

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

No. 2142 C.D. 2009

DIANE TELLY, ET AL., APPELLEES

v.

**PENNRIDGE SCHOOL DISTRICT
BOARD OF SCHOOL DIRECTORS, APPELLANT**

SHERRY LABS, ET AL., APPELLEES

v.

**CENTRAL BUCKS SCHOOL DISTRICT
BOARD OF SCHOOL DIRECTORS, APPELLANT**

**APPEAL OF PENNRIDGE SCHOOL DISTRICT BOARD OF DIRECTORS AND
CENTRAL BUCKS SCHOOL DISTRICT BOARD OF SCHOOL DIRECTORS FROM
THE DECISION OF THE BUCKS COUNTY COURT OF COMMON PLEAS OF
PENNSYLVANIA DATED OCTOBER 9, 2009 AT NO. 4824-2009**

**AMICUS CURIAE BRIEF OF BUCKS COUNTY ASSOCIATION OF TOWNSHIP
OFFICIALS IN SUPPORT OF APPELLEES**

Appeal from the Order entered on October 9, 2009 in the Court of Common Pleas of Bucks County,
Consolidated at No. 09-04824-31

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I. COUNTER-STATEMENT OF THE QUESTION INVOLVED

WHETHER IT WAS PROPER TO ENJOIN PENNRIDGE SCHOOL DISTRICT BOARD OF DIRECTORS AND CENTRAL BUCKS SCHOOL DISTRICT BOARD OF DIRECTORS FROM IMPLEMENTING RESOLUTIONS THAT INORDINATELY REDUCED THE COMPENSATION OF TAX COLLECTERS AND EFFECTIVELY ABOLISHED THE TAX COLLECTOR POSITION.

(Answered in the affirmative by the court below).

II. COUNTER-STATEMENT OF THE CASE

The Bucks County Association of Township Officials concurs with the Appellee's Counter-Statement of the Case and therefore will not reiterate the essential facts of the case.

III. SUMMARY OF THE ARGUMENT

In February 2009, Pennridge School District reduced the compensation paid to elected tax collectors for the collection of real estate taxes by 69% - giving the tax collectors the "option" of disclaiming responsibility for collection of taxes in favor of the school district.

In February 2009, Central Bucks School District reduced the compensation it would pay elected tax collectors by 79% - also providing an "option" to appoint the school district as the tax collector.

The Honorable Clyde W. Waite of the Common Pleas Court, based upon a full and complete record, found the compensation scheme of both school districts to be arbitrary, capricious, and an attempt to coerce the tax collectors from performing their elected duties in favor of the school districts. Judge Waite further found that the school districts' scheme would permit the school districts to perform some of the tax collection functions but not other important duties of that office.

There are more than ample reasonable grounds to support the decision of the lower court which properly applied relevant legal principles in reaching its decisions. To hold otherwise would permit not only the school districts in this case, but school districts throughout Pennsylvania, to force elected tax collectors to relinquish the obligation to collect school taxes in favor of collection by those districts. Such a decision would subvert the real estate tax collection system established by the General Assembly under the Local Tax Collection Law (72 P.S. §5511.1 through 5511.42). It would unfairly place a disproportionate burden to pay for the collection of real estate taxes on townships, boroughs and counties while at the same time placing additional

administrative burdens on elected tax collectors to answer taxpayer complaints concerning erroneous billing practices and related problems connected with the split of tax collection duties.

Because of the substantial adverse impacts on member Bucks County Association of Township Official municipalities if the school districts' scheme were to prevail, it urges this Honorable Court to affirm the well reasoned decision of the lower court.

IV. ARGUMENT

A. Statement of Interest of Amicus Curiae, Bucks County Association of Township Officials

The Bucks County Association of Township Officials (“BCATO”) is a county association of officials from twenty-nine (29) townships¹, formed under Section 1401 of the Second Class Township Code, [53 P.S. §66401]. BCATO members consider and discuss issues pertinent to individual and regional township government, administration and policy. Real estate taxes in each participating township are collected by the elected tax collector. Each participating township contributes to the compensation of the elected tax collector and tax collectors within each township provide customer services to the residents within the township. Therefore, each participant township will be impacted by this Court’s decision either directly or indirectly.

