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**REPORT OF LEGAL COUNSEL**  
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**Pa. Supreme Court Requires Public Employer to Bargain Over Pension Change**

The Pennsylvania Supreme Court, in City of Erie v. PLRB, a decision issued in November 2011, held that a municipal employer must bargain with the representative of its police/fire employees prior to instituting a change to its pension benefits.

In City of Erie, the employer took the position that language in the CBA covering its firefighters making the pension benefits subject to the employer's ordinances allowed the employer to pass an ordinance eliminating a particular pension benefit. The parties' CBA provided that the firefighters' pension fund was "governed in accordance with the provisions of [state law] and the City's ordinances ... now presently in effect and promulgated." The City claimed the right under this language to be able to pass an ordinance that eliminated a provision called a Partial Lump Sum Distribution Option ("PLSDO") that had been ordered in a prior interest arbitration award. The PLRB held that the change involved a mandatory subject of bargaining and therefore a unilateral change without bargaining violated the PLRA.

The Commonwealth Court ruled in favor of the City, holding that because the pension benefit was not actually required under the CBA the City could eliminate that benefit without bargaining with the Union. The PLRB appealed to the Supreme Court, which overturned the Commonwealth court's decision and reinstated the PLRB's finding of an unfair labor practice.

The Supreme Court specifically rejected the idea that the City's right to unilaterally change the benefit turned on whether the benefit appeared in the CBA. The Supreme Court looked at the basic language of Act 111 and concluded that bargaining over pension benefits is required as a mandatory subject. Thus, regardless of whether the benefit already appears in the parties' CBA, the City has an obligation to bargain with the Union before eliminating that benefit.

This is a favorable decision for labor. If the Commonwealth Court's decision remained in effect, then municipal employers would be able to unilaterally change and terms and conditions of employment that were not listed in the CBA. In addition, the municipal employer would be able to hide its change behind the passage of an ordinance. The Supreme Court expressly rejected the right of municipal employers to proceed in this manner.

### **President Makes Three Recess Appointments to Fill NLRB**

On January 12, 2012, three new members were sworn in to serve on the five-member National Labor Relations Board. President Obama appointed the three members, Sharon Block, Terence F. Flynn, and Richard Griffin. They were all named to serve in recess appointments, meaning that their terms will expire at the conclusion of the current term of Congress. They join current members Mark Gaston Pearce (the Chairman) and Brian E Hayes. Richard Griffin has been the General Counsel for the IUOE and he has served on the executive board of the AFL-CIO Lawyers Coordinating Committee.

RESPECTFULLY SUBMITTED,

ROBERT A. EBERLE, ESQUIRE