

**THE**  
**Dauphin County Reporter**

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12th JUDICIAL DISTRICT

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**INTELLECTUAL PROPERTY LAW**

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39 Years in Harrisburg

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#### **Estate Notices**

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##### **DECEDENTS ESTATES**

NOTICE IS HEREBY GIVEN that letters testamentary or of administration have been granted in the following estates. All persons indebted to the estate are required to make payment, and those having claims or demands to present the same without delay to the administrators or executors or their attorneys named below.

##### **FIRST PUBLICATION**

ESTATE OF MARY M. CONJAR, late of Swatara Township, Dauphin County, Pennsylvania. Executor: Lawrence W. Conjar, 542 Sheridan Road, Evanston, IL 60202. Attorney: Bridget M. Whitley, Esq., 17 South Second Street, 6th Floor, Harrisburg, PA 17101. y8-y22

ESTATE OF VINCENT TAYLOR, late of the City of Harrisburg, Dauphin County, Pennsylvania. Administrator: Ronald D. Butler, 500 North Third Street, P.O. Box 1004, Harrisburg, PA 17108. Attorneys: Butler Law Firm, 500 North Third Street, P.O. Box 1004, Harrisburg, PA 17108. y8-y22

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ESTATE OF SARA C. ESTEP, late of Harrisburg, Dauphin County, Pennsylvania (died May 29, 2011). Executor: Ronald P. Estep. Attorney: David C. Miller, Jr., Esq., 1100 Spring Garden Drive, Suite A, Middletown, PA 17057. Telephone (717) 939-9806; email: DavidCMillerJr@verizon.net. y8-y22

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ESTATE OF MATTHEW F. SCHMICK, late of Steelton Borough, Dauphin County, Pennsylvania. Executor / Attorney: Thomas Paese, Esq., Buchanan Ingersoll & Rooney PC, 17 North Second Street, 15th Floor, Harrisburg, PA 17101-1503. y8-y22

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ESTATE OF GEORGE L. KOTKIEWICZ, late of Wayne Township, Dauphin County, Pennsylvania (died May 28, 2011). Executrix: Barbara G. Kotkiewicz, 2823 Back Road, Halifax, PA 17032. Attorney: Elyse E. Rogers, Esq., Saidis, Sullivan & Rogers, 635 North 12th Street, Suite 400, Lemoyne, PA 17043. y8-y22

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ESTATE OF WILLIAM R. GRAUEL, late of Harrisburg, Dauphin County, Pennsylvania (died January 9, 2011). Personal Representative: Arlene M. Dare, 1098 Superior Drive, Apt. A, Harrisburg, PA 17111. Attorney: J.D. Krafczek, Esq., 38 No. 6th Street, P.O. Box 8467, Reading, PA 19603. y8-y22

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**FIRST PUBLICATION**

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**Estate Notices**

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ESTATE OF JOSEPH B. CHRISMER  
a/k/a JOSEPH B. CHRISMER, SR., late of  
Susquehanna Township, Dauphin County,  
Pennsylvania (died June 5, 2011). Trust  
Administration: Joseph B. Chrismer a/k/a  
Joseph B. Chrismer, Sr., Living Trust. Co-  
Executrices: Mary Rita Chrismer Gaiski and  
Marguerite Chrismer Musser, c/o James  
Smith Dietterick & Connelly, LLP, P.O. Box  
650, Hershey, PA 17033. Attorney: Gary L.  
James, Esq., James Smith Dietterick &  
Connelly, LLP, P.O. Box 650, Hershey, PA  
17033. Telephone (717) 533-3280. y8-y22

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ESTATE OF DOLORES M. HAYMAN,  
late of Lower Paxton Township, Dauphin  
County, Pennsylvania (died June 10, 2011).  
Executor: Nicholas G. Hayman, 30 Argali  
Lane, Mechanicsburg, PA 17055. y8-y22

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ESTATE OF LAWRENCE E. HOUCK,  
late of Derry Township, Dauphin County,  
Pennsylvania. Attorney: Elizabeth H.  
Feather, Esq., Caldwell & Kearns, P.C., 3631  
North Front Street, Harrisburg, PA 17110.  
Telephone (717) 232-7661. y8-y22

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ESTATE OF GOLDIE M. GRAZIANO,  
late of Susquehanna Township, Dauphin  
County, Pennsylvania (died January 12,  
2011). Executor: Jeffrey V. Graziano,  
Harrisburg, PA. Attorney: Jacqueline A.  
Kelly, Esq., Jan L. Brown & Associates, 845  
Sir Thomas Court, Suite 12 Harrisburg, PA  
17109. Telephone (717) 541-5550. y8-y22

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ESTATE OF JOHN W. MILAKOVIC,  
SR., late of Harrisburg, Dauphin County,  
Pennsylvania (died April 15, 2011). Personal  
Representative: Desdemona Oberdorf, 513  
Bowman Avenue, Lewisberry, PA 17339.  
y8-y22

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**SECOND PUBLICATION**

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ESTATE OF MARIE E. ROWE, late of  
Swatara Township, Dauphin County, Penn-  
sylvania (died April 8, 2011). Personal  
Representative: Teresa M. Rowe, 331B  
Brentwood Drive, York, PA 17403. Attorney:  
Robert G. Radebach, Esq., 912 North River  
Road, Halifax, PA 17032. y1-y15

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ESTATE OF THELMA McCOMBS, late  
of Londonderry Township, Dauphin County,  
Pennsylvania (died March 26, 2011).  
Executrix: Mona Lee McCombs May, 540 S.  
80th Street, Harrisburg, PA 17111. Attorney:  
Kendra A. Mohr, Esq., Pannebaker & Mohr,  
P.C., 4000 Vine Street, Middletown, PA  
17057. Telephone (717) 944-1333. y1-y15

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ESTATE OF BENJAMIN B. WENTZ, late  
of the Township of Swatara, Dauphin  
County, Pennsylvania. Personal Representa-  
tive: Shirley H. Falk, c/o Gingrich, Smith  
Klingensmith & Dolan, 222 S. Market Street,  
Suite 201, P.O. Box 267, Elizabethtown, PA  
17022. Attorney: Jeffrey S. Shank, Esq.,  
Gingrich, Smith Klingensmith & Dolan, 222  
S. Market Street, Suite 201, P.O. Box 267,  
Elizabethtown, PA 17022. y1-y15

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ESTATE OF TERESA ANN COOLEY,  
late of East Hanover Township, Dauphin  
County, Pennsylvania (died April 19, 2011).  
Personal Representative: Geraldine E.  
Cooley. Attorney: Nora F. Blair, Esq., 5440  
Jonestown Road, P.O. Box 6216, Harrisburg,  
PA 17112. y1-y15

## **Borough of Middletown v. Teamsters Local Union 776**

### **Labor Relations — Collective Bargaining Agreement — Grievance — Arbitrability — Essence Test.**

A labor arbitrator who was selected pursuant to the terms of a Collective Bargaining Agreement awarded additional pension benefits to a union employee, which the Petitioner and Intervenor sought to vacate. The Court, however, denied their petition and they appealed.

1. A labor arbitrator's grievance award is to be viewed with great deference by the courts and is subject to a very narrow scope of review. The broad deference afforded an arbitrator's interpretation of a CBA exists because the parties bargained for an arbitrator's interpretation of their agreement and not the court's. If the arbitrator's decision concerns the construction of the contract, the court has no business overruling the decision merely because it interprets the contract differently. *Juniata-Mifflin Counties Area Vo-Tech Sch. v. Corbin*, 691 A.2d 924, 926 (Pa. 1997) (citing *Leechburg Area School District v. Dale*, 424 A.2d 1309, 1312-1313 (Pa. 1981)).

2. In labor disputes resolved by arbitration, "the less judicial participation, the better." *Community College of Beaver County v. Community College of Beaver County, Society of the Faculty (PSEA/NEA)*, 375 A.2d 1267, at 1272 n 6 (Pa. 1977). The mere fact that the agreement is subject to other interpretations does not warrant judicial intervention. Under the essence test, a court may not review the merits of the arbitrator's interpretations, nor substitute its judgment for that of the arbitrator, even if its interpretation of the CBA would differ from that of the arbitrator. *City of Johnstown/Redevelopment Auth. v. United Steel Workers of Am., Local 14354*, 725 A.2d 248, 250-51 (Pa. Commw. 1999).

3. The arbitrator's award will be upheld under the essence test as long as it is not "irrational," despite the fact that a reviewing court "might disagree with the award, or even find it to be manifestly unreasonable . . ." *United Sch. Dist. v. United Educ. Ass'n*, 782 A.2d 40, 48 (Pa. Commw. 2001). This narrow scope of review of an arbitrator's award extends to review of the arbitrator's decision on arbitrability as well as the arbitrator's decision concerning procedural matters arising from the arbitration. *Scranton Fed'n of Teachers, Local 1147 v. Scranton Sch. Dist.*, 444 A.2d 1144, 1147-48 (Pa. 1982). The court's scope of review from a decision on arbitrability is very narrow and will be overturned only if it is indisputably and genuinely without foundation in, or fails to logically flow from, the CBA. *Westmoreland Intermediate Unit #7 v. Westmoreland Intermediate Unit #7 Classroom Assistants Educ. Support Pers. Ass'n*, 939 A.2d 855, 866 (Pa. 2007).

Pa.R.A.P. 1925(a) Opinion. C.P., Dau. Co., No. 2008 CV 11908 MD.

*Kathy Speaker MacNett*, for Petitioner

*Randall R. Rhoades*, for Intervenor

*Ira H. Weinstock*, for Respondent

TURGEON, J., June 2, 2011. – Petitioner Middletown Borough and Intervenor Middletown Borough as administrator of the pension plan for Middletown employees, seek to vacate an Arbitration Award directing the Borough provide additional pension benefits to Richard Evans, a

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union employee and member of the Teamsters' bargaining unit. On May 27, 2011, I issued an order denying the Petition to Vacate. This Opinion is written in support of that decision.

**BACKGROUND**

The facts are largely undisputed and were aptly recited by the Arbitrator<sup>1</sup> as follows:

... The Grievant, Richard L. Evans, began his employment with the Borough as a Third Class Lineman in 1973, eventually working his way to First Class Lineman. After a layoff and a three-year break in service in the early 1980s, the Grievant returned to work with the Borough in 1986 and remained an employee until his retirement on December 2[7], 2007. During his employment, the Grievant served as a Union Steward for more than twelve years. He was approximately fifty-seven years old with thirty-two years of service at the time of his retirement.

