 years as vice president and two years as recording secretary.
21 During that time, we had four different mayors. We negotiated
22 contracts 13 different times. Only three of those times, in my
23 32 years, did we go to arbitration. Only three times.

24 When those arbitration awards came out, both sides
25 were complaining that was a bad award. Neither of us were

1 happy, so the arbitrator must have did something right. Both
2 sides were unhappy, then something had to have been done right.
3 We weren't really pleased with either of their decisions.

4 During my time in the department, we tried to
5 minimum mandates calls, COLA. We tried to get pension
6 enhancements and we tried to get standards for safety. When I
7 retired in 2010, we did not have the COLA, we did not have a
8 pension enhancement, we did not have the minimum mandates for
9 apparatus or per shift and we did not have safety standards for
10 the job. We had S.O.P.s, but we did not have safety standards.

11 When I started in 1978, we had 118 firefighters per
12 shift, 33 guys on the rigs. Five stations were open. When I
13 left in 2010, we had three stations open. We had 72
14 firefighters and 13 guys per shift. Currently, there are 72
15 guys, 8 guys per shift. There are a truck --- ladder truck in
16 this city that is out of service all the time. So we have a
17 city of this size and we have one ladder truck. There are
18 engines that are placed out of service daily. Guys have bid in
19 positions, and when they come in, they go to other apparatus
20 because there are not enough men to man the apparatus.

21 We do not meet the rules most of the time and it's a
22 safety concern. During Mayor Gray's term with the city, we
23 negotiated two contracts and they went for a final last time.
24 The mayor decided --- he decided to go to arbitration. In
25 arbitration, he was given concessions on pension and healthcare

1 benefits. In Lancaster City, firefighters are required, made
2 to retire at age 60. Their pension is 50 percent of their
3 salary plus longevity. No Social Security, no COLA.
4 Healthcare benefits had been taken away from all the new hires
5 for their spouses when they retire. That will be an added cost
6 to them.

7 We just want fair pay. We have gone plenty of times
8 in with the city and they say --- hand them the request for
9 arbitration --- you know, for negotiations. They hand us
10 stickers. Ours may be a little exaggerated, theirs are all
11 zeros. The city says they have no money to pay. We spend
12 money to have their bills audited. Last time, we found \$2
13 million that the city said they had surplus. But they also had
14 \$9 million to the side. Is that bargaining in good faith?

15 My brothers and sisters in the fire service are here
16 to provide valued services to the city. They know that they're
17 not going to get rich or afford a big house. They won't be
18 able to buy the new car either. They do it because of their
19 passion. A passion to --- for service to the community that
20 they live in and that's what they want to do, including other
21 legislative Act 111 public safety employees, their employers
22 and the citizens that we risk our life to protect and serve.
23 Again, Act 111 works. Thank you.

24 CHAIRMAN HARPER: Thank you very much. Mr. Poulson,
25 you're not listed. Did you have something you wanted to add?

1 ATTORNEY POULSON: Yes, please. Thank you very
2 much.

3 CHAIRMAN HARPER: Briefly, because I do want to
4 allow time for Mr. Lightman. I'm sure we'll have testimony
5 that will be of interest to ---.

6 ATTORNEY POULSON: I'm sure. And hopefully, maybe
7 something that I have to say might be of interest as well.
8 First, I'd like to comment on an issue that everybody picked up
9 in Martin's testimony of the Lancaster Fire Department's
10 mandatory retirement age at age 60. That's something that you
11 see very often with firefighters and the police. We know that
12 the union members are always looking at retirement issues and
13 that's one of the many reasons why we are very concerned about
14 a retirement system requiring that it builds up over time,
15 because these people can't work as long as other employees.
16 It's a really important thing I'd like you to bear in mind.

17 The other thing that I'd like to note in terms of
18 experience is in addition to my work with the State Association
19 with legislative issues, I also work out in the field
20 negotiating contracts, seeing Act 111 interest arbitrations.
21 And I've done that for the last ten years all over the
22 Commonwealth. In fact, I did the Chambersburg contract with
23 Mr. Stonehill. I did the last Middletown contract that Ms.
24 Kuhls talked about. I will tell you that --- just to clarify a
25 couple of things, Chambersburg does have more firefighters

1 today than it did ten years ago. I don't know what was stated
2 to try to counter those things, but they do have more.

3 CHAIRMAN HARPER: And I think the question was
4 police officers; wasn't it?

5 MR. EICHELBERGER: No, it was both, but it was state
6 wide.

7 CHAIRMAN HARPER: Okay.

8 MR. EICHELBERGER: We just heard in Lancaster that
9 they have less than they did, so ---.

10 MR. POULSON: There were some that had less. I just
11 wanted to clarify that. But Ms. Kuhls didn't participate in
12 class negotiations. Maybe if she did, we'd have a better
13 experience. Middletown was one of those places where we walked
14 in to the first bargaining session --- we had one session ---
15 and we were told take it or leave it, we'll go to arbitration.
16 So the police were pushed to arbitration. And the arbitration
17 ruling did provide the township with some significant
18 concessions. In fact, that sergeant pay issue that was
19 addressed, there was significant testimony and evidence on that
20 issue before the panel. I can guarantee that, so that's
21 something that was presented.

22 And so those are just clarifications that I think
23 would be helpful, but also give you a sense of the level of
24 detail in these hearings. You know, ability to pay is
25 considered and acknowledged. It's the most important factor in

1 any arbitration and in any negotiations.

2 On rare occasions where we did interest arbitration,
3 I'm trying to figure out when it's necessarily going to be paid
4 for economic and non-economic situations that are appropriate.
5 And Mr. McLaughlin, who does what I am on the other side,
6 correctly pointed out that the heart of this bill and why this
7 bill is so troubling is this business of requiring the laundry
8 list of information in awards citing the ---. President Neri
9 correctly noted, as Mr. Laughlin knows, every award were a
10 municipal is not looking to resolve a safety rule, it will be
11 implemented and it will be appealed. So we'll have more
12 uncertainty. It can go on for two or three years. So talk
13 about waiting and worrying about a six month delay in getting
14 the report, you're going to be waiting years. That is by far
15 the worst thing in this bill. When we say we want bargaining,
16 we mean it because there will be no incentive for employers to
17 compromise. They'll say go to arbitration, let the Judge
18 figure it out and we elected officials don't have to have our
19 fingers on any of this. It's a very, very significant concern
20 and I'm telling you that from somebody who practices in the
21 field. I do have concern.

22 But one final area that I would like to highlight
23 has to do with the timing. So we did hear concerns about
24 timing from the earlier panel. Act 111 has very clear and very
25 specific timings. Bargaining must start by June 30th. The

1 latest that an award can be issued under Act 111 is the end of
2 October. That's what the law says. So why do we have
3 situations where it takes six months or a year or two years to
4 get an award? I'll tell you why, because when we go through
5 the process and we pick a path, the first thing that the
6 neutral arbitrator does --- and by the way, there's three
7 people on the list. They strike one, we strike one. It makes
8 sense to me. And the ones are the most reasonable are the ones
9 that get picked.

