1. Can the Borough Council President sign a collective bargaining agreement (“CBA”) without a Council vote or authorization? Can a signed CBA be undone by the new Council in January once seated?

The Borough Council must ratify the CBA.[[1]](#footnote-1) While the Council President can be the one to sign the actual document, he alone does not have the authority to enter into CBAs on behalf of the Borough.

There is Pennsylvania case law prohibiting governing bodies from binding their successors with respect to agreements involving governmental functions.[[2]](#footnote-2) One specific case from the Commonwealth Court involved a Chief of Police being hired the December after an election.[[3]](#footnote-3) The Court held that, absent a showing of urgency, necessity, public interest and absence of bad faith or ulterior motive, the eleventh-hour hiring was unenforceable because it was against public policy. However, there is also case law to the contrary on this very issue. Unfortunately it is very fact specific regarding such things as negotiations, exigent circumstances, etc..

Given the belief that the CBA has already been executed, without authorization from the Council, along with the case law suggesting an inability to bind a successor board, the new Council in January may have argument that termination is *possible* as to the CBA signed by the prior Council,[[4]](#footnote-4) re-opening the door to negotiations.

1. A new council will be created in January, what can they do regarding the budget? Can they make changes to the budget of more than 15%?

In January, Council can reopen the budget, amend it and levy any taxes to conform with their new budget.[[5]](#footnote-5) There is no limit as to how much Council can change a line item; there is no 15% limit.[[6]](#footnote-6)

1. McAdoo Borough v. Com., Pennsylvania Lab. Rel. Bd., 485 A.2d 761, 766 (Pa. 1984) (A collective bargaining agreement was properly ratified and binding upon the Borough after it was voted on by Council) [↑](#footnote-ref-1)
2. See Borough of Pitcairn v. Westwood, 848 A.2d 158, 161–62 (Pa. Cmmw. 2004) See also, e.g., Fraternal Order of Police v. Hickey, 499 Pa. 194 (1982); Scott v. Phila. Parking, 402 Pa. 151 (1960); Mitchell v. Chester Hous. Auth., 389 Pa. 314 (1957); Born v. City of Pittsburgh, 266 Pa. 128 (1920); Moore v. Luzerne County, 262 Pa. 216 (1918); McCormick v. Hanover Township, 246 Pa. 169 (1914); State Street Bank & Trust Co. v. Commonwealth Treasury Dep't, 712 A.2d 811 (Pa.Cmwlth.1998) [↑](#footnote-ref-2)
3. Pitcairn at 161-162. [↑](#footnote-ref-3)
4. See Lobolito, Inc. v. N. Pocono Sch. Dist., 755 A.2d 1287 (Pa. 2000)( A local government contract that exceeds the period of time when the officials making it are in office may be terminated by their successors, without cause, irrespective of the termination date or other procedures for termination set forth in the contract) [↑](#footnote-ref-4)
5. 8 Pa.C.S.A. § 1311 “During the month of January next following a municipal election, the council of a borough may amend the budget and the levy and tax rate to conform with its amended budget. A period of ten days' public inspection at the office of the borough secretary of the proposed amended budget, after notice by the borough secretary to that effect is published once in a newspaper of general circulation, must intervene between the proposed amended budget and its adoption. An amended budget must be adopted by council on or before the 15th day of February.” [↑](#footnote-ref-5)
6. Council should be aware that there are limits to the millage for specific items, they are outlined in 8 Pa.C.S.A. § 1302. [↑](#footnote-ref-6)