As an employee of the Borough, the Grievant was a participant in a Pension Plan that was made available to both bargaining unit and non-bargaining unit employees. Prior to 2006, the Pension Plan was administered through the Pennsylvania Municipal Retirement System (PMRS). However, subsequent to voting and approval by the pension participants, the Borough Council authorized a transfer of the Pension Plan to one administered through Standard Insurance Company. By letter dated October 9, 2006, Borough Manager Jeffrey Stonehill informed the Union that the impending transfer would enhance benefits through an increase in the multiplier rate and the addition of a Cost of Living Adjustment with all other terms and conditions remaining the same. The transfer subsequently took place on January 5, 2007, retroactively effective to March 28, 2005.

Prior to this transfer, the Grievant sent a letter to the Borough on May 30, 2005, expressing his interest in participating in an Early Retirement Window. The letter (Joint Exhibit 2) stated as follows:

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1. Portions denoted by *italics* were not included in the Arbitrator's Decision but have been provided by this Court to add information from the record where relevant.

## Borough of Middletown v. Teamsters Local Union 776

On August 15, 2005 I will be 55 years old and I would like to know if Council would consider opening a retirement window. This has been done for other employees 3 times in the last 12 or 13 years and I think that it could [be] of an advantage to the Borough as to myself and 3 other employees who could also retire under this window.

An Early Retirement Window was not created at that time and the Grievant continued his employment with the Borough.

Early Retirement Windows were previously offered by the Borough during the periods of May 1, 1992 to April 30, 1993; July 1, 1995 to June 30, 1996; and January 1, 2001 to December 31, 2001. In each of the three prior occasions, the Windows were created through a Borough ordinance and were made available to both bargaining unit and non-bargaining unit pension participants who met specific age and service requirements.

In 2007, the Borough began considering the opening of another Early Retirement Window in order to encourage the retirement of long term employees. In a Memorandum dated March 15, 2007, Borough Manager Jeffrey Stonehill provided the Borough Council with information regarding those long term employees who would be eligible for the early retirement and the cost that would be incurred by the Borough. The information addressed both bargaining unit and non-bargaining unit employees, and included the Grievant. On April 2, 2007, the Borough Council adopted Resolution No. 440, authorizing an Early Retirement Window for “Administrative or Confidential non-union at-will” employees. Resolution No. 440 (Joint Exhibit – 8) states in its entirety as follows:

WHEREAS, the Borough of Middletown (“the Borough”) has previously enacted an Ordinance establishing the Borough of Middletown Non-Uniformed Employees Pension Plan; and

WHEREAS, the Plan was last amended and executed effective January 5, 2007; and

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WHEREAS, the Borough reserved the right to amend the Plan; and

WHEREAS, the Borough wishes to establish an Early Retirement Window for eligible Administrative Employees who have may [sic] accept the option; and

WHEREAS, [Standard] Financial, the Plan Administrator, has actuarially evaluated the Plan and communicated to the Borough the amount of additional municipal contribution necessary to compensate the Plan for establishment of said Early Retirement Window.

**NOW, THEREFORE, BE IT RESOLVED BY THE MIDDLETOWN BOROUGH COUNCIL** that effective with the enactment of this Resolution, correspondence amending the Non-Uniform Employees' Pension Plan (the "Plan") be transmitted to the Plan Administrator by the Finance Director and permanently affixing a copy of this Resolution to the Plan Document establishing the following:

Early Retirement Window — A participant over the age of fifty-five (55) who is a Administrative or Confidential non-union at-will employee and having obtained at least thirty (30) years of vested service (YOVS) may retire and receive their full Retirement Benefits pursuant to the Plan establishing rules (normally age sixty [60] and at least twelve years of vesting service [YOVS]), provided that election to retire and such retirement shall occur between April 13, 2007 and October 13, 2007.

**ADOPTED this 2nd day of April, 2007, by the Council of the Borough of Middletown.**  
(Emphasis in original.)

As a bargaining unit employee, the Grievant was not permitted to participate in the Early Retirement Window

## Borough of Middletown v. Teamsters Local Union 776

that was offered during the period of April 13, 2007 to October 13, 2007. *Grievant filed a Grievance with the Borough on April 9, 2007 claiming that the Resolution was in violation of the Union Contract and requesting that the window be opened for union employees.* By letter dated April 10, 2007, he was informed by Borough Manager Jeffrey Stonehill that his request to do so was not approved by the Borough Council. By letter dated April 18, 2007, the Union requested that the Borough reconsider its decision to restrict the Early Retirement Window to non-bargaining unit employees. The Grievant was once again informed of his exclusion from the Window by letter dated September 12, 2007. The parties subsequently met on September 27, 2007 and November 20, 2007 in order to discuss the opening of an Early Retirement Window for both bargaining unit and non-bargaining unit employees. The discussions did not result in a resolution of the dispute. *On December 4, 2007, the Borough informed Grievant that it rejected the Union's offer to resolve the Early Retirement Window issue unless the Union would agree to making unrelated labor concessions which the Union refused.*

*After providing notice to the Borough on December 12, 2007 of his intention to retire under "grievance protest," [t]he Grievant retired on December 2[7], 2007, receiving a monthly pension benefit of \$1,861.97. As determined by an Actuary for the Standard Insurance Company, Stephen Coleman, the Grievant would have received \$2,347.53 per month had he been permitted to participate in the 2007 Early Retirement Window. The Grievant did not file an appeal to the Pension Plan regarding his pension benefits.*

This grievance was filed in protest of the Borough's exclusion of the Grievant as a bargaining unit member from the 2007 Early Retirement Window.

(Reproduced Record 347-50 (Arbitrator's Decision) and 69, 71-73, 91, 145 (*italicized portion*)). As noted, Grievant filed his Report of Grievance on April 9, 2007, which stated as follows:

On April 02, 2007 Borough Council passed a resolution to open an early retirement window and eliminated union



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employees. In the past early retirement windows have been opened and as per PMRS the window had to be opened for everyone administrative and union employees and was open for a full year instead of six months. This happened 3 times in the past. I am requesting that the window be opened for union employees and that it should remain open for 1 year. This is a violation of the Union Contract.

(RR 145) After the negotiations failed, the matter was referred to a labor arbitrator as provided under the Collective Bargaining Agreement (CBA) entered into between the Union and the Borough in 2006, which was made retroactive to January 1, 2004 and was effective through 2008. Article 9 of the CBA set forth the grievance procedure, as follows:

**ARTICLE 9 — GRIEVANCE PROCEDURE**

A grievance shall be defined as any difference between the Borough and the Union as to the meaning of a specific article or articles of this Agreement. In the event a grievance between an employee or employees and the Borough arises, an earnest effort shall be made to settle such differences promptly at the lowest possible step in the following manner only:

\* \* \*

4. **ARBITRATION** – If the grievance is timely referred to arbitration, a neutral arbitrator will be selected and governed by the following procedure:

The representatives of the parties will request the American Arbitration Association to provide a panel of five (5) professional labor arbitrators from which panel the parties will select a single arbitrator according to Association procedures. The arbitration will be conducted according to the rules of the Association, and the arbitrator's decision will be final and binding upon the parties.

The arbitrator will have the authority to interpret and enforce this Agreement, but he/she will have no authority to add to, detract from, or modify any provisions of this Agreement for any reason. ...

(RR 109-110 (CBA))

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**ARBITRATOR'S DECISION**

Following hearings, the Arbitrator held that the Borough's passage of Resolution 440 in 2007, by which it offered an early retirement window to at-will, non-union employees, to the exclusion of bargaining unit members, violated numerous provisions of the CBA. The Arbitrator specifically found that the Resolution violated CBA Article 19(i), Article 22(a) and Article 33. Those Articles provide as follows:

**ARTICLE 19 — BENEFITS**

i. Pension Plan: For the term of this Agreement, the Borough shall maintain in full force the pension plan comparable or better than that in effect as of the date of this Agreement.

**ARTICLE 22 — NO DISCRIMINATION /  
NO HARASSMENT**

a. The Borough and the Union agree that – there shall be no discrimination by the Borough or the Union against any employee because of his membership in the Union or because of any employee's lawful activity and/or support of the Union. The Union and the Borough further agree not to discriminate against any employee on the basis of age (over 40), sex, handicap not related to essential job functions, veterans' status, national origin, race, color, creed or religion, unless any of the above are bona fide occupational qualification recognized by law.

**ARTICLE 33 — MAINTENANCE OF STANDARDS**

The Borough agrees, subject to the following provisions, that all matters relating to wages, hours, and conditions of employment shall be maintained at not less than the highest standard in effect at the time of the signing of this Agreement, and the conditions of employment shall be improved whenever specific provisions for improvement are made elsewhere in this Agreement.

(RR 132-33, 136, 141)

The Arbitrator rejected the procedural arguments proffered by the Borough, including that the issue was not arbitrable because the subject of the grievance was not encompassed within the CBA and also that the

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Grievant's sole remedy existed within the appeal process set forth within the Pension Plan as opposed to seeking a remedy via grievance arbitration. (RR 353-55) The Arbitrator also rejected the Borough argument that the Grievant had no right to participate in the early retirement window because he in fact retired two months after the window closed, finding that the Grievant would have opted for early retirement during the window had it been made available to him. (RR 358)

With regard to the substance of the issues before him, the Arbitrator agreed with the principal arguments put forth by the Union which were that (1) the offering of the 2007 early retirement window benefit to non-union at-will employees over fifty-five years old with at least thirty years of vested service constituted a change to the pension plan which violated Article 19(i) and Article 33 of the CBA, and (2) the failure to offer the 2007 early retirement window to union employees was an act of discrimination based upon union membership, in violation of Article 22 of the CBA. (RR 355-58)

The Arbitrator held that the remedy for the CBA violations was to place Grievant in the position he would have enjoyed had the violations not occurred which was to hold that he was entitled to the increase in pension benefits that he would have received under the early retirement window, retroactive to December 27, 2007, the date of his retirement. (RR 358)

### LEGAL DISCUSSION

In its Petition to Vacate, the Borough sought to vacate the Arbitration Award for the following reasons: (1) the grievance was not arbitrable under the appeal provision of the Pension Plan; (2) the Arbitration Award failed to draw its essence from the CBA; (3) the Award impermissibly provided a benefit to a person in violation of the local ordinance; (4) the Award is contrary to a jury verdict; and (5) the Award impermissibly provided extra compensation to a retired employee in violation of the Pennsylvania Constitution.

