A regular meeting of the Northampton County Council was held on the above date with the following present: John Cusick, President; Margaret L. Ferraro, Vice President; Ron Angle; Thomas H. Dietrich; J. Michael Dowd; Bruce A. Gilbert; Lamont G. McClure, Jr.; Ann McHale; Barbara A. Thierry; Frank E. Flisser, Clerk to Council, and Philip D. Lauer, Solicitor to Council.

Prayer

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

Pledge of Allegiance

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

Approval of the Minutes

Mr. Cusick stated as the minutes of the April 28, 2011 meeting have not yet been completed, there were no minutes to approve.

Courtesy of the Floor

Mr. Justus James, American Federation of State, County and Municipal Employees (AFSCME), District Council 88 - advised as much as this Administration had tried to close Gracedale down, he hoped that after the election on May 17, 2011, they would change their focus and use their energy to rebuild Gracedale to allow it to succeed.

With regard to the Administration setting up a meeting with the unions, Mr. James stated as of this afternoon, he had not heard anything from them.

Mr. Angle commented he resented the fact that the term was used that County officials were trying to shut Gracedale down
because that was never an option.

Mr. Gilbert advised everything that was being done was in an effort to preserve Gracedale and to increase and enhance the services it currently provided. He further advised closing it was part of the misinformation that had been spread around and unfortunately, it was being heard by some as such.

County Executive’s Report

Mr. John Stoffa, County Executive, stated he did not have a report.

Consideration of the Collective Bargaining Unit Agreement Between the County of Northampton and AFSCME District Council 88, the Court Appointed Professional Unit

Mr. Cusick advised this Collective Bargaining Unit Agreement was initially considered by County Council at the meeting held April 14, 2011 and was defeated by a vote of 6-2, with 1 absent. He further advised this agreement was again reviewed at the April 28, 2011 County Council meeting, but consideration of it was tabled.

Mr. Cusick stated in order to consider this agreement resolution, a motion had to be made to remove it from the table.

Mrs. McHale made a motion to remove the resolution from the table.

Mr. McClure seconded the motion.

As there were no questions or comments, Mr. Cusick called for the vote.


The motion was passed by a vote of 9-0.

Mrs. McHale introduced the following resolution:

WHEREAS, Northampton County Charter Section 202 (12)
provides that, “the County Council shall have the power to approve any collective bargaining agreements with officers and employees”.

NOW, THEREFORE, IT IS HEREBY RESOLVED by the Northampton County Council that contract years 2010, 2011 and 2012 of the Collective Bargaining Unit Agreement/Arbitration Award between the County of Northampton and AFSCME District Council 88, the Court Appointed Professional Unit, shall be approved this 5th day of May 2011.

Mrs. McHale reminded everyone that Mr. Stoffa, Mr. John Conklin, Director of Administration, and representatives of AFSCME have already signed this agreement.

Mrs. Ferraro stated there were two resolutions in front of County Council tonight. She further stated one was to approve it for all three years, of which there were only one and one half years remaining, and the other would approve years one and two, but not the third year.

Mrs. Ferraro advised she would like to know what the repercussions were if a resolution was not passed because in all her years on County Council, they have always approved contracts that had been negotiated by the Administration and the bargaining unit.

Mr. Lauer stated the Public Employee Relations Act of Pennsylvania specifically provided if there was no agreement, “the impasse shall be submitted to a panel of arbitrators whose decision shall be final and binding upon both parties with the proviso that the decisions of the arbitrators, which would require legislative enactment to be effected, shall be considered advisory only”. He further stated the question became whether all or some of this agreement would require a legislative enactment by County Council in order to effectuate the terms of the arbitration award.

Mr. Lauer advised the County Council could not simply say it was going to cost some money or that money had to be transferred from one line item to another to pay for it because the Supreme Court of Pennsylvania ruled if all that could be shown was that there had to be some money moved around that was
not enough to defeat it. However, if a new tax of some kind had to be levied or a different intensity of taxation had to be levied then that could be a situation where a legislative enactment was required and then it could be considered to be advisory only.

Mr. Lauer stated the most recent Supreme Court pronouncement on this issue was quite clear when it stated a resolution could not be enacted or adopted stating it was going to cost money or may require a future legislative enactment. He further stated if County Council chose to reject all or some portion of the contract, there would have to be a determination on whether it required some legislative enactment to fulfill the terms of the arbitration award and if so, the reasoning for that decision.