10 The first thing the neutral says is gee, I have a
11 tight schedule. It's supposed to get awarded in 30 days. Do
12 you guys agree to waive the timelines? Every single case, the
13 municipalities say sure. Sure. That goes beyond 30 days. We
14 don't need to amend the law. If the concern is to get cases
15 done quickly, then I would suggest to this panel to tell the
16 arbitrators don't waive the timelines. We're waiving timelines
17 for another 30 to 60 days. So, you know, that's some
18 perspective from what is really happening out in the field.
19 What we think, because the law works, we shouldn't be tweaking
20 it. We don't need to change things for timing. In terms of
21 transparency, we testified about it before, the time factor
22 under 111. See how it works, from my perspective. No one's
23 taken me up on that, but the process works. Police officers
24 and firefighters don't want unreasonable contracts. They want
25 the same contracts as everybody else. In my experience working

1 with police and firefighters across the state, that's what they
2 do, so anyone who wants to see, let me know. Thank you.

3 CHAIRMAN HARPER: All right. I have a question for
4 Mr. Poulson. If everybody agrees that the economic testimony
5 is produced. Municipalities produce it, it's all out there and
6 that the arbitrator considers it --- which I think the
7 municipalities may fear that the arbitrator isn't considering
8 it ---?

9 ATTORNEY POULSON: Right. We hear that, too.

10 CHAIRMAN HARPER: But when you're saying that, why
11 is it a big deal to have the Findings of Fact regard to that?

12 ATTORNEY POULSON: The problem is that what this
13 bill does is it's not really Findings of Fact. It's requiring
14 to list factors to be considered based on record evidence, and
15 if you're not satisfied with the criteria, then you appeal.
16 That's what's going to happen. Lawyers are going to appeal.
17 They're going to appeal every one of these and say well, that
18 wasn't based on the evidence. Three percent, no way. That's
19 what's going to happen.

20 CHAIRMAN HARPER: So you're worried about having the
21 arbitrator elucidate their thinking, is solely based on the
22 fact that you think that municipalities will appeal on that
23 basis?

24 ATTORNEY POULSON: Well, there's two reasons. One
25 is that nobody --- anybody who goes through one of these

1 processes knows for a fact that the arbitrators go through
2 every --- it's already happening. And both sides tend to know
3 what's going on throughout the process. If you remain informed
4 with the arbitrator, even that's ---. Awards shouldn't be
5 surprises. The worst part about it is the likelihood that
6 there will be more appeals. Employers try to demand, even
7 though the law is very clear ---.

8 CHAIRMAN HARPER: Virtually impossible.

9 ATTORNEY POULSON: Because there's a tendency to say
10 well, blame the arbitrator, blame the judges and we're not
11 involved. And that causes a lot of time extension for the
12 municipalities and also for the police officers and fire. And
13 I'll submit that there's less of us than there are
14 municipalities. We have a lot smaller bankrolls.

15 CHAIRMAN HARPER: Thank you. Senator, do you have
16 anything you wanted to add on this one?

17 SENATOR EICHELBERGER: I do. If I can take it a
18 little broadly here and maybe ask a couple things.

19 CHAIRMAN HARPER: Sure. Well, you were making notes
20 so I thought maybe you wanted to talk or comment.

21 SENATOR EICHELBERGER: Well, I've heard some of
22 these things before. And it's always interesting to me and Mr.
23 Neri was --- you asked a very good question. The problem is
24 with what we're hearing today is --- and from Rick Poulson,
25 that there's some agreement on some of these issues, at least

1 sometimes, from some of you folks. But yet, you're not willing
2 to change any part of Act 111. I mean, I don't understand
3 that. If there's --- and the part that frustrates me the most
4 is, sometimes you'll say --- and we're going to hear from Gary
5 Lightman in a minute, but he's delineated in his testimony
6 specifics in here there's no willingness to sit down and go
7 through any of these things. None. You're satisfied, Mr.
8 Neri, that no transparency in this process is acceptable to
9 you; am I correct?

10 MR. NERI: I didn't say that.

11 SENATOR EICHELBERGER: That's exactly what you said.
12 You said you wouldn't change anything. You wouldn't allow that
13 provision to be incorporated into the current law.

14 MR. NERI: I didn't say there's no transparency in
15 this process.

16 ATTORNEY POULSON: Act 111 permits transparency
17 currently. There's nothing in the law that negates these
18 hearings closed. Many of my hearings are attended by anybody
19 who ---.

20 SENATOR EICHELBERGER: And most of them are not.

21 ATTORNEY POULSON: We invite the press. We invite
22 the press and the employer objects to it.

23 SENATOR EICHELBERGER: Well, let me rephrase that,
24 and I understand that, but most of what I hear is that they're
25 closed. Why don't you allow them all of the time? So that

1 makes my point. What's the problem then with putting that in
2 the law if you're fine with it? You know, every time you bring
3 up a thing, you guys say that's not an issue. We agree to
4 that, we agree to this and that, and we do that all the time.
5 Every day that happens. Well, then let's put it in the law.
6 What's the problem with that?

7 ATTORNEY POULSON: There's an open records law that
8 deals with these types of issues. That's probably a more
9 appropriate place to have this conversation. I'll tell you
10 that ---.

11 SENATOR EICHELBERGER: No, I don't think. But we
12 need to address this --- you guys don't want to touch Act 111.
13 Let's look at Act 111 ---.

14 ATTORNEY POULSON: Why don't --- if you keep us ---
15 why do you hear ---?

16 CHAIRMAN HARPER: Mr. Poulson.

17 ATTORNEY POULSON: I'm trying to answer the
18 Senator's question.

19 CHAIRMAN HARPER: I'm not sure you are trying to
20 answer the Senator's question. I'm chairing this meeting.
21 He's asking questions. Dialogue is good. That's how democracy
22 works. So let him get his question out before you answer it so
23 that the court reporter can get a good transcript.

24 ATTORNEY POULSON: I understand.

25 SENATOR EICHELBERGER: Thank you. And I don't have

1 a problem --- if we can address that another way, that's fine.
2 But there are other issues here that we can't address another
3 way. That's why I say we have to go through Act 111 and we
4 should do it more cleanly by doing it that way. The cost
5 sharing, 50/50, you know, you made a statement about
6 Chambersburg has more. I can tell you Altoona, that I
7 represent right now, is in distress. That union has more money
8 than the City of Altoona. The City of Altoona doesn't have any
9 money. So I mean, we can all show examples around the state
10 where there's an exception to something. I'm talking across
11 the board, the unions have a lot of money and so do the
12 municipalities when it comes to this kind of thing.

13 ATTORNEY POULSON: That's absurd.

14 SENATOR EICHELBERGER: You don't have any less than
15 what --- a small municipality that has a very tight budget,
16 they very well may have a small FOP that doesn't have a lot of
17 money. But why would we give an advantage in the law to one of
18 the parties in the negotiating process? I don't understand why
19 anybody thinks that's good public policy to do that. So we
20 should share those costs. And I had offered before --- again,
21 I had offered before to you folks that if we can put some
22 parameters on that, we can work through that issue. If you can
23 show --- you can demonstrate somewhere that somebody can't
24 afford to go through the process, we'll try to address that.
25 But again, the answer is no, we're not going to address that

1 issue.