In addition to these arguments, Intervenor argued that (6) the Award fails to derive from the essence of the CBA because it was in direct conflict with the parties' agreement; (7) the Award failed to derive from the essence of the CBA because the Arbitrator's finding of past practices was contrary to the CBA; (8) the conclusion that the Borough's resolution was discriminatory against union members was not rational; and (9) implementation of the Award will require the Borough to enact a retroactive ordinance in contravention of the Borough Code.

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### SCOPE OF REVIEW – ESSENCE TEST

It is well-settled that a labor arbitrator's grievance award is to be viewed with great deference by the courts and is subject to a very narrow scope of review. Our supreme court first adopted the "essence test" in 1977 as the appropriate standard of review of labor arbitration awards in *Community College of Beaver County v. Community College of Beaver County, Society of the Faculty (PSEA/NEA)*, 375 A.2d 1267 (Pa. 1977). The essence test draws its origins from federal decisional law, first set forth in *United Steelworkers of America v. Enterprise Wheel and Car Corp.*, 363 U.S. 593 (1960). *Juniata-Mifflin Counties Area Vo-Tech Sch. v. Corbin*, 691 A.2d 924, 926 (Pa. 1997). The United States Supreme Court explained the essence test as follows:

... the essence test requires a determination as to whether the terms of the agreement encompass the subject matter of the dispute. Where it is determined that the subject matter of the dispute is encompassed within the terms of the agreement, the validity of the arbitrator's interpretation is not a matter of concern to the court.

*Id.* (quoting *United Steelworkers* at 599). The reason for the deference afforded to the decisions of labor arbitrators has been explained as follows:

The labor arbitrator performs functions which are not normal to the courts; the considerations which help him fashion judgments may indeed be foreign to the competence of courts. ...

The labor arbitrator's source of law is not confined to the express provisions of the contract, as the industrial common law – the practices of industry and shop – is equally a part of the collective bargaining agreement although not expressed in it. The labor arbitrator is usually chosen because of the parties' confidence in his knowledge of the common law of the shop and their trust in his personal judgment to bring to bear considerations which are not expressed in the contract as criteria for judgment. The parties expect that his judgment of a particular grievance will reflect not only what the contract says but, insofar as the collective bargaining agreement permits, such factors has the effect upon productivity of a particular result, its consequence to the morale of the shop, his judgment whether tensions will be heightened or diminished. For the

## Borough of Middletown v. Teamsters Local Union 776

parties' objective in using the arbitration process is primarily to further their common goal of uninterrupted production under the agreement, to make the agreement serve their specialized needs. The ablest judge cannot be expected to bring the same experience and competence to bear upon the determination of a grievance, because he cannot be similarly informed.

*United Steelworkers v. Warrior & Gulf Navigation Co.*, 363 U.S. 574, 581-82 (1960). See, *State Sys. of Higher Educ. (Cheyney University) v. State Coll. Univ. Prof'l Ass'n (PSEA-NEA)*, 743 A.2d 405, 413 (Pa. 1999) ("*Cheyney University*") (citing *Scranton Fed'n of Teachers, Local 1147 v. Scranton Sch. Dist.*, 444 A.2d 1144, 1147 (Pa. 1982)) (the broad deference afforded an arbitrator's interpretation of a CBA exists because the parties bargained for an arbitrator's interpretation of their agreement and not the court's). "[I]f the arbitrator's decision concerns the construction of the contract, the court has no business overruling the decision merely because it interprets the contract differently." *Corbin* at 926 (citing *Leechburg Area School District v. Dale*, 424 A.2d 1309, 1312-1313 (Pa. 1981)). In labor disputes resolved by arbitration, "the less judicial participation, the better." *Community College of Beaver County* at 1272 n 6.

Nevertheless, our Supreme Court recognized that despite its previous holding in *Community College of Beaver County*, "different variations of the applicable standard ... led to a less than uniform proclamation of the appropriate degree of deference that a reviewing court should accord to a labor arbitrator's decision." *Cheyney University* at 409. The Court in *Cheyney University* attempted to clarify application of the essence test by requiring a reviewing court to conduct a two-prong analysis:

... First, the court shall determine if the issue as properly defined is within the terms of the collective bargaining agreement. Second, if the issue is embraced by the agreement, and thus, appropriately before the arbitrator, the arbitrator's award will be upheld if the arbitrator's interpretation can rationally be derived from the collective bargaining agreement. That is to say, a court will only vacate an arbitrator's award where the award indisputably and genuinely is without foundation in, or fails to logically flow from, the collective bargaining agreement.

*Id.* at 413. This narrow two-part formulation of the essence test was reaf-

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firmed by our supreme court in *Westmoreland Intermediate Unit #7 v. Westmoreland Intermediate Unit #7 Classroom Assistants Educ. Support Pers. Ass'n* 939 A.2d 855, 863 (Pa. 2007). The court reiterated that “the essence test is highly deferential and it admonishes that courts should not become embroiled in the merits of an arbitration, but rather, must only determine if the award is indisputably and genuinely without foundation in, or fails to logically flow from, the collective bargaining agreement.” *Id.* at 866. “[A]n arbitrator is confined to interpretation and application of the collective bargaining agreement, he does not sit to dispense his own brand of industrial justice. He may, of course, look for guidance from many sources, yet his award is legitimate only so long as it draws its essence from the collective bargaining agreement.” *Id.* at 862-63 (citing *United Steelworkers*).

The mere fact that the agreement is subject to other interpretations does not warrant judicial intervention. Under the essence test, a court may not review the merits of the arbitrator’s interpretation, nor substitute its judgment for that of the arbitrator, even if its interpretation of the CBA would differ from that of the arbitrator. *City of Johnstown/Redevelopment Auth. v. United Steel Workers of Am., Local 14354*, 725 A.2d 248, 250-51 (Pa. Commw. 1999); *American Fed’n of State, County & Mun. Employees, Dist. Council 88, AFL-CIO v. City of Reading*, 568 A.2d 1352 (Pa. Commw. 1990).

The proper analysis is thus whether the terms of the agreement encompass the subject matter of the dispute and whether the award can be in any way rationally derived there from. *Cheyney University* at 413. The arbitrator’s award will be upheld under the essence test as long as it is not “irrational,” despite the fact that a reviewing court “might disagree with the award, or even find it to be manifestly unreasonable. . . . *United Sch. Dist. v. United Educ. Ass’n*, 782 A.2d 40, 48 (Pa. Commw. 2001). Finally, it must be noted that this narrow scope of review of an arbitrator’s award extends to review of the arbitrator’s decision on arbitrability as well as the arbitrator’s decision concerning procedural matters arising from the arbitration. *Scranton Fed. of Teachers* at 1147-48 (citation omitted).

### 1. ARBITRABILITY

The Borough claimed that the Grievant’s argument that he should have been included within the retirement window was not arbitrable under the CBA; instead, it argued that the Grievant’s sole remedy was to pursue an appeal under the procedure provided within the Pension Plan. The Borough contended that the recent Third Circuit decision in *United*

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*Steelworkers of America v. Rohm and Haas Co.* supported its position. 522 F.3d 324 (3rd Cir. 2008).

In *Rohm and Haas*, four union employees unsuccessfully sought either disability retirement or long term disability benefits under a plan adopted by the employer pursuant to the Employee Retirement Income Security Act (ERISA). The plan administrator denied the benefits sought, following which the union demanded that the grievances be submitted for arbitration pursuant to the CBA entered into between the union and the company. The company refused, arguing that any challenge to a denial of benefits under the plan had to be made pursuant to the appeal procedure contained in the plan itself. The plan was governed by ERISA and existed independent of the CBA. The employees' union responded by initiating an action in federal court seeking, among other things, that the company be compelled to submit the grievances to arbitration. The District Court agreed and granted the union's summary judgment motion directing arbitration. On appeal, the Third Circuit reversed, holding that the issue was not arbitrable.

The federal court initially conceded that the arbitration provision in the CBA was broad and thus gave rise to a presumption of arbitrability. *Id.* at 332. It nevertheless agreed with the company that the dispute was not subject to the arbitration provision, holding that "because there is no specific language addressing the employees' rights to disability benefits [in the CBA], we cannot say such benefits were provided for under the terms of the ... CBA." *Id.* The Court further noted that the CBA did not reference the plan, did not contain an article devoted to disability benefits nor to any sort of discussion as to employees' rights to or calculations regarding such benefits. *Id.* at 332, 335. Thus, it held that the employees' right to receive disability benefits derived from the plan and not the CBA. *Id.* at 334. The Court further stated that "[b]ecause the Plan provides the basis for the employees' right to receive disability benefits, these rights cannot be said to result from any agreement entered into between the Union and the Company." *Id.* In light of the lack of CBA language addressing disability benefits, the court ruled that the matter could not be arbitrated.

As noted above, an arbitrator has sole jurisdiction to decide the arbitrability of an issue in the first instance. *Scranton Fed. of Teachers* at 1147-48. This court's scope of review from a decision on arbitrability is very narrow and will be overturned only if it is indisputably and genuinely without foundation in, or fails to logically flow from, the CBA. *Westmoreland Intermediate Unit #7* at 866.

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The Arbitrator in this case held that the situation presented to the court in *Rohm and Haas* was distinguishable from the matter before him. The Arbitrator noted that unlike in *Rohm and Haas*, the CBA here explicitly includes contractual language applicable to pension plans. Article 19(i) of the Agreement directly addresses the Pension Plan, requiring the Borough to “maintain in full force the pension plan comparable or better than that in effect as of the date of this Agreement.” Additionally, Article 33, entitled “Maintenance of Standards,” requires the Borough to maintain “wages, hours and conditions of employment at not less than the highest standard in effect at the time of the signing of this Agreement.” As referenced by the court in *Rohm and Haas*, wages have long been considered to include insurance and pension benefits and the term “conditions of employment” is subject to a broad interpretation. As such, the Arbitrator found that the CBA in this case includes language considerably more specific than the much broader reference to “maintenance of working conditions,” which was the CBA’s language upon which the union in *Rohm and Haas* sought to arbitrate disability retirement or long term disability benefits. The Arbitrator additionally reasoned that the broad definition of a “grievance” in Article 9 of the parties’ CBA further distinguished the case from *Rohm and Haas* and brought the parties’ grievance within the penumbra of the CBA. (RR 353-54)

The Arbitrator also rejected the Borough’s claim that the issue was not arbitrable because there is no mention of the calculation of pension benefits in the CBA. The Arbitrator explained that the calculation of the Grievant’s benefits was not the issue presented by the grievance. Rather, the dispute concerned the Grievant’s ability to participate in the early retirement window. The Arbitrator thus concluded that “[b]ecause Article 19, Section i and Article 33 of the Agreement include contractual language applicable to the Borough’s obligations in this regard, the issue presented is not outside the Agreement and is therefore arbitrable.” (354)

The Arbitrator further found that although the Grievant might have had an additional avenue of redress through the Pension Plan, his choice of remedies did not preclude this grievance arbitration. He noted that his decision was “especially appropriate in this matter due to the Grievant’s unrefuted testimony that he was not informed of his appeal rights prior to the arbitration hearing. The Grievant should not be penalized for any failure on the part of the Borough or the Pension Plan to make him aware of his alternative rights of appeal.” (RR 354-55) Indeed, Grievant testified before the Arbitrator that he had a conversation with the



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administrator of the Pension Plan concerning the open window period and was told by the administrator that there was nothing he could do for Grievant; instead, he was told that it was up to the Borough to resolve. Grievant also testified, as acknowledged and credited by the Arbitrator, that he was not informed by the Plan administrator of a right to appeal or of an appeal procedure under the Plan. (RR 15 (N.T. 56-57)) Furthermore, it wasn't until the Arbitration hearing in May 2008 that the Borough first raised the issue that Grievant should have sought redress under the Pension Plan's appeal process and that his failure to do so precluded him from relief in labor arbitration. (See RR 7 (Arbitration Hearing)) The Arbitrator's decision finding that Grievant was not required to pursue his remedy under the Pension Plan was thus fully supported by the record.

