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ABSTRACT

Few laws enacted by the Pennsylvania General Assembly have been more profoundly felt than Act 195 of 1970, which granted teachers and other public employees the right to bargain and to strike. In July 1992, after years of disruptive teacher strikes, a school strike reform bill was passed in the form of Act 88. This resource book presents a historical overview of collective-bargaining rights in Pennsylvania public education, an article-by-article review of both Act 88 and Act 195, the responsibilities and regulations of state agencies, impasse procedures under Act 88, and suggestions for preparing for successful negotiations. Appendices contain the texts of Act 88 of 1992, Act 195 of 1970, and Act 84 of 1988; sample forms used by the Bureau of Mediation and the Pennsylvania Labor Relations Board (PLRB); a schedule of rate and costs adopted by PLRB; mediation resources; and a glossary. (LMI)

# Public School Negotiations

## A Complete Guide to Collective Bargaining in Pennsylvania Public Education









Published by the Pennsylvania School Boards Association

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# Preface

Few laws enacted by the Pennsylvania General Assembly have been more profoundly felt than Act 195 of 1970, which granted teachers and other public employees the right to bargain and to strike. Intended to heal the wounds of labor unrest, that law instead produced more distress. Pennsylvania in the ensuing years quickly became the nation's leader in school strikes.

The year 1991 will be remembered as a time when some significant forces converged. Among them was the ongoing effort by PSBA and other interested groups to secure meaningful school strike reform. In fact, school directors across the state targeted the issue as a top legislative priority for the association. The first school strike bill ever to be moved to the floor of either chamber in the General Assembly was SB 727. After months of legislative debate and maneuvering, the bill received nearly unanimous votes in both chambers. The new law – Act 88 of 1992– took effect July 9, 1992. School strike reform, elusive for more than 20 years, finally had been enacted.

Included in this resource is a clear historical reference to collective bargaining rights in Pennsylvania public education, an article-by-article review of both Act 88 and Act 195, the responsibilities and regulations of state agencies, impasse procedures under Act 88, and suggestions for preparing for successful negotiations.

By using this guidebook, school directors and administrators will gain a better understanding of the bargaining process and their options at each stage.

*Joseph V. Oravitz*
*Executive Director*

# Acknowledgements

*Public School Negotiations* provides a complete guide to collective bargaining in Pennsylvania public education. Reflected in this edition is the historical information from PSBA's *Act 195 Handbook*, to which this publication is the successor.

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# Legislative history of collective bargaining rights in Pennsylvania public education

Public sector labor relations in Pennsylvania underwent a dramatic evolution from the late 1940s through the early 1990s. Initially, state law prohibited public employees from bargaining and striking. All that changed in 1970, when a law enacted in response to growing pressure from teacher and other public employee unions, gave rise to virtually unrestrained strike activity in the public schools. Public policy shifted again 22 years later when, as a result of an outcry from citizens, the General Assembly imposed the first restrictions on school employees' right-to-strike. How did this evolution take place?

## Development of Act 195

Few laws ever enacted by the General Assembly have been more profoundly felt than Act 195 of 1970, which granted teachers and other public employees the right to bargain and to strike. That law, intended to heal the wounds of labor unrest, instead produced even more distress. Pennsylvania in the ensuing years quickly became the nation's leader in school strikes.

Prior to the passage of Act 195, public employers and public employees were governed by Act 492 of 1947 – the No-Strike Law, which effectively ruled out binding collective bargaining and prohibited strikes. People who engaged in a strike were subject to automatic discharge. The law provided for grievance panels to serve as public sounding boards for employee complaints.

Exclusive collective bargaining rights between public employers and representatives of public employees, however, not only were un-

authorized but were determined by the courts to be impermissible. Since under this law there could not be a recognized bargaining agent, there was no way to impose penalties or forfeitures on any recognized employee organization.

Because under the 1947 law there could not be a recognized bargaining agent, all penalties for violations were applied to employees individually rather than to employee organizations. The courts generally refused to uphold the provisions of the law; thus, the 1947 No-Strike Law effectively became unenforceable.

It wasn't solely the ineffectiveness of Pennsylvania's 1947 act that brought on the clamor for change, however. In the 1960s growth in public employment was rapid. Unions began pressing for organizational rights, primarily because private unions saw an entirely new vista of membership in the public sector to counter a declining union membership in the private sector.

It was obvious by 1965 that Pennsylvania ultimately would have a collective bargaining law for public employees. The trend was set in motion in 1962 when President John F. Kennedy issued an Executive Order permitting federal employees to form employee organizations. That action spawned the various public employee laws that exist today in one form or another in many states.

President Kennedy's order also had the effect of encouraging employee groups to pressure school boards and other local governments (county and municipal) into recognizing exclusive bargaining agents and entering into negotiated agreements. At the same time, these efforts set the stage for statewide action by employee unions.

The American Federation of Teachers, long before the passage of Act 195, held the conviction that the right to organize, to bargain collectively and to strike were basic rights for all employees, including those in the public sector.

The Pennsylvania State Education Association, the largest teacher union in the state, soon endorsed similar positions, including the right to strike. In 1968 both teacher unions teamed up with other public employee groups to push for a collective bargaining law. In March of that same year, more than 20,000 angry teachers and others marched on Harrisburg pressing for passage of a collective bargaining law and additional school funding.

Faced with the need to take action, Governor Raymond P. Shafer formed a commission in 1968 to review the issue of public employee bargaining and to make recommendations for revising the 1947 "no-strike" law. The statewide panel was commonly known as the Hickman Commission, because it was chaired by Leon E. Hickman, a rec-

ognized labor attorney and vice president of ALCOA. Extensive hearings were held throughout the state as the commission began to forge its recommendations.

While the final recommendations of the Hickman Commission generally were incorporated into legislation by the state Senate (SB 1021), alternate proposals abounded in the Legislature during the 1969-70 session. PSBA drafted legislation – SB 518 – which embraced many of the Hickman Commission recommendations; PSEA and the AFL-CIO joined in writing HB 1443.

All three bills repealed the 1947 No-Strike Law and each provided for formation of bargaining units as determined by a state agency. All three proposals provided for designation of exclusive bargaining unit representatives and outlined impasse procedures. Each prescribed penalties for employees and their unions in the event of illegal strikes.

Following months of intense legislative debate, in the summer of 1969 employer groups effectively blocked the passage of the union-backed HB 1443. After it was evident that public employer groups throughout the state, spearheaded by PSBA, would resist pressures of employee organizations for a liberal bargaining bill, a new and basically well-constructed bill – SB 1333 – emerged and eventually was signed by the governor. The new law – Act 195 – took effect on Oct. 21, 1970.

After it was evident that public employer groups throughout the state, spearheaded by PSBA, would resist pressures of employee organizations for a liberal bargaining bill, a new and basically well-constructed bill – SB 1333 – emerged and eventually was signed by the governor.

## PSBA positions incorporated into Act 195

The 17 fundamental principles supported by the Pennsylvania School Boards Association, and submitted in SB 518, generally were incorporated into the new law.

- All public employees should be covered by the same law.

• Employees must have the right to join, participate in and support the organization chosen to represent them or to refrain from each and every one of these activities.

• Bargaining units should include only those employees whose duties are nonsupervisory, nonadministrative or nonconfidential in nature.

• Bargaining units should not include both professional and nonprofessional personnel.

• A single organization should represent the unit on an exclusive basis.

• A separate, independent agency should be created to administer the provisions of the law.

• Choice of a representative organization should be by secret ballot election which allows each member of the unit full discretion.

• The elected representative organization should be by secret ballot election which allows each member of the unit full discretion.

• Termination dates of contracts must be set as being coterminous with the fiscal year of the employer.

• The scope of negotiable items must be defined and limited to exclude those items which are mandated by law to reside with the public employer.

• Employers must be required to negotiate on petition of the representative organization.

• An orderly procedure must be established setting a deadline for commencing negotiations with an impasse procedure outlined.

• Impasse resolution procedures first should allow for the parties of interest to come to agreement with voluntary mediation. In cases where this is not successful, or if specified deadlines are not met, state-level procedures should be invoked.

• Impasse procedures should include mediation, fact-finding and compulsory arbitration with final authority on items requiring legislative action reserved to the employer.

• Collective bargaining must culminate in a written agreement.

• A grievance procedure must be mandated as part of any agreement with a definition of grievance limited to the interpretation or application of the agreement.

• The rights of the general public to expect uninterrupted, mandated services must be protected through a prohibition against a strike by public employees.

Only two provisions of the 17 principles failed to appear in Act 195: one dealt with mandatory impasse procedures before public employees were allowed to strike; the other was the failure of the law to

provide a separate independent agency to adequately administer the provisions of the law.

## The Act 195 years

Following the passage of Act 195, collective bargaining became serious business in the public schools as the strength of teacher unions grew. For 22 years, Pennsylvania consistently led the nation in the number of school strikes. The statistics were overwhelming: more than 800 walkouts idling in excess of a quarter million school employees and more than 3.7 million students. Incredibly, despite that record, the General Assembly never acted to curb walkouts in the public schools. In fact, Act 195 of 1970 remained untouched for nearly a generation.

Why was the law that gave rise to so much labor unrest in the public schools virtually immune from any legislative change? Clearly, public employee unions were largely responsible for blocking reforms. They wanted to protect a law which served their interests well. Any attempt to revise that act represented a threat to rights which they guarded closely.

Beyond the lobbying pressure exerted by the unions, there were other reasons that Act 195 remained unassailable. The law affected all public employees, including those working for state, county and municipal governments – not just personnel in the public schools. And, for those other jurisdictions, Act 195 had proved far more workable. Many legislators were reluctant to open that law and potentially disrupt state and municipal bargaining to address problems in the schools.

On the 20th anniversary of the passage of Act 195, PSBA compiled and published a "sunset review" of the act, which serves today as the only historical record of the effects of the law on public schools.

As a result, for 22 years no bill amending Act 195 ever was reported from a committee in either the Senate or House of Representatives, let alone brought up for a vote in either chamber.

For PSBA, a leading advocate for school strike reform, this legislative standoff was a source of considerable frustration. The association repeatedly presented reports documenting the disruption to edu-

cation which unchecked strikes were causing. In 1990, on the 20th anniversary of the passage of Act 195, PSBA compiled and published a "sunset review" of the act, which serves today as the only historical record of the effects of the law on public schools. PSBA also testified before numerous committees, enlisted the support of the news media and other interested organizations and offered dozens of legislative proposals over the years. Yet, despite that concerted effort, the General Assembly failed to act.

Repeated PSBA initiatives were stifled by the unwillingness of legislators to address the school strike issue. Because no bills modifying Act 195 ever were brought up for consideration, the association was forced to draft many of its proposals as amendments to the School Code or other laws. Whenever that happened, however, opponents would object to the action claiming that only Act 195, a labor law, could be the vehicle for changes in public sector bargaining. Those procedural challenges, which invariably were successful, had the convenient effect of enabling legislators to avoid up-or-down votes on the merits of nearly every school strike bill proposed over the years.

Selective strikes offended even some of the staunchest friends of organized labor. Such walkouts clearly put at risk the safety and welfare of the very children the public schools were created to serve.

## Senate Bill 727 introduced

The year 1991 will be remembered as a time when some significant forces converged. Among them was the ongoing effort by PSBA and other interested groups to secure meaningful school strike reform. In fact, school directors across the state targeted the issue as a top legislative priority for the association. Added to that was an increasingly bitter public reaction to the devastating tactics being employed by teacher unions. Despite a lagging state and local economy, salary demands at the bargaining table in many areas of the commonwealth were higher than ever. The number of school strikes rose, including "selective" strikes called day to day, building to building or for partial days, typically with little or no public notice.

Selective strikes offended even some of the staunchest friends of organized labor. Such walkouts clearly put at risk the safety and welfare of the very children the public schools were created to serve. They also produced enormous disruption to the community at-large. Parents often were forced to wait until the 11 p.m. television news broadcast not only to learn which of their children would have school the next day but to make necessary child care arrangements as well. In some cases, selective strikes were called with virtually no prior notice, sometimes even leaving students at schools with no teachers present.

The torrent of public outrage against what was viewed as excessive union demands in a declining economy and unfair strike tactics finally made an impact as the first school strike bill ever to be moved to the floor of either chamber in the General Assembly was brought up for a vote in the Senate. The proposal, Senate Bill 727, had been introduced as an amendment to the School Code providing for binding arbitration. PSBA opposed the legislation, contending that the granting of final authority to third-party arbitrators to establish salaries and benefits – and, effectively, local tax rates – constituted a cure worse than the strike "disease."

The arbitration provision was not the only cause of PSBA's concern. At about the same time SB 727 was being considered, the Senate came within a single vote of approving another bill which outlawed selective strikes but, as a condition, would have required that all classes be cancelled during any legally authorized walkout. The proposal would have barred school boards from using even its own administrators, supervisors and substitutes to keep a portion of the instructional program operating when a strike was underway.

PSBA rejected such a trade-off. The association's position was that, while teachers may have the legal right to strike, the constitutional mandate for a "thorough and efficient system of public education" required that school boards be able to take all necessary action to continue to provide that service. PSBA opposed any legislation which prohibited districts from operating school during a strike.

The association worked closely with the prime sponsor of SB 727, Sen. James C. Greenwood (R-Bucks), in modifying the bill in a way that was acceptable to school directors. The Pennsylvania State Education Association also participated in the talks.

When the revised bill passed the full Senate on a unanimous vote, it contained no provision for the compulsory use of arbitration. Instead, that impasse procedure was authorized only at the request of the school board or with its concurrence. SB 727 also mandated a stricter timeframe for bargaining, increased the number of state mediators

and permitted either negotiating party to initiate fact-finding. The legislation did not address the thorny selective strike issue, but it also contained no prohibition on keeping schools open during a walkout by the regular employees.

SB 727 then was referred to the House Education Committee for further consideration. There, the panel's chairman, Rep. Ronald R. Cowell (D-Allegheny), convened further discussions with PSBA, PSEA and the Pennsylvania Federation of Teachers. A new version of the bill was drafted, retaining the provisions concerning mediators and fact-finding but revising and adding other sections. Among the changes:

- Binding arbitration was permitted only if both parties mutually agree to its use.
- The bargaining timeframe was modified.
- Selective strikes were prohibited.
- Unions were required to give at least 36 hours' notice of any school walkout.
- School boards were permitted to operate classes during a strike, using personnel who had been actively employed at sometime in the previous 12 months.
- The secretary of education was granted legal standing to seek injunctions in county court whenever a strike threatens to prevent fulfillment of the 180 day school term required by law.

The new version of the bill, approved unanimously by the House Education Committee, was more sweeping in scope than the one approved by the Senate. For PSBA, the most notable achievement was the ban on selective strikes and the requirement that any legally authorized walkout be preceded by advance notice to the public. And, while this was accompanied by a new requirement that people working during a strike must have been employed for at least a limited period during the previous 12 months, a significant right had been retained. The legislation upheld the authority for school boards to keep classes operating and, as a result, served to reject the contention that schools should be required to close whenever regular employees go on strike.

When SB 727 went to the floor of the House of Representatives, its final passage was endangered by literally dozens of proposed amendments which would have disrupted the compromise developed by the Education Committee. Rep. Cowell took the lead in urging his colleagues not to further revise the legislation.

Of the 33 votes taken during more than five hours of debate, only four amendments were approved: the minimum notice of intent to strike was lengthened to 48 hours; courts were authorized to overturn arbitration awards which result from fraud, corruption or willful misconduct of the arbitrators; school districts were required to provide alternative instruction to students who request to be excused from animal dissection activities, and state funding was authorized for the renovation or purchase of buildings for school use.

Act 88 addresses many of the key issues targeted by school directors, most notably a ban on selective strikes, required advance notice of strikes, a stricter bargaining timeframe, greater access to fact-finding, a minimum complement of state mediators and standing for the secretary of education to seek injunctions to end school strikes.

## New obstacles arise

Passage by the House did not ensure final enactment of the measure, however. The legislation returned to the Senate for a vote on concurrence in the amendments inserted by the House. That vote was delayed for nearly four months; finally, in early April, the Senate rejected the House changes, sending the proposal to a joint conference committee to resolve differences between the chambers.

Even at that late stage in the debate, additional dangers were being posed. The Teamsters Union, which for years had sought to organize and represent administrators in the Philadelphia School District, attempted to gain that right through an amendment to SB 727. Frustrated by previous rejections of their "principals' bargaining" bill, the union viewed the conference committee as a convenient means of securing passage of their controversial proposal; if approved by that panel, the amended SB 727 would be sent to the full Senate and House for final floor votes. Once that happened, legislators would be forced to vote against the entire strike reform measure to defeat the Teamsters language.

PSBA was prepared to urge the General Assembly to do just that. The association has been a strong advocate of the management team, in which school boards work cooperatively with administrators in overseeing the operation of public schools. Forcing the parties in that team to engage in adversarial bargaining with each other constitutes poor public policy. PSBA viewed the principals' bargaining legislation, although limited to Philadelphia, as the first step in attempts to unionize administrators in all districts.

The irony was that, with the legislation just one step from final enactment, the potential had been created for SB 727 to actually worsen the labor problems in Pennsylvania's public schools rather than to remedy them. PSBA called upon the conference committee to reject the principals' bargaining provision and asked all school directors in the commonwealth to urge their legislators to ensure that the language was not added to the bill.

## SB 727 becomes law

In the end, the outcry against the proposed amendment proved effective. The conference committee rejected the Teamsters language while approving several changes of its own. The final version of the bill requires that a compulsory "arbitration" process be used whenever a strike threatens completion of the 180 day school year by June 15 or the scheduled end of classes, whichever is later. The end result of this new procedure is not binding, however, because the report of the arbitrators may be rejected by either negotiating party.

The conference committee also relaxed restrictions on the use of substitutes during a strike. The requirement remains for people to have been actively employed during the 12 months prior to a strike, but only until the compulsory, nonbinding arbitration process takes place. Then, if the recommendation of the arbitrators is rejected, the school board may employ substitutes without restriction.

Once approved by the conferees, SB 727 sailed through the General Assembly, receiving nearly unanimous votes in both the Senate and House of Representatives. Gov. Robert P. Casey signed the measure on July 9, 1992. Now Act 88 of 1992, the new law took effect immediately.

School strike reform, elusive for more than 20 years, finally had been enacted. Act 88 addresses many of the key issues targeted by school directors, most notably a ban on selective strikes, required advance notice of strikes, a stricter bargaining timeframe, greater access to fact-finding, a minimum complement of state mediators and

standing for the secretary of education to seek injunctions to end school strikes.

