A regular meeting of the Northampton County Council was held on the above date with the following present: Ann McHale, President; Wayne Grube, Vice President; Charles M. Dertinger; J. Michael Dowd; Margaret Ferraro; Lamont G. McClure, Jr.; Diane Neiper and Frank E. Flisser, Clerk to Council. Absent were Ron Angle and John Cusick and Leonard N. Zito, Solicitor to Council

Prayer

Mr. Dowd led County Council in prayer to open the meeting.

Pledge of Allegiance

Mr. McClure led County Council in the pledge of allegiance.

Approval of the Minutes

Mr. Dowd made the following motion:

Be It Moved By the Northampton County Council that the minutes of the September 4, 2008 meeting shall be approved.

Mr. McClure seconded the motion.

The motion was adopted by voice acclamation, with Mrs. Ferraro, Mr. McClure and Mrs. Neiper abstaining.

Courtesy of the Floor

Mr. Ken Nagy, Forks Township, PA - stated he did not think the County could find a bigger tax burden for the residents of Northampton County than a health department. He further stated he believed the Administration had an obligation to ask the people because the only ones he found that supported this endeavor were those who had a special interest in it.

Mr. Nagy suggested instead of creating a commission, it
might be better if the County created a non-profit corporation where the County could put the health department, as well as Gracedale and health care for the Prison. He advised a non-profit corporation could be subsidized and run off of grants thereby not becoming a burden to the County, noting with a commission, the County was going to inherit approximately 150 employees that was going to do nothing, but grow. Therefore, he believed a hard look should be taken at this issue.

Ms. Judith Henckel, 1752 Robin Hood Road, Upper Mount Bethel Township, PA - stated she was here to indicate her support for the bio-fuel initiative that would be discussed later during the meeting.

Confirmation of Appointments

Mrs. McHale advised the Personnel Committee met on Wednesday, September 17, 2008, to consider re-appointments to the Lehigh Valley Economic Development Corporation - Executive Committee, Prison Advisory Board and Revenue Appeals Board.

Mrs. Neiper introduced the following resolution, indicating the members of the Personnel Committee unanimously voted to present these re-appointments to County Council for approval:

R. 60-2008 RESOLVED, by the Northampton County Council that the following individuals shall be confirmed in their appointments/re-appointments as indicated hereafter:

LEHIGH VALLEY ECONOMIC DEVELOPMENT CORPORATION - EXECUTIVE COMMITTEE

Terms to Expire: 12/31/09

Re-Appointments:
Ann McHale
County Council President
750 Barrymore Lane
Bethlehem, PA 18017

John Stoffa
County Executive
3519 Kreidersville Road
Northampton, PA 18067
In response to Mrs. Neiper’s question, Mr. McClure commented he would like to vote on each board separately. There were no objections from the members of County Council.

Mrs. Neiper asked if there were any questions or comments with regard to the re-appointments of Mrs. McHale and Mr. Stoffa.

As there were no respondents, Mrs. McHale called for the vote.


This portion of the resolution was adopted by a vote of 7-0, with Mrs. McHale abstaining on the vote for herself.

Mrs. Neiper asked if there were any questions or comments regarding the re-appointment of Mr. Christenson.

As there were no respondents, Mrs. McHale called for the vote.

This portion of the resolution was adopted by a vote of 7-0.

Mrs. Neiper asked if there were any questions or comments with regard to the re-appointments of Mr. Nemeth and Mr. Zavacky.

As there were no respondents, Mrs. McHale called for the vote.


This portion of the resolution was adopted by a vote of 7-0.

Based on the votes, the resolution was adopted in its entirety.

Public Hearing on the Ordinance Providing for Amendments to Northampton County Administrative Code Article XIX Department of Human Resources, Sections 19.01 Organization, and 19.02 Duties

Mrs. McHale stated the following ordinance was introduced by Mr. Cusick, Mrs. McHale and Mr. Dertinger at the meeting held September 4, 2008:

AN ORDINANCE OF THE COUNCIL OF THE COUNTY OF NORTHAMPTON, PENNSYLVANIA ("COUNTY") ENACTED UNDER 1.2-202(7) OF THE NORTHAMPTON COUNTY HOME RULE CHARTER (348 PA. CODE 1.2-202(7)) AMENDING ARTICLE XIX OF THE NORTHAMPTON COUNTY ADMINISTRATIVE CODE PERTAINING TO THE DUTIES OF THE DIRECTOR OF HUMAN RESOURCES DEFINING POLICIES AND REGULATIONS APPLICABLE TO NORTHAMPTON COUNTY EMPLOYEES; CONFIRMING THE PROCEDURE FOR THE APPROVAL BY NORTHAMPTON COUNTY COUNCIL OF NORTHAMPTON COUNTY CAREER SERVICE REGULATIONS AND ESTABLISHING A PROCEDURE TO VALIDATE NORTHAMPTON COUNTY EMPLOYEES POLICIES MANUAL(S) AND CAREER SERVICE REGULATIONS
WHEREAS, Article 1.8–805 (348 Pa. Code 1.8–805) of the Northampton County Home Rule Charter pertaining to Career Service Regulations requires the County Executive and the Department of Human Resources to prepare and submit proposed Career Service Regulations for consideration and recommendation to the Northampton County Personnel Commission (Commission), for the Commission to report its recommendations to the County Executive or Director of Human Resources and to Northampton County Council and for Northampton County Council to approve, reject or amend the regulations; and

WHEREAS, Article 1.8–805 (348 Pa. Code 1.8–805) of the Northampton County Home Rule Charter blends the terms “Regulation(s)” and “Policies” in its various provisions; and

WHEREAS, Northampton County Council recognizes a distinction between a Regulation and a Policy, the former being a power which County Council has delegated to the County Executive and Department of Human Resources through Section 1.8–805 (348 Pa. Code 1.8–805) of the Northampton County Home Rule Charter in order to create a standard of behavior for Northampton County Career Service employees and the latter being an interpretation by the County Executive and the Department of Human Resources of the law regulating the behavior of Northampton County employees; and

WHEREAS, the Northampton County Executive and the Director of Human Resources have periodically created, published and promulgated to Northampton County career service and merit employees a Northampton County Employee Policies Manual; and

WHEREAS, Northampton County Council has determined that the Employee Policies Manual now contains provisions which regulate the behavior of Northampton County employees without such regulations having received a recommendation of the Northampton County Personnel Commission or the subsequent approval, rejection or amendment by Northampton County Council as is required under Section 1.8–805(a)(b)(c) (348 Pa. Code 1.8–805(a)(b)(c)) of the Northampton County Home Rule Charter; and

WHEREAS, Northampton County Council by this Ordinance intends to assure that all Northampton County employees are
bound and protected by regulations that have been recommended by the Personnel Commission and approved by Northampton County Council under Section 1.8-805(a)(b)(c)(348 Pa. Code 1.8-805(a)(b)(c)) of the Northampton County Home Rule Charter.

