

No. 1986-76

AN ACT

HB 1876

Amending the act of April 6, 1956 (1955 P.L.1414, No.465), entitled, as amended, "An act to promote the welfare of the people of this Commonwealth; creating Port authorities to function in counties of the second class as bodies corporate and politic, with power to plan, acquire, construct, maintain and operate facilities and projects for the improvement and development of the port district and to borrow money and issue bonds therefor; providing for the payment of such bonds and prescribing the rights of the holders thereof; conferring the right of eminent domain on the authorities; authorizing the authorities to enter into contracts with and to accept grants from the Federal government or any agency thereof; and conferring exclusive jurisdiction on certain courts over rates and services; and authorizing the authorities to collect tolls, fares, fees, rentals and charges for the use of facilities; defining the authorities' powers and duties, and defining the port districts; granting Port Authorities the exclusive right to engage in the business of owning, operating, and maintaining a transportation system for the transportation of persons in counties of the second class, providing, when necessary, for extension of transportation systems into adjoining counties and outside of said counties as provided in the act; limiting the jurisdiction of the Public Utility Commission over Port Authorities; authorizing municipalities to make loans and grants and to transfer existing facilities; authorizing Port Authorities to enter into contracts with and to accept grants from State and local governments or agencies thereof; exempting the property and facilities of such Port Authorities from taxation and limiting the time to commence civil action against said Authorities," further providing for the board of the authority; providing for a transit council, audits, service standards and the operating budget; and further providing for labor relations.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. The act of April 6, 1956 (1955 P.L.1414, No.465), known as the Second Class County Port Authority Act, is amended by adding sections to read:

Section 3.1. (a) There is hereby established a citizens advisory committee to be known as the (insert name of county) Transit Council.

(b) The members of the transit council shall, independent of the authority, adopt such bylaws, rules and regulations, and elect such officers as they deem appropriate for the conduct of the council's business.

(c) Regardless of whether public hearings are required on the following matters, the executive director shall submit to the transit council, before final action is taken by the board, proposals regarding (1) the adoption or amendment of a comprehensive transit plan, (2) the annual operating budget, (3) any capital budget, (4) the facilities to be operated, (5) the services to be available and the rates to be charged therefor or (6) other matters of similar nature. The transit council may thoroughly consider the proposals and may prepare and transmit, to the executive director, the board and to any interested member of the public, written comments concerning the proposals prior to the date when final action is to be taken.

(d) Although the board shall give careful and due consideration to the transit council's comments prior to the taking of any final action, the council's comments shall be considered only advisory in nature.

Section 3.2. (a) In addition to any audits or financial statements required by the county, State or Federal Government, the authority shall be subject to the following performance audit requirements:

(1) at least once every four years, the Office of the Auditor General shall review the procedures and audit, settle and adjust the accounts of the authority; and

(2) at least once every eight years, the board shall engage an outside consultant to conduct a comprehensive management study of the entire operation of the authority, including recommendations to improve the efficiency of services being provided.

(b) In no instance shall the same consultant be used for consecutive audits.

(c) The findings of both of the audits required by subsection (a) shall be made available to the public.

(d) This section shall not be construed to prohibit more frequent reviews of the books and accounts of the authority.

Section 3.3. (a) Within one year after the effective date of this amendatory act and annually thereafter, the board shall adopt a series of service standards and performance-evaluation measures. These service standards and performance-evaluation measures shall consist of objectives and specific numeric performance levels to be achieved in meeting these objectives. The areas to be addressed are:

(1) an automatic mechanism to review the utilization of routes;

(2) staffing ratios (ratio of administrative employes to operating employes, number of vehicles per mechanic);

(3) productivity measures (vehicle miles per employe, passenger and employe accidents per one hundred thousand vehicle miles, on-time performance, miles between road calls);

(4) fiscal indicators (operating cost per passenger, subsidy per passenger);

(5) the attendance of board members at regularly scheduled meetings of the board;

(6) the accessibility of the authority's services to elderly and handicapped individuals; and

(7) any other matter as desired by the board.

(b) The service standards and performance-evaluation measures shall be established by an action of the board following an opportunity for comment from the public, the transit council, any labor union representing authority employes, county government and other interested parties.