Act 88 is significant as a milestone on the road to school strike reform . . . not as the final destination. In achieving a number of PSBA's important objectives, it represents a vital step toward leveling-up the bargaining process and restoring labor peace to the state's public schools. The new law holds real promise, yet more work remains to be done. The fact that the General Assembly finally established the precedent of placing school bargaining provisions in the School Code hopefully means that Pennsylvania will not have to wait another quarter century for further changes to be made.

# Historical events

| Date | Directly related events |
|---|---|
| 1852 | Pennsylvania State Teachers Association created (now called Pennsylvania State Education Association). |
| 1857 | National Teachers Organization (now called National Education Association) founded in Philadelphia. |
| 1870-1910 | |
| 1873 | Pennsylvania Department of Public Instruction (now called Pennsylvania Department of Education) established. |
| 1874 | |
| 1895 | Pennsylvania Governor Hastings signed Compulsory Education Law.<br><br>Pennsylvania School Boards Association formally organized. |
| 1903 | Act 118 mandated $35 a month minimum salary for teachers. |
| 1911 | General Assembly adopted new Public School Code. |
| 1916 | |
| 1930 | |

# in collective bargaining

## Other events

---------- Economics growth period for USA, but not for teachers; yellow-dog contracts (these required workers' vows not to join a labor organization while in a particular employer's hire); anti-union fever.

---------- *Stuart vs. School District of Kalamazoo* established right of school authorities to levy taxes for the support of public schools.

---------- Early 20th century the working force was mostly female and less career-minded. Unmarried women lacked career focus, and married women were supplemental wage earners. In addition, free, compulsory education was borne by a none-too-wealthy local public purse. A small administrative force controlled a large teaching force.

---------- American Federation of Teachers founded (The Scranton Teachers' Association was a part of the charter group).

---------- President Franklin D. Roosevelt spoke of a threatened strike by public employees: " A strike of public employees manifests nothing less than an intent on their part to obstruct the operations of the government until their demands are satisfied. Such action, looking toward the paralysis of government by those who have sworn to uphold it, is unthinkable and intolerable."

| Date | Directly related events |
| --- | --- |
| Depression | |
| 1935 | |
| 1937 | Philadelphia was the first *municipality* to enter into bilateral agreements with public employee labor organizations. |
| | Teacher tenure law passed in Pennsylvania. |
| | Sabbatical leave law for teachers was passed. |

# Other events

Education faired badly during the Depression. To survive school districts:

- Increased class size, thereby decreasing the number of teachers employed.
- Reduced teacher salaries.
- Cut the length of the school day and school year.

Unemployment was (of course) very high during the depression. Among professional groups, it was probably highest among teachers.

Teachers' salaries remained inadequate during the Depression, but by 1947 and 1948, it was apparent that the relative reimbursement of teachers for their services was growing worse. The average salary paid a teacher in 1933-34 in the U.S. was $1,227. In 1947-48 the average teacher was earning $2,639. Although the salary of the average teacher had more than doubled during this 14-year period, the cost of living had tripled.

WAGNER ACT. Organized labor in the U.S. won the right to free collective bargaining with the Wagner Act, which *required employers to meet with duly authorized employee organizations and to "bargain in good faith" over wages, hours and conditions of employment.* Though collective bargaining was not new in 1935, it was at that time that it received legal sanction and legal protection and enabled organized labor in the *private sector* to secure sizable wage and benefit gains after WWII. Teachers' unions began to look at this mechanism to determine whether it was a suitable means to their ends.

| Date | Directly related events |
| --- | --- |
| World War II | |
| 1940s | |
| Late 1940s | |
| 1942 | |
| 1944 | |
| 1946 | |
| **1947** | Signed into law was Pennsylvania's "Public Employes Anti-Strike Act" (commonly called the No-Strike Law, Act 492) which prohibited strikes by public employees and effectively ruled out binding collective bargaining by public employees and their employers. There could not be recognized bargaining agent. The law provided for grievance panels to serve as a public sounding board for employee complaints when an impasse was reached in local discussions. However, no formal collective bargaining was permitted under the law. |

# Other events

----------Teachers sacrificed both as consumers and in terms of relative wages.

----------"Bread and butter" unionists tried to secure higher wages and better working conditions for members and social reconstructionists.

----------Many returned to college and became licensed to teach in the public schools by the late 1940s, increasing the number of men in teaching.

----------Teacher's wages began to fall relative to the wages of other workers.

----------**First collective bargaining contract for public school teachers established** (American Federation of Teachers Local of Cicero, Illinois & Cicero Board of Education).

GI bill signed–gave veterans opportunity for education at government expense. More men entered teaching profession.

----------After a Norwalk, Conn., strike the teachers' association (an NEA affiliate) **gained formal recognition as the official bargaining agent for teachers.**

Though it was not the first strike ever engaged in by teachers in the U.S., it was the beginning of a three-year period of considerable strike activity in which there would be nearly 100 teacher strikes in the U.S.

| Date | Directly related events |
| --- | --- |
| 1947 | School district reorganization mandated by the General Assembly. |
| 1949 | Public School Code revised (Act 14). |
| 1959 | |
| 1961 | Act 557 became law, providing for establishment of area technical schools. |
| 1962 | |
| 1963 | Creation, establishment and operation of community colleges authorized in Pennsylvania.<br><br>Act 94 did away with State Council of Education and established a State Board of Education, a 17-member body appointed by the governor (now a 21-member body). |

## Other events

----------NEA passed a resolution recommending that "each member seek salary adjustment in a professional way through group action."

----------**Wisconsin enacted the first comprehensive public sector bargaining law.**, which became a model for subsequent legislative activity in other states.

----------United Federation of Teachers won the **right to represent the teachers of New York City in collective bargaining; first major collective bargaining agreement between teachers union and a board of education.**

----------On January 17, President John F. Kennedy issued Executive Order 10988, which **granted collective bargaining rights to federal employees.**

While public employee organization and bargaining were not unknown before the 1962 issuance of Executive Order 10988, it opened the door for state governments to enact laws with respect to collective bargaining for public employees at the state and municipal levels. Employee organizations began to pressure school boards to recognize their exclusive bargaining agents and enter into collective bargaining agreements which were challenged in the Pennsylvania state courts, which nullified the agreements or declared them nonbinding.

----------President Kennedy issued "Standards of Conduct and the Code of Fair Labor Practices in the Federal Service" establishing procedures and criteria for enforcing Executive Order 10988.

| Date | Directly related events |
| --- | --- |
| | Act 299, the school reorganization law, was passed. More than 2,500 school districts existed at that time. Board membership was set at nine. |
| 1967 | Pennsylvania electorate approved an amendment to the Pennsylvania Constitution to partially contravene the prohibition against delegation of municipal powers to any board or commission by allowing binding arbitration in the settlement of disputes between police and firefighters in the commonwealth. |
| 1968 | New teacher salary subsidy bill (Act 96) passed, which established new minimum and maximum pay schedules in Pennsylvania. |
| | Act 111 provided for collective bargaining with compulsory resort to arbitration in case of impasse for police and firefighters in the commonwealth. |
| | Gov. Raymond Shafer established a commission (Hickman Commission) to review the matter of public employee collective bargaining and to make recommendations regarding changes to the 1947 No-Strike Law. |
| | In late, summer, the **Hickman Commission released its report**, along with a suggested draft of legislation, **SB 1021**, which embodied all the features of the commission. Also introduced were: **HB 1443**, a bill drafted jointly by the PSEA/AFL-CIO, and **SB 513**, a bill introduced by the PSBA. |
| | PSEA endorsed the right to strike for teacher organizations. |

## Other events

----------Act 405 (1965) and Act 96 (1968), the Teacher's Salary Act, respectively established minimum levels of compensation and fixed increment sums to be paid to professional employes based upon their experience and level of educational attainment. The increments set forth were fixed at $300 per year for each year of experience, and another $300 to be paid to the employee in the event that employee should obtain a master's degree or its equivalent of 30 or 36 semester hours of post-bachelor's work.

| Date | Directly related events |
| --- | --- |
| 1969 | |
| Summer 1969 | Employer groups effectively blocked passage of HB 1443 |
| 1970 | SB 1333, which later became Act 195, came on the scene. It was developed largely by the Senate State Government Committee subsequent to a series of hearings on public employee negotiations, and is considered a "compromise" measure. |
| | July 23: SB 1333 became Act 195, which took effect Oct. 21, 1970, except for the amnesty provision in sections 501, 502 and 503 that took effect immediately. |
| | Act 102 established 29 intermediate units and abolished the county superintendent office. |
| 1972 | |
| 1975 | Revised Pennsylvania School Code (HB 770) introduced in the House of Representative, the first attempt to revise school laws since 1949. |

# Other events

---------- President Richard Nixon issued Executive Order Number 11491, which became effective Jan.1, 1970. The order provided for the use of the Federal Mediation and Conciliation Service in the resolution of negotiation disputes. If this failed to resolve an impasse either party may request the Federal Service Impasse Panel to consider the matter. The panel may recommend procedures for the resolution of impasse or may settle the impasse by appropriate action including the use of the arbitration process when authorized or directed by the panel. The order permits negotiations with respect to personnel practices and policies and matters affecting working conditions.

----------Act 138 lowered age for school directors to 18.

Act 372 required transportation of nonpublic students up to 10 miles outside the district's boundaries.

Act 194 and 195 provided aid to nonpublic school students in the form of auxiliary services and textbook loans through intermediate units.

| Date | Directly related events |
|---|---|
| 1976 | Gov. Milton Shapp appointed a task force to study Act 195; the task force became known as the Jones Commission. |
| 1978 | |
| 1984 | A Senate Task Force on Act 195 was established. |
| 1988 | Act 84 of 1988 provides for the powers and duties of the State Board of Education; requires certain state and public school employees to pay a fair share fee; and provides for objections to payments of a fair share fee. Sections 401 and 705 of Act 195 are repealed insofar as they are inconsistent with this act. |
| 1991 | SB 727 introduced by Sen. James C. Greenwood (R-Bucks). Initially the bill provided for binding arbitration, which PSBA opposed. Working closely with Sen. Greenwood, PSBA, along with PSEA, succeeded in modifying the bill in a way that was acceptable to school directors. |
| 1992 | Following months of compromise when the bill was sent to a joint conference committee, SB 727 received nearly unanimous votes in both the Senate and House of Representatives. Gov. Robert P. Casey signed the measure on July 9, 1992. Act 88 of 1992 took effect immediately. |

## Other events

----------Act 105 reduced school directors' terms from six to four years.

# 2

# Act 88 and Act 195: Article-by-article review

Perhaps the greatest misconception regarding Act 88 of 1992 – the so-called "School Strike Reform Law" – is that it amends Act 195. **Act 88 amends the School Code** by shifting various public school employee bargaining provisions from Act 195 (the Public Employe Relations Act of 1970, P.L. 563, No. 195) to the Public School Code of 1949 (P.L. 30, No. 14). However, the provisions of Act 88 are to be read in conjunction (*in pari materia*) with Act 195.

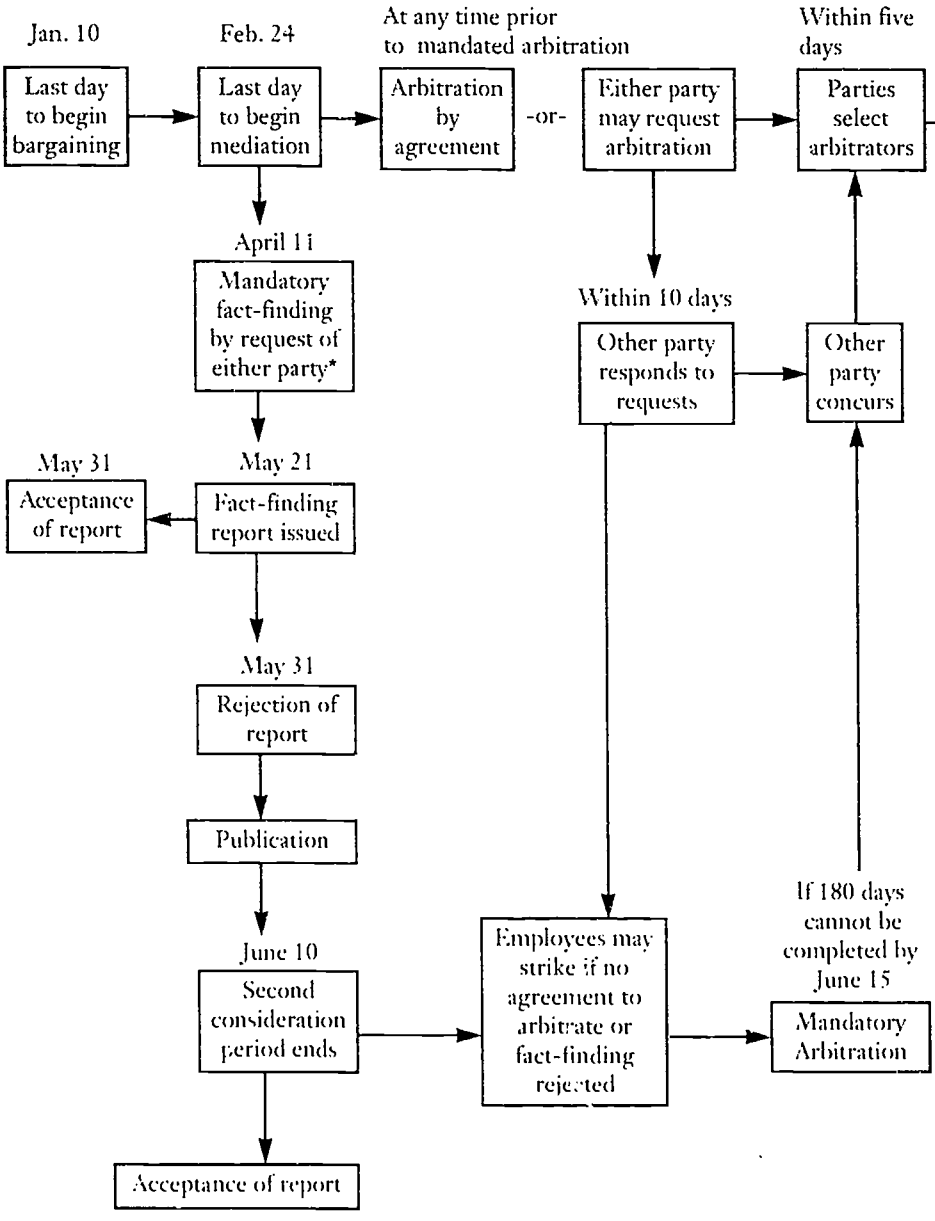
For example, there are significant changes to the collective bargaining process and the procedures for public school employee bargaining under Act 88, which differ substantially from those provisions which continue to apply to other public employees under Act 195.

Among the changes are:

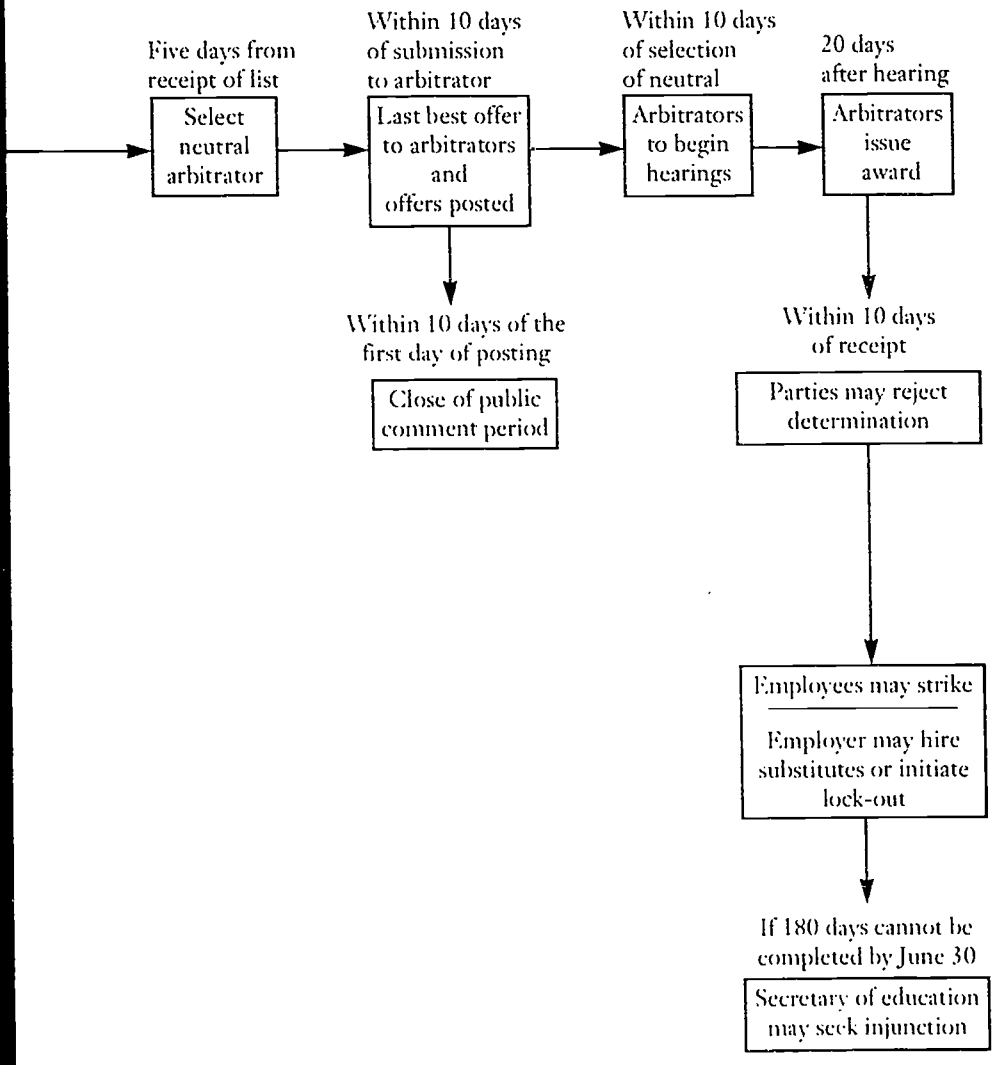
- A **mandatory** timeline for bargaining.
- A minimum complement of state mediators.
- Either party is authorized to initiate fact-finding.
- Selective strikes are prohibited.
- 48-hour advance written notice of any legally authorized strike is required.
- Voluntary nonbinding arbitration is established as a new impasse procedure.
- The secretary of education is granted standing to seek injunctions whenever a strike threatens completion of the minimum 180-day school year.