Additionally, the Arbitrator's decision finding the issues before him to be arbitrable since they were encompassed within the terms of the CBA, was an interpretation of the CBA rationally derived there from. Article 19(i) of the CBA in this case explicitly required that the pension plan maintained by the Borough for the benefit of union employees be comparable or better than that in effect on the date the CBA was entered. Article 33 similarly required that all matters relating to wages, hours and conditions of employment be maintained at not less than the highest standard in effect at the signing of the CBA. Notably, wages in the labor context encompass pension benefits. The Arbitrator's finding that *Rohm and Haas* was inapplicable to this case was thus logical whereby in that case there was a complete absence from the CBA of any provision out of which an employee's rights to the benefits sought could be said to arise.

On the other hand, the matter before the Arbitrator was not about the denial of benefits to the Grievant under the administrative provisions of the Pension Plan, nor did it involve an interpretation of the Pension Plan or a calculation of pension benefits. Instead, the issue concerned the denial of a pension benefit to an entire class of employees (union employees) in the face of a CBA that specifically called for pension benefits to be equal to or exceed those provided in the past. Inasmuch as the Arbitrator's decision on arbitrability was not indisputably and genuinely without foundation in the CBA, his decision must be left undisturbed.

## 2. CBA – ESSENCE TEST

The Borough next argued that the Arbitration Award must be vacated because it failed to draw its essence from the CBA, for reasons which will be explored below in greater detail.

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As to the merits of the Award, the Arbitrator explained that Article 19(i) requires that a pension plan comparable to that in existence as of the date of the signing of the CBA remain in full force and that Article 33 requires the Borough to maintain those “wages, hours and conditions of employment” in existence at the signing of the CBA. He found that under this language, the Borough was obligated to provide bargaining unit employees with a pension plan that had benefits equal to or exceeding those in existence when the term of the CBA commenced. The Arbitrator noted that the applicable CBA term was from January 1, 2004 through December 31, 2008. While this CBA was in existence, the Borough, on January 5, 2007, transferred the Pension Plan from a PMRS plan to one administered privately. The new Plan was made retroactive to March 28, 2005. The new Plan, according to the Arbitrator, resulted in “an enhancement in benefits” due to an increase in the multiplier rate and the addition of a COLA, while all other terms from the old Plan remained the same. (RR 355) The Arbitrator noted that the transfer did not result in a decrease in pension benefits. (RR 356)

Nevertheless, the Arbitrator held that the Borough’s 2007 early retirement window constituted a change in the Pension Plan that, because it was offered only to non-union employees, rendered the new Pension Plan no longer comparable to that which existed at the time of the signing of the CBA. Similarly, the failure to offer the early retirement window to union employees revealed a failure to maintain the “wages, hours and conditions of employment” that existed when the CBA was signed. (RR 356)

In finding that the offering of an early retirement window constituted a change in the Pension Plan, the Arbitrator looked to the language adopted by the Borough Council in passing the early retirement window Resolution, which was as follows:

WHEREAS, the Borough of Middletown (the “Borough”) has previously enacted an Ordinance establishing the Borough of Middletown Non-Uniformed Employees Pension Plan (the “Plan”); and

WHEREAS, the Plan was last amended and executed effective January 5, 2007; and

WHEREAS, the Borough reserved the right to amend the Plan; and

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WHEREAS, the Borough wishes to establish an Early Retirement Window for eligible Administrative Employees who have may accept the option; and

WHEREAS, [Standard] Financial, the Plan Administrator, has actuarially evaluated the Plan and communicated to the Borough the amount of additional municipal contribution necessary to compensate the Plan for establishment of said Early Retirement Window.

The Arbitrator found significant the preamble statements which noted the Pension Plan was last amended on January 5, 2005 and that the Borough “reserved the right to amend the Plan” in the future. He found that when read together with other language concerning the specific requirements for participation in the early retirement window, it must be concluded that the Borough considered the offer of an early retirement window a “change” in the Pension Plan. Because the Borough was acting to change the existing Plan, it was prohibited under the CBA from making any change that resulted in a decrease in pension benefits compared to those available at the signing of the CBA. (RR 356-57)

The Arbitrator also found significant that the parties had “an extended history” concerning early retirement windows such that an “established past practice” existed regarding pension benefits. In support, the Arbitrator noted that early retirement windows had been offered in 1992, 1995 and 2001 and that each such offering was made available to all Pension Plan participants, regardless of their bargaining unit status (assuming they met certain age and service requirements). This history revealed a consistent application of the early retirement window over the course of many years and several collective bargaining agreements. The Arbitrator concluded that the Borough’s exclusion of bargaining unit members from the 2007 early retirement window was a unilateral change of this past practice which decreased pension benefits available to union employees from the practice that was in effect when the CBA was signed. For this separate reason, the Arbitrator found that the exclusion of bargaining unit employees from the early retirement window constituted violations of Article 19(i), Article 22(a), and Article 33. (RR 357)

These conclusions reached by the Arbitrator, finding the Borough in violation of the CBA, clearly drew their essence from the CBA. As

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noted above, the essence test requires a high level of deference to the arbitrator's decision; a reviewing court is admonished to "not become embroiled in the merits of an arbitration, but rather, must only determine if the award is indisputably and genuinely without foundation in, or fails to logically flow from, the collective bargaining agreement." *Westmoreland* at 866. The detailed reasoning set forth by the Arbitrator in finding violations of the CBA logically flow from the CBA. The Arbitrator's reasoning is not "indisputably and genuinely without foundation." *Id.*

## i. MANDATE OF ARTICLE 19(i)

The Borough argued that the Award failed to draw its essence from the CBA because it failed to follow the mandate of Article 19(i). The Borough claimed that under 19(i), the CBA required only that the new Pension Plan must be a "comparable or better" than the older Plan it replaced on the date the CBA was signed. The Borough noted that the Arbitrator opined that the new Plan was indeed better than the old Plan and that because it was better, its adoption fulfilled the Article 19(i) mandate: "[f]or the term of this Agreement, the Borough shall maintain in full force the pension plan comparable or better than that in effect as of the date of this Agreement." The Borough argued that upon finding that the new Plan was better than the old Plan, the Arbitrator's analysis should have ended.

The Arbitrator concluded, however, that the later passage of the Borough Resolution in 2007 providing an early retirement window exclusively to non-union employees, constituted an additional change to the Pension Plan (during the term of the CBA). This change, the Arbitrator found, was one which failed to maintain in full force the Pension Plan that existed as of the effective date of the CBA. This finding clearly involved the Arbitrator's interpretation of Article 19(i) of the CBA. The Borough's dispute with this interpretation is a dispute outside the province of this court's review. *Corbin* at 926. Furthermore, the Arbitrator's interpretation was both rationally derived and logically drawn from the essence of the CBA. *Cheyney University* at 413. Ultimately, the broad deference afforded the Arbitrator's interpretation of a CBA exists because the parties bargained for his interpretation, and not this court's. *See, Id.*

## ii. PAST PRACTICES

The Borough also argued that the Arbitrator's finding of a violation of the CBA's Maintenance of Standards (MOS) provision in Article 33 was flawed. The Arbitrator found that the Borough had violated the

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first portion of this provision which required it to maintain “wages, hours, and conditions of employment ... at not less than the highest standard in effect at the time of the signing of this Agreement.” Central to the Arbitrator’s ruling was his finding that the parties had an “established past practice” of offering early retirement windows to all Pension Plan participants in 1992, 1995 and 2001,<sup>2</sup> and that the Borough’s exclusion of bargaining unit members from the 2007 window was a unilateral change of this past practice in violation of Article 33.

The Borough contended that in reaching this conclusion, the Arbitrator overlooked evidence in the record whereby the Borough essentially declared that early retirement windows had no status as past practice. This record includes a 2001 Borough Ordinance (No. 1136) which specifically repealed the prior early retirement windows offered in 1992 and 1995. (RR 50-51) In addition, a 1992 Memo of Understanding signed in conjunction with the 1992 window stated that the window was offered “on a one-time basis only” and that it was specifically understood and agreed that the window “shall create no precedent or continuing obligation of any kind whatsoever for the Borough to offer the Program or any successor Program, either in its present form or a modified version thereof, to any other employees covered by the Agreement or any successor Agreement.” (RR 153-54)

Although the Arbitrator did not directly address this evidence, he implicitly rejected that this evidence removed the prior window offerings to union employees from achieving a status of past practice. This court finds that such a finding drew its essence from the CBA. The Arbitrator can have logically and rationally concluded that the Borough’s repeal of the prior early retirement windows and/or its declaration that retirement windows were non-precedential revealed only the Borough’s intent to declare that it had no duty to offer any retirement windows in the future. In contrast, the language relied upon by the Borough does not explicitly repeal or declare as non-precedential the practice that the Borough, when it would offer early retirement windows, offered them equally to both union and non-union employees. As such, the Arbitrator offered a legitimate interpretation of the MOS provision of the CBA, and related documents, by finding that this was an established past practice.