(c) In the discretion of the board, the service standards and performance-evaluation measures may be system-wide or based on a sampling.

(d) The service standards and performance-evaluation measures shall only constitute goals for the authority in providing service in the year following their adoption. At the end of the year, fiscal or calendar as the case may

be, the authority shall release to the public a report indicating the projected performance level and the performance level that was actually achieved.

Section 3.4. (a) Annually, the board shall adopt an operating budget for the ensuing fiscal year. The budget shall reflect as nearly as possible the estimated revenues, including governmental operating subsidies and expenses of the authority for the fiscal year for which the budget is prepared. The total expenses shall not exceed the revenues estimated as available for the fiscal year.

(b) The board may at any time make supplemental appropriations or revisions of the budget for any lawful purpose from funds on hand or estimated to be received within the fiscal year and not otherwise appropriated, or from funds received in excess of projections.

(c) Where the governmental operating subsidies received during the year are less than anticipated in the operating budget adopted by the board, the board shall adjust the level of total expenditures so that total expenditures do not exceed the revised level of anticipated revenues.

Section 2. Section 6 of the act, amended March 28, 1969 (P.L.8, No.6), is amended to read:

Section 6. Subject to the provisions of section 6.1, the powers of the authority shall be exercised by a board, composed of the number of members, not more than ~~twelve~~ *nine*, as shall be fixed by the county commissioners of each county of the second class. The county commissioners of each county of the second class shall appoint the members of the board, all of whom shall be residents of such county and citizens of the United States, whose terms of office shall commence on the date of appointment, one member shall serve for one year, one for two years, one for three years, and one for four years, and one for five years, from the first day of January next succeeding the date of approval of this act, and terms of other members shall be staggered in a similar manner but in no instance shall exceed five years. Thereafter, whenever a vacancy has occurred or is about to occur by reason of the expiration of the term of any member, the county commissioners shall appoint a member for a term of five years to succeed the member whose term has expired or is about to expire. Members shall hold office until their successors have been appointed, and may succeed themselves. A member shall receive such compensation for his services as the county commissioners shall determine and shall be entitled to the necessary expenses, including traveling expenses incurred in the performance of his duties. Within ninety days after the creation of the authority, the board shall meet and organize by electing from their number a chairman, a vice chairman, and such other officers as the board may determine. The board may employ a secretary, an executive director, its own counsel and legal staff and such technical experts and other agents and employes, permanent or temporary, as it may require, and may determine the qualifications and fix the compensation of such persons. ~~Six~~ *Five* members of the board shall constitute a quorum for its meetings. Members of the board shall not be liable personally on the bonds or other obligations of the authority, and the rights of creditors shall be solely against such authority. The board may delegate to one or more of its agents or

employes such of its powers as it shall deem necessary to carry out the purposes of this act, subject always to the supervision and control of the board. The board shall have full authority to manage and operate the business of the authority and to prescribe, amend and repeal by-laws, rules and regulations governing the manner in which the business of the authority may be conducted and the powers granted to it may be exercised and embodied. Copies of such by-laws, rules and regulations shall be filed with the county commissioners of the county incorporating the authority. Members may be removed *at the will of the appointing power.*

If a vacancy occurs by reason of the death, resignation or removal of a member, the board of county commissioners shall appoint a successor to fill his unexpired term.

Section 3. Section 13.2 of the act, added October 7, 1959 (P.L.1266, No.429), is amended to read:

Section 13.2. [The authority through its boards shall deal with and enter into written contracts with the employes of the authority through accredited representatives of such employes or representatives of any labor organization authorized to act for such employes concerning wages, salaries, hours, working conditions and pension or retirement provisions.