NOW, THEREFORE, BE IT ENACTED AND ORDAINED by the County Council of the County of Northampton, as follows:

1. Article XIX of the Northampton County Administrative Code, Section 19.01 (Organization) and 19.02 (Duties) are hereby amended as follows (sections marked with bold underline have been added):

   Section 19.01  Organization

   The Department of Human Resources shall be headed by a Director who shall be responsible to the County Executive and who shall be the chief administrative officer and principal supervisor for the Department of Human Resources. The Director of Human Resources shall be an exempt cabinet level position directly responsible to the County Executive. Subject to 19.02 pertaining to the duties of the Director of Human Resources, the specific nature of the duties of the Director of Human Resources, in coordinating the administration of all such functions within the Department of Human Resources, shall otherwise be determined by the County Executive.

   Section 19.02  Duties

   The Director of Human Resources, in person or through subordinates, shall:

   (1) develop policy for all matters pertaining to personnel, salary scales, benefit packages and pension benefits;

   (2) create, publish and promulgate printed Career Service Regulations and an Employee Policies Manual for all Northampton County employees;

   (3) in creating, publishing and promulgating the Career Service Regulations, as well as the Northampton County Employee Policies Manual, the Director of Human Resources shall first
submit to the Personnel Commission the proposed statement of policy or regulation for a written determination by the Personnel Commission as to whether the proposed statement is a regulation or policy, as well as for the consideration and recommendation of regulations in accordance with Northampton County Home Rule Charter 1.8-805(a) (348 Pa. Code 1.8-805(a));

(4) within the time limitations set forth in 1.8-805(b), if the Personnel Commission determines that the statement is a regulation, it shall then follow the procedure in Section 1.8-805(a)(b) (348 Pa. Code 1.8-805(a)(b)) of the Northampton County Home Rule Charter to report its recommendation and Northampton County Council shall thereafter consider the matter under Section 1.8-805 (10)(c);

(5) within the time limitations set forth in 1.8-805(b), if the Personnel Commission determines in writing that the statement is a policy, then the Director of Human Resources is authorized to publish and promulgate the policy to all Northampton County employees;

(6) in the publishing and promulgating of the regulations and policies, the publication shall contain a reference to the written determination of the Personnel Commission as to whether or not the statement is a regulation or a policy, the date of such determination and in the case of a regulation, the date approved, rejected or amended by Northampton County Council under Section 1.8-805(10)(d) (348 Pa. Code 1.8-805(10)(d)). No publication shall be binding upon any Northampton County employee which does not contain a reference to the determination of the Personnel Commission as to whether it is a policy; or, as to the recommendation and approval by the Personnel Commission and Northampton County Council respectively in the case of a regulation;

(7) oversee job classification and appeals by employees for job reclassification requests;

(8) periodically review the Northampton County salary guide;

(9) enforce all relevant laws and regulations promulgated by the Federal, State and County governments;
(10) develop a job growth and job vacancy policy;

(11) formulate, update, evaluate and implement job testing procedures;

(12) enforce Career Service and Civil Service regulations including termination procedures;

(13) perform such other duties and functions as are assigned by the County Executive.

Public Hearing

Mrs. McHale asked if there was anyone from the public who wished to comment on this ordinance.

Mr. Justus James, AFSCME District Council 88 - Prison and Gracedale, and Ms. Radine Harwick, AFSCME District Council 88 - Staff Director of Court Appointed Non-Professionals and Professionals and Court Related Non-Professionals, Residual Unit and Youth Detention Center, introduced themselves.

Mr. James advised they have received approximately 63 policy changes that dealt with hours of work, conditions of employment, family medical leave, etc. to review within a two-week time period. He further advised they believed, based on the Home Rule Charter, these changes were not done properly and the process was flawed. He noted these changes not only impacted the union employees of Northampton County, but also the non-union employees, therefore, it was their hope County Council would approve this ordinance as the Union supported it.

When Mr. Dertinger asked if the changes were offered outside or after negotiations had taken place, Mr. James replied in the affirmative.

Ms. Harwick provided a time line for when the proposals were made:

On February 2, 2007, Ms. Connie Sutton-Falk, Director of Human Resources, notified AFSCME District Council 88 Assistant
Director Mr. Lawrence Murin, who represented the unit that she represented now, and Mr. James of the County’s intent to adopt ten new personnel policies. She noted copies of the policies were provided.

On February 9, 2007, Mr. Murin wrote to Ms. Sutton-Falk notifying her that certain provisions of these policies constituted changes in working conditions and required negotiations with AFSCME.

On March 12, 2007, Ms. Sutton-Falk e-mailed Messrs. Murin and James requesting that questions regarding the policies should be submitted to her by March 16, 2007, which was within four days.

In a letter dated March 20, 2007, Mr. Murin again requested negotiations and/or to meet and discuss the policies citing specifically which policies were an issue.

In a memorandum dated, March 21, 2007, Ms. Sutton-Falk notified Messrs. Murin and James that three of the original ten policies had been adopted including policies on which AFSCME had requested negotiations in the March 20, 2007 correspondence.

On May 1, 2007, Ms. Sutton-Falk e-mailed Mr. Murin asking if AFSCME still desired a meeting on these policies.