The Resolutions adopted by Pennridge School District Board of Directors and Central Bucks School District Board of Directors radically reduce the compensation levels of local tax collectors and devise new schemes of tax collection which will effectively eliminate the tax collector positions in the following BCATO member townships: East Rockhill Township, West Rockhill Township, Bedminster Township, Plumstead Township, Buckingham Township, New Britain Township, Warrington Township and Doylestown Township.

For those member townships that are not directly affected by these Resolutions, the outcome of this case still has significant ramifications. Based upon the position taken by the Pennsylvania School Boards Association (“PSBA”) in its Amicus Brief, it is

¹ The participating BCATO municipalities are Bedminster, Bensalem, Bridgetown, Buckingham, Doylestown, Durham, East Rockhill, Falls, Haycock, Lower Makefield, Lower Southampton, Middletown, Milford, New Britain, Newtown, Nockamixon, Northampton, Plumstead, Richland, Solebury, Springfield, Tincum, Upper Makefield, Upper Southampton, Warminster, Warrington, Warwick, West Rockhill and Wrightstown.

likely that other school districts will follow the lead of the Pennridge and Central Bucks School Boards if they are successful in this appeal. The result will be that other school districts within the jurisdiction of BCATO municipalities will attempt to control the collection of school district real estate taxes by setting the compensation rate for elected tax collectors so low as to effectively eliminate the tax collector position. Such actions, if authorized by this Honorable Court, will result in the erosion of local government and circumvention of the statutory provisions contained within the Local Tax Collection Law, 72 P.S. §§ 5511.1 – 5511.42 (hereafter the “LTCL”). In addition, the inordinate reduction in tax collector compensation by the school districts will shift the financial burden of maintaining a tax collector to the townships, boroughs and county.

- B. **BCATO concurs with Appellees statement of the standard of review appropriate to this appeal.**
- C. **The trial court properly determined that the tax collectors were entitled to a preliminary injunction enjoining the Pennridge School District Board of Directors and Central Bucks School District Board of Directors from adopting resolutions that contravened the Local Tax Collection Law and effectively eliminated the tax collector position.**

Common law principles, statutory authority and legislative intent concerning tax collector compensation all support the trial court's determination to enjoin the school districts from enforcing their resolutions which eviscerate tax collector compensation. Pursuant to Section 35 of the LTCL, the taxing authorities, including Townships, Boroughs, Counties and School Districts have the authority to establish tax collector compensation. 72 P.S. §§ 5511.35. The LTCL further authorizes the increase or reduction in compensation by ordinance or resolution adopted prior to February 15 of the year of a municipal election. 72 P.S. § 5511.36a. However, the cases interpreting these provisions require reasonable compensation. In addition, the provisions of the

LTCL and the corresponding cases do not permit a school district to divest a tax collector of its statutory duties by reducing compensation to an unreasonable amount.

1. Common law principles dictate the trial court properly enjoined Pennridge and Central Bucks School Districts from reducing tax collector compensations to unreasonable amounts.

An appellate court's review of an order concerning the granting or denial of a preliminary injunction is "highly deferential." Warehime v. Warehime, 580 Pa. 201, 209, 860 A.2d 41, 46 (2004), citing, Summit Towne Centre, Inc. v. Shoe Show of Rocky Mount Inc., 573 Pa. 637, 828 A.2d 995, 1000 (2003). This "highly deferential" standard requires "an appellate court . . . to examine the record to determine if there were any apparently reasonable grounds for the action of the court below." Id.

To obtain preliminary injunctive relief, a party must establish the following:

[1]) that the injunction is necessary to prevent immediate and irreparable harm that cannot be adequately compensated by damages[; 2]) that greater injury would result from refusing an injunction than from granting it, and, concomitantly, that issuance of an injunction will not substantially harm other interested parties in the proceedings[; 3]) that a preliminary injunction will properly restore the parties to their status as it existed immediately prior to the alleged wrongful conduct[; 4]) that the activity it seeks to restrain is actionable, that its right to relief is clear and that the wrong is manifest, or, in other words, must show that it is likely to prevail on the merits[; 5]) that the injunction it seeks is reasonable suited to abate the offending activity[; and, 6]) that a preliminary injunction will not adversely affect the public interest.