As Act 88 places public school employee bargaining issues under the School Code, the definitions and general provisions exclude any

# Bargaining procedure



# under Act 88 of 1992




* The Board also shall appoint fact-finders upon mutual request of parties at any time except during mandated final offer arbitration and may appoint fact-finders at any time except between notice of strike and conclusion of strike or during arbitration.

reference to other groups of employees, employers and representative organizations. Additionally, the definition of "strike" is modified, adding the more restrictive provisions which now apply to school employees.

In other areas, there are relatively minor changes: the language of Act 195 merely finishes up where Act 88 leaves off. For example, Act 88 specifies (sections 1111-1112-A) "Scope of Bargaining" procedures which are virtually identical to those of Act 195 (Article VII, 701 & 702), yet there is no specific reference to sections 703-706 which includes a savings-prohibition clause, "meet and discuss" requirements, dues deduction and maintenance of membership. It is implied that these are incorporated into Act 88 by reference.

The area of greatest change centers around the collective bargaining impasse procedure; Act 88's school employee requirements differ substantially from those of Act 195 covering other public employees.

Collective bargaining for school employees now is mandated to be in strict compliance with the timeline set forth in Act 88, Section 1121. Historically, under Act 195, timelines were viewed as flexible; Act 88 specifically addresses the issue by stating that ". . . the time periods set forth . . . are mandatory and should not be construed to be directory." (Sec. 1126-A)

Newly established timeframes are based "counting backward" from a budget submission date of either June 30 or Dec. 31, depending upon the school entity's fiscal year. The chart on pp. 36-37 illustrates the process using June 30.

The Pennsylvania Labor Relations Board will continue its role in facilitating harmonious employer-employee relations as a neutral. It is important to note that the provisions of Article V of Act 195 will continue to apply, authorizing board activities and actions, including: unit determination; conducting elections for certification or decertification of employee groups; investigation of alleged unfair practices; the right to hold hearings, issue subpoenas, administer oaths, examine witnesses, and receive evidence.

Other provisions of Act 195 which will continue to apply in public school employment (under Act 88 and the School Code) are Public Policy (Article I), Employee Rights (Article IV), Representation (Article VI), Picketing (Article XI), Unfair Practices (Article XII) and Prevention of Unfair Practices (Article XIII), Judicial Review (Article XV), Employee Organizations (Article XVII), Conflict of Interest (Article XVIII), Penalties (Article XIX) and the Savings (Article XX), Separability (Article XXI) and Repeals (Article XXII) clauses.

# Section-by-section analysis of Act 88

## General provisions

### Section 1101-A

Section 1101-A establishes the parameters for collective bargaining procedures by transferring to the School Code several key terms and definitions frequently used in Act 195, with some revisions.

The definition of "employee," for example, is modified to clearly exclude any management-level employee from the terms of the act, while "school entity" may refer to either a public school district, intermediate unit or area vocational-technical school.

In addition, for the purposes of bargaining deadlines, the "budget submission date" is defined as June 30 or Dec. 31, whichever is the end of the school district's fiscal year.

Further, the definition of a "strike" is extended to provide for a limit of two lawful strikes per year, 48-hour written notice of the intent to strike, and the resultant authority of the superintendent, executive director or director to cancel school for the effective date of the strike. Such a cancellation would not be considered a lockout.

## Scope of bargaining

### Section 1111-A
### Section 1112-A

Related to the scope of bargaining, sections 1111-A and 1112-A are generally transferred from sections 701 and 702 of Act 195.

While good faith bargaining is required, this obligation does not compel either party to agree to a proposal or require the making of a concession. In addition, "matters of inherent managerial policy" are excluded from bargaining requirements.

## Collective bargaining impasse

### Section 1121-A

Act 88 provides a strict, mandatory timeframe for bargaining, with revised deadlines, intended to produce contract settlements before the budget submission date (June 30 for most school districts).

Compared to Act 195, Act 88 requires use of mediation following an impasse in negotiations. Although the parties volantarily may

submit to mediation anytime after negotiations begin, if an agreement is not reached within 45 days or by 126 days prior to the budget submission date, both parties must request the services of the Bureau of Mediation, typically Feb. 24. Further, Section 1121-A requires the bureau to employ at least 25 mediators for such purposes.

## Section 1122-A

As established in Act 88, the authority for either bargaining party to initiate fact-finding without approval of the PLRB marks a significant change in collective bargaining law.

No later than April 10, following 45 days of mediation (no more than 81 days prior to the budget submission date), the Pennsylvania Labor Relations Board must be notified if the parties have not reached an agreement. By that time, either party may initiate fact-finding without the approval of the PLRB, a significant change from provisions established in Act 195.

The appointed fact-finding panel may consist of either one or three members. Within 40 days (May 21), the appointed fact-finder(s) must present a report, which may not include any recommendation concerning impasse procedures. In addition, the PLRB may impose fact-finding at any time should negotiations reach impasse, except during a strike or while the arbitration process is occurring.

Within 10 days after the fact-finding report has been issued (no later than May 31), the parties must notify the PLRB and each other whether or not they accept the recommendation. If the report is rejected by either or both parties, it must be published. During the five to 10 days following publication, both parties again must state their acceptance or rejection of the report. Finally, the cost of fact-finding is to be shared by the commonwealth (50%) and both parties (25% each).

## Section 1123-A

The negotiations process under Act 88 establishes a new impasse procedure: final-best-offer (nonbinding) arbitration.

At the onset of negotiations, both parties must bargain upon the type of arbitration to be used in the event of an impasse, selecting from three final-best-offer procedures: total package, issue-by-issue, or economic and noneconomic issues as separate units. In the latter, economic issues would include hours as well as wages, salary, fringe benefits or other forms of monetary compensation.

## Section 1124-A

If the parties mutually agree to arbitration, a three member panel

will be selected to serve as arbitrator. The board and employee representatives each select one panel member within five days of submitting to binding arbitration. The third arbitrator is selected from a list of seven furnished by the American Arbitration Association. In addition, each arbitrator must be a citizen of the commonwealth and must possess sufficient knowledge of the areas negotiated to make a determination. Beginning with the board, the two parties alternately strike one name until one remains, who becomes the third panel member and chairman.

When in voluntary arbitration, each party pays the cost of its own selected arbitrator, with both parties sharing the cost for the third arbitrator. Under mandatory arbitration, however, the commonwealth pays 50% of the cost for the arbitrators, with both parties sharing the remaining cost.

## Section 1125-A

Either party may request arbitration by notifying the Bureau of Mediation, the PLRB and the opposing party in writing, but both parties must consent before it can be implemented. If fact-finding has been initiated, the parties may not request arbitration until after that report has been issued. Strikes and lockouts are prohibited during the 10-day period between notification by the party requesting arbitration and reply of the opposing party.

If the parties do not agree to enter into arbitration, mediation continues. However, if a strike or lockout will threaten the completion of a 180-day school year by June 15 or the last day of the district's scheduled school year, whichever is later, the parties must submit to mandated final-best-offer arbitration.

Should arbitration commence, within 10 days of submitting to arbitration the parties submit to the arbitrators their last-best contract offers. Each party's offer must be posted in the school district's administrative office and a copy made available for a 10-day public comment period. All comments must be submitted to the arbitration panel.

Within 10 days of the selection of the third arbitrator, the panel must hold a hearing so that representatives of each party can make arguments in support of their respective offers. The panel must give at least five days' notice prior to the hearing.

Within 20 days of the hearing, the arbitrators are required to make a written determination. Both parties then have 10 days to consider the decision, and either may reject it. If both parties agree, it becomes the final settlement.

Should the arbitrator's determination be rejected by one or both parties, the employees may initiate or resume a legal strike, and the employer may hire substitutes and initiate or resume a legal lockout.

### Section 1126-A

Unlike Act 195, Act 88 clearly indicates that the revised timeframe for bargaining is mandatory, not discretionary.

### Section 1127-A

As the only appointed board in the commonwealth, the Philadelphia School Board is exempted from the binding arbitration provisions of Act 88.

## Strikes and lockouts

### Section 1131-A
### Section 1132-A

Strikes and lockouts must cease during fact-finding and arbitration.

## Collective bargaining agreement

### Section 1151-A

Either party may bring an action in the court of common pleas should one party refuse to comply with an agreement reached through binding arbitration.

### Section 1152-A

Contracts and agreements existing before the enactment of Act 88 are valid until their expiration. No phase-in provisions are made under the act, and all current bargaining proceedings will be required to follow the timelines, activities and prohibitions outlined in the measure.

## Secretary of education

### Section 1161-A

If a strike is called and completion of a 180-day school year is

threatened by June 30, the state secretary of education may initiate an injunction in the appropriate court of common pleas.

## Prohibitions

### Section 1171-A
### Section 1172-A

Act 88 bans selective strikes. Concerning the use of substitutes during legal strikes, two rules are established. If a strike is called prior to mandatory arbitration, the school district only may hire substitutes who have been "actively employed" at some period during the prior year. However, if the determination of the arbitrators is rejected and the school year cannot be completed by the later of June 15 or the scheduled end of school, districts may hire any legal substitutes if the strike is reactivated.

## Scope of the act

Should any part of the act be held invalid, the remaining provisions continue in full effect. In addition, any provisions of Act 195 which are inconsistent with those in Act 88 are repealed. Finally, Act 88 does not authorize the modification of existing retirement plans or benefits except through negotiations involving early retirement incentives or severance pay provisions.

# Section-by-section analysis of Act 195

*Act 195 must be read in conjunction with Act 84 and Act 88. The complete text of each act is reprinted in the Appendix. Sections of Act 195 no longer apply to school entities; the language is set off in italics.*

## ARTICLE I

Article I of the Public Employe Relations Act (PERA) has the title of "Public Policy." Section 101 of this article states the "purpose of the Act is to promote orderly and constructive relationships between all public employers and their employes, subject to the paramount right of the citizens of the commonwealth to keep inviolate the guarantees for their health, safety and welfare."

The section notes that unresolved labor disputes in the public sector are injurious to the general public. As a means of minimizing these disputes between public employers and public employees and promoting harmonious labor relationships in the commonwealth, the General Assembly has provided three guidelines. They are: (1) granting public employees the right to organize and to choose representatives; (2) requiring public employers to bargain with employee representatives and to enter into written agreements, and (3) establishing a means for protecting the rights of employers, employees and the public.

Although the title of Article I is "Public Policy," this is not to mean Act 195 and lawful collective bargaining is intended to be a vehicle for establishing public policy. The policy-making function remains with the public employer, such as the school district and its board of school directors, as provided by other laws.

## ARTICLE II

Article II, Section 201, simply recognizes this law by the short title of "Public Employe Relations Act," (and is referenced by the acronym of PERA).

## ARTICLE III

Article III, Section 301, is a compilation of terms and definitions frequently used in the law. Because Act 195 is a law which governs the relationships between public employers and public employees, it is important to clearly define the terms as used in the Act.

*The two most important definitions in the article are those given for*

*"public employer" and "public employee." PERA is not applicable to all employers in the state. Public employer as defined in Section 301 means the Commonwealth of Pennsylvania, its political subdivisons, any nonprofit organization, or institutions receiving grants or appropriations from local, state or the federal government. The definition continues by excluding employers covered by the "Pennsylvania Labor Relations Act" (1937), and the "National Labor Relations Act" (1935). Those laws applied only to workers engaged in interstate commerce.*

One problem identified with the definition of public employer centers around nonprofit organizations. Some people believe Act 195 should be amended to provide all nonprofit organizations the right to bargain (whether or not the organizations receive grants from government agencies) since many nonprofit organizations perform public services. Proponents reason that collective bargaining has been provided in the private sector through the National Labor Relations Act, in the public sector by PERA, and those workers employed by nonprofit organizations fall into an area with no coverage.

*PERA defines a public employee by the use of three tests. A public employee is: (1) someone who is employed by a public employer as defined in the act; (2) someone who is not in a specifically excluded class, (elected official, management level employee, etc.) or (3) someone who is not covered by Act 111 (1968) which authorizes collective bargaining for police or firefighters.*

The definitions of employee and employer as they pertain to public school entities are listed in Act 88, Article XI, Section 1101A.

## ARTICLE IV

Article IV is said to be the heart of PERA, because it guarantees employees the right to form unions and to engage in concerted activities. This article defines and expands the intent of the public policy stated in Article I. Of paramount importance are the words "to bargain collectively through representatives of their own free choice." Prior to PERA, public employees were permitted to bargain with their employers; however, there was nothing which required public employers to bargain, allowing them then to simply refuse. Article IV is given more importance when it is supported by Article XII, Section 1201 (a) (5). This statement declares it is an unfair labor practice if the public employer refuses to bargain with the representative of the public employee.

The mutual obligation of the parties to bargain also is listed in Section 1111A, Act 88.

Article IV also permits a union to negotiate with an employer over

union security through a maintenance of membership clause. This clause states that those employees who are presently members of the union, shall remain members during the life of the contract. The employees may resign from the union during the "window period" of 15 days immediately prior to the expiration of the agreement and until a new agreement is signed. The maintenance of membership clause does not require that all employees join the union as a condition of continued employment.

The union, as the legal representative of the bargaining unit, is obligated to represent all employees regardless of whether or not they belong to the union. *Act 195 does not permit additional union security such as an agency shop, which would require all public employees within the bargaining unit to pay a fee for collective bargaining services from the union, even if they choose not to be union members.* This provision has been repealed by Act 84, Section 4.

## ARTICLE V

Article V provides some guidelines for the Pennsylvania Labor Relations Board, which consists of three part-time members who are appointed to six-year terms by the governor with the consent of two-thirds of the Senate. The board has regional offices in Pittsburgh, Philadelphia and Harrisburg.

Sections 501 and 502 grant the board the authority to make, amend and rescind such rules and regulations it deems necessary to implement the provisions of Act 195. Section 503 empowers the board to establish panels of qualified people who are representatives of the general public to serve as fact-finders.

## ARTICLE VI

Article I of the act, in its general policy statement, says public employees have the right to organize and freely choose their representatives. Article IV continues by expanding on the concept of that right to organize. Article VI provides a format whereby employee organizations can request recognition from the public employer as the majority representative.

Section 603 of PERA spells out the election procedure for representatives of public employees. The first step in a union securing an election is acquition of a showing that 30% or more of the employees in an appropriate unit want to be represented by the union. The purpose of the 30% "showing of interest" is to guarantee that some rea-

sonable number of employees are interested in the petitioning union before the PLRB and the employer go to the trouble of determining an appropriate bargaining unit and conducting an election.

Section 604 of the law states that the PLRB shall determine the appropriateness of a unit. In making that judgment, the board will: (1) consider if the employees have a community of interest; (2) not include professionals and nonprofessionals in the same unit, unless the professional employees agree to include the nonprofessionals; (3) not include guards at prisons and mental hospitals in any unit with other public employees, and (4) not permit first-level supervisors to be included with other units of public employees.

Pennsylvania public employers also must allow first-level supervisors to form homogeneous units. The public employer is required to "meet and discuss" with first-level supervisors, or their representatives, on matters deemed to be bargainable for public employees covered under the law (Section 704, Article VII).

## ARTICLE VII

The General Assembly defined the scope of bargaining for all public employers and all types of bargaining units in Article VII. Sections 701, 702 and 703 have been labeled respectively, the mandatory, permissive and the illegal subjects of bargaining.

Section 701 broadly defines collective bargaining as the obligation to ". . . meet at reasonable times and confer in good faith with respect to wages, hours and other terms and conditions of employment." While good faith bargaining is required, it is always important to note that this obligation does not compel either party to agree to a proposal or require the making of a concession. This requirement as it pertains to school entities also is found in Act 88, Section 1111A.

*Section 702 provides a standard for employers in all areas of the public sector to determine subjects that are not mandatory for bargaining:*

> *Public employers shall not be required to bargain over matters of inherent managerial policy, which shall include, but shall not be limited to such areas of discretion or policy as the functions and programs of the public employer, standards of service, its overall budget, utilization of technology, the organizational structure and the selection and direction of personnel.*
>
> *Public employers, however, shall be required to meet and discuss on policy matters affecting wages, hours and terms and conditions of employment, as well as the impact thereon upon request by public employe representatives.*

This section now is covered by Act 88, Section 1112A.

Here, the Legislature clearly intended to insulate the policy-making function of local government, including school boards from the negotiations process. As was stated earlier, the Legislature never intended that unions, or mediators or arbitrators would set public policy. Policy is a function reserved for public officials, and Section 702 of the act was designed to protect this function.

The act further explicitly states in Section 703, that the parties cannot effect or implement subjects of bargaining, if the provision agreed upon is in violation of, inconsistent with, or in conflict with any statutes enacted by the General Assembly.

The distinctions created here are crucial in defining the rights of the parties at bargaining impasse. Because school boards are not required to bargain over matters of inherent managerial policy, public employees cannot insist on good faith bargaining or base a strike upon such proposals.

Section 705, which covers union security, is repealed insofar as it is inconsistent with Act 84 of 1988, Section 4.

## ARTICLE VIII

*Article VIII of the law is concerned with the impasse procedures which must be exhausted before the union may call for a work stoppage. The timetable for the collective bargaining impasse begins essentially with the wording of Section 801.*

*It states in part: ". . . if no agreement is reached between the parties within 21 days after negotiations have commenced, but in no event later than 150 days prior to the budget submission date, and mediation has not been utilized by the parties, both parties shall immediately, in writing, call in the service of the Pennsylvania Bureau of Mediation."*

*Section 802 then sets out a period of 20 days for mediation. This section also places upon the PLRB the responsibility for the optional appointment of a fact-finding panel after mediation has been used. The length of time for the process of fact-finding is 40 days. Under the same section, further provisions are made after the 40-day fact-finding period for both parties to accept or reject findings and recommendations within 10 days. An additional 10-day limitation is provided for publicizing the findings and recommendations of the fact-finding panel.*

*If the different time period requirements are summed up, we see that a minimum of 101 days must elapse from the time negotiations begin until all of the steps of the impasse procedures are exhausted. No employe organization can legally go on strike within that 101-day period.*

Act 88 provides school entities with new impasse procedure timeframes.

## ARTICLE IX

Article IX addresses the period once agreement is reached by the two parties and a collective bargaining agreement is drawn up. Section 901 requires that the agreement be reduced to writing and signed by both parties. This section is enforced through Article XII Sections 1201(a) (6) and 1201(b) (5). These two sections make it an unfair labor practice for both public employers and public employees to refuse to reduce a collective bargaining agreement to writing.

In addition, Section 1151A of Act 88 requires that agreements pursuant to this section be reduced to writing and signed by both parties. Section 1151A further allows an employee organization or school entity to institute a cause of action in the court of common pleas to compel compliance.

Section 902 stipulates who is permitted to vote when ratifying an agreement. The section requires only those members who belong to the bargaining unit involved shall be entitled to vote.