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2. Both the Borough and the Intervenor correctly note that there were in fact two past early retirement windows, in 1992 and 1995. The Arbitrator apparently mistook the 2001 Ordinance as a window ordinance when it was in fact a restatement ordinance. (See RR 50-51)

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In addition to the arguments raised by the Borough, the Intervenor also attacked the Arbitration Award on the basis that it failed to derive from the essence of the CBA in that it the Arbitrator's finding of past practices was contrary to the CBA and did not comport with Pennsylvania law. A past practice has been appropriately defined under Pennsylvania law, as it applies to labor arbitration, as follows:

A custom or practice is not something which arises simply because a given course of conduct has been pursued by Management or the employees on one or more occasions. A custom or practice is a usage evolved by men as a normal reaction to a recurring type situation. It must be shown to be the accepted course of conduct characteristically repeated in response to the given set of underlying circumstances. This is not to say that the course of conduct must be accepted in the sense of both parties having agreed to it, but rather that it must be accepted in the sense of being regarded by the men involved as the normal and proper response to the underlying circumstances presented.

*County of Allegheny v. Allegheny County Prison Employees Independent Union*, 381 A.2d 849, 853 n. 12 (Pa. 1978). Intervenor argued that the inclusion of union employees in the infrequently offered past retirement windows did not rise to a past practice as defined.

The Arbitrator here can not be said, however, to have made an irrational or illogical conclusion in determining that the offering of past early retirement windows to both union and non-union employees was an accepted course of conduct characteristically repeated in response to the given set of underlying circumstances. *Id.* The record before the Arbitrator revealed that until the instant violation by the Borough, each previous early retirement window was available to bargaining unit members as well as non-union personnel. Opening a window under the current Pension Plan that did not offer the same benefit to Union members rendered the current Plan less than comparable to the old one in violation of Article 19(i). Additionally, the failure to render the benefits to the Grievant also violated Article 33's MOS clause.

Even were this court to conclude that the Arbitrator's finding of past practices was not rationally derived or logically related to the CBA, or was otherwise contrary to the law, this court would nevertheless uphold the Arbitrator's Award on other grounds. Specifically, as determined by

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the Arbitrator (explained below), when the Borough passed its Resolution offering the enhanced early retirement pension benefits to non-union employees and to the exclusion of union employees, it did so in violation of the CBA's prohibition against discrimination of employees based upon their union status under Article 22(a).

### 3. IMPERMISSIBLE BENEFIT – EXPANSION OF RETIREMENT WINDOW

The Borough argued that the Arbitrator's Award impermissibly provided a benefit to a person in violation of the local ordinance passed by Borough Resolution, which is a legislative action. The Borough argued, specifically, that the Arbitrator lacked authority to enlarge the size of the retirement window, noting that the Grievant in this case did not retire until December 27, 2007, more than two months after the retirement window closed on October 13, 2007. It also argued that the requirement that Grievant retire within the window was a condition precedent to him qualifying for the additional pension benefits offered.

The Arbitrator rejected these arguments because he found that had the Borough not violated the terms of the CBA and offered the retirement window to union employees, Grievant would have retired within the window. The Arbitrator's decision on this point was rational and logical as it was supported by evidence garnered from the record, including that the employee filed his Grievance with the Borough seeking inclusion in the window on April 10, 2007, within days of passage by the Borough Resolution creating the window. The Borough thereafter held a number of meetings with Grievant and the Union, including on September 27, 2007, prior to the closing of the window. At the conclusion of that meeting, the parties agreed to continue their negotiations and later held another meeting on November 20, 2007, after the window closed. The purpose of these meetings was to settle the grievance issue. According to the Union's business agent, who participated in both sessions on Grievant's behalf, a scheduled arbitration hearing was in fact postponed due to these negotiations. (RR 61, 63-64, 69, 73)

It was not until December 4, 2007, when the Borough's attorney advised Grievant's advocates that the Borough would not offer the window to Grievant, while making a counteroffer to reconsider offering the window in exchange for unrelated labor concessions. (RR 71-72) After the Union and Grievant rejected the counteroffer (on a date unclear from the record), Grievant formally notified the Borough on December 12, 2007, of his intention to retire on December 26, 2007, under "grievance protest." (RR 91)

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This record fully supports the Arbitrator's finding that the Grievant "would have opted for early retirement during the Window had it been made available to him" as well as his implicit decision that Grievant acted with diligence by retiring within weeks following notification from the Borough that it would not be including him within the window.

## 4. CONTRARY TO LAW / JNOV

The Borough argued that insofar as this matter is governed by Section 7302(d) of the Pennsylvania Uniform Arbitration Act, that Section mandates application of the standard of review stated therein, which is whether the arbitration award is contrary to law or whether, had the decision been rendered by a jury, the court would have entered a different judgment or a judgment notwithstanding the verdict. Our Supreme Court has held that "the judgment n.o.v./error of law concept set forth in Section 7302(d)(2) is the same as the 'essence test.'" *Tunkhannock Area Sch. Dist. v. Tunkhannock Area Educ. Ass'n*, 992 A.2d 956, 958 (Pa. Commw. 2010), *appeal denied*, 8 A.3d 347 (Pa. 2010). The Borough's arguments have been fully addressed as set forth above in this court's application of the essence test.

## 5. EXTRA COMPENSATION

The Borough's final argument was that the Award impermissibly provided extra compensation to a public employee in violation of the Pennsylvania Constitution, Article 3, Section 26, which provides:

No bill shall be passed giving any extra compensation to any public officer, servant, employe, agent or contractor, after services shall have been rendered or contract made, nor providing for the payment of any claim against the Commonwealth without previous authority of law: Provided, however, That nothing in this Constitution shall be construed to prohibit the General Assembly from authorizing the increase of retirement allowances or pensions of members of a retirement or pension system now in effect or hereafter legally constituted by the Commonwealth, its political subdivisions, agencies or instrumentalities, after the termination of the services of said member.

Pa. Const. Art. 3, § 26.

The Borough asserted that under the Arbitration Award directing that Grievant be made eligible for the early retirement window, Grievant will receive an additional \$500 per month. The Borough maintained that



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since the Award was issued after the window closed and after the Grievant retired (i.e. after his services have been rendered), this extra pension compensation is illegal as it is a violation of this constitutional provision. *See, Grottenaaler v. Pa. State Police*, 410 A.2d 806, 808-09 (Pa. 1980) (arbitrators in Pennsylvania public sector cases may not mandate a governing body, over its objection, to carry out an illegal act). The Borough further noted that Grievant voluntarily selected a date for his retirement knowing that the enhanced early retirement window would not apply to him.

As addressed above, the Arbitrator made a rational finding amply supported by the record that Grievant fully intended to retire within the window had it been offered at the outset or at any time during the defined window period. However, since Grievant was thwarted by the Borough in his attempt to retire within the window, he was in essence forced to involuntarily retire outside the window. Additionally, the record does not support the Borough's argument that Grievant retired "knowing" that the enhanced early retirement window would not apply to him. The record reveals that at all relevant times, the issue was subject to a grievance and was being fully negotiated between the parties and later litigated before the Arbitrator. The Arbitrator thus reasonably concluded that "contrary to the assertions of the Borough, this monetary award is compensation owed under the terms of the Agreement and is not barred by Article 3, Section 26 of the Pennsylvania Constitution." (RR 358)

## 6. CONFLICTING AWARD

The Intervenor's first argument was that the Arbitration Award should be vacated because it fails to derive from the essence of the CBA in that it is in direct conflict with the CBA. The Intervenor notes that CBA Article 19(i), of which the Arbitrator found the Borough in violation, states that "the Borough shall maintain in full force the pension plan comparable or better than that in effect *as of the date of this Agreement.*" Intervenor argued that there is no evidence in the record that on the date of the Agreement, which was effective January 1, 2004, that the Pension Plan contained an early retirement window. Intervenor claimed that the Arbitration Award directly contradicts the CBA and that as such, cannot be said to draw its essence from the CBA.

The Arbitrator held that there was an established past practice of inclusion of union and non-union employees when retirement windows had been offered by the Borough in the past. As such, this past practice was in existence "as of the date of this Agreement." This finding is not

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indisputably and genuinely without foundation, and does it otherwise fail to logically flow from the CBA.

## 7. PAST PRACTICES

The Intervenor's argument that the Arbitration Award should be vacated because it failed to derive from the essence of the CBA, in that it the Arbitrator's finding of past practices is contrary to the CBA and Pennsylvania law, was addressed above in Section 2 of this Opinion.

## 8. ANTI-UNION DISCRIMINATION

Intervenor argued that the Award must be vacated because its conclusion that the Borough's action in not including the union employees in the early retirement window was anti-union discrimination was not rational whereby the Union negotiated for a pension plan which did not have an early retirement window and received the exact benefit for which it negotiated.

Article 22(a) prohibits "discrimination by the Borough or the Union against any employee because of his membership in the Union or because of any employee's lawful activity and/or support of the Union." The Arbitrator reasoned that this provision "presumably prohibits the withholding or forfeiting of benefits or rights based solely upon bargaining unit status or union activity." (RR 357) The Arbitrator further found that while the Grievant was not singled out as a union member, it was nevertheless clear that he received a lesser pension benefit due to his union membership. The Arbitrator further found that the Resolution, by which the Borough excluded union employees from this benefit, was made by an intentional act and as such, was in violation of Article 22(a). (RR 358)

This finding of discrimination against Grievant due to his union status clearly draws its essence from the CBA, Article 22(a). *Westmoreland* at 862-63. As noted above, the essence test requires a high level of deference to the arbitrator's decision; a reviewing court is admonished "not become embroiled in the merits of an arbitration, but rather, must only determine if the award is indisputably and genuinely without foundation in, or fails to logically flow from, the collective bargaining agreement." *Id.* at 866. Article 9 of the CBA provides the arbitrator "with authority to interpret and enforce" the CBA. (RR 109-110 (CBA)) Furthermore, the law is clear that in matters concerning the arbitrator's decision regarding the construction of the contract, "the court has no business overruling the decision merely because it interprets the contract differently." *Corbin* at 926. Inasmuch as the Arbitrator's decision involved an interpretation of the CBA, his decision must be left undisturbed.

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## 9. VIOLATION OF BOROUGH CODE

Intervenor lastly argued that the Award must be vacated because its implementation will require the Borough to enact a retroactive ordinance in contravention of the Borough Code. This is the same argument that the Borough raised earlier which is that the Grievant retired outside the window in December 2007, and that to include him within a retirement window will require that the Board enact a retroactive ordinance, which it is prohibited from doing. As discussed above, the Arbitrator made a rational finding supported by the record that the Grievant would have retired within the window had he not been improperly excluded from it. The Arbitrator's ruling does not require that the Borough retroactively enact an ordinance but merely enforces the terms of the already existing CBA.

Accordingly, I denied the Petition to Vacate.

