

# OPINION

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## VIEWING HARRISBURG

### Pa. professors move ahead of pack on same-sex health benefits

By MARTHA RAFFAELE  
Associated Press Writer

HARRISBURG — For gay and lesbian faculty at Pennsylvania's 14 state-owned universities, the wait for health care benefits that cover their partners is almost over.

Domestic-partner health insurance was added outright to the menu of fringe benefits in a tentative contract agreement the faculty union reached last week with the State System of Higher Education. If the union and the system's board ratify the pact in the coming weeks, the professors will become the first unionized state employees to receive domestic-partner health benefits.

Rita Drapkin, a tenured professor at the Indiana University of Pennsylvania, said that means her partner of 30 years will no longer have to pay for more expensive private health insurance that covers only catastrophic illness.

"We've waited a long time for it, but it's about more than the money," said Drapkin, a psychologist at IUPUI's counseling center. "It's about not being second-class citizens."

The old contract that covered the 5,500 members of the Association of Pennsylvania State College and University Faculties included the prospect of same-sex health care benefits, but said the system would provide them only if the state extended similar benefits to other unionized state workers.

That didn't happen. It is up to the board of the Pennsylvania Employees Benefit Trust Fund, which oversees state workers' health care benefits, to decide whether to provide domestic-partner health insurance to

unions representing tens of thousands of employees.

Two years ago, the fund's board — prompted partly by persistent lobbying by the state system faculty union — voted to study the possibility of offering health coverage to same-sex couples and unmarried heterosexual couples who live together. The board set no deadline for completing the study, however, and it has been occupied since then with other concerns relating to the fund's revenue, said David Fillman, the board's chairman.

"It got put on hold," said Fillman, who is also executive director of the American Federation of State, County and Municipal Employees.

The notion of providing benefits to same-sex partners of public employees has rankled conservative Republican state lawmakers, who tried unsuccessfully in recent years to advance legislation that would ban them.

Last week, an activist with an organization that opposes same-sex relationships criticized the domestic partner health insurance provision of the state system's tentative agreement.

"The promotion of domestic partner benefits is not about good business, but about bowing under the pressure exerted from those trying to equate same-sex partnerships to marriage," Diane Gramley, of the American Family Association of Pennsylvania, said in a statement. "They are not the same and any business that works to undermine marriage will ultimately suffer the financial consequences."

For now, the benefits trust fund is adhering to a state law that bans

gay marriage in determining who is eligible for benefits, said Kate Farley, the fund's executive director.

University administrators had "fully expected" that by the end of the faculty union's old contract they would be providing domestic-partner benefits to professors in same-sex relationships who met certain other criteria, system spokesman Kenn Marshall said.

Marshall acknowledged that the issue remained a loose end in the most recent negotiations.

"This time it was still on the table, and there was still a position that (the union) wanted these benefits," Marshall said. "We thought it was appropriate."

The system estimates that only 1 percent of the union will take advantage of the benefits, costing the universities about \$380,000 in a contract valued at \$437 million, Marshall said.

A number of other public and private universities in Pennsylvania already offer domestic-partner benefits, including Penn State University, where about two dozen of 40,000 employees have signed up for them.

The lack of such benefits in the state system has hurt its efforts to fill faculty vacancies, turning off not only applicants in same-sex relationships but also those who simply believe that not offering them is discriminatory, union president Pat Heilman said.

"It's a larger competitive problem than people think," Heilman said.

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## Starring Fred Thompson

WASHINGTON MERRY-GO-ROUND

By DOUGLAS COHN and ELEANOR CLIFT  
WASHINGTON — No wonder Fred Thompson is delaying his official entry into the presidential race. The closer he gets to a formal announcement, the more scrutiny he gets. Initial news accounts were mostly about his acting credits and how much his resume resembles Ronald Reagan's. Now we're learning about his life as a lobbyist, a profession that is opposite to the image he's cultivating of a Washington outsider.

The attacks have the feel of a preemptive strike, giving him a taste of what he is in for should he enter the fray. The media are doing their job in putting a potential new contender under the microscope.

Thompson spent nearly two decades in Washington as a lawyer-lobbyist before he ran for the Senate in 1994. He won that race campaigning as a good old boy in a rented red pickup truck that he drove across Tennessee to win votes. After leaving the Senate in 2003 for a coveted role on "Law and Order," he resumed his lobbying activities.

Thompson touts himself as an outsider who would come in and clean up the Washington mess. But there's nothing more inside than an ex-senator who was a lobbyist before he was a senator, and who then capitalized on the contacts he made in government. There's not a hint of scandal about any of this, but there is plenty of irony. In the Senate, Thompson was a huge advocate of campaign finance reform, speaking out about the corrosive influence of money in politics. That didn't stop him from helping his two sons land lucrative lobbying jobs based largely on family connections. "As Senator Rose, Lobbying Became Family Affair," *The New York Times* observed in a front-page story this week. Steering family members into well-paying lobbying jobs is not unusual in Washington, but it's not a popular theme on the campaign trail.