Id. at 209-10, 860 A.2d at 46-47. As Appellants focused their brief on the Appellees' likelihood of prevailing on the merits, this amicus curiae brief will also focus primarily on that issue.

The Pennsylvania Supreme Court has expressed that to be successful in seeking a preliminary injunction, a petitioner must make a strong showing that he or she is likely

to prevail on the merits. Maritrans GP, Inc. v. Pepper, Hamilton & Scheetz, 529 Pa. 241, 252, 602 A.2d 1277, 1283 (1992). In addition, the courts have required a showing that the activity which is sought to be restrained is “actionable.” Id. In this context, “[a]ctivity is actionable if it constitutes a breach of a duty imposed by statute or by common law.” Id. at 253, 602 A.2d at 1283.

The school districts’ decisions to radically reduce the tax collectors’ compensation and intent to divert tax collectors’ duties to the school district itself or other entity is actionable in as much as they contravene common law principles espoused by the this Court. Specifically, in Abington School District v. Yost, 40 Pa. Commw. 312, 317, 397 A.2d 453, 456 (1979), this Court stated,

[i]t was, of course, the Legislature’s intention that the amounts of compensation of tax collectors fixed by the local taxing districts pursuant to Section 36.1 [now 72 P.S. § 5511.36a] should be *reasonable*. There is not the slightest indication that the Legislature intended that local taxing authorities should have the power to reduce compensation as a means of reforming to their satisfaction the system of local tax collections, already comprehensively provided for in the statutes.

40 Pa. Cmwlth at 319, 397 A.2d at 456-57 [emphasis added]. In Yost, the Abington School District adopted a resolution which assigned the responsibilities for collecting school district real estate taxes to a bank and to school district employees and also drastically reduced tax collector’s salaries. Id. at 314. Specifically, the school district reduced the Abington Tax Collector’s salary from \$12,350 annually, plus \$5,000 for expenses, to a mere \$800 per year, including expenses. Id. Likewise the school district reduced the Rockledge Borough tax collector’s salary from \$2,300 annually to \$200 per year. Id. In addition, the school district set forth a tax collection system in its resolution which provided that “[p]reparation, updating and verification of tax duplicate, mailing of

tax bills, collection and auditing of tax receipts shall be performed by School District Personnel, using the School District's computer facilities and a bank 'lock-box' collection system wherein tax payments will be sent to a bank rather than to the Tax Collector." Id. at 315. The resolution, however, did provide tax collectors access to the school district's records to enable them to perform the inspections, audits and certifications required by the LTCL. Id.

In determining that the resolution contravened the LTCL, this Court held that school districts have certain designated powers with respect to local tax collectors, including, appointing collectors for school taxes upon a vacancy, appointing collectors of delinquent taxes and the power to fix and change compensation. Id. at 319-20. This Court stated, "[t]hese powers . . . are the extent of the authorized active involvement of school districts in local tax collection." Id. at 320. Furthermore, this Court set forth the duties of the tax collector pursuant to the LTCL as follows: "the billing, collection and receipting for taxes; the adjustment of duplicates; the collection of taxes by distress, attachment of wages and suit; the settlement of duplicates; and a myriad of other functions." Id. Therefore, the Court affirmed the trial court's decision enjoining the school district from enforcing its resolution. The Court reasoned that the resolution forced the tax collectors to relinquish their statutory duties to the school district and a bank. Specifically, the Court found that the resolution designating the school district and a bank as the tax collecting entities was a misapplication of the LTCL. Id.

