



FRATERNAL ORDER OF POLICE – PENNSYLVANIA STATE LODGE
2949 N. Front St.
Harrisburg, PA 17110

PRESENTATION ON ACT 47 (OF 1987)
BEFORE THE JOINT SESSION
December 8, 2011

Pennsylvania Senate Community, Economic & Recreational Development Committee,
Jane Earll, Chair;
Pennsylvania Senate Local Government, John Eichlberger, Chair;

- and-

Pennsylvania House Local Government Committee, Tom Creighton, Chair; and
Robert Freeman, Minority Chair;
Pennsylvania House Urban Affairs Committee, Chris Ross, Chair; and
W. Curtis Thomas, Minority Chair.

Submitted by: Mark Koch
Director of Legislative Affairs

Introduction

Good afternoon everyone. My name is Mark Koch. I am proud to serve as the Immediate Past President and Director of Legislative Affairs for the Pennsylvania Fraternal Order of Police. The Pennsylvania Fraternal Order of Police represents more than 40,000 active and retired law enforcement professionals throughout the Commonwealth of Pennsylvania.

On behalf of the members of the Fraternal Order of Police and their families, I would like to extend my sincerest thank you to each member of this joint committee for your past, present, and continued future support of Pennsylvania's law enforcement officers.

I appear before this Legislative Committee today to briefly present the viewpoint of the Fraternal Order of Police on the Financially Distressed Municipalities Act (Act of 1987, P.L. 246, No. 47), or what has become known as Act 47.

For the benefit of the members of this Legislative Committee, I have brought with me today State Fraternal Order of Police President, Les Neri, as well as FOP lodge representatives from Pittsburgh, Scranton, Johnstown, Chester and other Act 47 communities, each of whom are available to answer any questions you may have. Also with me today is Pennsylvania Fraternal Order of Police legislative counsel, Richard G. Poulson, who, in addition to his legislative work has represented public employees in many Act 47 communities. Finally, also appearing for the assistance of the committee is the Scranton Fraternal Order of Police, E.B. Jermyn Lodge No. 2, legal counsel Thomas W. Jennings.

Act 47 – specifically, the need to reform Act 47 – is a critically important issue for Pennsylvania's Police Officers and their families. As you might expect, the Fraternal Order of Police's primary mission is to provide for the safety and security of citizens and visitors within the Commonwealth. Our members risk their lives every day to keep Pennsylvanians safe. But in addition to those safety and security concerns, the FOP is also tasked with protecting the dignity and well-being of Pennsylvania's Police Officers. So we have two missions, really – and Act 47 threatens both. Because of this, we firmly believe that it is time for much-needed reform.

Before I review the FOP's suggested reforms to Act 47, I first want to stress that our proposed solutions to the problems posed by Act 47 are intended to improve the long-term fiscal health of distressed communities. Let me be clear -- the members of the Fraternal Order of Police are completely committed to the success of the municipalities that they serve. Municipal police officers don't just risk their lives in Act 47 communities, they also live, raise families and pay taxes in those communities, too. We are stakeholders in every sense.

Police Officers make critically important contributions to the overall success, safety, health and welfare of Act 47 communities, and we both desire and deserve to be partners in developing solutions to foster the stability of those communities. Currently, this is not the case. Police Officers in Act 47 communities have been almost completely disenfranchised, their rights and voices eliminated.

Our proposed reforms would restore the rights and the collective voice of the men and women who protect the citizens of Act 47 communities, because we firmly believe that those reforms will result in stronger communities and a better future for our members and their families.

Support for Fellow Stakeholders' Suggested Reforms

This Joint Committee has already heard testimony about the variety of ways in which Act 47 needs reform. The Fraternal Order of Police agrees with our fellow stakeholders on many of those issues, which is not surprising given that we all have the same interest in mind, and that is the recovery and success of Act 47 communities.

For example, the FOP agrees that reform is needed in the area of municipal mismanagement and corruption. Act 47 should promote through incentives and opportunities the concept of municipal managerial training to reduce the amount of managerial deficiencies of corruption or mismanagement. The Fraternal Order of Police supports the concept that having better trained managers and an appropriate system of municipal checks and balances will help communities emerge from and stay out of distressed status. We note the success of programs like the Early Intervention Program of the Department of Community and Economic Development (DCED), which highlights the importance of implementing best practices, and encourages greater use of those tools.

We agree that there is a need to develop legislative tools to help municipalities, especially cities, address the challenges posed by tax-exempt properties that provide no revenue yet impose an ever-increasing demand for police and emergency services. The Fraternal Order of Police fully supports the concept that all stakeholders, including tax-exempts, must share the pain necessary to emerge from distress, not just those working for the municipality.

We agree that Act 47 should be amended to help municipalities that provide emergency services develop more-modernized revenue systems. Oftentimes archaic revenue systems result in unfair assessments or disproportionate shares of local taxes and revenues for emergency services. The Fraternal Order of Police supports the modernization of those systems, including the distribution of fine monies and the elimination of the "free-riders" when it comes to police services.