In case of any labor dispute where collective bargaining does not result in agreement, the authority shall offer to submit such dispute to arbitration by a board composed of three persons, one appointed by the authority, one appointed by the labor organization representing the employes, and a third member to be agreed upon by the labor organization and the authority. The member selected by the labor organization and the authority shall act as chairman of the board. The determination of the majority of the board of arbitration thus established shall be final and binding on all matters in dispute. If, after a period of ten days from the date of the appointment of the two arbitrators representing the authority and the labor organization, the third arbitrator has not been selected, then either arbitrator may request the American Arbitration Association to furnish a list of five persons from which the third arbitrator shall be selected. The arbitrators appointed by the authority and the labor organization, promptly, after the receipt of such list, shall determine, by lot, the order of elimination and, thereafter, each shall, in that order alternately, eliminate one name until only one name remains. The remaining person on the list shall be the third arbitrator. The term "labor dispute" shall be broadly construed and shall include any controversy concerning wages, salaries, hours, working conditions or benefits, including health and welfare, sick leave insurance or pension or retirement provisions but not limited thereto, and including any controversy concerning any differences or questions that may arise between the parties including, but not limited to the making or maintaining of collective bargaining agreements, the terms to be included in such agreements and the interpretation or application of such collective bargaining agreements and any grievances that may arise. Each party shall pay one-half of the expenses of such arbitration.

If the authority acquires an existing transportation system, such of the employes of such transportation system, except executive and administrative

officers, as are necessary for the operation thereof by the authority, shall be transferred to and appointed as employes of the authority subject to all the rights and benefits of this act. These employes shall be given seniority credit and sick leave, vacation, insurance and pension credits in accordance with the records or labor agreements from the acquired transportation system. Members and beneficiaries of any pension or retirement system or other benefits established by the acquired transportation system shall continue to have rights, privileges, benefits, obligations and status with respect to such established system. The authority shall assume the obligations of any transportation system acquired by it with regard to wages, salaries, hours, working conditions, sick leave, health and welfare and pension or retirement provisions for employes. It shall assume the provisions of any collective bargaining agreement between such acquired transportation system and the representatives of its employes. The authority and the employes through their representatives for collective bargaining purposes shall take whatever action may be necessary to have pension trust funds presently under the joint control of the acquired transportation system and the participating employes through their representatives transferred to the trust fund to be established, maintained and administered jointly by the authority and the participating employes through their representatives.

No employe of any acquired transportation system, who is transferred to a position with the authority, shall by reason of such transfer be placed in any worse position with respect to workmen's compensation, pension, seniority, wages, sick leave, vacation, health and welfare insurance or any other benefits than he enjoyed as an employe of such acquired transportation system.

Employes who have left the employ of any acquired transportation system or leave the employ of the authority to enter the military service of the United States shall have such reemployment rights with the authority as may be granted under any law of the United States or the Commonwealth of Pennsylvania.]

(a) The authority through its boards shall deal with and enter into written contracts with the employes of the authority through accredited representatives of such employes or representatives of any labor organization authorized to act for such employes concerning wages, salaries, hours, terms and conditions of employment, and pension or retirement provisions. Collective bargaining and the employer-employe relations of the authority and its public employes shall not be subject to or governed by the terms and provisions of the act of November 27, 1967 (P.L. 628, No. 288), entitled "An act protecting the rights of employes of existing transportation systems which are acquired by cities of the third class or any authority thereof or certain joint authorities; requiring cities of the third class or any authority thereof or any such joint authority to enter into contracts with labor organizations acting for such employes, and providing for arbitration in case of disputes."

(b) It shall be the duty of the authority and the authorized representative to exert every reasonable effort to settle all disputes by engaging in collective bargaining in good faith and by entering into settlements by way of written agreements and maintaining the same.

(c) The authority shall not be required to bargain over matters of inherent managerial policy, which shall include, but shall not be limited to, such areas of discretion or policy as the functions and programs of the authority, standards of services, its overall budget, utilization of technology, the organizational structure and selection and direction of personnel. The authority, however, shall be required to meet and discuss on policy matters affecting wages, hours and terms and conditions of employment as well as the impact thereon upon request by the authorized representative.