In a memorandum dated May 11, 2007, Ms. Sutton-Falk notified Messrs. Murin and James of the County’s intent to adopt another 19 policies in addition to the ten proposed by Ms. Sutton-Falk on February 2, 2007.

In a letter dated May 17, 2007, Mr. Murin again demanded bargaining on all of the policies at issue.

By memorandum dated May 21, 2007, Ms. Sutton-Falk notified Messrs. Murin and James that the County had adopted another four policies, all of which were proposed by Ms. Sutton-Falk in her February 2, 2007 memorandum, two of which the Union had earlier demanded be negotiated.

On June 27, 2007, they received the acknowledgment and notification of the Unfair Labor Practice charge received by the Pennsylvania Labor Relations Board. At the same time, they received a memorandum from Ms. Sutton-Falk advising of 21 newly
adopted policies and that same should be distributed to employees who did not have access to the internet. She noted they still had not met.

On July 9, 2007, Mr. Murin requested an amendment to the Unfair Labor Practice charge to include the 21 new policies.

On October 12, 2007, a memorandum was received from Ms. Sutton-Falk advising of drafts for 17 proposed policies.

On October 12, 2007, a memorandum was received from Ms. Sutton-Falk advising of drafts for 17 proposed policies.

On November 2, 2007, they again requested to bargain with the County on behalf of these policies.

On November 16, 2007, the Unfair Labor Practice Hearing was postponed as the County and Labor Attorney made arrangements for a meeting on these policies.

On November 21, 2007, eight more policies were received, however, this time there was no cover letter.

On December 21, 2007, four more polices were received with no cover letter.

On January 3, 2008, three more policies - no cover letter.

On January 18, 2008, February 8, 2008 and February 15, 2008, numerous policies were received with no cover letter and she stopped counting.

On March 6, 2008, a meeting was held with the County, however, little or no changes were made to the policies as the County seemed unwilling to compromise.

On March 24, 2008, a memorandum was received from Ms. Sutton-Falk with another eight drafts of County policies.

On April 9, 2008 and April 23, 2008, more policies were received - no cover letters.

On May 8, 2008, the Union became aware of a decision by Mr. Len Zito, County Council Solicitor, regarding Employee’s Policies Manual and Career Service Regulations. She believed County Council had a copy of that letter.
On May 12, 2008, June 9, 2008 and July 2, 2008, more policies were received with no cover letters.

On July 24, 2008, the last policy was received to date, with no cover letter.

Ms. Harwick stated as Mr. James indicated approximately 65 polices and/or drafts had been received to date. She further stated 16 of them have been revised twice and two of them were revised three times.

Ms. Harwick advised she had in her hand the holiday policy, which was first drafted on November 1, 2007, revised again on December 1, 2007 and revised yet again on January 14, 2008. She asked how could a policy on holidays be revised when those holidays were recognized by the County.

Ms. Harwick stated the County had failed to bargain in good faith over the adoption of these polices, therefore, costing taxpayers thousands of dollars to negotiate the issues at arbitration. She further stated she currently had 18 grievances pending with her Union and nine of them were directly or indirectly related to these new policies.

Ms. Harwick advised the County had given authority to each department to interpret and enforce these new policies as they saw fit. She further advised there were long term employees who were given three-day suspension for a first time offense. She noted this was progressive nor corrective. She further noted the new policies no longer defined an offense, the seriousness of an offense nor the discipline associated to correct the offense.

Ms. Harwick stated their members deserved reasonable notice of an infraction, the ability to self correct and the knowledge of serious offenses and the repercussions associated with them. She further stated their contracts were negotiated under the blue book policies. She noted County Council must review these policies as the Home Rule Charter dictates to ensure fair and impartial treatment of our members and your employees.

In conclusion, Ms. Harwick advised they supported this ordinance and they asked County Council to do it too.
Mrs. McHale asked if there was anyone else who wished to address County Council regarding this matter. As there were no respondents, she asked if there were any members of County Council who wished to speak.

Mr. John Stoffa, County Executive, indicated Mrs. Linda Markwith, Human Services Generalist, would be responding on behalf of the Administration.

Mrs. Markwith stated she was appearing before County Council on behalf of the Administration to explain why she believed the proposed ordinance was not reflective of the original intent of the Northampton County Home Rule Charter, Administrative Code or the Career Service Regulations. She further stated the Northampton County Government Study Commission permitted the recommendations, by referendum vote on April 27, 1976. She noted subsequent to that election, the Northampton County Home Rule Charter document became effective January 2, 1978. She further noted in her research, she found on August 5, 1977, final draft documents of the Northampton County Administrative Code and the Northampton County Career Service Regulations were issued by Government Study Systems, Inc. of Philadelphia, Pennsylvania. She indicated the date of issue of the final Career Service Regulations document was April 6, 1978 and approved, via resolution #82-78, on June 26, 1978. She further indicated the Administrative document was also approved by County Council ordinance on June 26, 1978.

Mrs. Markwith advised in reviewing the proposed ordinance before County Council, the request was made to amend the Administrative Code Article XIX, Department of Human Resources, requiring the Director of Human Resources to first submit any changes to the Career Service Regulations and the Employees Policies Manual to the Personnel Commission for a written determination on whether the proposed revision was a regulation or a policy.

Mrs. Markwith stated in their opinion, this proposed ordinance would be a violation of the existing Northampton County Home Rule Charter Section 805 Career Service Regulations whereby amendments to the Career Service Regulations only required submission to the Personnel Commission and approval by County Council.
Mrs. Markwith advised if you looked at the Career Service Regulations book, second paragraph, it states, “It is expected that Career Service Regulations, unlike the Administrative Code, will be amended with some regularity as experienced, County policy and collective bargaining agreement make it necessary. At the same time it is intended that the interpretation and application of these Regulations would be standardized and made effective through Personnel Rules (or policy manual). These rules would be promulgated and made effective by the Personnel Director with approval of the County Executive”.

Mrs. Markwith stated this clarification was further explained under Regulation 1, Definitions for Personnel Rules, “Rules (otherwise known as our Policies Manual) issued by the County Executive, interpreting and providing procedural instructions to supplement the Career Service Regulations. Personnel Rules shall be consistent with the Career Service Regulations”.

