IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Michael T. Slupe	:	**CASES CONSOLIDATED**
	:	
v.	:	No. 1002 C.D. 2025
	:	
Butler County Retirement Board,	:	
Appellant	:	
	:	
Michael T. Slupe,	:	
Appellant	:	
	:	
v.	:	No. 1048 C.D. 2025
	:	
Butler County Retirement Board	:	Argued: June 16, 2026

BEFORE: HONORABLE PATRICIA A. McCULLOUGH, Judge
HONORABLE MATTHEW S. WOLF, Judge
HONORABLE MARY HANNAH LEAVITT, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION BY
JUDGE WOLF FILED: September 11, 2026

In these consolidated matters, the Butler County Retirement Board (Board) and Michael Slupe file cross-appeals to this Court from a July 11, 2025 order of the Court of Common Pleas of Butler County (trial court), which reversed a prior Board adjudication affirming Michael Slupe's placement in the Butler County Retirement System's 1/60th pension class. The Board argues for the reinstatement of its adjudication on the grounds that it was adequately supported by record evidence and consistent with Butler County's (County) pension law. Sheriff Slupe contends that the Board's appeal should be quashed and, alternatively, that the trial court's order is incorrect to the extent it rejected his constitutional arguments. For the reasons that follow, we affirm in part, reverse in part, and reinstate the Board's adjudication in full.

I. Background

In 1971, the County created its Employees' Retirement System (BCERS) in accordance with the provisions of the County Pension Law.[1] Reproduced Record (R.R.) at 78a. By a January 2, 2004 motion, the Board moved all County employees into BCERS's 1/40th pension class as defined in Section 7(a) of the County Pension Law.[2] *Id.* at 117a. The change of pension class, which effectively increased the County's contribution to all employees' pensions, was made retroactive to each employee's start date. *Id.* The Board decided to revise that policy at a March 25, 2009 meeting, citing the then-recent economic downturn. *Id.* at 113a. As described by an abstract of the meeting minutes, the Board thus adopted a motion placing "all new hires as of April 1, 2009" into BCERS's 1/60th class in order to reduce expenses. *Id.* at 113a-14a.

On November 3, 2009, Sheriff Slupe won election as the County's sheriff, an office that he continues to hold at the time of this decision. R.R. at 165a. In anticipation of his imminent County employment, Sheriff Slupe signed an agreement on December 15, 2009, acknowledging that he was to be entered into BCERS as a

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[1] Act of August 31, 1971, P.L. 398, *as amended*, 16 P.S. §§ 11651-11683.

[2] Section 7(a) provides a schedule of "classes" that determine the portion of county employees' salaries that are to be contributed to the pension fund. 16 P.S. § 11657(a). Under Section 7(a), these range from a so-called 1/120th class (with an employee contribution rate of 5%) to a 1/60th class (with an employee contribution of 9%). *Id.* Section 7.1(a) additionally permitted county pension boards to create additional 1/50th or 1/40th classes from 2003 until 2007. Added by the Act of December 16, 2003, P.L. 236, 16 P.S. § 11657.1(a). In other words, a lower denominator in the ordinal fraction denotes a more generous contribution by the County to that class's pensions.

member of its 1/60th pension class. *Id.* at 110a. That agreement went into effect when Sheriff Slupe formally took office on January 4, 2010. *Id.*

On January 24, 2022, through counsel, Sheriff Slupe sent a letter to the County, in which he asserted that his placement into the 1/60th pension class violated the Pennsylvania Constitution's prohibition against changes to elected officials' compensation during their terms in office.[3] R.R. at 119a. Sheriff Slupe reasoned that any change in benefits of a public office "must occur prior to the date fixed by law for candidates to withdraw their names from nomination." *Id*. at 119a-20a (citing *Myers v. Sch. Dist. of Newtown Twp.*, 153 A.2d 494, 544 (Pa. 1959)). Given that the deadline for withdrawing his candidacy occurred on March 25, 2009, Sheriff Slupe argued that he should be placed into the 1/40th class pursuant to the Board policy in effect when he could no longer withdraw his candidacy. *Id*. at 119a. The Board denied that request in a November 2, 2023 letter. *Id*. at 8a.