Section 903 requires the two parties to the agreement to use a third party to resolve disputes by determining what the two parties meant by the language that they chose to place in the bargaining agreement. Where the language is not clear and precise, the arbitrator will determine what the parties intended by the language. Generally, the decision of such an arbitrator is final and the courts will not upset the decision unless it can be shown that the arbitrator exceeded his authority.

Lastly, the act provides that the cost of such grievance arbitration will be split equally between the parties to the agreement.

## ARTICLE X

The Public Employe Relations Act changed prior law in Pennsylvania and gave public employees the limited right to strike. It did not give all public employees the right to strike, nor did it give them the right to strike as it exists in the private sector.

Public employees in Pennsylvania, except police officers, firefighters, guards at mental hospitals and prisons, and employees directly involved with the necessary function of the courts are given a limited right to strike. *Strikes are prohibited during the prescribed impasse procedures of Sections 801 and 802. Only when these procedures are exhausted, may a legal strike occur.*

Strikes and lockouts now are prohibited in certain circumstances by sections 1125A, 1131A, 1132A, 1161A and 1171A of Act 88.

The right of public employees to strike is further limited to the extent that the strike may be enjoined if the public employer petitions the court for an injunction and the court finds that the strike creates a clear and present danger or threat to the health, safety or welfare of the public.

In addition, pursuant to Section 1161A of Act 88 the secretary of education may seek injunctive relief in the appropriate court of common pleas when an employee strike would not permit the school entity to provide the period of instruction required by Section 1501 of this act by June 30.

Sections 1005, 1007, 1008, 1009 and 1010 relate to the enforcement of court-ordered back to work injunctions. This article lacks specific and mandatory direction to the courts as to penalties to be imposed for infractions of the law.

## ARTICLE XI

In bargaining there always is the possibility that an agreement cannot be reached, all of the impasse procedures specified in the law have been exhausted and the union takes its membership out on strike. Picketing the public employer is the customary activity associated with strikes. This article is designed to avoid the problems of one union honoring the picket lines of a striking union.

Section 1101 declares that any employee, other than one engaged in a legal strike, who refuses to cross a picket line shall be deemed to be engaging in a prohibited strike and therefore subject to court sanctions.

## ARTICLE XII

The grant of the right of collective bargaining is a frail benefit to employees unless the right is protected. Section 1201 rather explicitly spells out the basis of unfair practices by both employee groups and employers. Section 1201(a) is a list of unfair practices when committed by employee organizations.

The PLRB is the appointed authority to make determinations concerning whether either party has violated the terms of the act.

## ARTICLE XIII

This article, "Prevention of Unfair Practices," supports the powers of the PLRB to prevent any person from engaging in any unfair practice listed in Article XII.

Section 1302 establishes who can file an unfair labor practice charge and how charges are filed, while 1303 outlines how the findings of the board are handled with unfair practice charges are sustained or dismissed.

## ARTICLE XIV

Article XIV, Section 1401, deals exclusively with the relief the PLRB can offer for an unfair practice committed during or arising out of the collective bargaining procedures set forth in *Article VIII*, sections *801 and 802*.

In the event of an unfair labor practice arising out of sections *801 or 802*, the Labor Board will be empowered to promptly petition the court of competent jurisdiction for appropriate relief or a restraining order.

Mandatory timeframes as they pertain to school entities now are found in Act 88.

## ARTICLE XV

Decisions of the PLRB are not self-enforcing. If the board issues a decision and that decision is ignored, the board must go to court to secure enforcement. This can be found in Section 1501.

Section 1502 provides a vehicle for people aggrieved by a final order of the board to seek relief from that order. The aggrieved party may obtain a review of the order by petitioning the court of common pleas of the county where the alleged unfair practice occurred.

The court in reviewing an order of the PLRB under the act, must review the record as a whole and determine whether the PLRB's order is supported by substantial and legally credible evidence. The court must determine whether the evidence as a whole is "sufficient to convince a reasonable mind to a fair degree of certainty."

## ARTICLE XVI

Section 1601 grants the PLRB the power it deems necessary to properly investigate alleged violations. Section 1602 specifically grants the PLRB the power to issue subpoenas requiring the attendance and

testimony of witnesses. Section 1604 allows the PLRB to ask the court to enforce contempt of court charges against any person refusing to obey a subpoena issued by the board.

## ARTICLE XVII

Section 1701 prohibits public employee organizations from, either directly or indirectly, making a financial contribution from organizational funds to any political party or in support of any political candidate for public office. The PLRB is empowered to promulgate rules and regulations to enforce this section. A fine of up to $2,000 may be imposed for a violation of Section 1701. The section does not, however, prohibit individual members from contributing to political parties or candidates.

Some public employee organizations have formed political action committees, which are legal under the Pennsylvania Election Code. Employee organizations have established procedures whereby members can voluntarily contribute to these committees.

# 3

# Responsibility and regulations of agencies

In Pennsylvania, two state agencies have principal responsibility for regulating labor-management relations and resolving issues. The Pennsylvania Labor Relations Board administers and enforces commonwealth laws; the Bureau of Mediation is assigned the responsibility to provide mediation services to public sector parties.

## Pennsylvania Labor Relations Board

The Pennsylvania Labor Relations Act, which created the PLRB in 1937, encourages the peaceful resolution of private-sector industrial strife and unrest through collective bargaining between employers and their employees and protects employees, employers and labor organizations engaged in legal activities associated with the collective bargaining process. The board's private-sector jurisdiction is limited to employers and their employees not covered by the National Labor Relations Act, for the most part only small local businesses.

Most of the board's work is in the public sector. The Public Employe Relations Act (Act 195 of 1970), extended collective bargaining rights and obligations to most public employees and their employers at the state, county and local government levels and vested PLRB with administrative authority to implement its provisions.

The board is comprised of three members appointed by the governor and confirmed by the Senate to serve six-year terms, staggered at two-year intervals. While full-time staff in the central office in Harrisburg and a regional office in Pittsburgh are responsible for day-to-day activities, the three-member board resolves appeals from staff determinations and establishes overall policy and operating guidelines.

Although specific provisions may vary, the board's basic duties are

similar for public and private-sector cases. PLRB has the responsibility to determine the appropriateness of collective bargaining units and to certify employee representatives, as well as the authority to remedy and prevent unfair labor practices. For public employees other than police and firefighters, the Board also is assigned a limited role in resolution of collective bargaining impasses.

## Who is covered by Act 195?

Act 195 governs collective bargaining between public employers and their employees. The term "public employer" under the act includes not only the commonwealth and its political subdivisions, including school districts and its boards, commissions, authorities, etc., but also nonprofit organizations and certain other institutions that receive grants or appropriations from local, state or federal governments.

One of the PLRB's major functions is to determine the appropriateness of these collective bargaining units, based on guidelines established in the act and in relevant case law.

Employees under Act 195 include individuals employed by a public employer except elected officials; appointees of the governor; management-level employees; confidential employees; clergy and others in a religious profession, employees at church offices or facilities; and police and firefighters.

## Representation cases

Under the Public Employe Relations Act, employees may organize in units represented by employee organizations of their own choosing for the purpose of bargaining collectively with their employers concerning wages, hours and other terms and conditions of employment. Units of first level supervisors also may be organized to "meet and discuss" with their employers concerning issues which would be bargainable for rank and file employees. All units which came into existence after 1970, both collective bargaining and meet and discuss, must be certified by PLRB.

One of the board's major functions is to determine the appropriateness of these collective bargaining units, based on guidelines established in the act and in relevant case law. The board also determines whether employees in an appropriate unit desire to be represented by

a specific employee organization. This principally is accomplished through the conduct of secret ballot elections which are held at the employees' work site or, in some instances, by canvassing eligible voters by mail ballot.

Representation cases are initiated most often by filing a petition which must be supported by a showing of interest by 30% of the employees in the proposed unit.

Before an election is held, the PLRB may schedule a hearing to investigate issues which may exist concerning the petition. Frequently, if no major questions are raised concerning the propriety of the unit or other matters, the parties may eliminate the formal hearing by stipulating the time and place of the election, the eligibility list and various other matters. Joint election requests also may eliminate or reduce preliminary procedural steps to set up elections. This type of petition most often is filed when an employer does not question the appropriateness of the unit that the employee organization is attempting to organize.

When elections are held under Act 195, employee organizations must receive a majority of the valid ballots cast in the election to be certified as the exclusive representative of a collective bargaining unit. If no choice receives a majority of the votes, a runoff election is held between the two choices that received the most votes.

Units may be certified without conducting elections if an employer does not question either the appropriateness of a unit or the majority status of a petitioning employee organization, and joins with the employee organization to request that PLRB certify the proposed unit.

Representatives may be decertified pursuant to the filing of a decertification petition, which also must be supported by 30% of the employees in a unit or, in the case of an employer filed petition, by a substantiated good faith doubt of the majority status of the representative. The certified representative will lose its bargaining status if it does not receive a majority of the valid votes cast in a decertification election, or if it voluntarily decides to relinquish its representative status through the filing of a disclaimer of interest.

Parties also may petition PLRB for clarification of whether certain positions should be properly included in a unit. This procedure is available to determine managerial, supervisory or confidential status or to allocate newly created positions to appropriate bargaining units. Unit clarification procedures also may be used to merge two or more existing units.

PLRB also may amend a previously issued certification to reflect a change in the name or affiliation of an employee representative.

## Unfair practice cases

The PLRB enforces and protects the rights of employees to organize and to bargain collectively through investigation of charges of unfair practices and direction of remedies if such practices are found. Article XII of Act 195 outlines unfair practices prohibited for employers, employees or employee organizations.

Act 195 prohibits employers from interfering, restraining or coercing employees in the exercise of their rights. Employers also may not refuse to bargain, dominate or interfere with the formation or administration of any employee organization, or discriminate against employees because of union activity. The enumerated employee or employee organization unfair practices restrict interferenee and unlawful restraints that could occur in bargaining relations with employers or in dealing with individual employees, including refusal to bargain in good faith.

Parties may initiate a PLRB investigation of an alleged unfair practice by filing a charge on the Form PERA-9, Charge of Unfair Practices, which requests information on the specific subsection the act alleged to have been violated and on the specific facts and circumstances surrounding the charge.

The board's rules and regulations authorize the secretary of the board to issue complaints in unfair practice charges when, upon review, it is determined that a sufficient cause of action is stated in the charge. After a complaint is issued, the case may be assigned directly to a hearing or to a conciliator for further investigation or discussions between the parties for the purpose of arriving at a settlement of the case short of formal hearing.

Should the settlement effort fail, or should the case contain issues and circumstances which appear to be not amenable to negotiated settlement, the case will proceed to a formal hearing.

At the hearing, a representative of the party filing the charge will prosecute the case before a PLRB hearing examiner. The board does not provide legal counsel for individuals who have filed charges of unfair practices. The parties present testimony, examine and cross-examine witnesses and introduce evidence concerning the charge, and stenographic record is made of the hearing.

Upon conclusion of a hearing, the hearing examiner will issue a proposed decision and order to the parties containing a statement of the case, findings of fact, conclusions of law and an order either dismissing or sustaining the charge. If the charge is sustained, appropriate actions to remedy the effect of the unfair practice, including rein

statement of employees discharged in violation of the act, with or without back pay, may be ordered. PLRB has the authority to petition the courts for the enforcement of such orders and for appropriate temporary relief or restraining orders.

## Impasse resolution cases

PLRB has limited powers relating to bargaining impasses between employers and employees under Act 195. The act provides for mandatory mediation of bargaining impasses under the auspices of the Pennsylvania Bureau of Mediation. After the exhaustion of mediation, PLRB has the discretion to appoint a fact-finding panel to make findings and recommendations for resolving the dispute if it finds that the issues and circumstances in the case are such that fact-finding would be beneficial. The board pays half of the cost of fact-finding while the parties share the other half.

Act 88 provides mandatory timelines both for mediation and fact-finding, and for exceptions as to when fact-finding may not be implemented.

Act 88 of 1992 provides for voluntary and mandatory mediation of collective bargaining impasses under the auspices of the Pennsylvania Bureau of Mediation. Further, the act provides for fact-finding upon request by either party, by mutual agreement, or at the discretion of PLRB. In addition, Act 88 provides mandatory timelines both for mediation and fact-finding, and for exceptions as to when fact-finding may not be implemented.

PLRB also has a role in the selection of neutral arbitrators for interest arbitration panels created under Act 195 to resolve bargaining issues involving employees who do not have the right to strike. The act requires the PLRB to pay the costs of the neutral arbitrator in those proceedings whether or not the neutral has been selected from a board list.

## Pennsylvania Bureau of Mediation

In 1937, the Commonwealth of Pennsylvania enacted a law giving a broad mandate to the Department of Labor and Industry to provide mediation services to the private sector. As the demand for mediation activity increased, the department established a separate Bureau of Mediation.

The Public Employe Relations Act (Act 195 of 1970) gave public

sector employees the right to strike. The Bureau of Mediation then was assigned the responsibility of providing mediation services to public sector parties.

With the passage of Act 88 in 1992, various collective bargaining provisions were transferred from Act 195 to the Public School Code and a revised process was established for negotiations.

Among its provisions, Act 88 establishes a mandatory timeline for bargaining; provides for voluntary and mandatory mediation; and ensures a minimum complement of state mediators.

Today, the work of the Bureau of Mediation is the keystone of the commonwealth's overall efforts to promote cooperative relationships between labor and management in schools, plants and other places of work.

## Mediation: Commonwealth public policy

The Pennsylvania Labor Mediation Act states in pertinent part that it is the public policy of the commonwealth to encourage employers and employees by their representatives to make and maintain agreements concerning wages, hours and conditions of employment, and to settle all controversies arising out of the application of such agreements. 43 P.S. Sec. 211.31 et seq.

Under Act 88 the amended code now provides procedures for mediation and fact-finding. If after a reasonable period of negotiation, a dispute or impasse exists between the representatives of the employer and the employee organization, the parties may voluntarily submit to mediation. If no agreement is reached between the parties within 45 days after negotiations have commenced, but in no event later than 126 days prior to June 30 or Dec. 31 (whichever is the end of the school entity's fiscal year) and mediation has not been used by the parties, both parties shall immediately in writing request the service of the Pennsylvania Bureau of Mediation. (Act 88 Section 1121-A)

Once mediation has commenced, it shall continue for so long as the parties have not reached an agreement. If, however, an agreement has not been reached within 45 days after mediation has commenced or in no event later than 81 days prior to June 30 or Dec. 31, the Bureau of Mediation shall notify the PLRB of the parties' failure to reach an agreement and of whether either party has requested the appointment of a fact-finding panel. (Act 88 Section 1122-A)

Act 88 further provides that the Pennsylvania Bureau of Mediation shall employ a complement of not less than 25 mediators which shall be available to mediate according to the provisions of subsection (a). (Act 88 Section 1121-A)

## Agency services

While continuing to provide services to the private sector, mediation in public sector impasses accounts for 80% of the Bureau's caseload. State mediation services also are available to the parties in police and firefighter disputes under Act 111.

Bureau mediators also mediate grievances at the mutual request of the parties. This service provides a no-cost alternative to the submission of grievance disputes to conventional arbitration paid for by the parties.

In addition to its mediation duties, the Bureau maintains a list of qualified arbitrators and submits panels of arbitrators when requested by the parties to any collective bargaining dispute.

Many of these no-cost mediation services provided by the Department of Labor and Industry's Bureau of Mediation are also available through the U.S. Department of Labor's Federal Mediation and Conciliation Service.

The mission of each agency is to assist, when needed, in the collective bargaining process before a strike becomes inevitable, and even after a work stoppage has occurred.

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With the passage of Act 88, the Pennsylvania Department of Education becomes an integral part of the collective bargaining process.

## Role of PDE

Commonwealth Court held that, under Act 195, the secretary of education had no standing to compel a school district to seek an injunction to end a strike. However, under Act 88, if a strike is called and completion of a 180-day school year is threated by June 30, the secretary of education may initiate an injunction in the appropriate court of common pleas. (Act 88, Section 1161-A)

PDE is responsible for monitoring the school district calendar to determine the June 30 date for injunctive purposes.

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# Impasse procedures under Act 88

Act 88 further defines and mandates the timely use of impasse procedures, enforcing stricter timelines and adding nonbinding arbitration. The three forms of impasse resolution – mediation, fact-finding and nonbinding arbitration – initially are voluntary; however, mediation and nonbinding arbitration can become mandatory under the act.

## How mediation works

During the early stages of bargaining, the parties may adopt mediation voluntarily at any point until they reach the period when mediation is required. Act 88 mandates mediation within 45 days of the start of negotiations or by 126 days prior to the budget submission date (usually Feb. 24). Due to the expected increase in the need for mediators, Act 88 requires that the Bureau of Mediation employ a minimum staff of 25.

When the bargaining process reaches an impasse, an impartial mediator can provide a fresh point of view and encourage practical cooperation toward a settlement. Mediation's value in the collective bargaining process is time-tested – nine out if 10 disputes receiving active assistance from a mediator are settled without a work stoppage.

- Mediators have backgrounds in management or labor and are hired for their knowledge, skills and experience in collective bargaining.
- Mediators maintain strict objectivity, neutrality and confidentiality while trying to open new avenues to problem solving.
- Mediators confer with the parties involved in a dispute on an individual basis and through joint conferences called with employer and employee representatives.
- The mediation process can get stalled negotiations going again and improve the bargaining atmosphere. Mutual discussion, alterna-

tive solutions, specific contract clauses and economic data can be explored.

• Mediators also endeavor to permanently improve the bargaining and working relationship between management and labor.

After assisting in an agreement, the mediator often maintains contact with the union and employer to ensure that issues and concerns continue to be addressed in a cooperative manner. If requested by both parties, mediators also can provide advice on specific problems as well as grievance mediation. Early bargaining sometimes is encouraged by a mediator trying to avoid deadline tensions.

## Appointing fact-finding panels

If an agreement has not been reached within 45 days after mediation has commenced or in no event later than 81 days prior to June 30 (April 10) or Dec. 31 (Oct. 11), whichever is the end of the school entity's fiscal year, the Pennsylvania Bureau of Mediation shall notify the Pennsylvania Labor Relations Board of the parties' failure to reach an agreement and whether either party has requested the appointment of a fact-finding panel to make recommendations to resolve the dispute. Fact-finding is mandatory upon the unilateral request of either party during this period.

The parties mutually may agree to fact-finding and PLRB shall appoint a fact-finder as provided for by law (except the parties may not mutually agree to fact-finding during mandated nonbinding final-best-offer arbitration).

The board shall establish, after consulting representatives of both employee organizations and employers, panels of qualified people broadly representative of the public to serve as members of fact-finding panels. Within 60 days of the effective date of Act 88, PLRB was required to increase the number of available panels of people qualified to serve as members of fact-finding panels, to meet the expanded role of fact-finding as provided for in the act.

