

IN THE COURT OF COMMON PLEAS OF MONTGOMERY COUNTY, PENNSYLVANIA
CIVIL ACTION – LAW

BOROUGH OF PENNSBURG : NO. 2017-21988
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 :
 vs. :
 :
 :
 BOROUGH OF EAST GREENVILLE :

DECISION

In 1995, Plaintiff Borough of Pennsburg and Defendant Borough of East Greenville, by adopting substantially identical ordinances, entered into an inter-municipal agreement to establish the Upper Perk Police District, a joint police force to serve the two Boroughs, governed by an Upper Perk Police Commission. More than twenty years later, East Greenville exercised its right to withdraw from the agreement, effective June 1, 2017. This case presents the question whether East Greenville has any obligation to continue to contribute to the police pension fund following its withdrawal. Pennsburg asserts that East Greenville is so obligated, and it seeks a declaratory judgment to that effect and related relief. East Greenville denies that it has any such obligation, and it has also counterclaimed against Pennsburg for its share of the value of equipment and other assets that were retained by the Upper Perk Police Commission after East Greenville’s withdrawal.

By agreement of counsel for the parties (including certain police officers who were permitted to intervene as parties), this case — limited to Pennsburg’s claim for declaratory relief and East Greenville’s counterclaim — was submitted on stipulated facts, pursuant to Rule 1038.1 of the Pennsylvania Rules of Civil Procedure. Briefs were filed, and argument was held via the Zoom video platform on May 9, 2023. At the request of the Court made during argument, counsel agreed to supplement the stipulated record with copies of the applicable collective bargaining agreement and the ordinance effecting the inter-municipal agreement. Those

documents were attached to the parties' Joint Stipulation by Praeceptum filed on May 11, 2023, at which point the record was closed.

The Court adopts the parties' Joint Stipulation (Seq. 105, 109) as its Findings of Fact, and the discussion that follows will serve as its Conclusions of Law.

The ordinances adopted by both Boroughs expressly provide for the right of either Borough to withdraw from the inter-municipal agreement upon at least six months' written notice (§ 14-19(B)). There is no contention that East Greenville was not entitled to withdraw effective June 1, 2017. Indeed, Pennsburg expressly approved East Greenville's withdrawal by action of its Borough Council on March 7, 2017.

Neither the inter-municipal agreement nor the collective bargaining agreement provide for any obligation of a Borough to continue contributing to the police pension fund after withdrawal from the inter-municipal agreement. Nor can Pennsburg point to any provision of Pennsylvania law that would require continuing contributions by the withdrawing Borough. Further, the factual record is clear that East Greenville's share of the police pension fund was fully funded for the period of time that East Greenville remained a member of the inter-municipal agreement. Finally, there is no evidence that, even today, the pension benefits of the police officers continuing to serve Pennsburg are underfunded. Under the circumstances, the Court does not see a basis for requiring East Greenville to contribute to the pensions of officers since they ceased serving the residents of East Greenville.¹ Accordingly, Pennsburg is not entitled to the declaratory judgment that it is seeking.

¹ Pennsburg asserts that East Greenville, upon its withdrawal from the inter-municipal agreement, was obligated to collectively bargain with the police officers' bargaining unit on the issue of continuing contributions to the pension fund. Any such obligation, however, was for the benefit of the officers and their bargaining unit, not Pennsburg. More importantly, the officers could have invoked the grievance process set forth in the collective bargaining agreement but apparently did not do so.

East Greenville's counterclaim is based on section 14-13(B) of the ordinances, which provides:

In the event of termination of the Upper Perk Police District, all common equipment, materials and supplies retained by the Commission shall be appraised by appraisers appointed by the parties who have adopted this chapter for the purpose of sale, and then either sold or retained items shall be distributed in the same proportion as the assessment of expenses as set forth in this chapter.

Pursuant to an appraisal conducted under this provision, East Greenville's share of the assets of the Upper Perk Police Commission was valued at \$83,553.75, representing 45% of the value of the equipment that Pennsburg retained upon dissolution of the Upper Perk Police District.

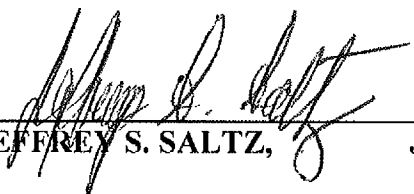
As a consequence of the dissolution of the Upper Perk Police District, section 14-13(B) expressly provided for two alternative courses of action — either a sale of the assets (presumably with distribution of the proceeds) or a distribution of the equipment and other assets in kind. Contrary to this requirement, Pennsburg simply retained the equipment for itself. Such conduct constituted a breach of the parties' agreement. The value of the equipment that should have been either sold or distributed in kind to East Greenville was \$83,553.75, and East Greenville is entitled to damages in that amount.

NOW, THEREFORE, this *18th* day of May, 2023, on the basis of the foregoing findings of fact and conclusions of law, a **DECISION** is hereby **RENDERED** as follows:

(a) in favor of Defendant Borough of East Greenville on the claim of Plaintiff Borough of Pennsburg for declaratory relief;

(b) in favor of Defendant Borough of East Greenville and against Plaintiff Borough of Pennsburg on the Defendant's counterclaim, in the amount of **\$83,553.75**.

BY THE COURT:



JEFFREY S. SALTZ, J.

efiled on: 5-18-23

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