Sheriff Slupe filed an appeal of the Board's denial, and a hearing was held on the matter before Hearing Officer Gianni Floro on April 12, 2024. *Id.* at 36a. At the hearing, Sheriff Slupe reiterated his claim that placement within the 1/60th class was unconstitutional; he then argued in the alternative that the Board's 2009 policy change did not apply to elected officials in the first place. *Id.* at 38a-39a. In testimony, Sheriff Slupe also acknowledged signing an agreement that he would enter the retirement system in the 1/60th class but asserted that he was never made aware of a reason to object to that action. *Id.* at 44a. In its defense, the Board argued that the class change applied to all *members* of the retirement system, whether they were appointed or elected. *Id.* at 45a. The Board further asserted in a post-hearing

[3] Specifically, article III, section 27 of the Pennsylvania Constitution provides that "[n]o law shall extend the term of any public officer, or increase or diminish his salary or emoluments, after his appointment." PA. CONST. art. III § 27.

submission that the definition of county employee provided in the County Pension Law controls in this case, and that such definition encompasses persons "elected or appointed." *Id.* at 153a-54a.

After the hearing's conclusion, the hearing officer drafted a report for the Board stating his conclusion that Sheriff Slupe "is entitled to a retirement benefit consistent with the 1/60th class, as that was applicable at the time he became the Sheriff." Board's Br., Appendix C, Report, Conclusion of Law (C.L.) No. 40. The hearing officer explained that the certification of the 1/60th class in 2009 was a proper exercise of the Board's authority under the County Pension Law, that the 1/60th class was in place at the time Sheriff Slupe took office, and that Sheriff Slupe's placement in the class does not violate his constitutional rights, as "he chose to participate" in BCERS as a member of that class. *Id.*, C.L. Nos. 36-38. Moreover, the hearing officer expressed concern that the retroactive placement of Sheriff Slupe into the 1/40th class "would subject all the other plan participants to an inequitable result not intended by the [l]egislature." *Id.*, C.L. No. 39. Finally, the hearing officer reasoned that the selection of the contribution rate "was a mere ministerial administrative function, which could not have taken effect until [Sheriff Slupe] was sworn into office." *Id.*, C.L. No. 41. In a July 30, 2024 adjudication, the Board adopted the hearing officer's factual findings and legal conclusions in full. Board's Br., Appendix B.

Sheriff Slupe appealed from the Board's adjudication to the trial court, which held oral argument on the matter on May 16, 2025, without taking new evidence. R.R. at 200a. In a July 11, 2025 order, the trial court reversed the Board's decision and instructed it to place Sheriff Slupe in the County retirement system's 1/40th class. Board's Br., Appendix A. In an accompanying opinion, the trial court rejected

Sheriff Slupe's argument that his placement in the 1/60th class violated the Pennsylvania Constitution because article III, section 27[4] prohibits changes of salary or emoluments for public officers after, but not before, their election. *Id.*, Mem. Op. at 3. However, the trial court agreed with Sheriff Slupe that the 2009 Board motion placing new hires into the 1/60th class did not pertain to elected officials. *Id.* at 4. The trial court explained that the 2004 Board motion placed all employees into the 1/40th class, regardless of whether they were hired or elected. *Id.* By contrast, the 2009 policy change only affected the pension class of "all new hires"; as an elected official, the trial court reasoned, Sheriff Slupe "could never have been considered to have been 'hired.'" *Id.* at 4-5.

The Board timely appealed from the trial court's order, maintaining in a 1925(b) statement that its conclusions had been supported by substantial evidence and that the trial court's interpretation of the abstract of minutes from the 2004 and 2009 meetings constituted "new and substitute factual findings." R.R. at 273a. Sheriff Slupe's timely cross-appeal followed. *Id.* at 283a. This Court's Prothonotary assigned a separate index number to the latter appeal, but the matters were consolidated by a subsequent Court order.

II. Issues

On appeal,[5] the Board argues that its adjudication confirming Sheriff Slupe's placement within the 1/60th pension class "was supported by substantial evidence and the benefit structure dictated by the County Pension Law." Board's Br. at 19. The Board thus contends that the trial court substituted its own findings and

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[4] PA. CONST. art. III, § 27.

[5] We have reordered the Board's and Sheriff Slupe's appeal arguments for clarity and ease of disposition.

conclusions for the Board's in contravention of its clearly mandated standard of review and the relevant rules of statutory construction.

In his cross-appeal, Sheriff Slupe contends that the Board's appeal should be quashed, as the Board failed to vote on filing the appeal during a meeting open to the public in violation of the Sunshine Act.[6] In the alternative, Sheriff Slupe maintains that his placement in BCERS's 1/60th pension class violated article III, section 27 of the Pennsylvania Constitution.