Mrs. Markwith advised under Regulation 2, Regulations and Adoption, it indicated “Regulations shall be prepared by the County Executive, submitted to the Personnel Commission for its review and consideration and to the County Council for approval as prescribed in Section 805 of the County Charter”.

Mrs. Markwith noted Regulation 2.03, Personnel Rules stated, “The County Executive shall establish, amend, and abolish Personnel Rules. The purpose of the Personnel Rules is to provide standard interpretation of and detailed procedure to be followed in carrying out the Charter provisions related to a merit personnel system”.

Mrs. Markwith commented she did not believe the proposed ordinance would be consistent with the Home Rule Charter because it only requested an amendment to the Administrative Code while leaving the Northampton County Charter, which would require a referendum vote to amend and the Northampton County Career Services Regulations, as it was currently written. She further commented the purpose of the Personnel Commission, as identified in the Northampton County Charter, Article X, Authorities, Boards and Commissions, detailed their function as advisory only.
Mrs. Markwith advised she did not think the issue was to determine if they were amending a regulation or a policy, but rather to implement employee policies or rules which effectively reflect the objective of the Career Service Regulations. Further, the Personnel Commission does not meet on a regular basis and she believed such a decision takes the oversight authority away from the Executive Branch to effectively manage and govern in accordance with the original intent of the Charter.

Mrs. Markwith stated since 1978, it appeared there were only three incidences, one in 1993, 1999 and 2003, where the Personnel Commission was contacted to review and recommend to County Council revisions to the Career Service Regulations. She further stated this alone substantiates the Personnel Employees Policies were amended with much more regularity than the Career Service Regulations have been.

Mrs. Markwith advised she found no documentation, either by resolution or ordinance, that have formally adopted or approved the Personnel Policies Manual, dating back to January of 1978. She further advised the history was clear that the Northampton County Home Rule Charter was approved first, followed by the Career Service Regulations and the Administrative Code.

Mrs. Markwith stated the Personnel Employees Policies Manual was issued in late 1978 and she discovered correspondence dated July of 1980 from the then Controller and District Attorney to the then County Executive requesting an amendment to certain sections. She further stated as a County employee for nearly 30 years, she could attest that revisions to the Personnel Employees Policies Manual have consistently been approved by the County Executive as per the Northampton County Home Rule Charter, Administrative Code and Career Service Regulations.

Mrs. Markwith advised the approved, revised polices were then distributed to department directors and supervisors accordingly. She further advised a Personnel Procedure Committee was formed in 2006 and included representation from the Administration, Court Services, Civil Division, Fiscal Affairs, Public Works, Controller’s Office, Emergency Management
Services, Gracedale Nursing Home, Human Services and Human Resources.

Mrs. Markwith stated this committee first met on October 6, 2006 and twice per month since then with subcommittees meeting additionally on their own. She further stated an extensive amount of work had been accomplished to date to revise the current Personnel Employees Policies Manual. She noted the committee looked at State and Federal laws, best practices and researched material to develop these policies. She further noted before submission to the County Executive for approval, the recommended policy documents were reviewed by the Solicitor’s Office.

Mrs. Markwith advised once signed by the County Executive, revised policies were posted on the County’s intranet site and copies were distributed to Council members, cabinet members, supervisors and all Union representatives.

Mrs. Markwith thanked County Council for the opportunity to explain some of the relevant history, as well as their concerns regarding the proposed ordinance. In closing, she respectively asked that each member of Council reconsider the approval of this ordinance.

In response to Mr. McClure’s question, Mrs. Markwith stated of her nearly thirty years with the County, nine years were spent in Human Resources. She further stated she believed she was chosen to make this presentation because of her career and history with the County and her knowledge regarding the formation of the Home Rule form of County government.

Mr. Dertinger advised this matter had been bantered about for six or so months. He further advised it was assigned to County Council’s Solicitor who came back with a very clear and entirely different opinion. He noted this ordinance was only drafted after they had, on the suggestion of Mr. Zito, waited for a period of time for a response from the Administration as to how they saw this as being legal.

Mr. Dertinger stated Section 805 indicated approval, not advice, no sooner than 30 days after the date of submission to
the Personnel Commission. He further stated these policies have been abusive and he wondered how the County could expect the employees to work here and to attract people to work here. He noted the Home Rule Charter, based on an interpretation by a former judge and solicitor to County Council, indicated it should be and shall be done this way. Therefore, he wondered why someone from the Solicitor’s staff was not making this presentation as it was a legal issue rather than have someone interpret what it meant.

Mr. Dertinger advised, in his mind, the Administration not only acted abusively with regard to these policies, but illegally. He further advised he felt it was abusive that members of County Council, elected officials, were asked to sign that they received a copy of the manual and would follow it.

Mr. Dertinger stated he questioned why Mrs. Markwith was called to give this presentation because this was a legal point and County Council had been nothing, if not patient, in trying to get an answer from the Administration, noting they received one on the 11th hour which did not answer the legal issue, but was a walk down historical lane.

Mr. McClure advised County Council was provided tonight an outline and time line of the regulations that were promulgated with respect to the policies manual, which were presented to the union and non-union employees. He then asked where those regulations came from.

Mrs. Markwith stated those were policies and as per the Career Service Regulations, the authority was given to the County Executive and the Director of Human Resources to revise them on a regular basis in order to comply with the Career Service Regulations.

In answer to Mr. McClure’s question, Mrs. Markwith advised the policies manual was to be updated on a regular basis and those polices were given to the County Executive for approval. She further advised once the County Executive approved them, by his signature as provided for in the Career Service Regulations,
Administrative Code and the Home Rule Charter, they were distributed.

In response to Mr. McClure’s question, Mrs. Markwith stated on October 6, 2006, a committee was formed at the request of County Council to revise these policies because it had been a long time since they were reviewed. She further stated there were representatives from all the departments of the County that worked on these policies.

With regard to the 11th hour comment, Mr. Karl Longenbach, County Solicitor, advised he prepared, upon request, a memorandum, which was dated August 1, 2008, that was sent to County Council’s Solicitor. He further advised passage of this ordinance was an unwarranted and unlawful encroachment on the powers of the County Executive. He noted they were not basing their argument on practiced procedure, past history, but on the clear-cut language of the Home Rule Charter, the Administrative Code, the Career Service Regulations and the Personnel Policies and Rules.