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**SECOND PUBLICATION**

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**Estate Notices**

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ESTATE OF THERESA G. WENKLAR, late of the City of Harrisburg, Dauphin County, Pennsylvania. Executrix: Bethany Bosha, 15 Golfview Drive, Camp Hill, PA 17011. Attorney: Gerald J. Shekletski, Esq., Stone LaFaver & Shekletski, P.O. Box E, New Cumberland, PA 17070. y1-y15

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ESTATE OF GEORGE J. WILLIAMS, late of the City of Harrisburg, Dauphin County, Pennsylvania. Executor: George R. Williams, 7842 Jefferson Street, Hummelstown, PA 17036. Attorney: Elizabeth H. Feather, Esq., Caldwell & Kearns, P.C., 3631 North Front Street, Harrisburg, PA 17110. Telephone (717) 232-7661. y1-y15

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ESTATE OF DOROTHY J. KNIGHT, late of Lower Swatara Township, Dauphin County, Pennsylvania (died April 26, 2011). Executrix: L. Ann Lindenmuth. Attorney: John S. Davidson, Esq., 320 West Chocolate Avenue, P.O. Box 437, Hershey, PA 17033-0437. y1-y15

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ESTATE OF STEPHEN J. MARKUS, late of Royalton Borough, Dauphin County, Pennsylvania (died February 4, 2011). Executrix: Rosemary Rowe, 511 Highlawn Avenue, Elizabethtown, PA 17022. Attorney: Francis A. Zulli, Esq., Wion, Zulli & Seibert, 109 Locust Street, Harrisburg, PA 17101. y1-y15

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ESTATE OF ESTHER C. KESSLER, late of Lower Paxton Township, Dauphin County, Pennsylvania. Executor: Kermit M. Jones, Jr., 2930 Gettysburg Road, Camp Hill, PA 17011. Attorney: David H. Stone, Esq., Stone LaFaver & Shekletski, P.O. Box E, New Cumberland, PA 17070. y1-y15

ESTATE OF ESTHER GENEVIEVE LEWIS a/k/a ESTHER G. LEWIS, late of the City of Harrisburg, Dauphin County, Pennsylvania (died June 2, 2011). Executrix: Susan Marie Shebosky, 527 Springhouse Court, Harrisburg, PA 17111-5658. Attorney: Francis A. Zulli, Esq., Wion, Zulli & Seibert, 109 Locust Street, Harrisburg, PA 17101.

y1-y15

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ESTATE OF PETER BAYARD FOSTER a/k/a PETER B. FOSTER, late of the City of Harrisburg, Dauphin County, Pennsylvania. Administratrix: Pauline F. Mullins, 5421 Kipling Road, Pittsburgh, PA 15217. Attorneys: Butler Law Firm, 500 North Third Street, P.O. Box 1004, Harrisburg, PA 17108. y1-y15

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ESTATE OF MAE L. UBBINK, late of Derry Township, Dauphin County, Pennsylvania. Personal Representative: Saralynn L. Black, c/o Anthony J. Nestico, Esq., Nestico, Druby & Hildabrand, P.C., 840 East Chocolate Avenue, Hershey, PA 17033. Attorney: Anthony J. Nestico, Esq., Nestico, Druby & Hildabrand, P.C., 840 East Chocolate Avenue, Hershey, PA 17033.

y1-y15

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ESTATE OF LENORE H. DAVIS a/k/a LENORE HELEN DAVIS, late of Lower Paxton Township, Dauphin County, Pennsylvania (died May 10, 2011). Executor: Alan T. Davis, 529 North 28th Street, Harrisburg, PA 17109. Attorney: Jeffrey M. Mottern, Esq., 28 East Main Street, P.O. Box 87, Hummelstown, PA 17036. y1-y15

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**THIRD PUBLICATION**

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**Estate Notices**

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ESTATE OF KEVIN B. BLANDING, SR., late of Harrisburg, Dauphin County, Pennsylvania (died May 21, 2011). Executor: Kevin L. Blanding, Jr. Attorney: Bruce J. Warshawsky, Esq., Cunningham & Chernicoff, P.C., 2320 North Second Street, Harrisburg, PA 17110. j24-y8

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ESTATE OF ELEANOR M. GAISKI, late of Lower Paxton Township, Dauphin County, Pennsylvania (died May 24, 2011). Executor: Lawrence A. Gaiski, 4501 Egret Drive, Harrisburg, PA 17112. Attorney: Christa M. Aplin, Esq., Jan L. Brown & Associates, 845 Sir Thomas Court, Suite 12, Harrisburg, PA 17109. j24-y8

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ESTATE OF MILES J. BOGDANOVIC, late of the Borough of Highspire, Dauphin County, Pennsylvania. Executor: David D. Bogdanovic, 652 Woodburne Road, Lewisberry, PA 17339. Attorney: Gerald J. Shekletski, Esq., Stone LaFaver & Shekletski, P.O. Box E, New Cumberland, PA 17070. j24-y8

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ESTATE OF RITA C. MATTHEWS, late of the Township of Middle Paxton, Dauphin County, Pennsylvania (died April 27, 2011). Executor: Donald E. Matthews, 4002 Pine Needles Drive, Harrisburg, PA 17112. Attorneys: Madelaine N. Baturin, Esq. and Harry M. Baturin, Esq., Baturin & Baturin, 2604 North Second Street, Harrisburg, PA 17110. j24-y8

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ESTATE OF VIRGINIA E. HILDEBRAND, late of Lower Paxton Township, Dauphin County, Pennsylvania (died May 24, 2011). Executrix: Carol J. Joyce, 6360 Huntingdon Street, Harrisburg, PA 17111. Attorney: John S. Davidson, Esq., 320 West Chocolate Avenue, P.O. Box 437, Hershey, PA 17033-0437. j24-y8

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ESTATE OF VERNA A. KRESS, late of Wiconisco Township, Dauphin County, Pennsylvania (died May 20, 2011). Co-Executrices: Eleanor Mauser, 7825 State Route 209, Wliiamstown, PA 17098 and Lorraine Troutman, 123 Romberger Lane, Elizabethville, PA 17023. Attorney: Terrence J. Kerwin, Esq., Kerwin & Kerwin, LLP, 27 North Front Street, Harrisburg, PA 17101. j24-y8

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ESTATE OF ELEANOR R. RAMP, late of Susquehanna Township, Dauphin County, Pennsylvania (died April 24, 2011). Executrix: Joanne M. McDonald, Harrisburg, PA. Attorney: Jacqueline A. Kelly, Esq., Jan L. Brown & Associates, 845 Sir Thomas Court, Suite 12, Harrisburg, PA 17109. Telephone (717) 541-5550. j24-y8

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ESTATE OF JOSEPHINE MERZANIS, late of Lower Paxton Township, Dauphin County, Pennsylvania. Personal Representative: Patrice Merzanis, 506 Manor Terrace, Harrisburg, PA 17111-2058. Attorney: Steve C. Nicholas, Esq., 2215 Forest Hills Drive, Suite 37, Harrisburg, PA 17112-1099. j24-y8

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ESTATE OF BEATRICE S. HARRISON a/k/a BEATRICE HARRISON, late of the Township of Susquehanna, Dauphin County, Pennsylvania. Executor: Samuel J. Harrison, 5 Shirewood Drive, Scotch Plains, NJ 07076. Attorney: Joseph L. Rider, Esq., 143 West Fourth Street, Williamsport, PA 17701. j24-y8

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**THIRD PUBLICATION**

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**Estate Notices**

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ESTATE OF DORIS W. PROCTOR, late of Williamstown Borough, Dauphin County, Pennsylvania (died June 9, 2011). Co-Executrices: Constance Shomper, 8840 State Route 209, Williamstown, PA 17098 and Lynne Bowman, 246 East Spruce Street, Williamstown, PA 17098. Attorney: Gregory M. Kerwin, Esq., Kerwin & Kerwin, LLP, 4245 State Route 209, Elizabethtown, PA 17023. j24-y8

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ESTATE OF CHARLES L. SIDERS, JR., late of Swatara Township, Dauphin County, Pennsylvania (died May 14, 2011). Personal Representative: Cindy Sheaffer, 644 Gaumer Road, New Cumberland, PA 17070. Attorney: Benjamin J. Glatfelter, Esq., P.O. Box 5100, Harrisburg, PA 17110. j24-y8

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**FIRST PUBLICATION**

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**Corporate Notices**

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NOTICE IS HEREBY GIVEN that **Filtrona Extrusion, Inc.** with a commercial registered agent in care of Capitol Corporate Services, Inc. in Dauphin County does hereby give notice of its intention to withdraw from doing business in this Commonwealth as per 15 Pa. C.S. 4129(b). The address of its principal office under the laws of its jurisdiction is 1625 Ashton Park Drive, Colonial Heights, VA 23834.

This shall serve as official notice to creditors and taxing authorities. y8

NOTICE IS HEREBY GIVEN that **Sysco Central Ohio, Inc.** with a commercial registered agent in care of Capitol Corporate Services, Inc. in Dauphin County does hereby give notice of its intention to withdraw from doing business in this Commonwealth as per 15 Pa. C.S. 4129(b). The address of its principal office under the laws of its jurisdiction is 1390 Enclave Parkway, Houston, TX 77077.

This shall serve as official notice to creditors and taxing authorities. y8

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NOTICE IS HEREBY GIVEN that **Estrella Distributing Corporation** with a commercial registered agent in care of National Registered Agents, Inc. in Dauphin County does hereby give notice of its intention to withdraw from doing business in this Commonwealth as per 15 Pa. C.S. 4129(b). The address of its principal office under the laws of its jurisdiction is 2200 South 75th Avenue, Phoenix, AZ 85043.

This shall serve as official notice to creditors and taxing authorities. y8

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NOTICE IS HEREBY GIVEN that **DLC Levittown General Partner, LLC** with a Commercial Registered Office Provider in care of National Registered Agents, Inc. in Dauphin County does hereby give notice of its intention to withdraw from doing business in this Commonwealth as per 15 Pa. C.S. 8586. The address of its principal office is 580 White Plains Road, Tarrytown, NY 10591.

This shall serve as official notice to creditors and taxing authorities. y8

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FIRST PUBLICATION

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Corporate Notices

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NOTICE IS HEREBY GIVEN that a Certificate of Authority for a Foreign Business Corporation was filed in the Department of State of the Commonwealth of Pennsylvania for **USA Maintenance Inc.** The address of its principal office under the laws of its jurisdiction is 1849 University Drive, Coral Springs, FL 33071. The name of this corporations commercial registered office provider is National Registered Agents, Inc. in the county of Dauphin.