2 We're not going to address that issue. We're not
3 going to address the transparency issue. We're not going to
4 address the selection issue for choosing arbitrators. How can
5 anybody argue that flipping a coin to pick an arbitrator isn't
6 a fair process? If these guys were all the same and you don't
7 have a problem --- which you've said these people are ---
8 they're fine, they're professionals. We have a short list,
9 we'll pick one of them. There's no situation here that they're
10 predisposed to vote one way or another. Then let's just flip a
11 coin and pick one. Why would you object to that? Do you want
12 to answer that Mr. Neri, any of these issues?

13 MR. NERI: Because I don't see the need to change
14 it, permitting a law a way --- a systematic way to address
15 these issues that works. I've been open with you. I've been
16 open to discuss issues and not only discuss them with you, but
17 discuss them with our municipal counterparts. So I don't want
18 someone to get the idea that we're not willing to discuss the
19 issues. Now, if you want to fault me for not agreeing with
20 you, I apologize for that, but I think I've explained why Act
21 111 is extremely sensitive. If you just read the full binder
22 that I'm giving you here, you will see that they like their
23 current system. They're just trying to tilt the field a little
24 more to their side because of the current economic situation.

25 SENATOR EICHELBERGER: Well, you and I have

1 discussed this. You told me in your own words this goes back
2 and forth. Sometimes when the economy's bad, it works for the
3 municipality. It ebbs and flows, I think somebody worded it
4 that way in the written testimony. When the economy's good,
5 you guys come in, you want more money. That doesn't mean it's
6 a good process. We should have a process that's fair every
7 year across the board to the taxpayers in that community. The
8 other thing that I've been trying to get at here is we're
9 hurting the people in these communities because we have less
10 people to do public safety work. And the union bosses never
11 seem to care about that. As long as the people that remain in
12 the unit are happy, and they get reelected, that's fine. But
13 you've got --- you know, we're talking about communities here.

14 We have less cops on the street. We have less
15 firefighters at the firehouse. That's not a good thing. That
16 hurts our communities. We should be working to try to keep
17 more of these people employed, give them an adequate wage and a
18 benefit package. And the benefit package we're talking about
19 --- and Marty, I mean, when you compare what public sector
20 people get today to what most people are doing in their private
21 businesses, it's far more generous than what these people are
22 getting. And if things are tight now, and there's got to be
23 some concessions made, think what's happening in many private
24 sector businesses. People are not getting any raises, people
25 are taking cuts, they're taking freezes, they're getting big

1 increases in their co-pays and deductibles for their health
2 insurance or losing their health insurance altogether. I mean,
3 we can't just say well, you know, we should all be getting more
4 money and everything improved every year.

5 I mean, you talk about safety issues for people that
6 are working in these units. When you have less people on the
7 street, that's not a good thing. You can have the best
8 personal protection for that officer, but if he's used to
9 riding with somebody and now he doesn't have anybody else to
10 ride with, there's not a backup down the street, that's not
11 good for him or her. But that's what we're faced with today
12 because we continue to cut people because we have to make up
13 for all these arbitration awards that are coming down. So why
14 can't we just --- and I'll close here. Why can't we just agree
15 to talk about these issues? If you agree to many of these,
16 let's sit down, work through the language and figure out a way
17 to make them work so we can update a 46-year-old law that
18 people on both sides can agree with, that is updated,
19 modernized, a little bit more fair in comparison to the times
20 and call it a day. Are you willing to do that?

21 MR. NERI: Senator, I'm willing to discuss not only
22 Act 111, but pension issues that we're currently facing. The
23 regional police is the real answer to the solution of providing
24 adequate police protection. There are many things that were
25 available to us. I will discuss anything you want at any time

1 you want to discuss it.

2 SENATOR EICHELBERGER: So you're willing to discuss
3 legitimate --- a legitimate discussion on working through the
4 language on the Act 111 proposal?

5 MR. NERI: Senator Eichelberger, in answer to that,
6 we don't believe that there's anything in Act 111 ---.

7 SENATOR EICHELBERGER: Okay. That's what your
8 answer is, no?

9 CHAIRMAN HARPER: Okay. We've got the testimony and
10 we have a couple more people who also would want to join the
11 discussion, so I'm going to recognize Representative Topper.

12 REPRESENTATIVE TOPPER: Well, I think my question
13 was answered. It was about the transparency issue. My dad was
14 a public school teacher for over 30 years and my uncle was a
15 state trooper so, you know ---. And I also sat on the other
16 side of the negotiating table as a borough councilman. So I
17 think I have a pretty good perspective and a reasonable
18 perspective of both and my question, you know --- I feel it has
19 been answered as far as the transparency which was, you know,
20 we say that it's transparent and yet for some reason it's not.
21 I'm just not seeing that. So I don't know why that's such a
22 big issue here with the legislation, but you guys answered
23 Senator Eichelberger, so I'm good.

24 CHAIRMAN HARPER: Okay. Thank you.

25 MR. NERI: Representative, if I may. This amendment

1 for transparency, the only thing that's being opened up by this
2 amendment, unless I'm reading this wrong, is the arbitration
3 hearing.

4 CHAIRMAN HARPER: Correct.

5 MR. NERI: None of the negotiations are open ---

6 CHAIRMAN HARPER: Correct.

7 MR. NERI: --- that goes back and forth. And all of
8 the executive sessions where the decisions are made, they're
9 not open to public transparency. It's the arbitration hearing
10 --- to show that goes on, which Act 111 does not prohibit.
11 There is no prohibition in Act 111 ---.

12 REPRESENTATIVE TOPPER: But don't both sides need to
13 agree that the hearing is open? So any --- as long as one side
14 wants it open, you're saying the hearing's going to be open?

15 MR. NERI: If there is an issue before the panel,
16 it's a majority decision of the panel, the majority of the
17 three panel members. Also there is some public safety concern
18 with transparency and I'll let Gary Lightman address those
19 issues.

20 REPRESENTATIVE TOPPER: Okay.

21 CHAIRMAN HARPER: Right. Okay. Thanks.

22 Representative Knowles?

23 REPRESENTATIVE KNOWLES: Thank you, Madam Chair.

24 For those of you who may have heard some of what I'm going to
25 say, please bear with me and forgive me. From 1972 to 1979,

1 and note the dates, 1972 to 1979, I was a police officer in the
2 Borough of Tamaqua, full-time police officer. So I appreciate
3 the job that you do. I'm familiar with the danger. I'm
4 familiar with the shift work. I'm familiar with the stress.
5 I'm familiar with the demands on your family life. It's not an
6 easy job. And there's nobody at this table that doesn't
7 appreciate what firefighters and the policemen do. So let's
8 make that perfectly clear; okay?

9 MR. NERI: Thank you.

10 REPRESENTATIVE KNOWLES: It's kind of interesting,
11 because when I left the police force, I went into business for
12 myself. And as a result of being convinced by some of my
13 friends in the community, I ran for borough council. I served
14 eight years on borough council, but I served six years as
15 mayor. So my familiarity with Act 111 goes back longer than
16 some of these people in this room have been on this earth;
17 okay? So I kind of get it and I kind of understand it. And I
18 know that people --- I've heard it said when I was a cop and I
19 hear it said today, we can't pay those people enough for what
20 they do. We can't pay those people enough for what they do.
21 And people mean that. The problem is that we need to look at
22 this issue and boy, what a difference when I'm here. And by
23 the way, I was part of the negotiating team for the police
24 department when I was there for some of those years. And a
25 couple years later, I'm sitting there as a borough councilman

1 negotiating against the very things that I fought for earlier.