Similarly, in Penn-Delco Sch. Dist. v. Schukraft, 95 Pa. Commw. 619, 506 A.2d 956 (1986), the Commonwealth Court again enjoined a school district from drastically reducing tax collector salaries and stripping the tax collectors of their duties. In 1977, the Penn-Delco School District adopted a "lock-box" system for the collection of its

taxes thereby depriving the tax collectors of their duties under the LTCL. Id. at 621. Four years later, the District adopted a resolution specifically transferring the tax collectors' duties to school District employees. Id. The resolution also reduced the tax collectors' salaries to \$1.00 per year. Id. The tax collector of Aston Township, Brookhaven Borough and Parkside Borough challenged the resolution. Id. Prior to the adoption of the resolution, the tax collectors were earning the following amounts: Aston Township - \$4,500 per year, Brookhaven Borough - \$3,200 per year and Parkside Borough - \$1,800 per year. The trial court enjoined the District from transferring the tax collector duties to the District, further enjoined the use of the lock-box system and restored the tax collectors previous salaries. Id.

The Commonwealth Court affirmed the trial court's decision to enjoin the District from transferring the tax collector duties to the District and from utilizing the lock box system. Relying on the Yost decision, the Court reasoned as follows, "[w]hile the District has the power to set the salaries of tax collectors, it may not use that power as a means of reforming to its satisfaction the system of local tax collection which is already comprehensively provided for by statute." Schukraft, 95 Pa. Commw. at 627, citing, Yost, 40 Pa. Commw. at 319, 397 A.2d at 456-57.

In the case sub judice, the school districts reduced the tax collectors' compensation well below any level of reasonableness in an effort to divest the tax collectors of their responsibilities to collect real estate taxes. The Pennridge Regional School District's resolution, established an unreasonably low compensation of \$0.70 per tax bill reduced from \$2.25 per tax bill. Diane Telly, elected Tax Collector for Hilltown Township, averages a thirty-two hour work week performing her tax collector duties. Her duties include the ministerial tasks of mailing duplicates, collecting the taxes and

forwarding the taxes to the District. In addition, she spends approximately two-thirds of her time performing other tasks which include accounting, reconciliation, preparation of monthly reports and providing customer service. Her customer service functions include: maintaining extended office hours to allow taxpayers to personally deliver tax payments, assisting tax payers in the preparation of forms, answering questions regarding duplicates, listening to tax payers' concerns regarding school taxes, providing information concerning the filing of assessment appeals and travelling to the homes of elderly residents to obtain tax payments. She employed an assistant to help her during her busiest times. Hilltown Township compensates her at a rate of \$4.20 per tax bill and her average compensation per bill from Bucks County is \$4.40 per tax bill. At \$0.70 per tax bill, Telly's annual compensation from the school district would be \$3,860.00 which would not even cover her assistant's salary and office overhead.

Telly's compensation is just one example of the impact of the proposed unreasonable compensation. When calculated by hourly wages, the eight Tax Collectors' compensations in Pennridge Regional School District range from \$3.16 to \$15.60 at the current compensation of \$2.25 per tax bill. When calculated at the rate of \$0.70 per tax bill as proposed by Pennridge Regional School District, the hourly wages fall to a range of \$.98 per hour to \$4.84 per hour. The District's proposed compensation of \$0.70 per tax bill yields hourly wages significantly below the minimum wage in Pennsylvania.² This pitiful compensation would necessitate most, if not all of the tax collectors, to obtain other employment thereby effectively eliminating the elected tax collector position in favor of the proposed lock-box system. Therefore, while the

² The Pennsylvania Minimum Wage law requires employees to be paid at a minimum of \$7.25 per hour, effective July 24, 2009.

Pennridge Regional School District has not explicitly divested the tax collectors of their statutory duties, the resolution sets compensation levels so low that the tax collectors would have no choice but to relinquish their duties to the district in order to enable them to have enough time to obtain other employment. This is exactly, what the Yost and Schukraft decisions prohibit. “While the District has the power to set the salaries of tax collectors, it may not use that power as a means of reforming to its satisfaction the system of local tax collection which is already comprehensively provided for by statute.” Schukraft, 95 Pa. Commw. at 627, citing, Yost, 40 Pa. Commw. at 319, 397 A.2d at 456-57.