The Corporation is filed in compliance with the requirements of the applicable provision of 15 Pa. C.S. 4124(b). y8

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NOTICE IS HEREBY GIVEN that **DLC Century Square General Partner, LLC** with a Commercial Registered Office Provider in care of Corporation Service Company in Dauphin County does hereby give notice of its intention to withdraw from doing business in this Commonwealth as per 15 Pa. C.S. 8586. The address of its principal office is 580 White Plains Road, Tarrytown, NY 10591.

This shall serve as official notice to creditors and taxing authorities. y8

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NOTICE IS HEREBY GIVEN that **DLC DEP General Partner, LLC** with a Commercial Registered Office Provider in care of National Registered Agents, Inc. in Dauphin County does hereby give notice of its intention to withdraw from doing business in this Commonwealth as per 15 Pa. C.S. 8586. The address of its principal office is 580 White Plains Road, Tarrytown, NY 10591.

This shall serve as official notice to creditors and taxing authorities. y8

NOTICE IS HEREBY GIVEN that **DLC Property Manager, LLC** with a Commercial Registered Office Provider in care of Corporation Service Company in Dauphin County does hereby give notice of its intention to withdraw from doing business in this Commonwealth as per 15 Pa. C.S. 8586. The address of its principal office is 580 White Plains Road, Tarrytown, NY 10591.

This shall serve as official notice to creditors and taxing authorities. y8

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NOTICE IS HEREBY GIVEN that **Affiliated Mortgage Company** with a commercial registered agent in care of National Registered Agents, Inc. in Dauphin County does hereby give notice of its intention to withdraw from doing business in this Commonwealth as per 15 Pa. C.S. 4129(b). The address of its principal office under the laws of its jurisdiction is 1301 Hudson Lane, Monroe, LA 71201.

This shall serve as official notice to creditors and taxing authorities. y8

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NOTICE IS HEREBY GIVEN that a Certificate of Authority for a Foreign Business Corporation was filed in the Department of State of the Commonwealth of Pennsylvania for **Rotonics Manufacturing Inc.** The address of its principal office under the laws of its jurisdiction is United States Corporation Company, 2711 Centerville Road, Suite 400, Wilmington, DE 19808. The name of this corporation's commercial registered office provider is Corporation Service Company in the county of Dauphin.

This is filed in compliance with the applicable provision of 15 Pa. C.S. 4124(b). y8

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FIRST PUBLICATION

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Corporate Notices

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NOTICE IS HEREBY GIVEN that, pursuant to the provisions of Section 4129 of the Business Corporation Law of 1988, **Kingsford Manufacturing Company**, a corporation of the State of Delaware, with principal office at 1221 Broadway, Oakland, CA 94612, and having a Commercial Registered Office Provider and county of venue as follows: CT Corporation System, Dauphin County, which on May 28, 1996, was granted a Certificate of Authority, to transact business in the Commonwealth, intends to file an Application for Termination of Authority with the Department of State. y8

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NOTICE IS HEREBY GIVEN that **Kettle Cuisine, Inc.**, a foreign business corporation incorporated under the laws of the Commonwealth of Massachusetts, with its principal office located at 270 Second Street, Chelsea, MA 02150, has applied for a Certificate of Authority in Pennsylvania under the PA Bus. Corp. Law of 1988. The commercial registered office provider in PA is: c/o Corporation Service Co., and shall be deemed for venue and official publication purposes to be located in Dauphin County. y8

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NOTICE IS HEREBY GIVEN that an Application was made to the Department of State of the Commonwealth of Pennsylvania, at Harrisburg, PA, on June 30, 2011, by **PC REO Trust**, a foreign trust formed under the laws of the State of Delaware, where its principal office is located at 1100 North Market Street, Wilmington, DE 19890, for a Certificate of Authority to do business in Pennsylvania under the provisions of the Pennsylvania Business Corporation Law of 1988. The registered office in Pennsylvania is located at c/o CT Corporation System, Dauphin County, Pennsylvania. y8

NOTICE IS HEREBY GIVEN that an Application was made to the Department of State of the Commonwealth of Pennsylvania, at Harrisburg, PA, on June 13, 2011, by **Air Drilling Associates, Inc.**, a foreign corporation formed under the laws of the State of Wyoming, where its principal office is located at 6795 E. Tennessee Avenue, Suite 437, Denver, CO 80224, for a Certificate of Authority to do business in Pennsylvania under the provisions of the Pennsylvania Business Corporation Law of 1988.

The registered office in Pennsylvania is located at c/o CT Corporation System, Dauphin County, Pennsylvania. y8

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NOTICE IS HEREBY GIVEN that an Application was made to the Department of State of the Commonwealth of Pennsylvania, at Harrisburg, PA, on April 22, 2011, by **Moorhead Brothers, Inc.**, a foreign corporation formed under the laws of the State of South Carolina, where its principal office is located at 302 Holly Grove Road, Blacksburg, SC 29702, for a Certificate of Authority to do business in Pennsylvania under the provisions of the Pennsylvania Business Corporation Law of 1988.

The registered office in Pennsylvania is located at c/o CT Corporation System, Dauphin County, Pennsylvania. y8

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NOTICE IS HEREBY GIVEN that an Application was made to the Department of State of the Commonwealth of Pennsylvania, at Harrisburg, PA, on June 23, 2011, by **Frank Crystal & Co. of California, Inc.**, a foreign corporation formed under the laws of the State of California, where its principal office is located at 575 Market Street, 13th Floor, San Francisco, CA 94105, for a Certificate of Authority to do business in Pennsylvania under the provisions of the Pennsylvania Business Corporation Law of 1988.

The registered office in Pennsylvania is located at c/o CT Corporation System, Dauphin County, Pennsylvania. y8



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FIRST PUBLICATION

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Corporate Notices

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NOTICE IS HEREBY GIVEN that, pursuant to the provisions of Section 4129 of the Business Corporation Law of 1988, **Next Day Gourmet, Inc.**, a corporation of the State of Delaware, with principal office at 9399 W. Higgins Road, Suite 600, Rosemont, IL 60018, and having a Commercial Registered office Provider and county of venue as follows: CT Corporation System, Dauphin County, which on May 2, 2001, was granted a Certificate of Authority, to transact business in the Commonwealth, intends to file an Application for Termination of Authority with the Department of State. y8

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NOTICE IS HEREBY GIVEN that on July 13th, 2011, **Belco Community Credit Union**, with its principal place of business located at 449 Eisenhower Blvd., Harrisburg, PA 17111, Dauphin County, filed Articles of Amendment with the Pennsylvania Department of Banking pursuant to the provisions of Chapter 9 of the Credit Union Code.

The purpose of the amendment is clearly stated that Belco Community Credit Union operates without profit within the definition of a credit union as defined by the National Credit Union Administration, the Federal Credit Union Act and the provisions of the Credit Union Code of the Commonwealth of Pennsylvania (Pa. C.S., Title 17, Sec. 101 et seq.).

In order to be considered, comments regarding this amendment must be received by the Department of Banking no later than thirty (30) days after the date that notice of the filing of this amendment is published in the *Pennsylvania Bulletin*. Publication in the *Pennsylvania Bulletin* may or may not appear contemporaneously with this notice. Please check the *Pennsylvania Bulletin* Web site at [www.pabulletin.com](http://www.pabulletin.com) to determine the due date for filing comments. y8

NOTICE IS HEREBY GIVEN that a Certificate of Authority for a Foreign Business Corporation was filed in the Department of State of the Commonwealth of Pennsylvania for **Diamond Detective Agency, Inc.** The address of its principal office under the laws of its jurisdiction is 1651 S Halsted Street, Chicago Heights, IL 60411. The name of this corporations commercial registered office provider is National Registered Agents Inc. in the county of Dauphin.

The Corporation is filed in compliance with the requirements of the applicable provision of 15 Pa. C.S. 4124(b). y8

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NOTICE IS HEREBY GIVEN that a Certificate of Authority for a Foreign Business Corporation was filed in the Department of State of the Commonwealth of Pennsylvania for **2 Wonder Full To Be Limited**. The address of its principal office under the laws of its jurisdiction is 2 West 128th Street, New York, NY 10027. The name of this corporations commercial registered office provider is United Corporate Services Inc. in the county of Dauphin.

The Corporation is filed in compliance with the requirements of the applicable provision of 15 Pa. C.S. 4124(b). y8

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NOTICE IS HEREBY GIVEN that Articles of Incorporation were filed with the Department of State of the Commonwealth of Pennsylvania, at Harrisburg, Pennsylvania, on May 17, 2011, for the purpose of obtaining a Certificate of Incorporation of a nonprofit corporation organized under the Nonprofit Corporation Law of the Commonwealth of Pennsylvania, approved December 21, 1988, Act 177. The name of the corporation is **Hamilton Health Center Community Services Inc.**

The purposes for which it was organized and shall at all times be operated are exclusively charitable, scientific and educational, within the meaning of Section 501(c)(3) of the Internal Revenue Code of 1986, as amended.

y8

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FIRST PUBLICATION

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Corporate Notices

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NOTICE IS HEREBY GIVEN that **Guru Denim, Inc.**, a foreign business corporation incorporated under the laws of the State of California, received a Certificate of Authority in Pennsylvania on 01/10/2008 and surrenders its Certificate of Authority to do business in Pennsylvania,

Its last registered office in this Commonwealth was located at: Paracorp, Inc., 600 North Second Street, Harrisburg, PA 17101, and its last registered office of the corporation shall be deemed for venue and official publication purposes to be located in Dauphin County, Pennsylvania.

Notice of its intention to withdraw from Pennsylvania was mailed by certified or registered mail to each municipal corporation in which the registered office or principal place of business of the corporation in Pennsylvania is located.

The post office address, including street and number, if any, to which process may be sent in an action or proceeding upon any liability incurred before any liability incurred before the filing of the application for termination of authority is True Religion Brand Jeans, 2263 E. Vernon Avenue, Vernon, CA 90058. y8

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NOTICE IS HEREBY GIVEN that **Mellanox Technologies, Inc.**, a foreign business corporation incorporated under the laws of the State of California, with its principal office located at c/o Matthew Gloss, 350 Oakmead Parkway, Suite 100, Sunnyvale, CA 94085, has applied for a Certificate of Authority in Pennsylvania under the PA Bus. Corp. Law of 1988.