III. Discussion

Section 4(a) of the County Pension Law provides for the creation of retirement systems for the employees of nearly all of the Commonwealth's counties. 16 P.S. § 11654(a). All county employees are "required to become a member of the retirement system" at the beginning of their employment; membership for a "county officer," by contrast, is optional. 16 P.S. § 11660. "County employe[e]" is defined in Section 2 of the County Pension Law as

> any person, whether elected or appointed, who is employed by the county, the county institution district, in the county prison or in any other institution maintained by the county from county moneys, or who is employed by any county or State official and paid by such official from moneys appropriated by the county for such purpose, whose salary or compensation is paid in regular periodic installments or from fees collected by his office, but shall not, except as hereafter provided, include any person employed after the effective date of this act on a part-time basis.

16 P.S. § 11652(2). Because BCERS is a retirement system created pursuant to the County Pension Law, the Board is authorized to manage it within the County

[6] Sheriff Slupe made the same claim in an "Application for Relief in the Nature of a Stay and/or Quashal Pursuant to Pa.R.A.P. 1703 et. seq.," (Application to Quash) which was filed in this Court on September 4, 2025. In a January 6, 2025 order, we denied the Application to Quash.

Pension Law's parameters. *MacElree v. Chester Cnty.*, 667 A.2d 1188, 1195 (Pa. Cmwlth. 1995). Among other powers, the Board is permitted by Section 7(b) of the County Pension Law to place incoming county employees within any of five classes, commonly referred to as the 1/120th, 1/100th, 1/80th, 1/70th, and 1/60th classes; separately, Section 7.1 permitted the creation of 1/50th and 1/40th classes until June 30, 2007. 16 P.S. § 11657(b), 16 P.S. § 11657.1.

In this case, the parties agree that Sheriff Slupe became a BCERS member at the beginning of his County employment on January 4, 2010. At that time, all new county employees were being brought on as members of BCERS's 1/60th class; this was a recent change, however, as County employees were brought on as members of the 1/40th pension class between January 2, 2004, and April 1, 2009. The instant dispute originated when Sheriff Slupe sought retroactive placement into the 1/40th class, claiming that the Board policy in place on March 25, 2009—the last day on which he could withdraw his candidacy for the office of Sheriff—was the one determining the class in which he belonged. Disagreeing, the Board adopted the hearing officer's position that Sheriff Slupe opted into BCERS membership when he became Sheriff, at which time all employees were brought on as 1/60th class members. The trial court reversed on appeal, holding that the policy change effective April 1, 2009 did not pertain to elected officials such as Sheriff Slupe, as indicated by the Board's meeting minutes.

A. The Board's Appeal Arguments

On appeal, the Board maintains that Sheriff Slupe was properly brought on as a member of BCERS's 1/60th class when he consented to the Board's terms in the member contribution agreement, which was signed by the parties in December 2009. The Board explains that it "properly interpreted its 1/60th class as applicable to [Mr.]

Slupe because it took effect before he entered the system and because the General Assembly never intended that he be placed into the preceding . . . class due to his status as an elected official." Board's Br. at 20. In defense of the trial court's decision, Sheriff Slupe maintains that the Board "knowingly created a bifurcated pension plan" in 2009, pointing to the Board meeting's minutes as evidence that the change to the 1/60th class only pertained to "new hires," not newly elected officials. Slupe's Br. at 8; *see also* R.R. at 113a-14a.

We agree with the Board. Its conclusion that Sheriff Slupe was rightly made a member of the 1/60th class, and has remained so since taking office in 2010, is supported by the plain language of the parties' December 2009 agreement. By relying on the abstract of minutes from the March 25, 2009 Board meeting in its reversal, the trial court essentially substituted its own factual findings for the Board's. In so doing, we conclude that the trial court exceeded its standard of review under Section 754(b) of the Local Agency Law, which provides:

> **Complete record.--**In the event a full and complete record of the proceedings before the local agency was made, the court shall hear the appeal without a jury on the record certified by the agency. After hearing the court shall affirm the adjudication unless it shall find that the adjudication is in violation of the constitutional rights of the appellant, or is not in accordance with law, or that the provisions of Subchapter B of Chapter 5 (relating to practice and procedure of local agencies) have been violated in the proceedings before the agency, or that any finding of fact made by the agency and necessary to support its adjudication is not supported by substantial evidence. If the adjudication is not affirmed, the court may enter any order authorized by 42 Pa.C.S. § 706 (relating to disposition of appeals).