2 So I understand what you guys are doing; okay? The
3 problem is that we need to base decisions --- if we could print
4 money like the federal government, maybe we could pay everybody
5 what they wanted, but the fact of the matter is that we can't.
6 These are taxpayers' dollars. Hard earned taxpayers' dollars.
7 When we make the decisions and when we deal with any of the
8 people that work in public sector jobs, we need to be fair, it
9 needs to be affordable and it needs to be reasonable. That's
10 what we want. We want to be fair, we want it to be affordable
11 and we want it to be reasonable. I've got to tell you guys,
12 I'm a co-sponsor on this bill, something I thought long and
13 hard before I signed up to. I sat down and talked and --- I
14 had concerns about it. But I don't get it, because as I look
15 at this bill, I don't see anything that dramatic. I don't see
16 anything that dramatic.

17 And even more so, gosh, I couldn't tell you --- I
18 have friends that are cops. So I have quite a few friends that
19 are cops and, you know, when we talked about this legislation,
20 when I explained some of the stuff to them, they don't really
21 think it's --- all right, you know, it's something worth
22 talking about. It's something worth negotiating. And I know
23 that you get those --- you know, as do all of the unions, they
24 get all those emails about how bad we are and how we don't care
25 about anybody. But when you're talking to them and when you

1 explain to them what you're trying to do and why you're trying
2 to do it --- I'm not saying they agree with everything. But
3 unlike what I've seen at this table, they're at least willing
4 to talk. I mean, let's talk. We would all like to vote on
5 something that you guys could live with, that we could live
6 with. And you know, the saying is that if nobody's happy and
7 everybody's satisfied, than maybe it's a good deal. So why
8 don't we work with the committee and why don't we work it out
9 so that nobody's happy but everybody's satisfied? Thank you
10 very much, Madam Chair.

11 CHAIRMAN HARPER: Thank you.

12 REPRESENTATIVE KNOWLES: And just one last question.
13 Can you --- I mean, to simply say Act 111 is fine. We don't
14 need to make any changes. Can you be specific in what areas of
15 the legislation that are especially troubling to you? And I
16 don't want to take a lot of time but, you know, it's not a --
17 -- everything's fine the way it is, that doesn't sound to me
18 like a good argument.

19 MR. NERI: Well, I think we went through that in our
20 testimony here and at prior hearings, Representative, what the
21 issue was for us.

22 REPRESENTATIVE KNOWLES: Okay. Thank you.

23 CHAIRMAN HARPER: All right. Representative
24 Mirabito?

25 REPRESENTATIVE MIRABITO: Thank you. You know,

1 obviously this is a very, very difficult discussion, and I
2 think that the Senator and the Representative are trying to do
3 something to protect the taxpayers. At the same time,
4 arbitration --- the whole point of arbitration is not to go to
5 court. That's why we created a system of arbitration. Because
6 we didn't --- that's why it's so hard to overturn the
7 arbitrator's decision, because the courts are low --- that's
8 the word they use. They are low to overturn the judgement of
9 an independent neutral who go by certain rules that have been
10 upheld in court. My concern with this --- I mean, I'm going to
11 be honest with you guys. I don't see splitting the cost of the
12 arbitration fee between the union and the employer that onus.
13 I do not see going to seven arbitrators that onus. I do see
14 --- if we put it in place a system that it ends up pushing
15 arbitration decisions into court, we have done a big disservice
16 to the public. And if we need to do something to make the
17 arbitrators more responsible, we need to find a solution and we
18 all have to do it.

19 I think that we have to be very careful not to
20 create a situation where either party has the incentive to go
21 to court. Because we have just made --- killed the caboose.
22 As much as people don't like arbitrations, going to court is a
23 disaster because the only folks who get rich quite frankly is
24 the attorneys. And I say that as an attorney; okay? Or the
25 litigators. The litigators who will spend hours preparing

1 witnesses, hours going over documents. So I hope that maybe
2 after this hearing, we can find a way to put all our heads
3 together and to respect what the good Senator is trying to do
4 and the good Representative. To respect that we all care about
5 our fire and police personnel. And that they have a right to
6 collective bargaining in the constitution. And that they're
7 not going to take that away, but at the same time to not do
8 something that actually inadvertently creates a nightmare.
9 That's something I think we need to look at.

10 CHAIRMAN HARPER: Thank you very much,
11 Representative. Okay. Thank you, gentlemen. What we're going
12 to do now is move through the next testifiers quickly, please.
13 We're way over time and I don't know about the rest of you, but
14 if I don't eat lunch sooner or later, I get a bad temper and
15 you don't want to see that. Okay? How fast can you talk?

16 MR. LIGHTMAN: Oh, I can do a very quick job.
17 Matter of fact, I can ---.

18 CHAIRMAN HARPER: Yeah, hold on for a second and
19 introduce yourself. And give our court reporter a chance to
20 find her place. Go.

21 MR. LIGHTMAN: My name is Gary Lightman and I'm here
22 as the voice of reason.

23 CHAIRMAN HARPER: Good to know. An unusual role for
24 you.

25 MR. LIGHTMAN: I would have had Joe Kovel, the

1 President of the Pennsylvania State Troopers, here with me, but
2 he heard about your temper issues. He is available for
3 questions if they would come up. We've all had our partners up
4 here, so for me now it's --- I don't want to reiterate. I just
5 want to say a few things. I probably am --- with all due
6 respect to Representative Knowles, the only one old enough here
7 to truly remember the beginnings of Act 111. It was my baby.
8 I raised it from the very beginning. It paid for my cars, my
9 house, it did a nice job being raised. But I will say this.
10 Some of the important things that I have seen occur over time
11 with this law --- and one of the things that has not been
12 answered by anybody. You can read Act 111 in about seven
13 minutes. I mean, if you just sit there and read it --- I've
14 probably meant to one of these days. But if you just read
15 right through, it is the most bare bones piece of legislation
16 you have ever seen.

17 However, other parents have come along, other than
18 me --- although I like to feel that I've spent most of my time,
19 and we've made it grow. We've made it grow up. And how did we
20 do that? Through many, many different changes that have
21 occurred in the course. I mean, when you get to the basis,
22 it's the simplest question that I've heard asked up here,
23 what's collective bargaining. One of you had asked that
24 question. I thought that's a great, great question. What is
25 it? Well, Act 111 doesn't actually define anything, but the

1 courts did it in Act 111. It explains what the duties are of
2 people that you want to engage in the collective bargaining
3 process. Is it enough just to write a list of proposals, say
4 here and walk in the door and say I'm out of here?

5 If you take a look at the cases under Act 111, a lot
6 of the questions that have been posed have been answered and
7 answered well. In fact, I've represented departments in the
8 State of Wyoming and a lot of strange places throughout the
9 United States in arbitration. And the Pennsylvania statute is
10 the one that is looked at by others as a thing of beauty. I
11 mean, the fact that it is so clear, so precise as far as if you
12 do this on this day, you must do this on this day, and all the
13 gaps have been filled in with 40 years, plus, of litigation.
14 One of the things that concerned me --- again, with all due
15 respect, but can anything be made better? Possibly. Well,
16 according to my wife, maybe not her, but other things you can
17 make better and better and better. You can do it. However, if
18 it's already something you feel great with it, something that
19 both sides can understand and deal with, then you don't need to
20 move on to something different for fear of what you end up
21 getting. That's the concern, is what will you end up with when
22 you fix it?