There's another aspect about Thompson that may bother some voters. He did not serve in the military although he was of draft age during the Vietnam War. Born in 1942, he was 22 years old when the war began in 1964. By then, he was already married with two children, the first born by the time he graduated from high school. His family responsibilities plus his acceptance to law school undoubtedly kept him out of the draft. Still, if elected, he would be another in a long line of Republicans who didn't go to war for whatever reason, but have few qualms about sending other people's children to war. Thompson lines up with his friend, Sen. John McCain, R-Ariz., and the other GOP candidates, in supporting the war in Iraq.

Don't get us wrong, there is a lot to commend Thompson as a candidate. He is an imposing figure and he is plenty smart, having crafted one of the most enduring lines in American politics, "What did the president know and when did he know it?" He was a staff lawyer on the Senate Watergate committee, working for Tennessee Senator Howard Baker, who asked the question that ultimately led to President Nixon's resignation.

Thompson's history and image is that of a reformer, but when you scratch beneath the surface, he is as much a product of Washington as any of the politicians he says are part of the problem.

Given the dissatisfaction with the current field, Thompson could come closest to what Republican voters want in their candidate. He remade himself once before to fit the anti-Washington mood that propelled the GOP into the majority. As an actor, he's trained to adapt to whatever the set demands. He knows what the audience wants, and it's not a Washington lobbyist.

## OTHER VIEWS

### Budget's already late; keep cutting

Pennsylvania has entered a fiscal year without a budget. So what else is new?

And why make a big fuss about it anyway? A late budget is better than a bad budget.

During all five years of Gov. Ed Rendell's time in office, the state's budget process has dragged past the June 30 deadline.

This year, for the first time, Rendell is working with a Democrat-controlled House. Republicans still control the Senate, which had approved a \$27 billion spending plan by a 49-1 vote on June 20.

[Last week], the House shot down that plan by a 102-96 vote — siding with the governor, who is pushing for a \$27.3 billion budget. Rendell had pitched his plan in February. It passed the House in May, then was trimmed by 1 percent in the Senate.

[Last] Monday, Jefferson County's Sam Smith, the House Republican leader, said he doubts a budget will be done [by Sunday].

Rendell said he believes the public is more concerned with the budget process being done well than with getting it done on time. We agree.

We'd like it to be done right and on time. But we'll take right in this case.

And that means cutting the spending down to \$27 billion. Or better yet, cutting it even further.

When the budget moved through the Senate, that organization found about \$263 million in savings over the House-passed budget. Senators knocked out money for the Department of Community and Economic Development (\$130.2 million), Department of Education (\$145.1 million) and the Department of Labor and Industry (\$10.1 million), among others.

But they didn't take money away from those agencies. They reduced the proposed increases to those agencies. Big difference.

But then they also increased spending by \$75.5 million for eight state agencies.

In fact, Rendell had proposed an increase in education funding this year of \$544 million as part of an overall budget increase of \$948 million — nearly a billion dollars — or 3.6 percent over fiscal 2006-07.

In other words, there is a lot more room to cut in this budget.

Sen. Gibson Armstrong, a Lancaster County Republican, said: "We're adamant about living within our means."

Chuck Ardo, a spokesman for the governor's office, told reporters: "We are hopeful that ... everybody will roll up their sleeves, get to work and hammer out a budget document."

Indeed, let's get to work on a budget document that allows us to live within our means — which is less than \$27 billion.

Yes, this is work that should have been done before June 30.

But we hope missing the deadline turns out to be a blessing in disguise.

— The (Johnstown) Tribune-Democrat

## It pays to have a good lawyer

Two legal challenges to Borough Council decisions were rebuffed last week in the Chester County Court of Common Pleas.

In both cases, attorneys for the plaintiffs were simply and unequivocally out-lawyered by the Borough Solicitor firm of Unruh, Turner, Burke & Frees.

In both cases, to out-lawyer did not mean that plaintiff's counsel was out-manuevered by some surprising series of courtly procedural games, though for all we know Unruh, Turner may well be adept in those skills, also.

In both cases, rather, decisions rested on the clarity and care with which the Borough's cases were argued. The legal arguments won the decisions. And those arguments rested on a careful choice of a single salient feature of each case on which the arguments were hung.

In one case, Council member Kendrick Buckwalter (R-West) had asked the Court to declare as unconstitutional the ordinance passed over his objections on December 20, 2006, that "Council members shall receive no compensation relative to his or her duties as members [sic] of Council."

That ordinance came on the heels of negotiations on the 2007 Borough budget, and had been recommended by Rich Kirkner (D-North) as a fitting means of budgetary savings. Buckwalter's objections were not budgetary but legal: he was uncertain whether Council could entertain such an action.