The commonwealth shall pay half of the cost of the fact-finding panel; the remaining half shall be divided equally between the parties. PLRB establishes rules and regulations under which panels shall operate including, but not limited to, compensation for panel members.

In addition, the PLRB may implement fact-finding, as provided for at a time other than that mandated in the act, except that fact-finding may not be implemented between the period of notice to strike and the conclusion of a strike or during nonbinding final-best-offer arbitration. If PLRB chooses not to implement fact-finding prior to a strike, it shall issue a report to the parties listing the reasons, if either party requests one.

PLRB has the option to appoint a fact-finding panel which may consist of either one or three members. Hearings will be held during which oral and/or written testimony will be given. Fact-finders have subpoena power under the law. If, during this time, the parties have not reached an agreement, the fact-finder will issue a report showing findings of facts and recommendations.

The parties have 40 days to present testimony and issue a fact-finder's report. The final report is sent by registered mail to both parties. According to the established timeframe in Act 88, the fact-finding report should be issued by May 20.

Not more than 10 days after the findings and recommendations have been sent to both sides (May 30), the parties shall notify the labor board and each other whether or not they accept the recommendations of the fact-finder. If either party rejects the fact-finder's recommendations, the report is released for publication by PLRB. The parties then have not less than five days nor more than 10 days after the publication of the fact-finding report to reconsider their positions.

Nonbinding arbitration may take one of three forms. The type of arbitration used is an important strategy decision to be made by the school board.

Once a second consideration has been given by both parties, the labor board again is contacted with the results of those votes. If either party rejects the recommendations, negotiations continue. Under Act 88, the second consideration period should be completed by June 30.

If fact-finding fails to bring about a settlement, negotiations, with the assistance of a mediator, will continue; however if no agreement to voluntarily use nonbinding arbitration exists, employees have the right to strike.

## Using arbitration

The bargaining process as established in Act 88 provides a new impasse procedure — negotiated nonbinding final-best-offer arbitration. At the onset of bargaining, both parties must discuss the options for arbitration to be used, if negotiations, mediation and fact-finding fail to produce an agreement. The issue of acceptance and adoption of one of three options in the arbitration process must be bargained, but there is no requirement for agreement on the type.

If the parties cannot agree to the type of arbitration to be implemented, the mediator chooses the procedure to be used by the panel.

Nonbinding arbitration may take one of three forms. The type of arbitration used is an important strategy decision to be made by the school board.

Just as in fact-finding, a specific timeframe must be followed during the arbitration process.

One option is **single package** arbitration in which the arbitrator chooses from either the board's last offer, the union's last offer, or the fact-finder's recommendation, if there is one. A second possible format for nonbinding arbitration is based on **issue-by-issue**. The arbitrator is free to compose a decision based on individual items from the offers of either party or a fact-finder. The final option available separates issues into two categories; **economic and noneconomic**. These issues are treated as separate units from each of the offers, including the findings of the fact-finder.

Nonbinding arbitration can occur either voluntarily or mandatorily. Following the rejection of a fact-finder's report, both sides may agree to enter into nonbinding arbitration. In another scenario, the board and the union could be required to enter into the arbitration process when the school district no longer can meet the requirement of 180 days of instruction by the end of the school year or June 15, whichever is later. The arbitration process is the same, whether voluntary or mandatory.

Just as in fact-finding, a specific timeframe must be followed during the arbitration process. The first step in the procedure involves the selection of the three arbitrators to serve on the panel which will be hearing the case. Within five days of submission to arbitration, each party will select one member of the panel. Each arbitrator is expected to be knowledgeable in school-related fields, such as educational programs, budget, finance and taxation. The third arbitrator for the panel is selected from a list of seven arbitrators received from the American Arbitration Association.

Each party will eliminate names from the list in an alternating fashion with the employer striking the first name. The person remaining shall be the third member of the panel, as well as its chairman. The selection process must be completed within five days of publication of the arbitrators's list.

The school district and the employee organization must submit their final-best-offer to the arbitrators within 10 days of submission to the process. Both sides also must deliver a copy of their offer to the opposing side. Supporting documentation should be included providing rationale for the positions taken on the unresolved issue. Specific considerations which should be taken into account in supporting rationale are noted in Act 88. These considerations place an emphasis on local conditions and include the public interest, the interest of the employee organization, and the financial capability of the school district.

Further, the law provides that consideration also must be given to changes in cost of living, existing terms and conditions of employment for the employee organization and other similar groups, and the arbitration process.

The public shall have access to offers from the two sides. The employer is required to post both offers in the school district's main office. The public has 10 days in which to comment on the offers. Following the completion of this period, all comments will be forwarded to the arbitrators for their consideration during deliberations. The panel of arbitrators is to begin hearings within 10 days of the selection of the third arbitrator of the panel. At least five days prior to the hearing, the parties shall receive written notice of the date, time and place for the hearing. At the hearing, representatives from both sides will argue in support of the positions taken in their last-best-offers.

Once the hearings have been completed, the arbitration panel has no more than 20 days to issue a decision. The determination of the majority of the arbitrators shall be final and binding on the parties involved **unless**, within 10 days, either side rejects the findings of the arbitration panel. If neither side rejects the panel's report in a "properly convened special or regular meeting," the findings will be binding on the parties and the dispute will be resolved.

## Binding arbitration is not the answer

Most "experts" do not see binding arbitration, in any form, as the solution to labor problems in the public sector. What is seen in these proposals is the destruction of the democratic process of representative government by turning the final decision making in negotiations over to a person who has no accountability to the public, which will be forced to live with the arbitrator's financial and other public policy decisions. Many articles and booklets have been distributed over the years which speak to the concerns inherent in binding arbitration proposals.

There is no guarantee that binding arbitration will prevent strikes

any more than legalizing them did, even with appropriate public interest protections afforded under Act 195. A full cycle has been made to Act 88 from the no-strike provisions of the 1947 law.

Some major objections to binding *interest* arbitration are:

• **Without a constitutional amendment, any legislation attempting to amend Act 195**, the state's public employee bargaining law, and provide binding arbitration for teacher unions and other school employees **would be unconstitutional**.

In cases where binding arbitration is a substitute for the strike weapon in public sector employment, strikes, albeit illegal ones, still occur. More often binding arbitration is sought simply as an extension of the bargaining process for the union or the employer.

• **Contrary to popular belief, binding arbitration already is part of Act 195** when it comes to resolution of grievances that arise under a labor contract. Very often in private sector labor relations, unresolved grievances by a union lead to a strike. Under Act 195, public employers and their unions must use binding arbitration to resolve differences of opinion raised in the grievance about the intent or application of a certain provision of a labor contract. Sometimes called "rights arbitration," this process has worked quite well, avoiding the kinds of strikes often encountered in private employment; however, it fundamentally differs in principle from allowing for binding arbitration to determine the substance of an agreement between a unit of government – a school board, for example – and a union.

• **Local school directors** (and other elected local government officials) **lose their authority to determine public policy**, such as setting tax levels and establishing educational program policy under "interest arbitration."

• **The arbitrator**, who is not accountable in any way to the general public and who is not fiscally responsible to the local community, **is entrusted with making decisions that can have a direct and immediate effect of causing an increase in local tax rates and change in local services**, regardless of whether or not the local tax-

paying public is willing or capable of financing such increases.

• **The arbitrator often makes decisions regarding administrative procedures** which may have both economic and noneconomic impact upon the local school district. The noneconomic impact often results in public policy control being given to the special interest group involved in the bargaining process. The same concern applies equally to other units of government, except police and firefighters who are covered by a special circumstance in Act 111.

• **Binding arbitration does not eliminate strikes.** Historically, binding arbitration found a place in American labor law as a substitute for a strike in private sector negotiations where the two parties had mutually agreed upon the circumstances under which binding arbitration would be used. However, in cases where binding arbitration is a substitute for the strike weapon in public sector employment, strikes, albeit illegal ones, still occur. More often binding arbitration is sought, not as a substitute for the right to strike, simply as an extension of the bargaining process for the union or the employer.

• **Compulsory binding arbitration upsets the structures of American representative government.** Arbitration in this sense – determining what the two parties, a unit of government and a union, shall agree to – is a public policy, or law-making function. The determination of public policy is a function of the legislative and, to some degree, the executive branches of government. The application of that policy, once determined, is a function of the judicial branch of government – the courts. Courts do not have authority to exercise legislative powers – to make laws or to establish regulations. Arbitration is an extension of the judicial function of government. Thus, arbitrators, when given the power to order the conditions of a settlement between a unit of government and a union, are given powers that the courts themselves do not and should not have.

• **Compulsory arbitration historically has resulted in significantly high wages and fringe benefits for the union,** caused by the natural inclination of an arbitrator to "split the difference" between what is offered and what is being sought. Even last-best-offer binding arbitration, where the arbitrator may not change the positions of the two parties and only may select one of those two positions, does not totally cure this "middle-of-the-road" approach.

Binding arbitration removes decisions from the authority of the elected representatives, placing that power in the hands of an outside person who has no accountability to the public. And the constitutionality of binding arbitration laws has been questioned in several state courts.

The taxpaying public is becoming increasingly aware of the soaring costs of paying for public services. Where local resources are simply not adequate to raise the funds needed to satisfy an arbitrator's award the only recourse available to the local governing body is to request the Legislature to appropriate more money. If such an appropriation is denied, obviously the level of services will need to be reduced.

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# Preparing for successful negotiations

Preparation is the cornerstone to success in many endeavors; collective bargaining is no different. The enactment of Act 88 establishes a mandatory timeframe in which collective bargaining is to take place. Preparation is critical, if appropriate objectives are to be determined and reached through the bargaining process.

Collective bargaining preparation activities are constant and deliberate, and should not be left to chance. As soon as one contract is signed, preparation for its successor begins.

A well-conceived plan to monitor the current contract for cost impact, obstruction of management decisions and flexibility to operate, grievances and other areas having direct impact on the district should be put in place with specific responsibilities assigned. Changes in law or interpretation of law also need to be monitored for their impact on current contract language or for consideration of future language.

Such monitoring not only allows the board to make more informed decisions on bargaining goals, it also gives board members the opportunity to anticipate union goals and express long-term bargaining philosophy which needs to be met contract after contract in the years ahead. The goals will be expressed by the exchange of proposals between the union and the district, making creation and understanding proposals extremely important.

As bargaining begins, keep in mind the timetable established under Act 88, the opportunities for impasse procedures and how these may affect bargaining strategies.

For the first time in Pennsylvania's history, public school collective bargaining is governed by the mandatory timeframe established

under Act 88 of 1992. The timetable set forth in the act is predicated on the school district's budget submission date, either June 30 or Dec. 31, depending upon the entity's fiscal year.

Ground rules for strikes have been altered with the implementation of the new law. Selective strikes, favored by many unions due to their unpredictable and highly disruptive nature, now are prohibited. The provisions of Act 88 also provide that when an employee organization has called a strike once and then unilaterally returns to work, the employee organization only may go on strike once more during the school year. In fact, if the employee organization calls a strike and then returns to work, they only would be permitted to strike once more during the school year.

For the first time in Pennsylvania's history, public school collective bargaining is governed by the mandatory timeframe established under Act 88 of 1992.

When employees are required to return to work during the nonbinding mandatory arbitration period, the union may continue its strike only after the arbitration decision is rejected. The walkout is considered a continuation of the first strike; therefore, the employees are free to strike once more because their return to work was compulsory under the law and not a unilateral move by the union.

Another new requirement employee organizations must fulfill is the notice of intent to strike. A 48-hour written notice to the superintendent is required prior to the start of a strike. If the superintendent decides to cancel school and the union calls off its strike, the decision to close school on the day of intended strike is not considered a lockout.

The duration of teacher strikes as they effect the overall school year also is addressed in Act 88. When an employee organization is on strike for an extended period that would prevent the school district from completing the 180-day school year by June 30, the secretary of education may seek an injunction in the county court of common pleas.

Using substitute workers during a work stoppage is permitted, with certain limitations. If a strike is called prior to the mandatory arbitration timeframe, the school district only may hire substitutes it has employed at some time during the previous 12 months. However, if the decision from the arbitrators is rejected and the school year can-

not be completed by the end of school or June 30, whichever is later, school districts may hire certified substitutes if the strike recommences. Assuming negotiations is the process used to effect desired changes to a collective agreement and, therefore, to the relationship between employee and employer, the labor proposals exchanged become the mechanisms used to create the change and to transmit the message behind the change.

Proposals must be understood and interpreted for literal as well as hidden meaning. Literal intent is obvious, although often misunderstood. Hidden intent is, at best, risky to interpret.

The mystery surrounding labor proposals can be eliminated by a thorough understanding and knowledge of what has taken place as it relates to the bargaining unit since the current agreement became effective. Virtually no proposal should surprise board members when the union makes its initial offer. These cautions will help avoid such pitfalls:

- Monitor salary settlements in surrounding or regional districts. More than likely they will be your district union's minimum goal.
- Evaluate the relationship between union and management, which will indicate how many proposals will attempt to usurp management prerogative.
- Consider what "incidents" have occurred during the current contract. Language will be proposed so they don't happen again.
- Keep informed on state and national union goals; they will be proposed by your district's union.

Union proposals are drafted to accomplish three objectives: job security, union security, and improved compensation and working conditions. Their content is derived from area comparisons, state and national union boilerplate objectives, and actual, alleged or potential inappropriate treatment of bargaining unit members as perceived by union leadership.

The union uses the bargaining table as the scrimmage to attempt to secure changes that will "solve" all of the problems. Such an attempt to solve problems generally tends to heighten the adversarial relationship between labor and management.

The board's proposal should send a message and, more importantly, set a tone. Place on the table only those items requiring serious consideration. Adding a few decoys may be necessary strategy; however, like the boy who cried wolf, boards who ask for everything every

time usually get very little. Serious concerns and reasonable discussion have a much better chance of bringing results.

Whether initiated by labor or management, change has a better chance away from the bargaining table. Pressure — of both time and expected results — is lessened when talks are informal and contract language will not be the result of the discussions.

Meet and discuss as called for in Section 301 of Act 195, or occasional informal meet and discuss, both are greatly underused. The opportunity for labor and management to bring issues of concern to each other on a regular basis throughout the year will reduce the need to use the bargaining table, and therefore the contract, as the primary arena to resolve issues.

Many proposed issues already will be covered in state and federal statute, School Code, PDE regulations and board policy and should not become part of the contract. If any of these areas are included or even referenced in the contract, they become subject to the grievance procedure and to arbitration.

The labor proposal cannot be viewed only as a demand to alter or improve the current collective bargaining agreement. It is a message, a statement, a series of suggestions, an opportunity to address a forum (the board), a catharsis, and not to be taken lightly.

A union proposal is the culmination of union networking among employees that brings feedback from all areas of the school district — building, department, grade level. The proposal probably has been under development since the last contract was ratified. Its intent warrants careful scrutiny by the board, while not taking lightly the earnestness of union members. The board's proposal should be no less.

Many union items will be proposed under the guise of being non-economic. All issues are economic issues; some are just more obvious than others. Salary, benefits, paid leave and tuition reimbursement are obvious economic issues that generally are recognized for their cost factors.

Transfer, teaching load, preparation time and class size are examples of items the union often will call noneconomic. These also are examples of job security items. They may not have an obvious direct cost, but if contract language prevents the total use of staff, additional staff must be hired at a definite cost to the district.

Existing staff positions are more secure if additional staff must be hired because of restrictions in the contract language about the use of existing staff. Job security proposals also include evaluation, just cause, maintenance of standards, and no reduction in force.

Arguments that a proposal will improve the education of the children in the district very well may have some merit. However, if the improvement of education is the real goal, a labor agreement is not the appropriate vehicle. Policy, regulations, procedures, curriculum and other education documents are more appropriate, and these areas are best handled through the meet-and-discuss provisions in Act 195.

Many proposed issues already will be covered in state and federal statute, School Code, PDE regulations and board policy and should not become part of the contract. If any of these areas are included or even referenced in the contract, they become subject to the grievance procedure and to arbitration. Later, it's possible an arbitrator could tell a board what they meant when they enacted a policy.

## Understanding a labor proposal

A labor proposal, not just the specific intent of each item but also the general overtones it conveys, can portray a picture of the district. It can be a depiction of the past, a portrait of the present or a prediction of the future. For example, if class size appears on the table for the first time, it may mean that, although it has not been a problem in the past, at least in the eyes of the union it may have become a problem or is expected to become a problem in the future.

Each item will carry its arguments, costs and consequences, so understanding each item and its intention is paramount. However, understanding the total proposal and the message it sends can have long-term positive impact on the district as interests and concerns of the bargaining unit are recognized.

Several months in advance of the mandatory January starting date for bargaining, specific preparation should begin, giving the management team time and opportunity to be sure all aspects of preparation are covered before the first meeting. At the first meeting it is too late; instead of preparing, boards will find themselves reacting defensively.

The specific order and a specific timetable for preparation will vary with each district. What is important is to recognize the com-

plexity of collective bargaining and the importance of each step of preparation.

The role of the board must be clear throughout the bargaining process. A board of education is a legislative body. Its function is not to operate the schools, but to see that they are run effectively. Effective boards concentrate their time and energy upon determining what it is the schools should accomplish and developing policies to carry out these goals. They avoid day-to-day administrative questions, except to ensure that the administration of the schools is effective and efficient, and that it reflects the policies established by the board. Therefore, boards must be very careful during negotiations not to bargain away administrative prerogatives to carry out board policy.

Negotiating a contract and benefits and establishing policy must be accomplished in strict regard to existing legislation and within the parameters established by such legislation.

Through the collective bargaining process, board administrative teams must become "listeners" who can empathize with employees' needs while ensuring the continuing ability to provide a thorough and efficient system of education for children.

Negotiated contracts must provide fairly and equitably for employees' needs derived from wages, hours and other terms and conditions of employment. These items must be considered in light of short-range and long-range planning, and in the best interest of the employees and the general public.

The board-administrative team must preserve the managerial right and discretion to develop policy and administrative procedures as follows:

- Functions and program of the school district.
- Standards or quality of services rendered to the public through the education objective.
- Management of resources and the overall budget of the school district.
- Use of technology in providing educational services.
- Organizational structure needed to achieve a thorough and efficient system of education.

- Supervision or direction and selection of all personnel. Such supervision should ensure accountability and promote employee growth.

Negotiating a contract and benefits and establishing policy must be accomplished in strict regard to existing legislation and within the parameters established by such legislation.