The FOP also agrees with our fellow stakeholders that there are too many roadblocks to effectively merge or consolidate failing communities, or to implement regional approaches to policing. The Fraternal Order of Police supports the concept of mergers and consolidation to defray costs and provide in many cases better services.

Finally, we wholeheartedly agree that there is a need to slash the bloated administrative system associated with having almost 1,000 different local police pension plans throughout the Commonwealth, by establishing one statewide municipal police pension system. The Fraternal Order of Police has supported this concept for years, and this session we are prepared to submit a proposal for a statewide police pension system, to be administered through the Pennsylvania Municipal Retirement System (PMRS), that will provide millions in savings in the redundant administrative and actuarial costs of police pensions that are currently shouldered by local municipalities.

So there are already many areas of agreement among the stakeholders on ways to reform Act 47.

FOP's Suggested Reforms

While we agree with our colleagues on the reforms I have just mentioned, it is the position of the Fraternal Order of Police that there are two areas of reform that stand out from the others.

First, Act 47 must be amended to provide for fair, limited and local collective bargaining within the confines of the recovery process. Bargaining within an Act 47 plan will give management and labor the opportunity to work together to determine how they will jointly share pain and jointly share success within the resources and revenues available in those communities. Unfortunately, this does not exist currently – Police Officers in Act 47 communities have virtually no rights. Let me repeat that – Police Officers in Act 47 communities have virtually no rights. But if Act 47 were amended to restore limited yet meaningful collective bargaining for Police Officers, our members would be able to play an integral part in developing bargained-for solutions to the problems facing Act 47 communities.

Second, Act 47 must be amended to provide a sensible and objective exit strategy that does not forever render Act 47 communities as welfare wards of the state. Currently there are far too many incentives for communities to remain “distressed”. Absent a change in the law, it is very clear that some distressed communities will likely never leave the program. This must change.

These two reforms – a restoration of bargaining and an objective exit process – are sorely needed and will result in a greatly improved Act 47 recovery process.

Impact of the Scranton Decision

Finally, I would be remiss if I did not address in my testimony a recent judicial decision concerning Act 47 and law enforcement bargaining rights, which has caused a stir among many stakeholders and interested legislators.

The last decade has seen extensive (and expensive) litigation over the interplay between Act 47 and collective bargaining under Act 111, as municipal employers have gradually become more aggressive in their development and implementation of Act 47 recovery plans. During the course of this dispute there have been two different schools of thought on the interplay between the Act 47 and Act 111.

The first approach, which has been advanced by more aggressive municipal managers, is that there must be an elimination of all collective bargaining for employees, and especially those under Act 47. This approach would place complete and total authority in the hands of the municipal manager or recovery plan coordinator, with the employees having no say. According to some, this approach would magically cause the problems facing Act 47 communities to disappear. But this position is unrealistic and cannot be sustained. Imposing draconian cuts in contractual benefits and wages by fiat does not create maximum efficiency and productivity from the workforce. In fact, it results in exactly the type of litigation, hard feelings and overall dysfunction that we have seen in Scranton and similar Act 47 communities. Simply put, it hasn't worked for the last 25 years, and there is no reason to believe that it will work now.

The second approach, espoused in the recent Pennsylvania Supreme Court decision involving the City of Scranton, is that Act 47 does not apply at all in the context of Act 111 bargaining rights, specifically Act 111 interest arbitration awards. Critics of this approach have argued that it would inappropriately except police officers from the recovery process and in doing so undermine the overall Act 47 system.

I suppose it would be very easy for the Fraternal Order of Police to adopt this approach, which would essentially relieve Police Officers from any obligation to deal with the problems facing their cities. But that would be just as misguided as the one-sided "absolute power" approach that has been abused in some Act 47 communities to eliminate the rights and protections afforded to police officers.

Because of this, the Pennsylvania Fraternal Order of Police rejects the “all or nothing” approaches that we have heard from both sides of this argument. Instead, we offer a third option, one that both encourages and requires labor and management to work together to help their communities emerge from distress and move toward prosperity. This third option is, in our view, a balanced position that takes into account realistic needs on both sides of the struggling municipality with their managers and workers.

Our proposed approach is to amend Act 47 to restore meaningful, but limited, collective bargaining rights within the context of the limitations facing distressed communities. This approach will allow both sides to air their viewpoints in a purposeful way, to look for the best answer (not just the easy answer), and to partner in the ongoing process of improving and changing together. Real change is a difficult process. But regardless of difficulty, we must seize this opportunity to improve Act 47’s approach to managing municipalities through shared cooperation, rather than producing an ever increasing juggernaut and then wondering why the results are so dismal. It is time for meaningful change, because the status quo in Act 47 communities simply has not worked.

Conclusion

To conclude, it is the position of the Fraternal Order of Police that Act 47 must be reformed to provide a vibrant, modern and balanced approach to managing municipalities and their employees. Part of that reform is to provide distressed communities with improved tools to develop revenue so they can survive and thrive. Another part of reform is to restore meaningful collective bargaining between municipal employees and employers. The third part of effective reform is to provide an objective exit process that eliminates the current incentives for distressed communities to continuously fail.

Please accept my sincere thanks for your attention to this important issue and for your continued support for Pennsylvania’s Police Officers and their families.