His objections were clarified in the civil complaint filed on his behalf on January 17, 2007, by Phoenixville attorney Richard Breuer, in which the ordinance was argued to be "repugnant to Article 3, §27 of the Pennsylvania Constitution, which states [']No law shall extend the term

of any public officer, or increase or diminish his salary or emoluments, after his election or appointment.[']"

Nonsense, answered (ever so politely) Unruh, Turner's Anthony Verwey, on February 2. The Court has seen this argument before, back in 1881 — and settled the matter then in *Baldwin v. City of Philadelphia*.

Verwey argued that while an ordinance "has the force of law in the community to be affected by it...[a] municipal ordinance is not a law." Quoting *Baldwin*: "There is nothing in the Article, even by implication, that would justify us [the Pennsylvania Supreme Court] in extending the word 'law' to the ordinances of a municipality."

On February 22, Breuer countered. "The holding of *Baldwin* that a municipal ordinance is not a 'law,' was either incorrect then or has become incorrect in light of contemporary jurisprudence...Plaintiff thus submits that the term 'law' in Article 3, §27 includes a municipal ordinance."

Last week, the Court gave Breuer good marks for arguments that were "intriguing," but Judge Thomas J. Gavin was not about to overturn a 126-year-old precedent. "[*Baldwin*] has not since been overruled and remains in law today," Gavin wrote. "I am not at liberty to ignore controlling precedent."

Verwey knew that. The *Baldwin* peg was the right one, the only one, on which to hang the argument.

In the second, older case, the appeal of the Phoenix Property Group (PPG) to Council's June 26, 2006, decision on its proposals for Parcels "O" and "Q" on the steel site,

Unruh, Turner's work was nothing short of elegant. It began with Andrew Rau's shepherding the issues through two months of public hearings. It ended with a piece of legal literature.

Here, the peg was the steel site's Master Development Plan and the Unified Development District zoning ordinance that controlled the Plan.

Hanging all of its arguments on the Master Plan peg enabled Council to regard PPG's two applications for conditional use approval as a single effort "to amend a prior conditional use grant" made with Master Plan approval in August, 2001.

The Borough's zoning ordinance establishes the terms on which Council's decision must be made, Rau's argument went. The ordinance "specifically authorizes an amendment...[if] the Borough determines that the proposed amendment is within the approved scope of the original [plan], and only to add detail and/or reflect engineering changes," he wrote, citing the ordinance. "All other amendments to an approved Master Development Plan will require a new Master Development Plan and Map Change Application unless the Borough determines that the proposed amendment is within the approved scope of the original...."

That enabled Council to stand on other precedents, notably *In Re: Appeal of Cutler Group* (2005) and *Manor Healthcare Corp. v. Lower Moreland Township* (1991), to place on PPG the "duty to present evidence" and "the burden of persuading the governing body that the proposed use satisfies the objective

requirements of the ordinance."

Based on that central peg of the Master Plan, Council judged requirements as to Parcel "O" were met and, with conditions, approved amendment. But also based on the Master Plan, Council judged requirements as to Parcel "Q" were not so met, and rejected amendment. In an appeal drafted by PPG attorney Chris Cummings, PPG appealed the "Q" denial and, narrowly, two conditions of the approval of "O" on July 20, 2006.

But the Court of Common Pleas agreed with the Borough's argument down the line. Judge Robert J. Shenkin wrote that PPG's applications were indeed a single "application to amend a previously approved Master Development Plan." Agreement on that first principle, agreement on the case's most salient feature, could determine the Court's judgment on related issues. Rau knew that.

And so: "It was PPG's burden to demonstrate compliance with the specific criteria of the [Zoning] Ordinance," Shenkin wrote. "That point was never reached in these proceedings. We find that there was substantial evidence to support the Borough's conclusion that PPG did not present sufficient credible evidence to demonstrate compliance."

It pays to have a good lawyer. Borough Council pointed the direction it wanted to head in each of these cases, but, being no foolish client, let the lawyers shape the arguments.

Actually, what the public's discovered over the last year and a half is that Council did its work best in January, 2006, when it hired Unruh, Turner, Burke & Frees in the first place.

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## REMEMBER TO CALL

Sound Off is back on line and we're anxious to hear from our readers. Some rules for Sound Off: Callers must identify themselves and give their telephone number before leaving a message. This information will not be published, but it is necessary for verification and in case there is a question about the message. Keep your message short and on one topic for a better chance of having it published. To contact Sound Off dial (610) 650-8088.

## REMEMBER TO WRITE

The Phoenix wants to publish your letters. Here are a few guidelines:

- Letters should be as brief as possible. The Phoenix reserves the right to edit letters for any reason. Limit letters to 400 words.

- All letters must be signed. The Phoenix will not publish anonymous letters for any reason.

- Please include your telephone number. It will not be published, but may be needed to verify that you are the writer of the letter.

- Letters should be of local interest or by local writers.

- Longer letters may be selected for publication as a guest column, at the prerogative of the newspaper.