(d) First-level supervisors shall not be included in bargaining units with other employes of the authority. Incumbents holding first-level supervisory positions on the effective date of this subsection will be given the opportunity to continue in represented status or to terminate their bargaining unit status. Those who choose to continue in represented status shall retain the individual right to terminate their bargaining unit status at any time. All newly appointed first-level supervisors shall not be included in bargaining units with other employes of the authority. "First-level supervisor" shall mean the lowest level at which an employe functions as a supervisor. For the purposes of this section "supervisor" shall mean any individual having authority in the interests of the employer to hire, transfer, suspend, layoff, recall, promote, discharge, assign, reward or discipline other employes or responsibly to direct them or adjust their grievances; or, to a substantial degree, effectively recommend such action, if, in connection with the foregoing, the exercise of such authority is not merely routine or clerical in nature, but calls for the use of independent judgment. In the event that an employe in a position defined as a "first-level supervisor" is removed from his or her position due to a layoff or other reduction in force, such employe may elect to return to the position he or she held immediately prior to becoming a "first-level supervisor." In all cases, such job placement will be made in accordance with full seniority.

(e) Collective bargaining shall commence at least one hundred days prior to the expiration of a collective bargaining agreement.

(f) In the case of any labor dispute where collective bargaining does not result in an agreement, the dispute, with the written consent of both parties, shall be submitted to final and binding interest arbitration. The board of arbitration shall be composed of three persons, one appointed by the authority, one appointed by the labor organization representing the employes and a third member to be agreed upon by the labor organization and the authority. The member selected by the labor organization and the authority shall act as chairman of the board. The determination of the majority of the board of arbitration thus established shall be final and binding on all matters in dispute. If, after a period of ten days from the date of the appointment of the two arbitrators representing the authority and the labor organization, the third arbitrator has not been selected, then either arbitrator may request the American Arbitration Association to furnish a list of five persons from which the third arbitrator shall be selected. The arbitrators appointed by the authority and the labor organization, promptly, after the receipt of such list, shall determine, by lot, the order of elimination, and, thereafter, each shall,

in that order alternately, eliminate one name until only one name remains. The remaining person on the list shall be the third arbitrator. All contract provisions shall remain status quo during the period of arbitration, and there shall be no lockouts, strikes or other interference with or interruption of transit operations during the arbitration proceedings or during any action which may be instituted to upset the arbitration award. The term "labor dispute" shall include any controversy regarding written provisions of a collective bargaining agreement between the parties concerning wages, salaries, hours, terms and conditions of employment or benefits, including health and welfare, sick leave insurance or pension or retirement provisions. The term "interest arbitration" shall mean formulation by a neutral arbitrator of provisions governing wages, hours of work and other terms and conditions of employment after consideration of proposals relating to wages, hours of work and other terms and conditions of employment advanced by the authority and the authorized representative of the employes of the authority. Each party shall pay one-half of the expenses associated with any arbitration which may be conducted pursuant to this subsection.

(g) If an agreement has not been reached within forty-five days of the termination date of the collective bargaining agreement, either party may, in writing, call upon the Pennsylvania Labor Relations Board to appoint a neutral fact-finder. The fact-finder may hold hearings and take oral or written testimony and shall have subpoena power. Collective bargaining may continue during fact-finding. In the event an agreement has not been reached by the expiration date of the collective bargaining agreement and fact-finding has not previously been requested, both parties shall immediately, in writing, call upon the Pennsylvania Labor Relations Board to appoint a neutral fact-finder. The fact-finder may hold hearings and take oral or written testimony and shall have subpoena power. Collective bargaining may continue during fact-finding.

(h) The Commonwealth shall pay one-half of the cost of fact-finding; the remaining one-half of the cost shall be divided equally between the parties. The Pennsylvania Labor Relations Board shall establish rules and regulations under which the fact-finder shall operate.

(i) The findings of facts and recommendations shall be sent by registered mail to the Pennsylvania Labor Relations Board and to both parties not more than forty-five days after the appointment of the fact-finder.

(j) Not more than fifteen days after the findings and recommendations shall have been sent, the parties shall notify the Pennsylvania Labor Relations Board and each other whether or not they accept the recommendations of the fact-finder, and, if they do not, the fact-finder shall publicize his findings and recommendations.