Mr. Lauer advised from previous discussions, he felt the consensus was that two of the three years of the arbitration award did not require legislative enactment, but the third might. He further stated County Council would have to decide if that was the case while being aware that there were consequences to it because if the arbitrator’s award was rejected, the other party in the arbitration proceedings may file an Unfair Labor Practice.

Mrs. Ferraro stated she was dismayed, as was most everyone, with the way things were and as the County was entering into new negotiations with Gracedale employees and with other employees, she was hoping that something would be a pacesetter. However, maybe this contract would just have to play out and as new negotiations started, people would have to know immediately right up front that it was not feasible for the County to give what was given in this contract.

Mr. McClure advised County Council was in this situation because this contract was unsuccessfully negotiated, went into arbitration and was rejected. He further advised what they learned at the last meeting was County Council, at least for years 2010 and 2011, had no right to reject it.

Mr. McClure stated he also got the sense that Mr. Lauer did not think it was particularly wise from a legal perspective to treat this award as if it was separable. He further stated when he asked Mr. Karl Longenbach, County Solicitor, he replied it
was because it was not logical to him that it could not be. Therefore, he asked Mr. Lauer what his opinion was tonight on the issue.

Mr. Lauer advised the arbitration award was not designed to be severable because there had been negotiations, discussions and an arbitration at the conclusion of which, it was concluded that a fair and reasonable way to solve the impasse was to award those numbers for those years. Therefore, for County Council to say they would accept the first two, but not the third, seemed in essence to be rejecting it.

Mr. Lauer stated it got a little complicated because he felt a very strong argument could be made that regardless of what County Council did with this document, the Administration was probably going to end up paying and may decide to pay promptly, with or without this agreement, the increases for 2010 and 2011.

Mr. Lauer advised he did not know what would happen if County Council rejected it because of the third year as there could be an Unfair Labor Practice filed. He further advised the direct answer to the question was it was clearly a three year award and he was not sure if County Council could accept two of them, but not the third one.

Mr. McClure asked Mr. Lauer, based on his reading of the case law, was laying down a marker or letting future bargaining units understand, based on this particular contract, that there was a new sheriff in town and things would be tougher a legally appropriate standard for rejecting the contract.

Mr. Lauer stated he did not, however, this situation occurred in limited cases. He further stated it occurred here because there were Court employees involved and the statute specifically provided for Professional Court employees and there could not be an impasse with respect to certain types of employees. He noted if there was an impasse, the arbitration would settle it, however, he did not know if that was the case with other unions so the County may never face this same situation again.

Mr. Dowd commented Mr. Lauer was given a directive to come up with a resolution to the issue, which he did, but not being
totally convinced that what County Council did would carry forward successfully. He further commented his concern was if County Council rejected it, they could be right back here again in a few months with another situation.

Mr. Dowd advised another concern that had been raised was County Council could not have a situation whereby on a long term basis, people who were paying taxes were not getting raises and people who worked for the County were so there had to be some balance there or at least a better control of health care costs.

Mrs. McHale stated the County Executive was responsible for negotiating contracts and even though it had to receive County Council’s financial approval, it was not up to County Council to renegotiate contracts. She further advised the County Executive and his Administration, as well as the employees and their union representatives, had approved this so it was only fair for County Council to approve it.

Mr. Dietrich advised according to the latest quarterly financial report, there was a $7 million dollar deficit in the County’s 2011 budget. He then questioned if County Council was being pressured to vote a certain way, what was the point in voting.

Mr. Lauer stated his understanding of what would occur with respect to 2010 and 2011 if this was approved was that employees would be awarded the differential between what they had received and what they would have received if this contract had been in effect, which he believed was a modest amount that would not result in a new tax.

Mr. Lauer advised with respect to 2012, in order to turn it down legally, County Council would have to make the conclusion that an additional legislative enactment was necessary. He further advised if County Council refused to reject it now, it would be prudent to address it again during the 2012 budget process because the case would have to be made then as well.

When Mrs. Thierry commented that she understood Mr. Lauer to say if the County had the money, it had to pay it, but according to Mr. Dietrich the County did not have the money, Mr. Angle and Mr. Stoffa indicated there was no deficit.

Mr. Angle stated he was voting no for this contract and did
not care what the Courts or the arbitrators say because he was representing the people of Region IV.

Mrs. McHale asked Mr. Stoffa how he planned to calculate the difference or were they able to calculate the difference in the health care contributions as the employees did not receive an increase and their health care contributions did not increase.

Mr. Stoffa advised it was his understanding their contributions were frozen at the existing contract rate.