Mr. Longenbach stated if County Council should choose to pass this ordinance, they would have violated the very rules that they were talking about because this would be tantamount to amending the Career Service Regulations before presenting it to the Personnel Commission which was legally required under the Home Rule Charter. He further stated if County Council chose to give the Personnel Commission the power as stated in this ordinance, they also run the risk of violating the Home Rule Charter because it provided powers beyond the powers of the Personnel Commission.

Mr. Longenbach advised the problem and difficulty in this matter was the distinction between the regulations and rules, policies and procedures. He further advised if it was a regulation, they would be the first to acknowledge that there was a clear-cut provision in the Home Rule Charter. He noted an idea emanated from the County Executive, went to the Personnel Commission, they reviewed it, they passed it on to County Council to consider it. On the other hand, when it came to personnel polices, rules and procedures, Career Service Regulations were equally clear that no such procedure was to be followed rather it came from within the County Executive and whether it was one person or a hundred persons who came up with
the idea, it ultimately gets presented to the County Executive, who approved them and that was where it stopped. Now, the only restraint on power of the County Executive was that any and all personnel policies, procedure or rule, had to be consistent with an existing regulation.

With regard to the comment that there was 63 policy changes, Mr. Longenbach stated he would have to ask how many Career Service Regulations were changed with regard to those 63 policies and the answer would be none. He further stated this group had spent the past year diligently trying to revamp policies that were last revised in 1999. Additionally, he would agree with County Council that the next step would be to do an equally diligent examination of the Career Service Regulations and follow the procedures that were constituted by the Home Rule Charter. However, passing the proposed ordinance, although he understood the motivation and had no doubt it was proposed in good faith, legally altered the structure of the Home Rule Charter, which they believed was unlawful in this case.

Mr. Dertinger advised Mr. Zito had followed up with the August memorandum to get clarification, noting there was nothing in that memorandum that even closely resembled what was mentioned this evening. He further advised there had been talk about repealing a lot of these rules that had been added, however, it was determined County Council could not repeal measures that had not actually become law. He noted Mr. Zito had pointed out that in the Home Rule Charter, the words policies and procedure were intermingled or used interchangeable in the Home Rule Charter, specifically in Section 805. Therefore, to stand on what the State Career Service Regulations may or may not say, he noted this was a Home Rule County and acted accordingly.

Mr. Dertinger stated one of the recommendations from the Solicitor was to have County Council review these policies before moving forward with having them printed and distributed so there would not be a situation where 63 policy changes were made without County Council, as the governing body, knowing about them. He further stated the 11th hour comment still stood because County Council’s Solicitor did not understand the comments provided in the August memorandum and after attempts to obtain a response a number of times, none was provided until tonight. Additionally, somewhere along the line, the
Administration offered to meet with County Council’s Solicitor without members of County Council present, which he felt was entirely inappropriate.

Mr. Longenbach replied he believed the disagreement with regard to the status of the polices and procedures continued because County Council persistently suggested they were invalid or unlawful and he would be persistent equally as strong that they were perfectly lawful.

In answer to Mr. McClure’s question as to the date of Mr. Longenbach’s response to the inquiry, Mr. Longenbach advised no specific request came to him with regard to the subject matter of Mr. Zito’s original opinion. He further advised he received a request from the County Executive to prepare the memorandum, which he did on August 1, 2008. He noted when the proposed ordinance was introduced at the last meeting, there was a request to have a conference between Mr. Zito and himself, which occurred earlier this week.

In response to Mr. McClure’s question, Mr. Longenbach stated the memorandum was distributed to County Council on August 1, 2008.

Mr. McClure replied that in a memorandum issued by Mr. Zito on August 15, 2008, he indicated he did not receive a response to his memorandum of August 11, 2008, from Mr. Longenbach.

In response to Mr. McClure’s comment regarding his opinion that the proposed ordinance violated the Home Rule Charter, Mr. Longenbach advised personnel policies, rules and procedures have been issued since the initiation of the Home Rule Charter and that had been the tried and true practice which had never been challenged up to this point in time.

Mr. Anthony Martino, who was substituting as Solicitor for Mr. Zito, stated he had great respect for Mr. Longenbach, however, Mr. Zito had expressed his disappointment and frustration to him because he had not received a written response to any of his memorandums or the draft ordinance from the County Executive’s office. He further stated he reviewed the file again today and did not see anything in writing addressing the points made by Mr. Zito throughout the history of this issue.
Mr. Martino advised it appeared that a fundamental issue that had to be addressed was the distinction between regulations, which may be adopted, and policies, which may be adopted. He further advised Mr. Zito’s memorandum addressed that issue, his draft ordinance addressed that issue, however, he did not see anything in either his statements to him or in his research which would indicate that this proposed ordinance would in any way violate the Home Rule Charter or any other rule of law.

Mr. Martino stated he would personally again express the disappointment that Mr. Zito had in that he did not receive some exclusive statement from the County Executive, prior to this evening, so he could have addressed it legally. He further stated he had no reason to believe that Mr. Zito’s position would be changed in any way based upon what he heard tonight.

Mrs. Neiper remarked what bothered her about this entire issue and everyone could get into all the legal discussions they wanted to, was that County Council’s belief the handling of the changes was done incorrectly because they should have gone to the Personnel Commission and then to County Council, had been out there for months. She noted she recognized the fact the Administration obviously believed otherwise, however, questioned why the history lesson which was provided by Mrs. Markwith tonight was not given to County Council months ago if they were going to base their arguments on some it. She further noted by not doing so, she felt they put some of the employees, based on the turn out tonight, through a stressful situation that did not have to happen if this was brought forth months ago.

Mr. Dowd agreed that it would have been very helpful to him, and he believed other members of County Council, if they would have had that information in writing months ago. Further, he felt if things had been done in a certain fashion for a number of years, there would not have been the response they were getting today, therefore, something must have changed.