23 It sounds pretty good to me, transparency really
24 good, except one of the things that I wouldn't want to be
25 talking about publicly is how many troopers we have out in a

1 county on a midnight. I wouldn't want to be doing that. But
2 if I don't, I would have failed my mission to the state police
3 to be able to show the danger that they're facing out there. I
4 will always believe that --- another case that filled in the
5 gap. Many years ago, Borough of Dunmore, an arbitration was
6 done simply by one person walking in and saying we would like
7 some of these things, you know, and laid out what they wanted.
8 The case ended up in the Supreme Court and --- as a result of
9 appeals by the Borough of Dunmore. And what the Supreme Court
10 said is look, we never intended --- the legislation never
11 intended, in the very beginning, to make this some big deal
12 process. It's an extension of the collective bargaining
13 process. That's all it was ever meant to be. So even in the
14 presentation that's done, you'll not see anywhere in Act 111
15 that I need to bring in documents, that I need to put on an
16 actuary, that I need to do Direct and Cross Examination, you
17 know.

18 I mean, lawyers --- you want to talk about and I'll
19 say it, too. Lawyers have ruined the process. Lawyers have
20 made what was meant to be a quick and fair process into
21 something that it really wasn't meant to be. You let the press
22 in and now we're going to get Perry Mason. Now we will get the
23 real dog and pony show. And over the years, the courts have
24 told us exactly what we need to do in that process. And one of
25 the things that we don't need to do is make it a circus. I

1 mean, as I said, I believe in it so strongly that I've spent my
2 whole career in it. And honestly and sincerely, it works. It
3 really does work. And I would never sit here and regale you
4 with decisions like, oh, we lost this, see how great it is
5 because a cop lost his benefits? You know, I mean, I
6 personally believe I represent the greatest people in the world
7 and whatever it is that they can get, I think they should have.

8 But I will tell you one thing that I always feel.
9 If I could take the Pennsylvania State Troopers out on strike,
10 they would have so much more than they have right now. Now, in
11 order to do that, we'd have to strike. If I asked them to do
12 it, they wouldn't do it. But they can prove, unbinding ---
13 other unions that do have the right to strike, that can say
14 we're going to shut your company down if you don't pay us X.
15 These guys, they have to come in and say let me prove to you
16 why we should have a pay raise. Let me prove to you why we
17 need this benefit. And if they don't prove it, they don't get
18 it. They can't use the power that they have to force it.

19 And that's why Act 111 is written the way that it
20 is. To keep that fairness. For example, to not keep people
21 out of a process that they can't afford. And little things ---
22 and again, only because I live it and know it. Seven
23 arbitrators, how could I possibly object to that list of seven
24 arbitrators? A lot of arbitrators do not want to do Act 111.
25 In a grievance, they go in like the Lone Ranger. You know,

1 they ride in, listen to a case, ride out and make the decision.
2 And Act 111 is going to get them --- people yelling on each
3 side of them, all the pressure, all the newspaper publicity.
4 They don't want to do it. There's a very small pool of very
5 competent people that are willing, but it's small. If you
6 expand the pool, I mean, I'm going to propose --- like if I had
7 to have brain surgery and my insurance company says I can
8 recommend three doctors and I feel pretty good that I'm going
9 to get the top three brain surgeons to do my work. But if they
10 now say, guess what, we're going to expand the pool a little
11 bit, we're going to throw in four more additional brain
12 surgeons and guess what, we're going to knock three of them off
13 the list. Now all of a sudden, I'm worried am I going to get
14 the seventh best brain surgeon working on me?

15 Again, 45 years the way it works just makes total
16 and complete, not only sense, but I would say this. And I know
17 you've been asked these questions before. I'm not going to
18 deny it and I'm not going to say --- dodge it this time. I
19 mean, I dodged it the last time, but I would say this. I
20 wouldn't --- I respect all of you enough that I wouldn't waste
21 your time discussing something, in my opinion, that doesn't
22 need to be discussed. And I'll explain it this way. The
23 legislation today is probably the smartest we've ever had going
24 back in time. There's no doubt, present company. So over 45
25 years that this law has existed, tough economic times are not

1 brand new; right? I mean, we went through some real bad things
2 years ago. Act 111 was still there.

3 We survived all those things with this same law. So
4 therefore, to make a knee jerk reaction and change something
5 that has already proven itself makes no sense to me. It makes
6 no sense. And the only explanation when I search for
7 explanations is that if things are bad, let's see if we can now
8 put a stake through the heart of something that we don't care
9 about. Well, this happens to be something that I love. And I
10 would be willing to talk with anybody about that thing. But in
11 so doing, what I would hopefully be doing is explaining to you
12 why exactly what is there should be there and show you the
13 cases that have been interpreted over the years to make it
14 clear that every one of these things that exist in that law
15 worked back then, work today. And you heard me say before,
16 there's another thing that's very, very old. Leviticus.
17 Hasn't been changed for 3,000 years and it still works.

18 CHAIRMAN HARPER: I'm not sure about that. In light
19 of certain decisions recently --- but go ahead.

20 MR. LIGHTMAN: Point well taken. Well, that is what
21 I have to say ---.

22 CHAIRMAN HARPER: All right. I have a question for
23 you if you're finished with your testimony.

24 MR. LIGHTMAN: I am.

25 CHAIRMAN HARPER: And my question is this. If we

1 all agree that economic information, evidence, what the
2 municipal government can afford is part of the arbitration
3 already --- we all agree on that. The municipalities
4 complained they worked to put that information out there and
5 you heard the last panel tell us that's always part of what
6 they decide. Why would it be a big deal just to put in the
7 decision just a line that acknowledges that the economic
8 evidence has been considered and here's why we think this award
9 is affordable? Why is that a big deal?

10 MR. LIGHTMAN: Well, the only reason I could say why
11 is number one, is again, consider what the process is going to
12 be. Extending the collective bargaining process and the quick
13 resolution of the issue. If I would resolve the issue by
14 saying look, the reason I didn't give you the three percent pay
15 raise and I only gave you a two and half percent pay raise was
16 I personally believe that the economics of the municipality
17 were such that --- and I go on.

18 CHAIRMAN HARPER: Well, arbitrators in Triple A
19 arbitration do that all the time. Yeah, they give you a little
20 explanation on why they found this way or that way and they
21 tell you why. What's the big deal? If we all agree that the
22 evidence is already part of the process and the municipality
23 seems to doubt that it is being considered and your guys are
24 sure that it is being considered. What's the big deal about
25 saying to the arbitrator just add a line to your award? That's

1 just one of the pieces.

2 MR. LIGHTMAN: Two things. Number one is, again,
3 when I say why, you're saying, oh, so the parties will believe
4 that they were understood.

5 CHAIRMAN HARPER: So that the municipal governments
6 will have faith that the arbitrator actually considered that
7 evidence.