Language negotiated into a contract, which is a binding agreement equally obligating each party, should be clear and exacting so both management and employees easily can understand the intent and condition under which they are ready to operate. Ambiguous language only leads to misunderstanding and ultimately may be subjected to interpretation by an outside third-party neutral, who also could find the language difficult to apply.

Both parties to the agreement must remember that appeals to arbitration awards become rather limited as a result of court intervention. Therefore, both parties are challenged to negotiate clear and concise contract language which has been tempered by developing case law and arbitration opinions rendered throughout the comparative short history of collective bargaining in Pennsylvania. It must be remembered that public sector collective bargaining is relatively short on precedent-setting history when compared to a rather well-established precedent of the private sector from which the model was developed. As a matter of fact, the precedent of the private-sector model has had a rather adverse effect, specifically in situations where other related laws have conflicted with the older more established School Code.

Personnel practices must be developed which more effectively help employees grow in a multidimensional way so that they maintain self-esteem by gaining positive feedback for their efforts. However, this is not an easy task because the collective bargaining model produces or maintains an adversarial condition that must be overcome by strong positive effort. Employees must learn that board-administrative teams sincerely are interested in them and their needs. Management must take the lead in light of the union constantly being geared-up for self-preservation.

## Selecting the negotiating team

Board-administrative teams must learn the principles of modern management which rapidly are moving away from the "we-they" syndrome to a more humanistic approach such as the following:

- Your people are your only exclusive asset. They work only for you.

- People produce, not equipment, buildings or books.
- It is not what people can do that determines individual productivity, it is what they want to do.
- Attitude is the underlying basis for all action.
- It isn't what is so that motivates us, it's what we think is so.
- There's hardly a problem that people are involved with that they are not also the answer to.

These tenets should be kept in mind as the bargaining process continues. Team selection should be among the first steps taken to give the team sufficient time to prepare, assign responsibilities, study data, determine strategies and gel as a working unit.

Team make up will vary from district to district; there is not just one right team. With each negotiation, decide what is the best team to represent the board that year.

Team make up will vary from district to district; there is not just one right team. Similar teams may not be successful from district to district or from contract negotiations to contract negotiations. With each negotiation, decide what is the best team to represent the board that year.

Different team combinations of board members, administrators and outside professionals are common. Some districts use only board members, others include administrators and solicitors, while still others bring in outside help.

Characteristics of a good team member are fundamental, regardless of makeup, including: knowledge of bargaining and the law, background on previous negotiations and labor-management issues, open mindedness, flexibility, articulation, analytical skills, ability to be a team member, confidentiality, and broad concern for all interests involved in the bargaining process (the community, taxpayers, parents, citizens without children in school, senior citizens, students, teachers and administrators).

Team members also must be aware of the time commitment involved in bargaining and they must be prepared for the possibility of personal criticism from various sources. The superintendent and business manager should be available at negotiations sessions, but may not necessarily be present at the bargaining table.

The role of the administration is crucial throughout negotiations,

whether or not they are directly involved at the bargaining table. The superintendent will have ultimate responsibility to administer the agreement the board reaches with the union. As such, the superintendent should be given input on the impact of proposed language on the day-to-day operation of the district and should be in agreement with contract changes.

Business officials should be involved in all aspects of cost analysis – past, present and future – so the team will know exactly how much each contract item will cost and for what time period.

Certain legal restrictions exclude board members from the bargaining process when a conflict of interest can be shown. The Pennsylvania Ethics Act precludes public officials – school directors – from using the authority of their office for private monetary gain for themselves or their family. When determining whether a conflict of interest exists, school boards should consult their solicitor.

A 1990 opinion from the State Ethics Commission supported the position that school directors with a "conflict of interest" who are involved in collective bargaining may not be part of deliberations and discussions during negotiations; however, they may vote on the final agreement.

In addition, Article XVIII of Act 195 prohibits a public official from bargaining with a public employer when the interests of a public official conflict with those of the public employer. This article further provides for the immediate removal by the public employer from collective bargaining negotiations or in any matter connected with such negotiations of any person who violates this section.

However, this article does not preclude a public official, where entitled, from voting on the ratification of an agreement.

One common characteristic of a good negotiating team is that they have only one person speak at the bargaining table as chief negotiator. Again, this expertise may exist inhouse or an outside negotiator may be brought in. The person chosen as chief negotiator should have the same characteristics of the team members, in addition to leadership skills, speaking skills and an even greater understanding of the law and the process. The chief negotiator must be able to convey clearly to the union team the position of the board on issues while, at the same time, clearly understand the union's positions on issues.

The importance of a single speaker is two-fold. First, by using one person, only one position, opinion or response can be given. Secondly, if more than one person speaks, disunity may be shown to the union and individual team members can be separated and targeted.

## Collecting data for negotiations

Before determining the team, choosing the negotiator and setting the time to meet to determine parameters for bargaining, the administration should be given the task of collecting pertinent data necessary to make decisions on objectives.

Collection and retention of data should begin well in advance of the start of negotiations and be updated regularly. Data collected should help create the board's arguments during negotiations. A position based on an error in judgment or assumption rather than concrete data may become unarguable and form the basis for losing the integrity of the total proposal. Sound supportable arguments are essential to achieving a bargaining position.

Collection and retention of data should begin well in advance of the start of negotiations and be updated regularly. Data collected should help create the board's arguments during negotiations.

Collected data which can prove useful to a school district for negotiations should be extensive, including:

- Information from the Consumer Price Index to develop salary proposals.
- County demographic data, such as figures and trends for personal income and unemployment rates, to give the board a clear picture of current local economic conditions.
- Census information to trace population trends.
- Comparative census data assists school officials in anticipating future needs, such as additional classrooms or staff.

Certain school district data can have an impact on the positions a board takes with regard to negotiations. School districts may find great value in having revenue history available including millage history, total dollars of assessed real estate taxes, tax collection rates, and local, state and federal subsidies received. To show valid trends in these areas, a five-year history is recommended.

To obtain a complete picture of a school district's budgetary condition, a history of expenditures also must be compiled. Itemized reports on expenses in areas such as instructional, administrative, trans-

portation and debt service should be available, preferably showing a five-year trend. Data on the district's fund balance, if any, and on employee salary and fringe benefit costs can play a major part in supporting a district's position on specific issues during collective bargaining.

## Establishing contract goals

Once the board has seen the analysis of the current contract, reviewed grievances, heard input from administrators and reviewed all data collected and assembled, goals and objectives for negotiations can be established.

While these objectives may be difficult to decide, a few are evident. The contract will expire, a new contract will replace it. What does the board want the new contract to look like? What does the board feel is the bottom line for salary adjustments? What does the board want to do in the benefits area? What current language does the board want to change and what new language will it resist?

As parameters are determined, the team should be writing its proposal for contract changes to present to the union and determining strategies to reach these objectives.

Remember, the contract is a mutual agreement between the parties and both parties have an interest in its content. And, both parties have an equal interest and right to alter its content. If the board has no proposal, the contract only can be altered to the degree the board agrees with the union proposal.

## Communicating progress internally and externally

Throughout negotiations the team needs to keep the board up to date on progress. While the process varies from district to district and many methods are appropriate, if the process is to work, trust and confidentiality are important. Don't breach the confidentiality of information shared in an update.

The public also will be interested in what is happening at the bargaining table. When and to what extent to brief the public is a constant argument. The question of sooner or later usually is the issue. Each local district has to analyze the timeliness of public comment.

However effective public communications only takes place with planned, systematic communication programs. You cannot separate the two. You will not be credible to the news media or the public if you choose only to communicate when you're in trouble. Therefore school officials have a mandate to communicate on a regular basis.

Communicating during crises (snow storms, floods, emergencies, etc.) really is no different than communicating at other times during

the school year, except you will be severely tested during collective bargaining.

Crisis communication requires objectivity and truthfulness. Anything less by the board and administration is an abandonment of responsibility to the students and the community. One of the hardest things a board and management team will have to settle in their minds is: At what point do the interest of the employees take precedent over the interest of the general public?

Remember two points from the beginning: Every contract will be settled; and, at some point during impasse, all the issues that have led to that impasse must be told in a straightforward, no-holds-barred manner.

Look ahead and plan for sharing information with the public:

- Pull together a small coordinating team and appoint a leader.
- Determine one speaker and make that person available at all times.
- Review all news media personnel, numbers, etc.
- Deal with issues, not personalities. Refrain from attacks that would reduce your ability to deal effectively at the bargaining table and achieve your goals.
- Gather all available statistical data to ensure quick communications. (Play the "what if" game.)
- Review all communication channels to the community. Preaddressed envelopes to key communicators or community groups. Set up a telephone network.
- Set up methods to communicate with internal audiences.
- Keep public officials informed, but know sensitive areas. Sometimes other public employee unions sympathize with teachers or other public employee groups.

The mandatory timeframe for collective bargaining, as established in Act 88, will have a major impact on collective bargaining with school employees. School directors and administrators need to be alert about their options at each stage of the bargaining process. Preparedness and a thorough understanding of the negotiations process will be imperative if a district is to have success at fulfilling its collective bargaining objectives.

# Appendix

# ACT 88

**(Signed into law July 9, 1992)**

Amending the act of March 10, 1949 (P.L.30, No.14), entitled "An act relating to the public school system, including certain provisions applicable as well to private and parochial schools; amending, revising, consolidating and changing the laws relating thereto," providing for collective bargaining; further providing for payments on account of transportation of nonpublic school pupils and for reimbursement on leases and debt; granting pupils the right to refuse to dissect, vivisect or otherwise harm or destroy animals; and making a repeal.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. The act of March 10, 1949 (P.L.30, No.14), known as the Public School Code of 1949, is amended by adding an article to read:

## ARTICLE XI-A: Collective Bargaining.

**a) General Provisions.**

Section 1101-A. Definitions. – When used in this article the following words and phrases shall have the following meanings:

"Board" shall mean the Pennsylvania Labor Relations Board.

"Employee" shall mean a public school employee who bargains collectively with a public school entity, but shall not include employees covered or presently subject to coverage under the act of June 1, 1937 (P.L.1168, No.294), known as the "Pennsylvania Labor Relations Act," or the National Labor Relations Act (61 Stat. 152, 29 U.S.C. Ch. 7 Subch. 11). The term does not include any management-level employee of any other school district.

"Employee organization" shall mean a public school employee organization of any kind, or any agency or employee representation committee or plan in which membership is limited to public school

employees, and which exists for the purpose, in whole or in part, of dealing with public school employers concerning grievances, public school employee-public school employer disputes, wages, rates of pay, hours of employment or conditions of work, but shall not include any organization which practices discrimination in membership because of race, color, creed, national origin or political affiliation.

"Employer" shall mean a public school entity, but shall not include employers covered or presently subject to coverage under the act of June 1, 1937 (P.L.1168, No.294), known as the "Pennsylvania Labor Relations Act," or the National Labor Relations Act (61 Stat. 152, 29 U.S.C. Ch. 7 Subch. 11).

"Impasse" shall mean the failure of an employer and an employee organization to reach an agreement in the course of negotiations.

"Lockout" shall mean the cessation of furnishing of work to employees or withholding work from employees for the purpose of inducing, influencing or coercing a change in the conditions or compensation or the rights, privileges or obligations of employment.

"Representative" shall mean an individual acting for employers or employees and shall include employee organizations.

"School entity" shall mean a public school district, intermediate unit or area vocational-technical school.

"Strike" shall mean concerted action in failing to report for duty, the wilful absence from one's position, the stoppage of work, slowdown or the abstinence in whole or in part from the full, faithful and proper performance of the duties of employment for the purpose of inducing, influencing or coercing a change in the conditions or compensation or the rights, privileges or obligations of employment. The employee organization having called a strike once and unilaterally returned to work may only call a lawful strike once more during the school year. A written notice of the intent to strike shall be delivered by the employee organization to the superintendent, executive director or the director, no later than forty-eight (48) hours prior to the commencement of any strike and no strike may occur sooner than forty-eight (48) hours following the last notification of intent to strike. Upon receipt of the notification of intent to strike, the superintendent, executive director or the director may cancel school for the effective date of the strike. A decision to cancel school may, however, be withdrawn by the superintendent, executive director or the director. Any subsequent change of intent to strike shall not affect the decision to cancel school on the day of the intended strike. For the purposes of this article, the decision to cancel school on the day of the intended strike shall not be considered a lockout.

**(b) Scope of Bargaining.**

Section 1111-A. Mutual Obligation. – Collective bargaining is the performance of the mutual obligation of the employer or his representative and the representative of the employees to meet at reasonable times and confer in good faith with respect to wages, hours and other terms and conditions of employment, or the negotiation of an agreement or any question arising thereunder and the execution of a written contract incorporating any agreement reached but such obligation does not compel either party to agree to a proposal or require the making of a concession.

Section 1112-A. Matters of Inherent Managerial Policy. — Employers shall not be required to bargain over matters of inherent managerial policy. Those matters shall include, but shall not be limited to, such areas of discretion or policy as the functions and programs of the employer, standards of services, its overall budget, utilization of technology, the organizational structure and selection and direction of personnel. Employers, however, shall be required to meet and discuss on policy matters affecting wages, hours and terms and conditions of employment as well as the impact thereon upon request by employee representatives.

**(c) Collective Bargaining Impasse.**

Section 1121-A. Submission to Mediation. – (a) If after a reasonable period of negotiation a dispute or impasse exists between the representatives of the employer and the employee organization, the parties may voluntarily submit to mediation but if no agreement is reached between the parties within forty-five (45) days after negotiations have commenced, but in no event later than one hundred twenty-six (126) days prior to June 30 or December 31, whichever is the end of the school entity's fiscal year, and mediation has not been utilized by the parties, both parties shall immediately in writing call on the service of the Pennsylvania Bureau of Mediation.

(b) The Pennsylvania Bureau of Mediation shall employ a complement of not less than twenty-five (25) mediators which shall be available to mediate according to the provisions of subsection (a).

Section 1122-A. Fact-finding Panels. – (a) (1) Once mediation has commenced, it shall continue for so long as the parties have not reached an agreement. If, however, an agreement has not been reached within forty-five (45) days after mediation has commenced or in no event later than eighty-one (81) days prior to June 30 or December 31, whichever is the end of the school entity's fiscal year, the Bureau of Mediation shall notify the board of the parties' failure to reach an

agreement and of whether either party has requested the appointment of a fact-finding panel.

(2) No later than eighty-one (81) days prior to June 30 or December 31, whichever is the end of the school entity's fiscal year, either party may request the board to appoint a fact-finding panel. Upon receiving such request, the board shall appoint a fact-finding panel which may consist of either one (1) or three (3) members. The panel so designated or selected shall hold hearings and take oral or written testimony and shall have subpoena power. If, during this time, the parties have not reached an independent agreement, the panel shall make findings of fact and recommendations. The panel shall not find or recommend that the parties accept or adopt an impasse procedure.

(3) The parties may mutually agree to fact-finding and the board shall appoint a fact-finding panel as provided for in clause (2) of subsection (a) of this section at any time except that the parties may not mutually agree to fact-finding during mandated final best offer arbitration.

(4) The board may implement fact-finding, and appoint a panel as provided for in clause (2) of subsection (a) of this section, at a time other than that mandated in this section, except that fact-finding may not be implemented between the period of notice to strike and the conclusion of a strike or during final best offer arbitration. If the board chooses not to implement fact-finding prior to a strike, the board shall issue a report to the parties listing the reasons for not implementing fact-finding, if either party requests one.

(b) The findings of fact and recommendations shall be sent by registered mail to the board and to both parties not more than forty (40) days after the Bureau of Mediation has notified the board as provided in subsection (a).

(c) Not more than ten (10) days after the findings and recommendations shall have been sent, the parties shall notify the board and each other whether or not they accept the recommendations of the fact-finding panel and if they do not, the panel shall publicize its findings of fact and recommendations.

(d) Not less than five (5) days nor more than ten (10) days after the publication of the findings of fact and recommendations, the parties shall again inform the board and each other whether or not they will accept the recommendations of the fact-finding panel.

(e) The board shall establish, after consulting representatives of employee organizations and of employers, panels of qualified persons broadly representative of the public to serve as members of fact-finding panels. The board shall, within sixty (60) days of the effective date

of this act, increase the number of available pan ls of qualified persons to serve as members of fact-finding panels to meet the expanded role of fact-finding as provided for in this act.

(f) The Commonwealth shall pay one-half of the cost of the fact-finding panel; the remaining one-half of the cost shall be divided equally between the parties. The board shall establish rules and regulations under which panels shall operate, including, but not limited to, compensation for panel members.

Section 1123-A. Negotiated Final Best Offer Arbitration. – (a) The parties to a collective bargaining agreement involving public school employees shall be required to bargain upon the issue of acceptance and adoption of one of the following approved impasse procedures, with the proviso that such an obligation does not compel either party to agree to a proposal or require making a concession:

(1) Arbitration under which the award is confined to a choice among one of the following single packages:

(i) the last offer of the representative of the employer;

(ii) the last offer of the representative of the employees; or

(iii) the fact-finder's recommendations, should there be a fact-finder's report.

(2) Arbitration under which the award is confined to a choice among one of the following on an issue-by-issue basis:

(i) the last offer of the representative of the employer; (ii) the last offer of the representative of the employees; or

(iii) the fact-finder's recommendations, should there be a fact-finder's report.

(3) Arbitration under which the award is confined to a choice among one of the following on the basis of economic and noneconomic issues as separate units:

(i) the last offer of the representative of the employer;

(ii) the last offer of the representative of the employees; or

(iii) the fact-finder's recommendations, should there be a fact-finder's report.

(b) As used in this section, economic issues shall mean wages, hours, salary, fringe benefits or any form of monetary compensation for services rendered.

Section 1124-A. Method of Selection of Arbitrators. – The board of arbitration shall be composed of three (3) members. Arbitrators as referred to in this article shall be selected in the following manner:

(1) Each party shall select one (1) member of the panel within five (5) days of the parties' submission to final best offer arbitration. Each arbitrator shall be knowledgeable in the school-related fields of budget,

finance, educational programs and taxation.

(2) The third arbitrator shall be selected from a list of seven (7) arbitrators furnished by the American Arbitration Association within five (5) days of the publication of the list. Each of the seven (7) arbitrators shall be a resident of this Commonwealth and knowledgeable in the areas necessary to effectively make a determination. Each party shall alternately strike one name until one shall remain. The employer shall strike the first name. The person so remaining shall be the third member and the chairman.

(3) Payment of arbitrators shall be as follows:

(i) For voluntary arbitration, each party shall pay the cost of the arbitrator selected by it under clause (1) of this section. The cost of the third arbitrator shall be divided equally between the parties.

(ii) For mandatory arbitration, the Commonwealth shall pay one-half of the cost of the arbitrators; the remaining one-half of the cost shall be divided equally between the parties.