Similarly, the Central Bucks School District reduced the rate of compensation from \$3.50 per tax bill to \$0.72 per bill for 2010, \$0.81 for 2011, \$0.91 for 2012 and \$1.01 for 2013. Sherry Labs, tax collector for Plumstead Township, testified that her approximate anticipated wages for 2009 related to collection of school district taxes at \$3.50 per tax bill would be \$17,020.50. At \$0.72 per bill, her annual compensation from the District drops to approximately \$3,501.36. Labs testified that she would not even be able to satisfy her tax collection related expenses at that compensation rate. Labs works approximately thirty two (32) hours per week during the six month school tax collection period. In addition to those duties described above and performed by Diane Telly, Labs maintains a website that enables taxpayers to obtain information and submit their taxes electronically. Furthermore, she provides tax certifications to title companies upon request. The reduced compensation would basically force Labs to deputize Berkheimer as a tax collector pursuant to Central Bucks School District’s resolution in order to enable her to have the time to obtain additional employment and income.

Is an annual salary of \$3,860.00 in Telly's case and \$3,501.36 in Labs case reasonable compensation for a school district tax collector? To determine whether compensation is reasonable, an assessment of job duties, hours worked and required certifications should be performed. With respect to collection of school district taxes, the tax collectors work six months a year, approximately 32 hours per week, are required to take a basic training course, take a qualifying examination, become certified and obtain six continuing education credits annually. An employee working for minimum wage (\$7.25 per hour) who works 32 hours per week for six months out of the year would earn \$6,032.00. For the most part, minimum wage employees, unlike tax collectors, need no specialized training, are not required to take qualifying exams, are not certified by the state and are not required to obtain continuing education credits. However, such an employee would earn substantially more than what Pennridge Regional and Central Bucks School Districts proposed to pay their qualified and certified tax collectors. Interestingly, if the other two taxing entities (township and county) were to drop their annual salaries for tax collectors to the same level as the School Districts' proposed compensation, the tax collectors would be earning less than \$1,000.00 over the poverty guidelines published by the Federal Government for 2009, of \$10,830. Federal Register, Volume 74, Number 14 (January 23, 2009).

In addition, the school districts' decisions to adopt these resolutions completely overlooks the necessary customer service functions performed by the tax collectors. While not statutorily required, the tax collectors spend approximately two thirds of their working hours assisting residents with preparation of tax forms, responding to questions concerning tax duplicates and interim bills, maintaining extended office hours to allow taxpayers to personally deliver tax payments, listening to tax payers' concerns

regarding school taxes, providing information concerning the filing of assessment appeals and travelling to the homes of certain elderly or disabled residents to obtain tax payments. The tax collection schemes proposed by Pennridge Regional School District and Central Bucks School District fail to account for the need to perform these necessary functions. A tax collector is an elected official with obligations to their constituents.

Revising the tax collection scheme in the manners proposed by the Districts will undoubtedly lead to significantly reduced or non-existent customer service, which in turn will lead to frustrated tax payers and potentially large-scale problems with tax collection.

2. **The plain language of the relevant statutes and legislative intent dictate that Pennridge and Central Bucks School Districts were properly enjoined from reducing tax collector compensations to unreasonably low levels.**

The LTCL specifically enumerates the various responsibilities and duties of a tax collector. The LTCL provides, “[i]n boroughs, towns and townships of the second class, the elected tax collector *shall be the collector* of borough, town or township taxes, as the case may be, and of county, county institution district, school district and vocational school district taxes.” 72 P.S. §5511.4(b) (emphasis added). The law requires the elected tax collector to “account for and pay over all taxes” to the taxing districts. 72 P.S. §5511.4(c). In addition, the elected tax collector is liable for the taxes charged until such taxes are paid over to the taxing authority. 72 P.S. §5511.4(d). The LTCL also contains provisions which require the elected tax collector to complete a basic training program, take a qualifying examination and become a qualified tax collector. 72 P.S. §5511.4a. Furthermore, tax collectors are required to complete six (6) hours of

continuing education courses annually at their own cost, unless the political subdivision agrees to pay for the courses. Id.