8 MR. LIGHTMAN: But if you take a look at pretty much
9 any arbitration award that you'll ever see in the world,
10 there's at least 99 times out of a hundred there's, you know
11 --- and the arbitrator will say in that I have listened to the
12 brilliant testimony of the whatever and I have done this and I
13 have spent days and days studying this award and now as a
14 result of that, here's my decision. Now, what the bill is
15 requiring is a detailed financial analysis. If you just want
16 an arbitrator to say I paid attention, than every award already
17 says I paid attention.

18 CHAIRMAN HARPER: Right. But then what we're
19 talking about is wordsmithing the bill, which the Senator has
20 already agreed he's open to wordsmithing the bill. The
21 municipal governments are not sure that the arbitrator is
22 paying any attention to the economic evidence that they're
23 putting in. The police officers are sure that he is. The bill
24 requires some statement to that. If it requires too much,
25 fine. Give us some language that would solve the problem that

1 we can all find common ground on.

2 MR. LIGHTMAN: I would say that if that is honestly
3 a concern and with all due respect ---.

4 CHAIRMAN HARPER: It is. It was heard by all the
5 municipal witnesses this morning.

6 MR. LIGHTMAN: Well, I would say that we did not
7 hear from all the --- the bulk of municipalities out there. If
8 I wanted an arbitrator to pay specific attention to something,
9 I would say to the arbitrator what you're about to hear is very
10 critical. I want you to pay specific attention to it. And it
11 is the heart and soul for our case and it is critically
12 important that you address this issue. I mean, do you expect a
13 judge --- we've had to --- in the appeals that you have to give
14 detailed explanations.

15 CHAIRMAN HARPER: Yes.

16 MR. LIGHTMAN: If you read Act 111, it's final and
17 binding and not appealable in court. It was done that way for
18 a purpose. You don't want your employees to be out pending,
19 particularly your essential services, which is police and fire.
20 You want it open. You want it done, over. That's what you
21 want. But what you're doing is letting in the lawyer again.
22 What you're doing is taking this process and making it more
23 lawyery (sic), which as an attorney, I can tell you is not what
24 it was meant to be and it hurts the process.

25 CHAIRMAN HARPER: Okay. With all due respect, your

1 position is that Act 111 is perfect and needs no changes;
2 right?

3 MR. LIGHTMAN: I would say yes, that Act 111 is
4 perfect and needs no changes, however if you look at 40-some
5 odd years' worth of changes, they've been made. They have been
6 made both legislatively and they have been made legally. And
7 for example, Act 47. I mean, things that have been done out
8 there impact on the operation of Act 111. I mean, to me,
9 what's happening with this --- every single one of these
10 changes to Act 111 are things that I look at and I see what
11 harm they could cause. There's not even one that is not
12 harmful to the process. That's the problem and that's why I
13 think you get the reaction you get from the FOP, from any
14 stakeholder on our side, is show me one thing that is not
15 harmful to the process.

16 CHAIRMAN HARPER: Thank you. Anybody else have
17 questions or comments? Representative Knowles?

18 REPRESENTATIVE KNOWLES: Yes. Mr. Lightman, I met
19 you a long time ago and I can ---.

20 MR. LIGHTMAN: I remember it well.

21 REPRESENTATIVE KNOWLES: Yeah, I can tell you that
22 you've grown into your middle years much more gracious than I
23 have. Just a real quick question. Can you tell me a little
24 bit about the number of neutral arbitrators in terms of the
25 list and the background of the neutral arbitrators?

1 MR. LIGHTMAN: Well, the statute itself, Act 111,
2 has a specific definition as to where arbitrators have to come
3 from. And arbitrator in an Act 111 case will be a resident of
4 the Commonwealth of Pennsylvania ---.

5 REPRESENTATIVE KNOWLES: Any qualifications other
6 than being a resident?

7 MR. LIGHTMAN: And be a member of the list that is
8 maintained by the American Arbitration Association. Now, the
9 American Arbitration Association is probably the hallmark of
10 arbitrating groups. You've got MCS (phonetic), there's
11 Pennsylvania Borough of Mediation, there's a lot of private
12 arbitration services. But probably the most respected in the
13 country is the American Arbitration Association. If I wanted
14 to be an American Arbitration Association Arbitrator, the first
15 thing they would look for is they have different types of ---
16 you know, commercial arbitration, they have --- you know, so
17 they have to apply for the labor panel. You know, and I would
18 say I would like to be a member of your labor panel. They
19 would then look at my background, I need to have references and
20 I can't remember how many different references. But if you
21 supply the references, then they do a background investigation,
22 and if you're acceptable, you now are in their Labor
23 Arbitration list.

24 REPRESENTATIVE KNOWLES: But my question, Mr.
25 Lightman, is describe to me --- as you've looked at lots of

1 lists and you've picked lots of neutral arbitrators, describe
2 to me what --- is it a lawyer? Is it somebody from academia?
3 Is it a retired police officer?

4 MR. LIGHTMAN: Well, that's interesting. Back in
5 the day --- in the early days of arbitration, almost every one
6 of them came from the World War II Labor Board. I mean, the
7 people that the President had brought in and helped to set
8 prices during the war. And these gentlemen became labor
9 arbitrators, their business was labor, and that's where they
10 all came from. They were distinguished gentlemen who spent
11 their life in labor. What I've seen happening as time has gone
12 on, it's become a lot more academic. A lot of labor
13 professors, a lot of people who have spent their life in a
14 labor business. But I will say one thing about all of them.
15 It seems to me, in dealing with them, with all of them, it's
16 wanting to be able to provide a service that helps avoid
17 terrible problems, I mean, the problems of bad morale in police
18 work with these delays in contracts. You want to bring
19 somebody in who can make the decision fair and quick and get it
20 over with.

21 REPRESENTATIVE KNOWLES: And it's a good way for a
22 guy that's retired to make a couple bucks.

23 MR. LIGHTMAN: Oh, absolutely. For somebody who
24 spent their life in the process, though. That's what you
25 normally see.

1 REPRESENTATIVE KNOWLES: Thank you, Mr. Lightman.
2 Thank you, Madam Chair.

3 CHAIRMAN HARPER: Thank you very much, Mr. Lightman.
4 Thank you for your testimony and thank you for waiting. We're
5 a little behind the times. I would ask Ed Troxell from the
6 Boroughs Association, Michael McAuliffe Miller from Eckert
7 Seamans and Brian Jenson from the Pennsylvania Economy League
8 to come up, share your time and help us round out this
9 morning's very interesting testimony on these bills. Yes, we
10 are late, so --- and I know you spent time preparing your
11 testimony and we do have written copies of it. I'm going to
12 ask you to summarize and to move ahead quickly. Now, before
13 you start, let's get our court reporter to make sure she knows
14 who everyone is.

15 MR. TROXELL: My name is Ed Troxell. I'm the
16 Director of Government Affairs for the Borough Association.

17 MR. MILLER: Michael McAuliffe Miller. I'm a
18 partner at Eckert Seamans.

19 DR. JENSON: Brian Jenson. Executive Director of
20 the Pennsylvania Economy League of Greater Pittsburgh.

21 MR. TROXELL: Okay. Thank you all. I'm Ed Troxell,
22 the Director of Government Affairs. I want to thank the
23 Committee for inviting us here today, basically to look at Act
24 111. One of the things I just want to do before I introduce
25 our labor council is just maybe frame this argument, put it in

1 a context that's there. In 1968, we passed the Borough Code.
2 We did a Borough Code in 1968. The same body just last year
3 did reenact the Borough Code. There's nothing wrong with
4 looking back on a law and reenacting it. In 1968, we used to
5 burn lead casting (phonetic). We've learned some things from
6 that case. We don't burn lead casting anymore.