Section 1125-A. Final Best Offer Arbitration. – (a) At any time prior to mandated final best offer arbitration, either the employer or the employee organization may request final best offer arbitration unless fact-finding has been initiated as provided in section 1122-A. If fact-finding has been initiated, the parties shall complete fact-finding before requesting final best offer arbitration. If either party requests final best offer arbitration, the requesting party shall notify the Bureau of Mediation, the board and the opposing party in writing. The opposing party shall, within ten (10) days of the notification by the requesting party, notify the requesting party in writing of its agreement or refusal to submit to final best offer arbitration. No strikes or lockouts shall occur during this ten (10) day period or until the requesting party is notified by the opposing party that they refuse to submit to final best offer arbitration. Arbitration provided for in this subsection shall only occur if both parties agree to submit to final best offer arbitration.

(b) If a strike by employees or a lockout by an employer will prevent the school entity from providing the period of instruction required by section 1501 of this act by the later of:

(1) June 15; or

(2) the last day of the school entity's scheduled school year, the parties shall submit to mandated final best offer arbitration consistent with the arbitration option negotiated. A return to work for the purpose of submitting to final best offer arbitration shall not be considered a unilateral return to work.

(c) If the parties are unable to agree on the adoption of one of the

approved impasse procedures under section 1123-A, the mediator appointed pursuant to section 1121-A shall select the procedure.

(d) Within ten (10) days of submission to final best offer arbitration, the parties shall submit to the arbitrators their final best contract offer with certification that the offer was delivered to the opposing party, together with documentation supporting the reasonableness of their offer. This documentation shall include, but not be limited to, the following:

(1) The public interest.

(2) The interest and welfare of the employee organization.

(3) The financial capability of the school entity.

(4) The results of negotiations between the parties prior to submission of last best contract offers.

(5) Changes in the cost-of-living.

(6) The existing terms and conditions of employment of the employee organization members and those of similar groups.

(7) Such other documentation as the arbitration panel shall deem relevant.

(e) Arbitration shall be limited to unresolved issues. Unresolved issues shall mean those issues not agreed to in writing prior to the start of arbitration.

(f) The parties may mutually agree to submit to final best offer arbitration at any time except during fact-finding or during mandated final best offer arbitration.

(g) Upon submission to the arbitrator of both parties' final best offers under subsection (a) or (b) of this section, the employer shall post within the time limits described in subsection (d) of this section the final best contract offers in the school entity's main office for the purpose of soliciting public comments thereon. Copies of both parties' final best offers shall be available from the school entity's main office. The cost of copies shall be established by the school entity and shall be paid by the requestor.

(h) The public comment period shall close within ten (10) days of the first day of posting. All public comments shall be directed to the arbitrators for consideration, who shall provide them on request to the employer and to the employees' organization.

(i) Within ten (10) days of the selection of the third arbitrator of the arbitration panel, the arbitrators shall begin hearings at which they will hear arguments from representatives of the employer and of the employees in support of their respective last best contract offers under subsection (a) or (b) of this section. At least five (5) days prior to the hearing, a written notice of the date, time and place of such hearing

shall be sent to the representatives of both the employer and employees which are parties to the dispute. This written notice shall also be sent to the fiscal authority having budgetary responsibility or charged with making appropriations for the employer, and a representative designated by such body shall be heard at the hearing upon request of such body or of the employer as part of the presentation of the employer.

(j) Not later than twenty (20) days after the hearing pursuant to subsection (i) of this section, the arbitrators shall:

(1) examine each item of dispute;

(2) make a determination in writing consistent with the arbitration option agreed to by the parties; and

(3) forward a copy of the written determination to both parties involved in the dispute and to the board.

(k) The determination of the majority of the arbitrators reached as provided under either subsection (a) or (b) of this section shall be final and binding upon the employer, employees and employee organization involved and constitutes a mandate to the school entity to take whatever action necessary to carry out the determination, provided that within ten (10) days of the receipt of the determination the employee organization or the employer does not consider and reject the determination at a properly convened special or regular meeting. This determination includes, but is not limited to, a determination which requires a legislative enactment by the employer prior to or as a condition for its implementation, including, without limitation, the levy and imposition of taxes.

(l) No appeal challenging the determination reached as provided under subsection (a) or (b) of this section shall be allowed to any court unless the award resulted from fraud, corruption or wilful misconduct of the arbitrators. If a court determines that this has occurred, it shall declare the award null and void. An appeal of the award shall be made to the court of common pleas of the judicial district encompassing the respective school district.

(m) If the employer or the employee organization rejects the determination of the majority of the arbitrators:

(1) The employee organization may initiate a legal strike or resume a legal strike initiated prior to submission to final best offer arbitration.

(2) The employer may hire substitutes as provided under subsection (b) of section 1172-A.

(3) The employer may initiate a legal lockout or resume a legal lockout initiated prior to submission to final best offer arbitration.

Section 1126-A. Time Frame. - The time periods set forth in this

article are mandatory, and shall not be construed to be directory.

Section 1127-A. Exception. – Any school district of the first class with an appointed school board and the public employees of that school district as defined in the act of July 23, 1970 (P.L.563, No.195), known as the "Public Employee Relations Act," shall comply with and be subject to the binding arbitration provisions of the "Public Employee Relations Act" and shall not be subject to the provisions of section 1123-A, 1124-A or 1125-A of this act.

**(d) Strikes and Lockouts.**

Section 1131-A. Strikes Prohibited in Certain Circumstances. – A strike must cease where the parties request fact-finding for the duration of the fact-finding. A strike must end where the parties agree to arbitration. Strikes are prohibited:

(1) During the period of up to ten (10) days provided for under section 1125-A(a).

(2) During final best offer arbitration, including the period of up to ten (10) days after receipt of the determination of the arbitrators during which the governing body of the school entity may consider the determination.

(3) When the arbitrators' determination becomes final and binding.

Section 1132-A. Lockouts Prohibited in Certain Circumstances.– A lockout must cease where the parties request fact-finding for the duration of the fact-finding. A lockout must end where the parties agree to arbitration. Lockouts are prohibited:

(1) During the period of up to ten (10) days provided for under section 1125-A(a).

(2) During final best offer arbitration, including the period of up to ten (10) days after receipt of the determination of the arbitrators during which the employer may consider the determination.

(3) When the arbitrators' determination becomes final and binding.

**(e) Collective Bargaining Agreement.**

Section 1151-A. Agreement and Enforcement. – Any determination of the arbitrators to be implemented under this article shall be memorialized as a written agreement by and between the school entity and the employee organization to be signed and sealed by their duly appointed officers and agents as provided by law. The executed agreement shall be enforceable by each party in the manner as provided by law, including without limitation and in derogation to the mandatory arbitration of disputes or grievances under the act of July 23, 1970 (P.L.563, No.195), known as the "Public Employee Relations Act." In

the event that a school entity or an employee organization refuses to execute a written agreement under this section, the employee organization or the school entity may institute a cause of action in the court of common pleas to compel compliance with the provision of this section requiring a written agreement and, in the appropriate case, specific performance of the determination.

Section 1152-A. Existing Agreements; Provisions Inconsistent with Article. – Any provisions of any collective bargaining agreement in existence on the effective date of this article which are inconsistent with any provision of this article, but not otherwise illegal, shall continue valid until the expiration of such contract. The procedure for entering into any new collective bargaining agreement, however, shall be governed by this article, where applicable, upon the effective date of this article.

**(f) Secretary of Education.**

Section 1161-A. Injunctive Relief. – When an employee organization is on strike for an extended period that would not permit the school entity to provide the period of instruction required by section 1501 of this act by June 30, the Secretary of Education may initiate, in the appropriate county court of common pleas, appropriate injunctive proceedings providing for the required period of instruction.

**(g) Prohibitions.**

Section 1171-A. Selective Strikes. – The work stoppage practice known as "selective strikes" shall be considered an illegal strike. Any strike which does not comply with the definition of "strike" contained in this article shall be considered a selective strike.

Section 1172-A. Utilization of Strike Breakers. – (a) Except as provided in subsection (b), during a legal strike, as defined by this article, the school entity, as defined by this article, shall not utilize persons other than those employees who have been actively employed by the school entity at any time during the previous twelve (12) months.

(b) A school entity may utilize persons other than those employees who have been actively employed by the school entity at any time during the previous twelve (12) months:

(1) when the employee organization or employer rejects the determination of the majority of the arbitrators; and

(2) when a legal strike will prevent the completion of the period of instruction required by section 1501 of this act by the later of:

(i) June 15; or

(ii) the last day of the school district's scheduled school year.

Section 2. The act is amended by adding a section to read:

Section 1522. Pupil's Right of Refusal; Animal Dissection. – (a) Public or nonpublic school pupils from kindergarten through grade twelve may refuse to dissect, vivisect, incubate, capture or otherwise harm or destroy animals, or any parts thereof, as part of their course of instruction.

(b) Schools shall notify incoming pupils and their parents or guardians of the right to decline to participate in an education project involving harmful or destructive use of animals and authorize parents or guardians to assert the right of their children to refuse to participate in those projects. Notice shall be given not less than three (3) weeks prior to the scheduled course exercise which involves the use of animals.

(c) A pupil who chooses to refrain from participation in or observation of a portion of a course of instruction in accordance with this section shall be offered an alternative education project for the purpose of providing the pupil an avenue for obtaining the factual knowledge, information or experience required by the course of study. If tests require harmful or destructive use of animals, pupils shall be offered alternative tests. A pupil shall not be discriminated against based upon his or her decision to exercise the right afforded that pupil by this section and lowering a grade because a pupil has chosen an alternative education project or test is strictly prohibited.

(d) As used in this section, the following words and phrases shall have the meanings given to them in this subsection:

(1) "Alternative education project" shall include, but is not limited to, the use of video tapes, models, films, books and computers which would provide an alternative avenue for obtaining the knowledge, information or experience required by the course of study in question. The term also includes "alternative test." A pupil has the right to refuse any alternative education project or test which may involve or necessitate any harmful use of an animal or animal parts.

(2) "Animal" shall mean any living organism of the kingdom animalia in the phylum chordata, organisms which have a notochord. The term also includes an animal's cadaver or severed parts of any animal's cadaver.

(3) "Pupil" shall mean a person twenty-one (21) years of age or under who is matriculated in a course of instruction in an educational institution from kindergarten through grade twelve. For the purpose of asserting the pupil's rights and receiving any notice or response pursuant to this section, the term also includes the parents or guardian of the matriculated minor.

Section 3. Section 2509.3 of the act, amended August 5, 1991 (P.L.219, No.25), is amended to read:

Section 2509.3. Payments on Account of Transportation of Nonpublic School Pupils. – Each school district, regardless of classification, shall be paid by the Commonwealth the sum of thirty-five dollars ($35) for each nonpublic school pupil transported in the school year 1978-1979 through the school year 1983-1984. For the school year 1984-1985 through the school year 1989-1990, each school district shall be paid the sum of seventy dollars ($70) for each nonpublic school pupil transported. For the school years 1990-1991 and 1991-1992, each school district shall be paid the sum of one hundred twenty-four dollars ($124) for each nonpublic school pupil transported. For the school year 1992-1993 and each school year thereafter, each school district shall be paid the sum of one hundred fifty-nine dollars ($159) for each nonpublic school pupil transported.

Section 4. Section 2574(f) of the act, added June 1, 1972 (P.L.325, No.89), is amended to read:

Section 2574. Approved Reimbursable Rental for Leases Hereafter Approved and Approved Reimbursable Sinking Fund Charges on Indebtedness. – * * *

(f) For the purchase of any building, reimbursement shall be computed in the same manner as for constructed school buildings.

Section 5. In the event that any provisions of this act or its application to any person or circumstance is held invalid, such provision shall be void and inoperative; however, all other provisions of this act shall continue in full effect and force.

Section 6. The act of July 23, 1970 (P.L.563, No.195), known as the Public Employee Relations Act, is to be read in pari materia with the addition of Article XI-A of the act, but is repealed insofar as it is clearly inconsistent with the addition of Article XI-A of the act.

Section 7. Nothing in this act or in any other law shall be construed to permit, authorize or require collective bargaining, mediation or binding arbitration to create, alter or modify pension or retirement benefits set forth in 24 Pa.C.S. Pt. IV (relating to retirement of school employees) or administered by the Public School Employees' Retirement Board. Further, nothing in this act or in any other law shall be construed to permit, authorize or require an employer, through collective bargaining, mediation, binding arbitration or otherwise, to establish, create, alter or modify a pension or retirement plan or pay pension or retirement benefits or other compensation that modifies or supplements in any way the benefits set forth in 24 Pa.C.S. Pt. IV or administered by the Public School Employees' Retirement Board.

Notwithstanding the above, the parties may negotiate and agree to early retirement incentive or severance pay provisions so long as they do not affect the retirement benefits identified above and would not result in the Public School Employees' Retirement System not being a qualified plan under the Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. Sec. 1 et seq.).

Section 8. The amendment of section 2574(f) of the act shall apply retroactively to January 1, 1991.

Section 9. This act shall take effect immediately.

# ACT 195

**(As signed into law, July 23, 1970.)**

Establishing rights in public employes to organize and bargain collectively through selected representatives; DEFINING PUBLIC EMPLOYES TO INCLUDE EMPLOYES OF NONPROFIT ORGANIZATIONS AND INSTITUTIONS; providing compulsory mediation and fact-finding, for collective bargaining impasses; providing arbitration for certain public employes for collective bargaining impasses; defining the scope of collective bargaining; establishing unfair employe and employer practices; prohibiting strikes for certain public employes; permitting strikes under limited conditions; providing penalties for violations; and establishing procedures for implementation.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

## ARTICLE I: Public Policy

Section 101. The General Assembly of the Commonwealth of Pennsylvania declares that it is the public policy of this Commonwealth and the purpose of this act to promote orderly and constructive relationships between all public employers and their employes subject, however, to the paramount right of the citizens of this Commonwealth to keep inviolate the guarantees for their health, safety and welfare. Unresolved disputes between the public employer and its employes are injurious to the public and the General Assembly is therefore aware that adequate means must be established for minimizing them and providing for their resolution. Within the limitations imposed upon the governmental processes by these rights of the public at large and recognizing that harmonious relationships are required between the public employer and its employes, the General Assembly has determined that the overall policy may best be accomplished by (1) granting to public employes the right to organize and choose freely their representatives; (2) requiring public employers to negotiate and bar-

gain with employe organizations representing public employes and to enter into written agreements evidencing the result of such bargaining; and (3) establishing procedures to provide for the protection of the rights of the public employe, the public employer and the public at large.

## ARTICLE II: Short Title

Section 201. This act shall be known and may be cited as the "Public Employe Relations Act."

## ARTICLE III: Definitions

Section 301. As used in this act:

(1) "Public employer" means the Commonwealth of Pennsylvania, its political subdivisions including school districts and any officer, board, commission, agency, authority, or other instrumentality thereof AND ANY NONPROFIT ORGANIZATION OR INSTITUTION AND ANY CHARITABLE, RELIGIOUS, SCIENTIFIC, LITERARY, RECREATIONAL, HEALTH, EDUCATIONAL OR WELFARE INSTITUTION RECEIVING GRANTS OR APPROPRIATIONS FROM LOCAL, STATE OR FEDERAL GOVERNMENTS but shall not include employers covered or presently subject to coverage under the act of June 1, 1937 (P.L. 1168), as amended, known as the "Pennsylvania Labor Relations Act," the act of July 5, 1935, Public Law 198, 74th Congress, as amended, known as the "National Labor Relations Act."

(2) "Public employe" or "employe" means any individual employed by a public employer but shall not include elected officials, appointees of the Governor with the advice and consent of the Senate as required by law, management level employes, confidential employes, CLERGYMEN OR OTHER PERSONS IN A RELIGIOUS PROFESSION, EMPLOYES OR PERSONNEL AT CHURCH OFFICES OR FACILITIES WHEN UTILIZED PRIMARILY FOR RELIGIOUS PURPOSES AND those employes covered under the act of June 24, 1968 (Act No. 111), entitled "An act specifically authorizing collective bargaining between policemen and firemen and their public employers; providing for arbitration in order to settle disputes, and requiring compliance with collective bargaining agreements and findings of ARBITRATORS."

(3) "Employe organization" means an organization of any kind, or any agency or employe representation committee or plan in which

membership includes public employes, and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, employe-employer disputes, wages, rates of pay, hours of employment, or conditions of work but shall not include any organization which practices discrimination in membership because of race, color, creed, national origin or political affiliation.

(4) " Representative" means any individuals acting for public employers or employes and shall include employe organizations.

(5) "Board" means the Pennsylvania Labor Relations Board.

(6) "Supervisor" means any individual having authority in the interests of the employer to hire, transfer, suspend, layoff, recall, promote, discharge, assign, reward or discipline other employes or responsibly to direct them or adjust their grievances; or to a substantial degree effectively recommend such action, if in connection with the foregoing, the exercise of such authority is not merely routine or clerical in nature but calls for the use of independent judgment.

(7) "Professional employe" means any employe whose work: (i) is predominantly intellectual and varied in character; (ii) requires consistent exercise of discretion and judgment; (iii) requires knowledge of an advanced nature in the field of science or learning customarily acquired by specialized study in an institution of higher learning or its equivalent; and (iv) is of such character that the output or result accomplished cannot be standardized in relation to a given period of time.

(8) "Unfair practice" means any practice prohibited by Article XII of this act.

(9) "Strike" means concerted action in failing to report for duty, the wilful absence from one's position, the stoppage of work, slowdown, or the abstinence in whole or in part from the full, faithful and proper performance of the duties of employment for the purpose of inducing, influencing or coercing a change in the conditions or compensation or the rights, privileges, or obligations of employment.

(10) "Person" includes an individual, public employer, public employe, authority, commission, legal representative, labor organization, employe organization, profit or nonprofit corporation, trustee, board or association.

(11) "Membership dues deduction" means the practice of a public employer to deduct from the wages of a public employe, with his written consent, an amount for the payment of his membership dues in an employe organization, which deduction is transmitted by the public employer to the employe organization.

(12) "Budget submission date" means the date by which under the law or practice a public employer's proposed budget, or budget con-

taining proposed expenditures applicable to such public employer is submitted to the Legislature or other similar body for final action. For the purposes of this act, the budget submission date for the Commonwealth shall be February 1 of each year AND FOR A NONPROFIT ORGANIZATION OR INSTITUTION, THE LAST DAY OF ITS FISCAL YEAR.

(13) "Confidential employe" shall mean any employe who works: (i) in the personnel offices of a public employer and has access to information subject to use by the public employer in collective bargaining; or (ii) in a close continuing relationship with public officers or representatives associated with collective bargaining on behalf of the employer.