Mr. Dertinger advised regardless of what had taken place in the past, never had there been 63 changes presented in such a haphazard manner which was why it had received the attention it had. He further advised AFSCME, who had a recognized labor agreement, was being told they had four days to respond and yet
County Council had not received a four-day response from the Administration on anything.

Mrs. McHale stated after hearing both sides and looking at some of the changes that have been brought forth, the one that caught her eye and that she felt was a serious issue was the one the County Executive signed dated April 1, 2008, that eliminated retiree health care for any new employees. Therefore, she planned on supporting this ordinance and hopefully, everyone could move forward to resolve all the issues.

As there were no other questions or comments, Mrs. McHale called for the vote.


The ordinance was adopted by a vote of 7-0.

With respect to the ordinance that County Council just passed, Mr. McClure advised the County was in a situation now with this Administration where County Council must take a strong stand and let them know it did not believe it was their job to clean up the mess that the Administration created by their extralegal activities. He further advised in passing this ordinance unanimously tonight, County Council had determined, as a threshold manner, that the Charter was violated and the legal basis for that statement was County Council Solicitor’s opinion.

Mr. McClure stated Section 812 of the Home Rule Charter called for a penalty for violation of the Charter and read as follows: “Any officer or employee who knowingly and willfully violates any of the provisions of this Charter shall be dismissed from his office or employment”. He further stated it was clear that the buck had to stop somewhere and although he was pretty aggressively blocked at his attempt to find out specifically from where these regulations emanated, the buck had to stop with the Human Resources Director.

Mr. McClure made a motion that County Council demonstrates its sense that Ms. Connie Sutton-Falk should resign.

Mrs. Neiper seconded the motion.
Mrs. McHale asked if there were any questions or comments with regard to the motion.

Mr. Dowd advised the County Executive had the right to pick the people he wanted to work for his Administration. He further advised he did not believe this was in the realm of County Council’s responsibilities.

Mr. Dertinger stated he would be supporting the motion and not simply because he believed the buck should stop somewhere, but because Ms. Sutton-Falk had taken just about every effort to either be condescending to this body, to not answer their questions or skirt around them. He further stated it was often stated how important it was for County Council and the Administration to work well together and there was no example as to just how far these two bodies were than with the Department of Human Resources.

Mrs. McHale advised she had received numerous complaints from employees who have had issues with the Department of Human Resources, in particular with Ms. Sutton-Falk.

Mrs. Ferraro commented she agreed with Mr. Dowd that this was not in County Council’s purview and felt it was inappropriate.

Mrs. Neiper stated she seconded Mr. McClure’s motion because there was obviously a fundamental problem here with how the County dealt with its employees and it was the leader who set the tone and she just saw a very negative tone here. She further stated she was basing this on her own work experience over the years and it did not bode well for the employees if they did not feel comfortable or thwarted at every turn to do a good job. She noted she felt this motion put this matter out there.

When Mrs. McHale asked if it was possible to maybe amend the wording of that motion to a vote of no confidence rather than ask for the resignation, several members of County Council answered in the negative.

Mrs. Ferraro advised she had been around since 1989 and she believed there have been more problems with Directors of Human Resources than any other position because it was not an easy job.
and it was not easy to please everyone. She reiterated that she felt this action was inappropriate.

Mr. Dertinger stated he believed it was in County Council’s purvey to act when an injustice of this magnitude occurred rather than sit idly by and let it continue.

Mr. Grube commented what happened here tonight was a very sad situation. He further commented he hoped the rest of the employees of the County do not think that County Council was going to be a butcher block for people in the Administration every time that something occurred. He noted he was not always pleased with Ms. Sutton-Falk, but this was not a home for executions.

Mrs. McHale asked if there were any other questions or comments and as there were no respondents, she called for the vote.


The motion was passed by a vote of 5-2.

Presentation of the Grasslands Bio-Fuels Program

Mrs. McHale advised at the request of Mrs. Ferraro the presentation of the Grasslands Bio-Fuels program was added to the agenda of this meeting for consideration.

Mrs. Ferraro stated Mr. Bill Sweeney of the Jacobsburg Environmental Education Center contacted her with regard to this great conservation issue. She noted that Mr. Matt Glennon, Supervisor for Plainfield Township, was present, along with Mr. Jerry Brunetti, who was from Lower Mount Bethel Township and was leading the education of bio-fuels. She further noted the County needed to look at renewable energy sources and ways to cut costs.

Mr. Brunetti read from a letter he prepared for this meeting (see Attachment #1).
Mr. Brunetti then gave a power point presentation with regard to the Bio-Fuels for Communities and Schools Conference that was held on August 16, 2008, which was based on information from the Benton Area School District, who was the first school in Pennsylvania to use bio-fuels (see Attachment #2).

Mr. Brunetti advised they were present tonight to ask County Council if they were ready to take the next step which might be to establish a committee to discuss how the County could utilize resources that it had and to be a model and example for the entire region, as well as save the taxpayers a substantial amount of money in the process.

Mr. Brunetti also provided a list of funding sources available (see Attachment #3).

In answer to Mr. McClure’s question as to whether older boilers would be compatible to this type of fuel, Mr. Brunetti answered they would not be. However, the boilers would pay for themselves in a very short amount of time.

Mr. Sweeney stated he had spoken to Mr. Willard Werkheiser who lived and worked on a farm for 62 years and whose son now maintained that farm and he indicated to him that his son was having difficulty maintaining it because corn was pretty labor intensive and expensive. He further stated when he explained to Mr. Werkheiser how warm season grasses was not only a less labor intensive crop, but also perennial, Mr. Werkheiser commented it was time for a change.

Mr. Sweeney advised what they were proposing was for County Council to be a champion of change and to use its influence to help protect not just some of these greenways and the life style of farming, but also the people in this area who were going to need sources of fuel for heating.

Consideration of the Resolution Approving the Request of the Bethlehem Township Board of Commissioners to Reallocate 2001 Bond Issue Open Space Park Land Grant Funds

Mrs. McHale stated County Council received a request from the Bethlehem Township Board of Commissioners to reapply 2001
Bond Issue funds for the construction of soccer fields at the Bethlehem Township. She further stated the County Council Solicitor had reviewed this request and indicated County Council could authorize and approve this request through adoption of a resolution.