7 What I'd like to do is just basically put before you
8 the fact that Act 111 works. However, it does need some
9 tweaking to modernize it to make it more effective. You've
10 heard today from taxpayers from municipalities, you've heard
11 from the police, you've heard labor attorneys. Everyone's got
12 valid points. Everyone has something to say. However, we do
13 need to look at this process more closely and to open it up to
14 actually bring the Right-to-Know Law to bear on it. Let's have
15 some clarity. Back in 1968, we had black and white TV. We
16 were just getting into color TV; okay? Nowadays we're looking
17 at this with more information --- substantial information that
18 it would be better if we had some way of knowing what these
19 awards really meant through billing, about that analysis for
20 every award and things like that.

21 One of the things lastly, too, is a 50/50 cost. The
22 public servants, who are fireman, police, along with the
23 taxpayers, all share in the common public purse. If there's a
24 way we find that we can share those costs, we'd love to see
25 that take place. So the technicalities on the bill, I'm going

1 to give that over to Mike, but I just wanted to share that with
2 you and thank you for your time.

3 CHAIRMAN HARPER: Thank you, Ed. Mike?

4 MR. MILLER: I thank the Committee for the
5 opportunity to appear before it. As I've indicated, I'm a
6 partner with the law firm of Eckert, Seamans, Cherin and
7 Mellott. We have a statewide labor practice on the management
8 side and we've represented --- well, we're the longtime Act 47
9 coordinator of the City of Pittsburgh. We've represented
10 counties, cities, townships and boroughs across the
11 Commonwealth. And in my view, I'm afraid to have to tell you,
12 Mr. Lightman, but in my view, I have to disagree with my
13 colleague, Mr. Lightman, with whom I've tried many cases. This
14 is not an overturning of Act 111. From the boroughs'
15 perspective --- and I'm statewide labor counsel for the
16 boroughs. From the boroughs' perspective, it seems to me that
17 Act 111 can work and sometimes does work.

18 But what I view this bill doing is providing a
19 safety net for when it doesn't work, for when it goes offline.
20 And we've seen that happen. One of the things that you heard
21 this morning --- and I was here for the testimony earlier from
22 the municipal officials that testified --- was that the median
23 income of most residents of most boroughs and most
24 municipalities is being outstripped by the median income of
25 public safety. And Senator Eichelberger has already talked

1 about that and I think he's correct to talk about how that's
2 affecting the choices made by municipalities and municipal
3 officials. I'll tell you that Representative Schreiber's
4 community, the City of York, has less firefighters now than it
5 did five or six years ago as a result of several arbitration
6 decisions which we've been involved in fighting.

7 And I'll talk just a little bit more about it,
8 summarizing very, very quickly for this panel. What I would
9 say is this. Obviously, you heard a lot about the fee
10 splitting. The Boroughs Association believes, I strongly
11 believe, that this is a necessary change. This is something
12 that has to happen. Under the New Cumberland Case, a party
13 that seeks an arbitrator has to request bargaining and after 30
14 days can declare an impasse and proceed to arbitration. Even
15 if there is no meeting, even if there is no negotiation --- and
16 if you consider that for a second. One can send demands,
17 resist a meeting for 30 days, I'm busy, I'm in the shower,
18 whatever, proceed to arbitration at the sole cost of the
19 municipality without any meaningful attempt to bargain, to
20 reach a settlement.

21 No other group --- even teachers under Act 88, have
22 that kind of power. And so the fact that someone would have to
23 have some sort of skin in the game, I think only makes sense.
24 The Borough Association strongly believe it makes sense. There
25 are issues in the statute and the Representative pointed to

1 that. There is no standard with regard to what arbitrators are
2 required to know, what the arbitrator's --- education
3 arbitrators are required to have, what prior experience
4 arbitrators are required to have before their put on the panel.
5 And I agree with Mr. Lightman. The triple A is a good entity
6 that they provide decent lists, but if the Committee wished to
7 take another look at that provision, that might be something
8 that would be worth doing in addition.

9 The statute says that the party seeking to declare
10 impasse identify its partial arbitrators and its issues in
11 dispute and the municipality has to respond within five days
12 with the identity of its partial arbitrator. There's some
13 confusion in the statute about whether or not the responding
14 party has to provide their issues in dispute, but ladies and
15 gentlemen, think about it. Almost every single time, it is the
16 union that declares impasse and says we're going to go to
17 arbitrations. The municipal officials, who are part time, have
18 five days within to make a decision, are we going to
19 arbitration, what are our issues in dispute or have you talked
20 to our lawyer? That's an area of the statute that I encourage
21 the Committee to look at.

22 With regard to the conversation that this committee
23 is having, I think it's a good conversation that we have from
24 both sides of the aisle about the impact of requiring Findings
25 of Fact and Conclusions of Law. And I've heard some concerns

1 about that. Senator Teplitz was, I think, when you make a
2 change to a pension benefit, the court set rules that under Act
3 205, you have to do a study about the financial impact and that
4 study must be considered by an arbitration panel prior to it
5 being made, and if it's not, then the benefit is improper and
6 you throw the benefit out. I view the amendments to the
7 statute in the same manner. It's a low bar. You make Findings
8 of Fact, you make Conclusions of Law. I don't read anything in
9 the statute which says that the analysis has to be perfect or
10 correct or the projections that the arbitrator makes have to be
11 borne out over time, but merely that something happened that
12 people can go forward with.

13 It works in the pension circumstance with Act 205.
14 It's very simple. The courts say look, there was a study.
15 It's done. It's appropriate. And as I'm reading the statute,
16 I believe that that's what's going on here. I don't
17 necessarily believe that there will be a flood of appeals as a
18 result of requiring some analysis in an award that is
19 presented. One thing I think it would do is this. I've heard
20 testimony already from Manager Teoli and I know from my
21 personal experience in the City of York, that in the City of
22 York when we got one of our fire awards, there was a rank
23 differential that was appended to the fire board. There was no
24 evidence produced at the hearing. It was never an issue in
25 dispute. It was appealed by the city and the city has resolved

1 that issue because they have made an economic choice to resolve
2 it. But that is an example of where this standard requiring
3 Findings of Fact and Conclusions of Law where someone tries to
4 put an issue in or solve an issue that was not fully briefed in
5 the record before the panel gets it would make sense. Would
6 allow people to understand that if an issue --- the issue of
7 salary was an issue in dispute and it went sideways, you'd at
8 least have some analysis of how it came out the other end of
9 the machine.

10 Senator Teplitz raised the issue of the U.L.P. and
11 the good faith issue. I conferred with my colleague, Mr.
12 McLaughlin, and under the Act, as we understand it, the ability
13 to file a U.L.P. for failing to bargain in good faith is
14 against mandate. You don't have that standing or that right.
15 This puts it in there. In addition, who would hear it?
16 Obviously, under the statute, the Labor Board would hear it and
17 it is a defined term. So I think that we understand this. But
18 I will say that you heard testimony earlier from many municipal
19 managers that said look, people come in and they say look,
20 these are our terms, and if you don't take them, we're going to
21 go to arbitration.