2 Pa.C.S. § 754(b); *see also In re Thompson*, 896 A.2d 659, 668 (Pa. Cmwlth. 2006) (explaining that a reviewing court is not permitted under Section 754(b) "to substitute its judgment on the merits for that of the municipal body"). Accordingly, we also reject Sheriff Slupe's argument that the trial court's decision must be affirmed because there is evidence in the record allegedly supporting it. Merely when evidence exists in the record that could support a contrary conclusion, it does not follow that an agency's findings of fact are not supported by substantial evidence. *Stage Road Poultry Catchers v. Dep't of Lab. and Indus., Off. of Unemployment Comp. Tax Servs.*, 34 A.3d 876, 886 (Pa. 2011).[7]

B. Slupe's Appeal Arguments

1. Sunshine Act

As to his arguments regarding the perfection of the appeal of this matter by the Board, Sheriff Slupe first contends that the Board's appeal from the trial court's order should be quashed in its entirety because the Board failed to abide by the requirements of the Sunshine Act, 65 Pa.C.S. §§ 701-716. Sheriff Slupe explains that the Board's decision to appeal constituted an "official action" as defined at 65 Pa.C.S. § 703, and, as such, warranted a meeting open to the public as called for by 65 Pa.C.S. § 704. Sheriff Slupe then contends that the decision to appeal the trial court's order was made during an executive session preceding a regular Board meeting that occurred on August 5, 2025; in support, Sheriff Slupe attaches the

[7] The Board additionally argues that the County Pension Law does not authorize the separate treatment of members who enter the retirement system during the same class period. *See* Board's Br. at 21-25. Because the evidence of record clearly establishes that Sheriff Slupe was placed as a member in the 1/60th class, we decline to reach the Board's alternative statutory interpretation argument.

abstract of minutes from said meeting as an appendix to his Brief to this Court.[8] As a result of this alleged failure, Sheriff Slupe contends that the Board's appeal to this Court is "a nullity as it has been taken in contravention of the Sunshine Act" and should be quashed. Slupe's Br. at 22.

In response, the Board asserts that the only "official action" relevant to the instant litigation occurred at a July 30, 2024 public meeting. *See* Board's Brief in Response at 6. The Board explains that the August 5, 2025 executive session was only to consult with its outside counsel on the instant litigation and that no Board vote was required or taken.

We deny Sheriff Slupe's request to quash the Board's appeal, as he has failed to establish a legitimate basis for doing so. It is well settled that the complainant carries the burden of proof of a Sunshine Act violation, owing to "the presumption of regularity and legality that obtains in connection with proceedings of local agencies." *Kennedy v. Upper Milford Twp. Zoning Hearing Bd.*, 834 A.2d 1104, 1123 (Pa. 2003). In this instance, the abstract of minutes supplied by Sheriff Slupe as an appendix to his Brief fails to make a *prima facie* showing of a Sunshine Act violation. Instead, the document only indicates that the Board held an executive session with its counsel to discuss a privileged matter, which is a valid ground for a closed-door executive session.[9] In the absence of such a showing, we must presume the regularity and legality of the Board's proceedings.

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[8] In relevant part, the abstract of minutes from the August 5, 2025 meeting states that "[a]n [e]xecutive [s]ession was convened at 9:00 a.m. to consult with [i]ndependent [c]ounsel pursuant to attorney-client privilege. No action was taken." Slupe's Br., Appendix A. at 1.

[9] *See* 65 Pa.C.S. § 708(a)(4) (providing that an agency may hold an executive session to "consult with its attorney or other professional advisor regarding information or strategy in connection with litigation or with issues on which identifiable complaints are expected to be filed").

2. Constitutional Issue

Lastly, Sheriff Slupe maintains that his placement in the 1/60th pension class is in violation of article III, section 27 of the Pennsylvania Constitution's prohibition of any changes to an official's compensation "after his election or employment." PA. CONST. art. III § 27. In support, Sheriff Slupe refers to *Myers v. School District of Newtown Township*, 153 A.2d 494, 496 (Pa. 1959), in which our Supreme Court held that a tax collector's salary could not be adjusted during his tenure in office under the version of Section 36.1 of the Local Tax Collection Law then in effect.[10]

This argument, too, is unavailing. As the trial court aptly noted, article III, section 27 of the Pennsylvania Constitution prohibits changes in salary and emoluments *after election*, which is not even alleged to have occurred in this case. Sheriff Slupe argues that, under *Myers*, the constitutional protection of his compensation took effect on March 25, 2009, the deadline for withdrawal of his candidacy. We think it clear that the reference in article III, Section 27 to "election or appointment" does not mean the last date to withdraw from an election contest. Sheriff Slupe himself concedes in his Brief that he was "first elected Butler County Sheriff on November 3, 2009. Appellee Brief at 5. *Myers* is inapposite, as it only involved the Court's interpretation of a provision of the Local Tax Collection Law—long since amended—and does not mention the Pennsylvania Constitution. Accordingly, we conclude that the trial court did not err in rejecting Sheriff Slupe's constitutional argument.