Viewing the provisions of the LTCL collectively, it is clear that the legislature intended that the tax collectors themselves collect the taxes and disperse them to the school districts. The plain language of Section 5511.4(b) provides that the elected tax collector *shall* be the collector of taxes. While the LTCL does permit a tax collector to deputize others to collect taxes, the tax collector himself/herself remains responsible for any of the taxes collected by a deputized tax collector. 72 P.S. §5511.22; see also, Borger v. Pleasant Valley Sch. Dist., 122 Pa. Commw. 187, 551 A.2d 648 (1988) (holding a tax collector may be compelled to perform his/her tax collection obligations through a mandamus action). This continuing liability for the receipt and transfer of taxes is a clear expression of the legislature's intent that the tax collector perform and be responsible for all aspects of tax collection. Had the legislature desired to permit tax collectors to designate the taxing authority or its agents as the responsible tax collector and disclaim the tax collector duties, it could have crafted language to permit such designation.

The resolutions adopted by the Central Bucks School District and the Pennridge Regional School District attempt to circumvent the LTCL and eviscerate the elected tax collector position. Both resolutions attempted to establish a system of tax collection that would be performed by persons or entities other than the elected tax collector. In the case of Central Bucks, the resolution proposed that the tax collectors deputize Berkheimer, a private tax collection company, to perform the tax collector's duties and in the case of Pennridge Regional, the resolution proposed that the tax collectors deputize the school district itself which would utilize a lock-box system at a bank with the

assistance of school district personnel. While neither resolution specifically required the tax collectors to relinquish their duties, the resolutions drastically reduced the tax collectors salaries to levels to a degree that essentially eviscerated the elected tax collector position.

In addition, the LTCL requires tax collectors to complete a training course and take an examination to become a certified tax collector. Furthermore, tax collectors are required to obtain six hours of continuing education each year. These provisions demonstrate the legislature's intent that the tax collector himself or herself be the one to collect the taxes. Permitting the taxing authority or an agent of the taxing authority to perform the collection of taxes completely circumvents the certification and education requirements contained in the LTCL. Pennridge Regional and Central Bucks proposed to have individuals who are untrained and not certified perform the functions of the tax collector position. In addition, under the school districts' proposed systems of tax collection, the tax collectors would still be required to continue to attend continuing education courses, while those performing the actual task of tax collection would not be required to obtain any annual instruction on tax collection.

- 3. The consequences of permitting school districts to arbitrarily reduce compensation to unreasonable levels will unfairly and unjustly redistribute the burden of tax collector compensation to municipalities and eviscerate the tax collection scheme established by the legislature.**

The inordinate reduction in tax collector compensation has significant ramifications for the statutorily created tax collector position and will have substantial economic impacts on Townships and Counties. Of the three entities which collect real estate taxes, School Districts, Townships and Counties, School Districts, by far, earn the greatest revenue. However, the school districts involved in this matter currently


compensate the tax collectors at significantly lower rates than some Townships and the County. The Resolutions passed by Pennridge Regional and Central Bucks propose a reduction in compensation of approximately 69% in the case of Pennridge Regional and 79% in the case of Central Bucks. The ramification of permitting such a vast reduction in compensation is clear: The Townships and/or Counties will have to shoulder the burden of tax collector compensation even though the Townships' and Counties' revenues are significantly less than those of the School Districts. This gross disparity in tax payer compensation among the School Districts, Townships and Counties cannot be what the legislature intended.

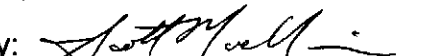
V. CONCLUSION

For the reasons stated above, *Amicus Curiae*, BCATO, respectively requests that this Honorable Court affirm the Order entered on October 9, 2009 by the Honorable Clyde W. Waite of the Bucks County Court of Common Pleas granting Appellees petition for Injunctive Relief.

Respectfully Submitted:

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CENTRAL BUCKS SCHOOL DISTRICT
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AMICUS CURIAE BRIEF OF BUCKS COUNTY ASSOCIATION OF TOWNSHIP
OFFICIALS IN SUPPORT OF APPELLEES

I hereby certify that this day I am serving two copies of the foregoing Brief of *Amicus Curia* by depositing same with the United States Postal Services, postage prepaid, First Class Mail addressed as follows

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