22 That's happened to me within the last four months.
23 I've had a client where the union came in --- this is a union
24 with a 20-year bargaining history. They said here are our
25 terms. That's it. We're going right to arbitration after 30

1 days. I think that this Committee's efforts to try and address
2 that balance only makes sense. And I think this panel has
3 already made this point, but I want to reaffirm it before I
4 turn it over to Mr. Jensen --- and I hope the Committee
5 understands that my brevity doesn't represent any lack of
6 passion on this issue.

7 CHAIRMAN HARPER: No, we recognize it as a
8 compassion for us and the court reporter.

9 MR. MILLER: I do this like my colleague, Mr.
10 Lightman, this is what I do for a living. I do it for the
11 borough I grew up in and live in now. But at the end of the
12 day, the issue of ability to pay, I agree with my colleagues.
13 It is considered by the panel in executive session. But I
14 agree with the point that's been made repeatedly. I see no
15 damage or violence to Act 111 to simply require that that be
16 set forth in reasonable standards in the opinion in the award
17 so that taxpayers and municipal officials can understand where
18 we're going. It's that simple. It's already being done. It
19 can be set forth in the opinion. Thank you.

20 CHAIRMAN HARPER: Thank you. Mr. Jensen, you get
21 the last word.

22 DR. JENSEN: All right.

23 CHAIRMAN HARPER: Dr. Jensen, I'm sorry.

24 DR. JENSEN: Thank you very much. And I will be
25 brief. I'm just going to highlight a couple of maps and charts

1 in my written testimony. First off, just very quickly a little
2 bit about the Pennsylvania Economy League. We're a statewide
3 organization. I'm the Executive Director in the Pittsburgh
4 Office. And the Pennsylvania Economy League is an independent,
5 non-partisan research organization. We've been around since
6 1936 providing professional data analysis and public policy
7 advice in order to try to make Pennsylvania a more competitive
8 state. I've been with them 27 years, and I've spent virtually
9 all of my career working on issues of municipal financial
10 distress and labor issues. So we've been at this for a long,
11 long time, so now I'd like to refer the Committee members to a
12 map on page six. What this map ---.

13 CHAIRMAN HARPER: Is this it? With a lot of gray
14 blotches all over it?

15 MR. JENSEN: This demonstrates the financial stress
16 of many municipalities. If you take a look at the map, you'll
17 see that there are very few regions in the Commonwealth that
18 don't have some municipality in a severe state of distress.
19 Not all of those distressed municipalities are Act 47
20 municipalities. In fact, there are only a handful. But there
21 are many, many more municipalities in Pennsylvania that would
22 qualify for Act 47 if they would choose to go in that
23 direction. I'd also point out that this isn't simply a big
24 city problem. You will see that Pittsburgh and Philadelphia
25 and Scranton, Erie and Altoona and Johnstown, I believe,

1 Bethlehem and Allentown are highlighted here. But it's not
2 just the big cities. There are many, many boroughs across the
3 Commonwealth that have financial distress. There are many
4 municipalities in Pennsylvania that are financially distressed
5 for one reason or another.

6 So I want to put that out there as context for the
7 reason that we think this issue --- at the Pennsylvania Economy
8 League --- of binding arbitrations is so fundamental to
9 restoring the fiscal health of these municipalities. There is
10 an Act 47 Bill that's been working its way through the
11 legislative process. I commend the General Assembly for taking
12 a second to look at Act 47 and trying to make improvements to
13 it. But at the end of the day, what we really need to do is
14 keep municipalities from going into Act 47 and addressing
15 issues such as pension and binding arbitration are ways to do
16 that.

17 Next, I'd like to refer you to a chart on page
18 seven. So how do we know that we have a problem with binding
19 arbitration? What this chart is is the average wage increase
20 as a result of binding arbitration decisions --- that's the
21 blue bar over there. You'll see that from an analysis of
22 binding arbitration awards that we were able to refer to,
23 beginning in 2006, that the average wage increase is right
24 around three percent. And that's for some --- I don't know,
25 roughly 50, 55 incidences, cases, that amount to this average,

1 three percent. The average CPI, the rate of inflation during
2 that time, was 2.4 percent. So you can see that as a result of
3 binding arbitration, the wages of police and firefighters have
4 exceeded the rate of inflation by about .6 percent. So binding
5 arbitration awards definitely create a wage benefit above that
6 of the inflation.

7 The chart also shows --- the red bar there shows the
8 Act 47 municipalities. As you may know, Act 47 provides for
9 --- it includes a provision that requires arbitration awards to
10 be compliant with, or fall into line with, whatever is in the
11 Act 47 Recovery Plan. So if the Act 47 Recovery Plan says wage
12 increases can't exceed two percent, than that's what the
13 arbitrators have to agree to. They can't exceed that. And
14 you'll see there that the Act 47 plans have resulted in wage
15 increases of about one and half percent on the average in this
16 time period. So it's roughly half the amount of the percentage
17 increase in wages that we see from the binding arbitration
18 awards.

19 And then finally I'd like to refer you to the last
20 chart, which is where that data comes from. This is an array
21 of all those binding arbitration awards that we were able to
22 locate. We averaged out the annual increase in wages in all
23 those cases and also did the same thing for the Act 47
24 municipalities. And you'll see that virtually --- I think it's
25 probably 80 --- I think it's about 80 to 85 percent of those

1 Act 111 awards, the binding arbitration awards, exceed the rate
2 of inflation. And only --- I think there's one or two in the
3 Act 47 awards do the same thing. So there's clearly a
4 financial advantage, a wage advantage in Act 111 arbitration
5 awards over time and Act 47, where we have these cost
6 containment provisions, Act 47 has acted as a break on those
7 wage increases. It's been a very effective break from those
8 wage increases. So that's --- the Committee members have an
9 opportunity to review that data and I'd be happy to address
10 that in more detail here or provide it later. Thank you.

11 CHAIRMAN HARPER: Thanks. I'm going to ask the
12 members if they have questions to contact you directly. I
13 appreciate that you came out and you stayed with us. And I
14 appreciate all the presenters this morning. I think you've
15 given the House and Senate Local Government Committees a lot to
16 think about, I know we're thinking about it and looking at it
17 with respect to the bill. I'm going to ask Senator
18 Eichelberger if he has any concluding remarks as not only
19 Chairman of the Senate Local Government Committee but also a
20 prime sponsor of one of the bills we're discussing. Senator?

21 SENATOR EICHELBERGER: Thank you, Madam Chairman. I
22 thought we had a good hearing today. I appreciate everybody
23 coming out and all the members partaking today in this very
24 busy month of June, particularly to come out today.

25 CHAIRMAN HARPER: Thank you.

1 SENATOR EICHELBERGER: So thanks for everything and
2 for the school here for providing the facility. Very nicely
3 done.

4 CHAIRMAN HARPER: Thank you very much. Thank you
5 all.

6 HEARING CONCLUDED
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CERTIFICATE

I hereby certify, as the stenographic reporter, that the foregoing proceedings were taken stenographically by me, and thereafter reduced to typewriting by me or under my direction; and that this transcript is a true and accurate record to the best of my ability.


Cynthia Ann Simpson
Court Reporter