Mr. McClure introduced the following resolution:

R. 61-2008  WHEREAS, on July 19, 2001, the Northampton County Council enacted Ordinance No. 371 of 2001 (a copy of which is attached hereto and labeled as Attachment “A”), which is more commonly known as the 2001 Bond Issue Ordinance, which is titled, “AN ORDINANCE OF THE COUNCIL OF THE COUNTY OF NORTHAMPTON, PENNSYLVANIA (“COUNTY”), AUTHORIZING, PURSUANT TO THE PENNSYLVANIA LOCAL GOVERNMENT UNIT DEBT ACT (“DEBT ACT”), THE INCURRING OF LEASE RENTAL DEBT IN AN AMOUNT NOT TO EXCEED $125,000,000 TO BE IN THE FORMS OF AND EVIDENCED BY A LOAN AGREEMENT OR SIMILAR DOCUMENT WITH THE NORTHAMPTON COUNTY GENERAL PURPOSE AUTHORITY (“AUTHORITY”) AND/OR A GUARANTY OR SIMILAR AGREEMENT PURSUANT TO WHICH THE COUNTY WILL PAY TO THE AUTHORITY SUCH AMOUNTS AS ARE NECESSARY TO EFFECT, OR WILL GUARANTEE, PAYMENT OF BONDS TO BE ISSUED BY THE AUTHORITY FOR THE PURPOSES OF PROVIDING FUNDS TO BE APPLIED FOR AND TOWARD CERTAIN CAPITAL AND ECONOMIC DEVELOPMENT PROJECTS TO BE UNDERTAKEN BY THE COUNTY AND THE AUTHORITY; AUTHORIZING THE EXECUTION AND DELIVERY OF SUCH LOAN AGREEMENT AND/OR GUARANTY; SETTING FORTH THE AMOUNTS OF THE PAYMENTS TO BE MADE THEREUNDER AND COVENANTING TO BUDGET, APPROPRIATE AND PAY SUCH AMOUNTS; PLEDGING ITS FULL FAITH, CREDIT AND TAXING POWER FOR SUCH BUDGETING, APPROPRIATION AND PAYMENT; AUTHORIZING AND DIRECTING THE PREPARATION, EXECUTION AND FILING OF A TRANSCRIPT OF PROCEEDINGS, INCLUDING THE DEBT STATEMENT AND BORROWING BASE CERTIFICATE WITH THE PENNSYLVANIA DEPARTMENT OF COMMUNITY AND ECONOMIC DEVELOPMENT; AUTHORIZING AND DIRECTING THE TAKING OF NECESSARY OR APPROPRIATE ACTIONS, INCLUDING EXECUTION AND DELIVERY OF REQUISITE DOCUMENTS IN CONNECTION WITH THE ISSUANCE BY THE AUTHORITY OF SAID BONDS; AND TAKING RELATED ACTIONS”; and

WHEREAS, Exhibit “A” to Ordinance No. 371 of 2001 identifies capital and economic development projects for which the bonds were issued and included $12,986,460.00, for open space and farmland preservation..., and recreational improvements..., of which approximately $3,500,000.00 were grants to Northampton County municipalities. The 2001 Bond
Issue Ordinance contained a grant of $200,000 for the Township of Bethlehem for the acquisition of land for a new park; and

WHEREAS, on July 31, 2008, the Bethlehem Township Manager, at the request of the Board of Commissioners of Bethlehem Township, requested the reallocation of approximately $128,400.00 of an original $200,000.00 2001 Bond Issue open space grant to develop three (3) youth soccer fields at the Bethlehem Township Municipal Park (a copy of the request is attached hereto and labeled as Attachment “B”).

NOW, THEREFORE BE IT HEREBY RESOLVED, By the Northampton County Council that the Northampton County Council authorizes and approves the reapplication of approximately $128,400.00 of an original $200,000.00 2001 Bond Issue open space grant, to the recreational development of three (3) youth soccer fields at the Bethlehem Township Municipal Park.

Mrs. McHale asked if there were any questions or comments.

Mr. Grube advised reciprocity was nice and since they were allowing Bethlehem Township to reallocate this money, perhaps Bethlehem Township could reconsider their position on the rehabilitation center.

Mrs. McHale called for the vote.


The resolution was adopted by a vote of 7-0.

Introduction of the Ordinance Providing for Approval of the Appointment of the Northampton County Members of the Joint Northampton-Lehigh County Department of Health

Mrs. McHale stated an agreement was reached between the Northampton County and Lehigh County Executives to increase the Northampton-Lehigh County Board of Health to nine members. She further stated the Northampton County Executive presented the names of two individuals to fill the remaining Northampton County appointee positions to County Council for confirmation. She noted the County Council Solicitor previously indicated that
the appointments should be confirmed through adoption of an ordinance.

Mrs. McHale advised that Mrs. Neiper and Mr. Dowd would be the co-sponsors of this ordinance and indicated the public hearing, debate and possible vote was scheduled for the October 2, 2008 County Council meeting.


WHEREAS, on December 7, 2007, Northampton County Council enacted Ordinance No. 475, effective January 6, 2008, adopting a resolution of Northampton County Council creating and providing for the establishment of the Joint Northampton-Lehigh County Department of Health, under the Local Health Administration Law of the Commonwealth of Pennsylvania, 1951, Aug. 24, P.L. 1304, §1, 16 P.S. 12001, et seq.; and,

WHEREAS, the Joint Northampton-Lehigh County Health Commission has recommended for approval by Northampton County Council the following appointees to the Joint Northampton-Lehigh County Department of Health.

NOW, THEREFORE, BE IT ENACTED UNDER THE NORTHAMPTON COUNTY HOME RULE CHARTER §1-602 (14) AND RESOLVED AS LAW THAT:

1. The appointment of David G. Beckwith is approved and confirmed for the initial term of two (2) years from the second Monday in January 2009 in accordance with §12007 of The Act (16 P.S. 1200).
2. The appointment of Carol A. Kuplen is approved and confirmed for the initial term of two (2) years from the second Monday in January 2009 in accordance with §12007 of The Act (16 P.S. 1200).

