

[Public Employers Still Cannot Unilaterally Impose Restrictions on Union Employees' Tobacco Use](#)

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In a recent decision, the Supreme Court of Pennsylvania evaluated whether a public employer's ban on employee tobacco use in the workplace affected a "working condition" that was subject to the employer's statutory duty to bargain with the union representing its employees. In [Borough of Ellwood City v. Pa. Labor Relations Bd. \(pdf\)](#), the Court held that, under the Pennsylvania Labor Relations Act, the municipal employer's ban on the use of tobacco products in the workplace was a mandatory subject of bargaining.

The Borough of Ellwood passed an ordinance in 2006, which banned tobacco use on or in Borough-owned buildings, vehicles and equipment – a ban that applied to the Borough's unionized police officers. The Borough unilaterally implemented the ban without bargaining with the union. The union subsequently filed an unfair labor practice charge against the Borough with the Pennsylvania Labor Relations Board, alleging that the Borough failed to bargain over a mandatory subject of bargaining. On appeal, the Court found for the Union, holding that tobacco use restrictions constitute a mandatory subject of bargaining – not an "inherent managerial prerogative." Thus, the Borough was obligated to bargain with the union over the tobacco restrictions.

The *Ellwood* Court also addressed potential conflicts between a municipality's ability to enact legislation protecting the health, welfare, safety, and general welfare of its citizens with the rights of the police officers to collectively bargain. In reconciling this conflict, the Court noted that, while local legislation promoting clean air and warning of the risks of tobacco use was laudatory, such legislation cannot serve as a barrier to negotiations over the topic when it constitutes a working condition subject to mandatory bargaining.

Although the Borough is a public employer, the Court's decision has implications for public and private employers alike. Many employers are subject to the Pennsylvania Clean Indoor Air Act and similar local ordinances which may impose restrictions on tobacco use in workplaces and public areas. However, unionized employers who unilaterally change existing policies and practices to comply with such restrictions may face challenges from the unions with which they deal. For this reason, it may be advisable for unionized employers to discuss applicable tobacco restrictions and the impact of these restrictions with the union before implementing changes.

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