IV. Conclusion

For the foregoing reasons, we reverse the trial court's order to the extent that it reversed the Board's adjudication and reinstate that adjudication, which is legally

[10] *See Myers*, 153 A.2d at 496; *see also* Act of May 25, 1945, P.L. 1050, 72 P.S. § 5511.36a for the version now in effect.

sound and adequately supported with substantial evidence. We affirm the portion of the trial court's order that concluded Sheriff Slupe's argument under article III, section 27 of the Pennsylvania Constitution was without merit.

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MATTHEW S. WOLF, Judge

Judge Wallace did not participate in the decision in this matter.

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Michael T. Slupe	:	**CASES CONSOLIDATED**
v.	:	No. 1002 C.D. 2025
Butler County Retirement Board, Appellant	:	
Michael T. Slupe, Appellant	:	
v.	:	No. 1048 C.D. 2025
Butler County Retirement Board	:	

O R D E R

AND NOW, this 11th day of September 2026, the order of the Court of Common Pleas of Butler County in the above-captioned matter, dated July 11, 2025, is hereby AFFIRMED in part and REVERSED in part. The order is AFFIRMED to the extent that it denied Michael T. Slupe's claim of a violation of article III, section 27 of the Pennsylvania Constitution by the Butler County Retirement Board (Board). PA. CONST. art. III § 27. The order is REVERSED in all other respects, and the Board's adjudication in the above matter, dated July 30, 2024, is hereby REINSTATED.

MATTHEW S. WOLF, Judge

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

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Butler County Retirement Board	:	Argued: June 16, 2026

BEFORE: HONORABLE PATRICIA A. McCULLOUGH, Judge
HONORABLE MATTHEW S. WOLF, Judge
HONORABLE MARY HANNAH LEAVITT, Senior Judge

OPINION NOT REPORTED

CONCURRING OPINION
BY JUDGE McCULLOUGH FILED: September 11, 2026

I join the Majority Opinion in full. I write separately only to emphasize that, even assuming that the County Pension Law[1] permitted the creation of different classes of pension plan participants based on employment status as either "hired" or "elected," the record here establishes that the Butler County Retirement Board (Board) did not in 2009, nor has it ever, established such classes.

First, none of the plan documents from 1971 forward appear to make any distinction between hired and elected employees as to applicable plan terms, including accrual rate. The plan documents merely permit elected employees to opt

[1] Act of August 31, 1971, P.L. 398, *as amended*, 16 P.S. §§ 11651-11683.

out of plan participation. Once elected employees choose to participate, however, their pensions are governed by the same terms, including accrual rates, that apply to all county employees, as determined by their date of entry. *See* Reproduced Record (R.R.) at 75a-91a; 122a-41a.

Although the plan documents at times use the word "hire," they do not contain alternative calculations or terms for employees who are "elected." Thus, the date of "hire" appears to be used somewhat loosely in the plan documents to refer to the date an employee enters the plan as a "new member." If "hired" is a term of art restricted literally to "hired" employees, then the plans would be bereft of any terms applicable to elected officials. That is an unreasonable interpretation of the plan documents. *See* R.R. at 23a, 25a, 27a, 128a, 132a.

Second, although the Board meeting minutes from March 25, 2009 refer to "new hires," the January 2, 2004 Board meeting minutes also refer to "hire" dates when discussing whether to change the accrual rate to 1/40th for all employees. The term "hire" again appears to have been used generically by the Board without making any actual distinction between hired and elected employees. If the Board's reference to "hires" in meeting minutes truly makes the difference, then the 2004 plan would not apply to Sheriff Slupe either. *See* R.R. at 116a-17a.

In sum, the plan documents and meeting minutes in the record adequately support the Board's determination that the 1/60th accrual rate applies to Sheriff Slupe and all other Butler County employees hired or elected on or after April 1, 2009. As noted by the Majority Opinion, the trial court supplanted the Board's findings with its own in this respect, which exceeded its scope of review.

PATRICIA A. McCULLOUGH, Judge