(k) If the authority and the authorized representative of the employes of the authority do not accept the recommendations of the fact-finder and refuse to mutually agree to final and binding interest arbitration in accordance with subsection (f), the employes shall have the right to strike in regard to that dispute, and such strike shall not be prohibited unless or until such a strike creates a clear and present danger or threat to the health, safety or

welfare of the public: Provided, That such strike shall not be prohibited on the grounds that it creates a clear and present danger or threat to the health, safety or welfare of the public unless the court's order granting relief further mandates that both parties submit the labor dispute to final and binding interest arbitration by a board of arbitration under the provisions of this section. No party, other than the authority, shall have any standing to seek any relief in any court of this Commonwealth under this subsection.

(l) Notwithstanding the provisions of subsection (k), no strike shall be permitted until the completion of a thirty-day "cooling-off" period, commencing immediately following the termination of the collective bargaining agreement, during which time the parties may reevaluate their respective positions. Nothing herein contained shall prohibit fact-finding during the "cooling-off" period.

(m) Although the arbitrators may consider any factors deemed to be relevant, the arbitrators shall consider and give weight primarily to, and describe in the award, the impact of the following factors in determining the award:

(1) The ability of the authority to maintain levels of transit service sufficient to serve the service area.

(2) The appropriated amounts of Federal, State and county operating subsidies.

(3) The amount, if any, of any fare increase and/or additional public subsidy which would be necessary to fund the economic cost increase (including, but not limited to, increases in wages, pensions and other fringe benefits) and the ability of the public to bear such a fare increase, with consideration given to the per capita income of persons in the service area and the impact upon future ridership levels.

(4) A comparison between the overall wage, salary and fringe benefit levels of the authority's represented employes and other workers in the public and private sectors of the metropolitan area who perform similar work.

(5) A comparison of the hours and working conditions of the authority's represented employes and other workers in the public and private sectors of the metropolitan area who perform work requiring similar skills.

(6) The cost of consumer goods and services within the metropolitan area.

(7) Any stipulation entered into between the authority and the authorized representative.

(n) No employe of the authority shall engage in any strike, walkout or other concerted cessation or curtailment of work, and no authorized representative of employes of the authority shall cause, instigate, encourage, promote or condone any strike, slowdown, walkout or other concerted cessation or curtailment of work by any employe of the authority where, in either case, such action is taken in support of any labor dispute involving the formulation of any contract provisions until fifteen days following the issuance of the fact-finder's report.

(o) The authority shall submit disputes involving the interpretation of specific provisions of collective bargaining agreements, including formal

written supplemental understandings and agreements directly related to contract provisions, in effect from time to time, to grievance arbitration. In any grievance arbitration, the arbitrator must base the award upon the express terms and conditions of a labor agreement between the authority and the authorized representative. Each party shall pay one-half of the expenses associated with any arbitration which may be conducted pursuant to this subsection.

(p) If the authority or the authorized representative refuses to submit to the procedures set forth in this section, such refusal shall be deemed a refusal to bargain in good faith, and unfair practice charges may be filed by the submitting party, or the Pennsylvania Labor Relations Board may, on its own, issue an unfair practice complaint and conduct such hearings and issue such orders as provided by law.

Section 4. The act is amended by adding sections to read:

Section 13.2A. Notwithstanding any provision of law to the contrary, either party to a collective bargaining agreement between the board and its employes shall respond, in writing, to any written offer of the other party within fifteen days of receipt of the written offer.

Section 13.2B. Notwithstanding any provision of law to the contrary, the board shall not have the power to hire or employ replacement workers in the event of work stoppages based on unfair labor practices or economic conditions.

Section 5. The provisions of this act are severable. If any provision of this act or its application to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of this act which can be given effect without the invalid provision or application.

Section 6. Nothing in the provisions of this amendatory act shall apply to the labor dispute between the authority and its employees over the terms to be included in a successor agreement replacing the agreement in effect until November 30, 1985, which shall be governed by current laws. Upon the expiration of the collective bargaining agreement, the authority shall be prohibited from entering into, renewing, amending or extending any collective bargaining agreement provision inconsistent with this amendatory act.

Section 7. (a) Section 2 of this act shall take effect January 1, 1988.

(b) The remaining provisions of this act shall take effect immediately.

APPROVED—The 2nd day of July, A. D. 1986.

DICK THORNBURGH