3. The appointees shall serve and conduct meetings and be compensated only as provided for as specified in the Local Health Administration Law of the Commonwealth of Pennsylvania, 1951, Aug. 24, P.L. 1304, §1, 16 P.S. 12001, et seq., as amended.

4. This Ordinance is a companion to Ordinance No. 475 of Northampton County Council enacted December 7, 2007 and constitutes legislative action under paragraph 4 of that ordinance.

Introduction of an Ordinance Providing for the Conveyance Of An Easement on County-owned Real Property, in East Allen Township, to PPL Electric Utilities Corporation

Mrs. McHale advised the issue of granting the PPL Corporation an easement on County-owned land in East Allen Township was first considered on June 19, 2008. She further stated based upon advice of the County Council Solicitor, the matter was not voted upon because the Administration did not present County Council with two appraisals as per the requirements of Northampton County Administrative Code Article XIII, Section 13.15 (2).

Mrs. McHale stated the County Executive had subsequently presented the two appraisals and requested that County Council consider approval of the easement.

Mrs. McHale asked if any members of County Council wished to sponsor this ordinance. As there were no respondents, she advised the ordinance would not be introduced.

Mr. Robert Todter, a representative of Keystone Cement, advised the easement request was not for PPL, per se, but for Keystone Cement to be provided with power. He further advised there was no alternative for them to bring power into the $250 million facility that they were building here for jobs in this County. He noted they needed that easement desperately and they followed the County’s advice in authorizing the County to solicit at their discretion any two appraisals as they saw fit.
and they have agreed to the sum that had been recommended for the purchase of the easement. Therefore, he requested for someone to sponsor this ordinance because they needed to move forward as they were behind schedule.

Mrs. Ferraro indicated she would be one of the sponsors.

Mr. Dertinger commented that seeing this was a $250,000 project, they might have come to County Council during the planning stages to decide how they were going to get power to it before they got to a point where they were behind schedule. He further commented based on his knowledge of this project, he did not believe it would be an asset to Northampton County.

Mr. Dowd stated he believed issues deserved to be aired in a public forum, therefore, he would be the other co-sponsor. However, he reiterated his sponsorship was basically to allow the matter to be placed on the agenda for discussion.

Mrs. McHale advised the public hearing, debate and possible vote would be scheduled for the October 2, 2008 County Council meeting.

AN ORDINANCE PROVIDING FOR THE CONVEYANCE OF AN EASEMENT ON NORTHAMPTON COUNTY-OWNED REAL PROPERTY IN EAST ALLEN TOWNSHIP TO PPL ELECTRIC UTILITIES CORPORATION

WHEREAS, Northampton County Home Rule Charter Article 602 (a)(6) provides that the Northampton County Council shall enact an ordinance for any act which “conveys or leases or authorizes the conveyance or lease of any real property of the County.”; and

WHEREAS, PPL Electric Utilities Corporation has requested an electric and communication lines easement, across County-owned land in East Allen Township; and

WHEREAS, in accordance with the provisions of the Northampton County Administrative Code, Article XIII Procurement and Disposition of County Property, Section 13.15 Purchase, Sale and Lease of Real Estate a. and b. the Northampton County Executive presented two (2) sealed appraisals on the subject
NOW, THEREFORE, BE IT HEREBY ORDAINED AND ENACTED, by the Northampton County Council that it does hereby agree to grant, in consideration of Two Thousand ($2,000) Dollars, an easement, on Northampton County-owned lands located in the Township of East Allen, County of Northampton, Commonwealth of Pennsylvania (as further described in certain deed dated December 23, 1980 and recorded in the Office for Recording of Deeds in and for Northampton County in Deed Book 622, Page 1030, being further described as Tax Identifier Number K6-15-1 PKB 0508C), to the PPL Electrical Utilities Corporation according to the terms and conditions of the easement agreement (a copy of which is attached and labeled as Exhibit “C”).

Consideration of the Resolution Providing for Acceptance of a Gift of Real Property

Mrs. McHale stated the Administration notified County Council that the estate of Ruth Diefenderfer had gifted 29.07 acres of land located in East Allen Township to Northampton County. She further stated Home Rule Charter Article II County Council, Section 202. Powers (10) provided County Council had the power to accept on behalf of the County any gifts of real property and to provide for the acceptance by any agency on behalf of the County of other gifts”. She noted the County Executive had requested County Council accept the land.

Mr. Grube introduced the following resolution:

R. 62-2008 WHEREAS, Northampton County Home Rule Charter Article II, County Council, Section 202. Powers (10), provides that the County Council shall have the power “to accept on behalf of the County any gifts of real property and to provide for the acceptance by any agency on behalf of the County of other gifts.”; and

WHEREAS, the estate of Ruth E. Diefenderfer, Deceased, has gifted to Northampton County a parcel of real property, totaling approximately 29.07 acres located in the Township of East Allen,
County of Northampton, Commonwealth of Pennsylvania, identified by Northampton County Tax Map. No. L5-18-4-0508; and

WHEREAS, the Northampton County Executive, in conjunction with the Northampton County Solicitor’s Office, has asked the Northampton County Council to proceed with the acceptance of the gifting of Northampton County Tax Map. No. L5-18-4-0508.

NOW, THEREFORE, BE IT RESOLVED, By the Northampton County Council that, it does hereby accept, from estate of Ruth E. Diefenderfer, Deceased, the parcel of land consisting of approximately 29.07 acres of land identified by Northampton County Tax Map No. L5-18-4-0508.

As there were no questions or comments, Mrs. McHale called for the vote.


The resolution was adopted by a vote of 7-0.

Human Services Committee

Mrs. Neiper advised the Human Services Committee would be meeting Monday, September 29, 2008, and one of the items that would be discussed was the Health Board.

Council Solicitor's Report

Mr. Zito provided a copy of his Solicitor’s Report for this meeting (see Attachment #4).

Adjournment

Mr. McClure made a motion to adjourn.

Mr. Dowd seconded the motion.

The motion passed by acclamation.
Frank E. Flisser
Clerk to Council