Mrs. Ferraro stated it would be nice to just forge ahead and not think of the consequences, however, the consequences resulting from County Council’s action tonight could end up costing the County a lot more money. She further stated the Administration was in agreement with the contract, but she believed a tone had been set that things could not remain the same.

Mr. Cusick advised he felt using a percentage of a salary to determine the employee’s healthcare cost did not work because there have been substantial increases in what the County had to pay. He further advised he would like to see the Administration, as part of future negotiations, move toward having the employees pay a percentage of the benefit as their contribution.

Mrs. McHale stated another thing the County should look into was going to private pay rather than self insured because of the costs associated with being self insured.

As there were no further questions or comments, Mr. Cusick called for the vote.


The resolution failed by a vote of 4-5.

Mr. Cusick introduced the following resolution:

WHEREAS, Northampton County Charter Section 202 (12)
provides that, “the County Council shall have the power to approve any collective bargaining agreements with officers and employees”; and

WHEREAS, the Northampton County Council, the governing body of the County of Northampton, met, reviewed and discussed the Collective Bargaining Unit Agreement/Arbitration Award between the County of Northampton and AFSCME District Council 88, the Court Appointed Professional Unit, at the meeting held April 14, 2011. At said meeting, the Northampton County Council rejected the Collective Bargaining Unit Agreement/Arbitration Award by a vote of 2 (yes) - 6 (no); and

WHEREAS, the Northampton County Council met and further reviewed and discussed the Collective Bargaining Unit Agreement/Arbitration Award between the County of Northampton and AFSCME District Council 88, the Court Appointed Professional Unit, at the meeting held April 28, 2011. Consideration of the Collective Bargaining Unit Agreement/Arbitration Award was tabled by a vote of 7 (yes) - 2 (no).

NOW, THEREFORE, IT IS HEREBY RESOLVED by the Northampton County Council that contract years 2010 and 2011 of the Collective Bargaining Unit Agreement/Arbitration Award between the County of Northampton and AFSCME District Council 88, the Court Appointed Professional Unit, shall be approved this 5th day of May 2011. Further, contract year 2012 of the Collective Bargaining Unit/Arbitration Award agreement is hereby rejected. Approval of the 2012 year of the Collective Bargaining Unit/Arbitration Award would require legislative enactment to adopt the 2012 budget and to appropriate sufficient funding in that budget, as a result of which that portion of the Arbitration Award is deemed to be advisory and not binding upon the County.

Mr. McClure advised he believed Mr. Cusick’s resolution was unlawful because just merely stating legislative enactment was required was not a substitute for going through the rigor of demonstrating, especially to make a record for a Court who may review this in the future, the County could not fund the 2012 award.
Mr. Angle agreed with Mr. McClure, therefore, he made a motion to table this resolution until the correct process was followed.

Mr. Dietrich seconded the motion.

As there were no questions or comments, Mr. Dietrich called for the vote.


The motion was adopted by a vote of 5-4.

In response to Mr. Angle’s question as to whether this resolution would be presented in two weeks with the appropriate language, Mr. McClure stated the legal language was in this resolution, but County Council had to demonstrate the necessity, noting stating the necessity and demonstrating it were two different things.

In answer to Mr. McClure’s question as to whether he had been able to determine what the effect County Council’s rejection of the contract would be, specifically since no evidence was presented to support its rejection, Mr. Lauer advised an Unfair Labor Practice could be filed and to the extent that County Council had not articulated reasons supporting the rejection of the arbitrator’s award, the County could have a difficult time defending itself.

Consideration of the Resolution Supporting the Abolishment of the Delaware River Joint Toll Bridge Commission

Mr. Angle stated he was sure everyone was aware of the Delaware River Joint Toll Bridge Commission’s (DRJTBC) decision to increase bridge tolls. He further stated several years ago, when the DRJTBC raised their tolls, several businesses closed up and there was already talk of some businesses doing the same if the tolls increased.

Mr. Angle advised the Charter of the DRJTBC, which was
written in 1932, clearly stated that when the bridge was paid for, it must be free. He further advised DRJTBC had read into the Charter that as long as they had debt, they did not have to free the bridges so for many years they put money into different projects so they would not be without debt. He noted they were sitting on $400 million so whatever debt there was, could be paid off with enough left over to perpetually take care of the bridge.

Mr. Angle stated the Governor of New Jersey, as well as the legislators, were completely on board with abolishing the DRJTBC.