The commercial registered office provider in PA is: c/o Corporation Service Co., and shall be deemed for venue and official publication purposes to be located in Dauphin County. y8

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NOTICE IS HEREBY GIVEN that **Red**

**Robin Distributing Company, Inc.**, a foreign business corporation incorporated under the laws of the State of Colorado, received a Certificate of Authority in Pennsylvania on 8/20/2003 and surrenders its Certificate of Authority to do business in Pennsylvania.

Its last registered office in this Commonwealth was located at: 2595 Interstate Drive, Suite 103, Harrisburg, PA 17110, and its last registered office of the corporation shall be deemed for venue and official publication purposes to be located in Dauphin County, Pennsylvania.

Notice of its intention to withdraw from Pennsylvania was mailed by certified or registered mail to each municipal corporation in which the registered office or principal place of business of the corporation in Pennsylvania is located.

The post office address, including street and number, if any, to which process may be sent in an action or proceeding upon any liability incurred before any liability incurred before the filing of the application for termination of authority is 6312 S. Fiddler's Green Circle, Number 200N, Greenwood Village, CO 80111. y8

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NOTICE IS HEREBY GIVEN that a Certificate of Organization - Domestic Limited Liability Company was filed on June 9, 2011, with the Department of State of the Commonwealth of Pennsylvania, at Harrisburg, Pennsylvania, for the purpose of obtaining a Certificate of Organization of a proposed domestic limited liability company to be organized under the 1988 Pennsylvania Business Corporation Law of the Commonwealth of Pennsylvania.

The name of the company is: **FAT DADDYS AUTOMOTIVE AND MACHNE, LLC.**

The registered office is at: 1371 State Route 25, Millersburg, Dauphin County, PA 17061.

JASON P. KUTULAKIS, Esq.  
2 West High Street  
Carlisle, PA 17013

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FIRST PUBLICATION

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**Corporate Notices**

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NOTICE IS HEREBY GIVEN that Articles of Incorporation were filed with the Department of State of the Commonwealth of Pennsylvania at Harrisburg, Pennsylvania on 5/2/2011 for the purpose of obtaining a Certificate of Incorporation pursuant to the provisions of the Business Corporation Law of 1988, 15 Pa. C.S. Section 1101. The name of the corporation is: **Light Source International Inc.**

The purpose for which the corporation is organized is: Teaching, Training, Seminars and Getaways. y8

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NOTICE IS HEREBY GIVEN that **Clark Western Design, LLC**, with a Commercial Registered Office Provider in care of Capitol Corporate Services, Inc. in Dauphin County does hereby give notice of its intention to withdraw from doing business in this Commonwealth as per 15 Pa. C.S. 8586. The address of its principal office is 9100 Centre Pointe Drive, Suite 210, West Chester, OH 45069.

This shall serve as official notice to creditors and taxing authorities. y8

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FIRST PUBLICATION

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**Miscellaneous Notices**

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**IN THE COURT OF COMMON PLEAS  
OF DAUPHIN COUNTY  
PENNSYLVANIA**

**No. 2009-CV-06626**

**NOTICE OF SHERIFF'S SALE**

**LITTON LOAN SERVICING, L.P.,  
Plaintiff**

**vs.**

**MAJESSA FULTZ-HASKINS, Defendant**

**NOTICE**

**TO: Majessa Fultz-Haskins**

**NOTICE OF SHERIFF'S SALE  
OF REAL PROPERTY**

BEING PREMISES: 3031 Derry Street, Harrisburg, PA 17111-1645.

BEING in Paxtang Borough, County of Dauphin, Commonwealth of Pennsylvania.

PARCEL No. 47-034-030.

IMPROVEMENTS consist of residential property.

SOLD as the property of Majessa Fultz-Haskins.

YOU ARE HEREBY NOTIFIED that your house (real estate) at 3031 Derry Street, Harrisburg, PA 17111-1645 is scheduled to be sold at the Sheriff's Sale on October 20, 2011 at 10:00 A.M., at the Dauphin County Courthouse Administration Building, 4th Floor, Commissioners Hearing Room, Second and Market Streets, Harrisburg, PA 17108 to enforce the Court Judgment of \$105,351.52 obtained by, Littton Loan Servicing, L.P. (the mortgagee), against the above premises.

PHELAN HALLINAN &  
SCHMIEG, LLP

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**FIRST PUBLICATION**

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**Miscellaneous Notices**

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**IN THE COURT OF COMMON PLEAS  
OF DAUPHIN COUNTY  
PENNSYLVANIA**

**CIVIL ACTION – LAW**

**CIVIL DIVISION**

**No. 2011-CV-2569 EJ**

**NOTICE OF ACTION IN EJECTMENT**

**FEDERAL NATIONAL MORTGAGE  
ASSOCIATION, Plaintiff**

**vs.**

**TRACY L. HAMILTON OR  
OCCUPANTS, Defendant(s)**

**NOTICE**

**TO: Tracy L. Hamilton or occupants:**

YOU ARE HEREBY NOTIFIED that on March 14, 2011, Plaintiff Federal National Mortgage Association filed an Ejectment Complaint endorsed with Notice to Defend, against you in the Court of Common Pleas of Dauphin County Pennsylvania, docketed at 2011-CV-2569 EJ. Wherein Plaintiff seeks to Evict all occupants at the property 702 Mohn Street, Harrisburg, PA 17113, whereupon your property was sold by the Sheriff of Dauphin County.

YOU ARE HEREBY NOTIFIED to plead to the above referenced Complaint on or before twenty (20) days from the date of this publication or Judgment will be entered against you.

This firm is a debt collector attempting to collect a debt and any information obtained will be used for that purpose. If you have previously received a discharge in bankruptcy

and this debt was not reaffirmed, this correspondence is not and should not be construed to be an attempt to collect a debt, but only enforcement of a lien against property.

**NOTICE**

YOU HAVE BEEN SUED IN COURT. If you wish to defend against the claims set forth in the following, you must take action within twenty (20) days after this complaint and notice are served, by entering a written appearance personally or by attorney and filing in writing with the court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you by the court without further notice for any money claimed in the complaint or for and other claim or relief requested by the plaintiff. You may lose money or property or other rights important to you.

You should take this notice to your lawyer at once. If you do not have a lawyer or cannot afford one, go to or telephone the office set forth below to find out where you can get legal help. If you cannot afford to hire a lawyer, this office may be able to provide you with information about agencies that may offer legal services to eligible persons at a reduced fee or no fee.

DAUPHIN COUNTY  
LAWYER REFERRAL SERVICE  
213 North Front Street  
Harrisburg, PA 17101  
(717) 232-7536

y8

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**FIRST PUBLICATION**

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**Miscellaneous Notices**

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**IN THE COURT OF COMMON PLEAS  
OF DAUPHIN COUNTY  
PENNSYLVANIA**

**CIVIL ACTION – LAW**

**No. 2011-CV-3915-MF**

**NOTICE OF ACTION IN  
MORTGAGE FORECLOSURE**

**FANNIE MAE (“FEDERAL  
NATIONAL MORTGAGE  
ASSOCIATION”) C/O IBM  
LENDER BUSINESS PROCESS  
SERVICES, INC., AS SERVICER  
14523 SW Millikan Way, Suite 200  
Beaverton, OR 97005, Plaintiff**

vs.

**BENJAMIN S. MARTIN  
2959 Schoolhouse Road  
Middletown, PA 17057, Defendant(s)**

**TO: Benjamin S. Martin**

**PREMISES SUBJECT  
TO FORECLOSURE:  
2959 SCHOOLHOUSE ROAD  
MIDDLETOWN, PA 17057**

**NOTICE**

YOU HAVE BEEN SUED IN COURT. If you wish to defend against the claims set forth in the following, you must take action within twenty (20) days after this Complaint and Notice are served, by entering a written appearance personally or by attorney and filing in writing with the court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you by the court without further notice for any money claimed in the complaint or for any other claim or relief requested by the plaintiff. You may lose

money or property or other rights important to you.

YOU SHOULD TAKE THIS NOTICE TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW. THIS OFFICE CAN PROVIDE YOU WITH INFORMATION ABOUT HIRING A LAWYER. IF YOU CANNOT AFFORD TO HIRE A LAWYER, THIS OFFICE MAY BE ABLE TO PROVIDE YOU WITH INFORMATION ABOUT AGENCIES THAT MAY OFFER LEGAL SERVICES TO ELIGIBLE PERSONS AT A REDUCED FEE OR NO FEE.

**DAUPHIN COUNTY  
LAWYER REFERRAL SERVICE  
213 North Front Street  
Harrisburg, PA 17101  
(717) 232-7536**

**MARTHA E. VON ROSENSTIEL, Esq.  
Martha E. Von Rosenstiel, P.C.  
649 South Avenue, Suite 6  
Secane, PA 19018  
(610) 328-2887**

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**IN THE COURT OF COMMON PLEAS  
OF DAUPHIN COUNTY  
PENNSYLVANIA**

**No. 2010-CV-11921-MF**

**NOTICE OF SHERIFF’S SALE**

**CITIMORTGAGE, INC., Plaintiff**

vs.

**ASHLEY M. RODGERS, Defendant**

**NOTICE**

**TO: ASHLEY M. RODGERS**

**NOTICE OF SHERIFF’S SALE  
OF REAL PROPERTY**

**BEING PREMISES: 1627 BRIGGS  
STREET, HARRISBURG, PA 17103.**

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**FIRST PUBLICATION**

**Miscellaneous Notices**

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BEING in 8th WARD OF THE CITY OF HARRISBURG, County of DAUPHIN, Commonwealth of Pennsylvania.

TAX PARCEL No. 08-010-010-000-0000.

IMPROVEMENTS consist of residential property.

SOLD as the property of ASHLEY M. RODGERS.

YOU ARE HEREBY NOTIFIED that your house (real estate) at 1627 BRIGGS STREET, HARRISBURG, PA 17103 is scheduled to be sold at the Sheriff's Sale on OCTOBER 20, 2011 at 10:00 A.M., at the DAUPHIN County Courthouse to enforce the Court Judgment of \$78,798.29 obtained by, CITIMORTGAGE, INC. (the mortgagee), against the above premises.

PHELAN HALLINAN  
& SCHMIEG, LLP

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*Motion Judge of the Month*

JULY 2011

Judge Jeannine TURGEON

AUGUST 2011

Judge Bruce F. BRATTON

*Opinions Not Yet Reported*

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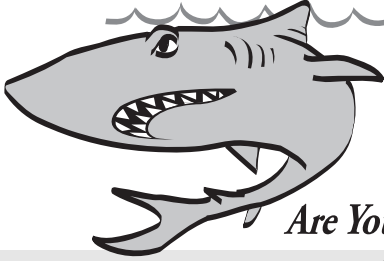
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