Mr. Angle introduced the following resolution:

R. 47-2011  WHEREAS, on Monday, May 2, 2011, the Delaware River Joint Toll Bridge Commission (Commission) raised tolls on seven bridges, including those on Routes 22, I-78 and I-80. The unanimous vote by the Commission was to increase tolls effective July 1, 2011, from $.75 to $1.00 for automobiles and from $3.25 to $4.00 per axle for trucks; and

WHEREAS, the increases were instituted without adequate public notice or sufficient public input; and

WHEREAS, the massive toll increases during such difficult economic times, while coupled with spiraling fuels costs, will be detrimental to businesses and the public alike and could cause a disastrous further erosion of the economy in our area by causing businesses to relocate out of the Northampton County area; and

WHEREAS, the State of New Jersey is considering legislation (a copy of which is attached hereto and labeled as Exhibit “A”) that would: (1) provide for the abolishment of the Commission, (2) transfer bridges under the jurisdiction of the Commission to the New Jersey or Pennsylvania Departments of Transportation and (3) remove tolls on certain of the bridges.

NOW, THEREFORE, BE IT RESOLVED that the Northampton County Council hereby supports the concept of the legislation offered by the State of New Jersey as set forth in Exhibit “A”. Further, the Northampton County Council urges the Pennsylvania General Assembly to adopt, and the Governor to sign, legislation
similar to the legislation set forth in Exhibit “A.”.

In response to Mrs. Ferraro’s question as to who would be responsible for the bridge, Mr. Angle advised the money currently held by DRJTBC would be used to pay all current debt and the balance would be used to maintain the bridge.

Mr. Dowd stated he had no qualm asking them to rescind the proposed increase, however, he had no faith in the Federal or State government doing anything to maintain the bridge.

Mr. Dietrich agreed with Mr. Dowd as far as the confidence of New Jersey or Pennsylvania successfully maintaining the bridge.

Mr. Cusick advised as a former township supervisor in a bridge community, he felt the DRJTBC was an excellent partner and was responsive to their needs. He further advised he agreed there was a lot of patronage and money wasted, but there were some things the DRJTBC had undertaken that he felt were worthwhile to the communities that were directly impacted.

As there were no further questions or comments, Mr. Cusick called for the vote.


The resolution was adopted by a vote of 5-4.

Economic Development Committee Report

Mr. Dowd stated he invited Mr. David Haines, Chairman of the Lehigh Northampton Airport Authority, to the next Economic Development Committee meeting in June.

In answer to Mr. Angle’s question as to the status of the Tatamy Route 33 Interchange, Mr. Dowd advised the environmental impact studies were done, the design was in progress and they were determining the costs before moving forward with the Tax Increment Financing.
In response to Mr. Angle’s question as to what the plans were for the economic development study that was conducted, Mr. Dowd stated he planned to discuss it at an upcoming Economic Development Committee meeting.

Prison Liaison Report

Mrs. Thierry advised there was an attempted escape at the Prison and she wanted to thank everyone involved in thwarting it.

9-1-1 Liaison Report

Mr. Dietrich stated the Hazardous Mitigation Plan was in its final step before being presented to the Finance Committee, as well as County Council.

Mr. Dietrich advised he attended the Kops and Kids Reading Festival that was held in South Side Bethlehem, noting there was good representation from the County, police and firefighters.

Mental Health/Early Intervention and Development Programs Advisory Board Liaison Report

Mr. Dietrich stated a new applicant for the Mental Health/Early Intervention and Development Programs Advisory Board would soon be presented to the Personnel Committee and County Council. He further stated they were still looking for some additional appointees since they required nine members and with this new appointment, they would have six.

Prison

Mrs. Thierry made a motion for letters of commendation be presented to the two Correction Officers who were responsible for preventing the inmate’s attempt to escape.

Mr. Angle seconded the motion.
Mr. Cusick advised the motion was approved by voice acclamation.

**Farmland Preservation Liaison Report**

Mr. Cusick stated there were still vacant positions for farmers on the Farmland Preservation Board so if anyone knew of someone who might be interested in those positions, please have them send a resume of interest to Mr. Stoffa.

**Kops and Kids Reading Program**

Mrs. Ferraro advised she believed there was going to be another Kops and Kids Reading Program held at the Easton Community Center in early June.

**West Easton Treatment Facility**

In answer to Mr. Angle’s question as to any new developments with regard to the West Easton Treatment Facility, Mr. Cusick stated he had not received anything.

Mr. Stoffa advised there was one appraisal and he was not sure when that may become a reality.

**Adjournment**

Mr. McClure made a motion to adjourn.

Mrs. Thierry seconded the motion.

The motion passed by acclamation.

Frank E. Flisser
Clerk to Council