(14) "Wages" means hourly rates of pay, salaries, or other forms of compensation for services rendered.

(15) "Commonwealth employe" means a public employe employed by the Commonwealth or any board, commission, agency, authority, or any other instrumentality thereof.

(16) "Management level employe" means any individual who is involved directly in the determination of policy or who responsibly directs the implementation thereof and shall include all employes above the first level of supervision.

(17) "Meet and discuss" means the obligation of a public employer upon request to meet at reasonable times and discuss recommendations submitted by representatives of public employes: Provided, That any decisions or determinations on matters so discussed shall remain with the public employer and be deemed final on any issue or issues raised.

(18) "Maintenance of membership" means that all employes who have joined an employe organization or who join the employe organization in the future must remain members for the duration of a collective bargaining agreement so providing with the proviso that any such employe or employes may resign from such employe organization during a period of fifteen days prior to the expiration of any such agreement.

(19) "First level of supervision" and "first level supervisor" means the lowest level at which an employe functions as a supervisor.

## ARTICLE IV: Employe Rights

Section 401. It shall be lawful for public employes to organize, form, join or assist in employe organizations or to engage in lawful

concerted activities for the purpose of collective bargaining or other mutual aid and protection or to bargain collectively through representatives of their own free choice and such employes shall also have the right to refrain from any or all such activities, except as may be required pursuant to a maintenance of membership provision in a collective bargaining agreement.

## ARTICLE V: Pennsylvania Labor Relations Board

Section 501. The board shall exercise those powers and perform those duties which are specifically provided for in this act. These powers and duties shall be in addition to and exercised completely independent of any powers and duties specifically granted to it by other statutory enactments.

Section 502. The board shall have authority from time to time to make, amend and rescind such rules and regulations as may be necessary to carry out the provisions of this act. Such rules and regulations shall be effective upon publication in the manner which the board shall prescribe.

Section 503. The board shall establish after consulting representatives of employe organizations and of public employers, panels of qualified persons broadly representative of the public to be available to serve as members of fact-finding boards.

## ARTICLE VI: Representation

Section 601. Public employers may select representatives to act in their interest in any collective bargaining with representatives of public employes.

Section 602. (a) A public employer may recognize employe representatives for collective bargaining purposes, provided the parties jointly request certification by the board which shall issue such certification if it finds the unit appropriate.

(b) Any employe representatives in existence on JANUARY 1, 1970, shall so continue without the requirement of an election and certification until such time as a question concerning representation is appropriately raised under this act; or until the board would find the unit not to be appropriate after challenge by the public employer, a member of the unit or an employe organization. The appropriateness of the unit shall not be challenged until the expiration of any collective bargaining agreement in effect on the date of the passage of this act.

Section 603. (a) A public employe, a group of public employes or an employe organization may notify the public employer that 30% or more of the public employes in an appropriate unit desire to be exclusively represented for collective bargaining purposes by a designated representative and request the public employer to consent to an election.

(b) If the public employer consents, the public employe, group of public employes or employe organization whichever applicable may submit in a form and manner established by the board an election request. Such request shall include a description of the unit deemed to be appropriate. The basis upon which it was determined that 30% or more of the employes desired to be represented and a joinder by the public employer. The board may on the basis of the submissions order an election to be held or it may at its discretion investigate or conduct hearings to determine the validity of the matters contained in such submissions before determining whether or not an order should issue.

(c) If a public employer refuses to consent to an election, the party making the request may file a petition with the board alleging that 30% or more of the public employes in an appropriate unit wish to be exclusively represented for collective bargaining purposes by a designated representative. The board shall send a copy of the petition to the public employer and provide for an appropriate hearing upon due notice. If it deems the allegations in the petition to be valid and the unit to be appropriate it shall order an election. If it finds to the contrary it may dismiss the petition or permit its amendment in accordance with procedures established by the board.

(d) If a public employer receives notification that 30% or more of the public employes desire to be exclusively represented for collective bargaining purposes by a designated representative and the party giving notice does not thereafter seek an election the public employer may file a petition for the same with the board. The board shall then follow the procedures as established for petitions filed under subsection (c) of this section.

Section 604. The board shall determine the appropriateness of a unit which shall be the public employer unit or a subdivision thereof. In determining the appropriateness of the unit, the board shall:

(1) Take into consideration but shall not be limited to the following: (i) public employes must have an identifiable community of interest, and (ii) the effects of overfragmentization.

(2) Not decide that any unit is appropriate if such unit includes both professional and nonprofessional employes, unless a majority of such professional employes vote for inclusion in such unit.

(3) Not permit guards at prisons and mental hospitals, EMPLOYES

DIRECTLY INVOLVED WITH AND NECESSARY TO THE FUNCTIONING OF THE COURTS OF THIS COMMONWEALTH, or any individual employed as a guard to enforce against employes and other persons, rules to protect property of the employer or to protect the safety of persons on the employer's premises to be included in any unit with other public employes, each may form separate homogenous employe organizations with the proviso that organizations of the latter designated employe group may not be affiliated with any other organization representing or including as members, persons outside of the organization's classification.

(4) Take into consideration that when the Commonwealth is the employer, it will be bargaining on a statewide basis unless issues involve working conditions peculiar to a given governmental employment locale. This section, however, shall not be deemed to prohibit multi-unit bargaining.

(5) Not permit employes at the first level of supervision to be included with any other units of public employes but shall permit them to form their own separate homogenous units. IN DETERMINING SUPERVISORY STATUS THE BOARD MAY TAKE INTO CONSIDERATION THE EXTENT TO WHICH SUPERVISORY AND NONSUPERVISORY FUNCTIONS ARE PERFORMED.

Section 605. Representation elections shall be conducted by secret ballot at such times and places selected by the board subject to the following:

(1) The board shall give no less than 10 days notice of the time and place of such election.

(2) The board shall establish rules and regulations concerning the conduct of any election including but not limited to regulations which would guarantee the secrecy of the ballot.

(3) A representative may not be certified unless it receives a majority of the valid ballots cast.

(4) The board shall include on the ballot a choice of "no representative."

(5) In an election where none of the choices on the ballot receives a majority, a runoff election shall be conducted, the ballot providing for a selection between the two choices or parties receiving the highest and the second highest number of ballots cast in the election.

(6) The board shall certify the results of said election within five working days after the final tally of votes if no charge is filed by any person alleging that an "unfair practice" existed in connection with said election. If the board has reason to believe that such allegations

are valid, it shall set a time for hearing on the matter after due notice. Any such hearing shall be conducted within two weeks of the date of receipt of such charge. If the board determines that the outcome of the election was affected by the "unfair practice" charged or for any other "unfair practice" it may deem existed, it shall require corrective action and order a new election. If the board determines that no unfair practice existed or if it existed, did not affect the outcome of the election, it shall immediately certify the election results.

(7) (i) No election shall be conducted pursuant to this section in any appropriate bargaining unit within which in the preceding 12-month period an election shall have been held nor during the term of any lawful collective bargaining agreement between a public employer and an employe representative. This restriction shall not apply to that period of time covered by any collective bargaining agreement which exceeds three years. For the purposes of this section, extensions of agreements shall not affect the expiration date of the original agreement.

(ii) Petitions for elections may be filed with the board not sooner than 90 days nor later than 60 days before the expiration date of any collective bargaining agreement or after the expiration date until such time as a new written agreement has been entered into. For the purposes of this section, extensions of agreements shall not affect the expiration date of the original agreement.

Section 606. Representatives selected by public employes in a unit appropriate for collective bargaining purposes shall be the exclusive representative of all the employes in such unit to bargain on wages, hours, terms and conditions of employment: Provided, That any individual employe or a group of employes shall have the right at any time to present grievances to their employer and to have them adjusted without the intervention of the bargaining representative as long as the adjustment is not inconsistent with the terms of a collective bargaining contract then in effect: And, provided further, That the bargaining representative has been given an opportunity to be present at such adjustment.

Section 607. If there is a duly certified representative: (i) a public employe or a group of public employes may file a petition for decertification provided it is supported by a 30% showing of interest, or (ii) a public employer alleging a good faith doubt of the majority status of said representative may file a petition in accordance with the rules and regulations established by the board, subject to the provisions of clause (7) of section 605.

## ARTICLE VII: Scope of Bargaining

Section 701. Collective bargaining is the performance of the mutual obligation of the public employer and the representative of the public employes to meet at reasonable times and confer in good faith with respect to wages, hours and other terms and conditions of employment, or the negotiation of an agreement or any question arising thereunder and the execution of a written contract incorporating any agreement reached but such obligation does not compel either party to agree to a proposal or require the making of a concession.

Section 702. Public employers shall not be required to bargain over matters of inherent managerial policy, which shall include but shall not be limited to such areas of discretion or policy as the functions and programs of the public employer, standards of services, its overall budget, utilization of technology, the organizational structure and selection and direction of personnel. Public employers, however, shall be required to meet and discuss on policy matters affecting wages, hours and terms and conditions of employment as well as the impact thereon upon request by public employe representatives.

Section 703. The parties to the collective bargaining process shall not effect or implement A PROVISION IN a collective bargaining agreement if the implementation of that PROVISION would be in violation of, or inconsistent with, or in conflict with any statute or statutes enacted by the General Assembly of the Commonwealth of Pennsylvania or the provisions of municipal home rule charters.

Section 704. Public employers shall not be required to bargain with units of first level supervisors or their representatives but shall be required to meet and discuss with FIRST LEVEL supervisors or their representatives, on matters deemed to be bargainable for other public employes covered by this act.

Section 705. Membership dues deductions and maintenance of membership are proper subjects of bargaining with the proviso that as to the latter, the payment of dues and assessments while members, may be the only requisite employment condition.

SECTION 706. NOTHING CONTAINED IN THIS ACT SHALL IMPAIR THE EMPLOYER'S RIGHT TO HIRE EMPLOYES OR TO DISCHARGE EMPLOYES FOR JUST CAUSE CONSISTENT WITH EXISTING LEGISLATION.

## ARTICLE VIII: Collective Bargaining Impasse

Section 801. If after a reasonable period of negotiation, a dispute or impasse exists between the representatives of the public employer and the public employes, the parties may voluntarily submit to mediation but if no agreement is reached between the parties within 21 days after negotiations have commenced, but in no event later than 150 days prior to the "budget submission date," and mediation has not been utilized by the parties, both parties shall immediately, in writing, call in the service of the Pennsylvania Bureau of Mediation.

Section 802. Once mediation has commenced, it shall continue for so long as the parties have not reached an agreement. If, however, an agreement has not been reached within 20 days after mediation has commenced or in no event later than 130 days prior to the "budget submission date," the Bureau of Mediation shall notify the board of this fact. Upon receiving such notice the board MAY IN ITS DISCRETION APPOINT A FACT-FINDING PANEL WHICH PANEL MAY CONSIST OF EITHER ONE OR THREE MEMBERS. IF A PANEL IS so designated or selected IT shall hold hearings and take oral or written testimony and shall have subpoena power. If during this time the parties have not reached an agreement, the panel shall make findings of fact and recommendations:

(1) The findings of fact and recommendations shall be sent by registered mail to the board and to both parties not more than 40 days after the Bureau of Mediation has notified the board as provided in the preceding paragraph.

(2) Not more than 10 days after the findings and recommendations shall have been sent, the parties shall notify the board and each other whether or not they accept the recommendations of the fact-finding panel and if they do not, the panel shall publicize its findings of fact and recommendations.

(3) Not less than five days nor more than 10 days after the publication of the findings of fact and recommendations, the parties shall again inform the board and each other whether or not they will accept the recommendations of the fact-finding panel.

(4) THE COMMONWEALTH SHALL PAY ONE-HALF THE COST OF THE FACT-FINDING PANEL; THE REMAINING ONE-HALF OF THE COST SHALL BE DIVIDED EQUALLY BETWEEN THE PARTIES. THE BOARD SHALL ESTABLISH RULES AND REGULATIONS UNDER WHICH PANELS SHALL OPERATE, INCLUDING, BUT NOT LIMITED TO, COMPENSATION FOR PANEL MEMBERS.

Section 803. If the representatives of either or both the public employes and the public employer refuse to submit to the procedures set forth in section 801 and 802 of this article, such refusal shall be deemed a refusal to bargain in good faith and unfair practice charges may be filed by the submitting party or the board may on its own, issue an unfair practice complaint and conduct such hearings and issue such orders as provided for in Article XIII.

Section 804. Nothing in this article shall prevent the parties from submitting impasses to voluntary binding arbitration with the proviso the decisions of the arbitrator which would require legislative enactment to be effective shall be considered advisory only.

Section 805. Notwithstanding any other provisions of this act where representatives of units of guards AT prisons or mental hospitals OR UNITS OF EMPLOYES DIRECTLY INVOLVED WITH AND NECESSARY TO THE FUNCTIONING OF THE COURTS OF THIS COMMONWEALTH have reached an impasse in collective bargaining and mediation as required in section 801 of this article has not resolved the dispute, 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 effective shall be considered advisory only.

Section 806. Panels of arbitrators for bargaining units referred to in section 805 of this article shall be selected in the following manner:

(1) Each party shall select one member of the panel, the two so selected shall choose the third member.

(2) If the members so selected are unable to agree upon the third member within 10 days from the date of their selection, the board shall submit the names of seven persons, each party shall alternately strike one name until one shall remain. The public employer shall strike the first name. The person so remaining shall be the third member AND CHAIRMAN.

(a) Whenever a panel of arbitrators is hereafter constituted pursuant to the provisions of Section 806 of the act of July 23, 1970 (P.L. 563, No. 195), known as the "Public Employe Relations Act," the cost of the arbitrator selected by each party shall be paid by the respective party selecting the arbitrator. The cost of the impartial arbitrator selected by the arbitrators already selected or selected in accordance with the procedure set forth in Section 806(2) of the act of July 23, 1970 (P.L. 563, No. 195), known as the "Public Employe Relations Act," shall be paid by the Pennsylvania Labor Relations Board.

(b) The Pennsylvania Labor Relations Board shall establish rules

and regulations to implement this act. (Added by Act 67, 1976)

~~Section 807. The costs of the arbitrators selected under the provisions of section 806 shall be paid by the Commonwealth under rules and regulations established by the board.~~ (Repealed by Act 67, 1976)

## ARTICLE IX: Collective Bargaining Agreement

Section 901. Once an agreement is reached between the representatives of the public employes and the public employer, the agreement shall be reduced to writing and signed by the parties. Any provisions of the contract requiring legislative action will only be effective if such legislation is enacted.

Section 902. If the provisions of the constitution or bylaws of an employe organization requires ratification of a collective bargaining agreement by its membership, only those members who belong to the bargaining unit involved shall be entitled to vote on such ratification notwithstanding such provisions.

Section 903. Arbitration of disputes or grievances arising out of the interpretation of the provisions of a collective bargaining agreement is mandatory. The procedure to be adopted is a proper subject of bargaining with the proviso that the final step shall provide for a binding decision by an arbitrator or a tri-partite board of arbitrators as the parties may agree. Any decisions of the arbitrator or arbitrators requiring legislation will only be effective if such legislation is enacted:

(1) If the parties cannot voluntarily agree upon the selection of an arbitrator, the parties shall notify the Bureau of Mediation of their inability to do so. The Bureau of Mediation shall then submit to the parties the names of seven arbitrators. Each party shall alternately strike a name until one name remains. The public employer shall strike the first name. The person remaining shall be the arbitrator.

(2) The costs of arbitration shall be shared equally by the parties. Fees paid to arbitrators shall be based on a schedule established by the Bureau of Mediation.

Section 904. Any provision of any collective bargaining agreement in existence on January 1, 1970, which is inconsistent with any provision of this act but not otherwise illegal shall continue valid until the expiration of such contract. The parties to such agreements may continue voluntarily to bargain on any such items after the expiration date of any such agreement and for so long as these items remain in any future agreement.

## ARTICLE X: Strikes

Section 1001. Strikes by guards at prisons or mental hospitals, EMPLOYES DIRECTLY INVOLVED WITH AND NECESSARY TO THE FUNCTIONING OF THE COURTS OF THIS COMMONWEALTH are prohibited at any time. If a strike occurs the public employer shall forthwith initiate in the court of common pleas of the jurisdiction where the strike occurs, an action for appropriate equitable relief including but not limited to injunctions. If the strike involves Commonwealth employes, the chief legal officer of the public employer or the Attorney General where required by law shall institute an action for equitable relief, either in the court of common pleas of the jurisdiction where the strike has occurred or the Commonwealth Court.

Section 1002. Strikes by public employes during the pendency of collective bargaining procedures set forth in sections 801 and 802 of Article VIII are prohibited. In the event of a strike during this period the public employer shall forthwith initiate an action for the same relief and utilizing the same procedures required for prohibited strikes under section 1001.

Section 1003. If a strike by public employes occurs after the collective bargaining processes set forth in sections 801 and 802 of Article VIII of this act have been completely utilized and exhausted, it shall not be prohibited unless or until such a strike creates a clear and present danger or threat to the health, safety or welfare of the public. In such cases the public employer shall initiate, in the court of common pleas of the jurisdiction where such strike occurs, an action for equitable relief including but not limited to appropriate injunctions and shall be entitled to such relief if the court finds that the strike creates a clear and present danger or threat to the health, safety or welfare of the public. If the strike involves Commonwealth employes, the chief legal officer of the public employer or the Attorney General where required by law shall institute an action for equitable relief in the court of common pleas of the jurisdiction where the strike has occurred or the Commonwealth Court. Prior to the filing of any complaint in equity under the provisions of this section the moving party shall serve upon the defendant a copy of said complaint as provided for in the Pennsylvania Rules of Civil Procedure applicable to such actions. Hearings shall be required before relief is granted under this section and notices of the same shall be served in the manner required for the original process with a duty imposed upon the court to hold such hearings forthwith.

Section 1004. An unfair practice by a public employer shall not be a defense to a prohibited strike. Unfair practices by the employer during the collective bargaining processes shall receive priority by the board as set forth in Article XIV.

Section 1005. If a public employe refuses to comply with a lawful order of a court of competent jurisdiction issued for a violation of any of the provisions of this article the public employer shall initiate an action for contempt and if the public employe is adjudged guilty of such contempt, he shall be subject to suspension, demotion or discharge at the discretion of the public employer, provided the public employer has not exercised that discretion in violation of clauses (1), (2), (3) and (4) of subsection (a) of section 1201, Article XII.

Section 1006. No public employe shall be entitled to pay or compensation from the public employer for the period engaged in any strike.

Section 1007. In the event any public employe refuses to obey an order issued by a court of competent jurisdiction for a violation of the provisions of this article, the punishment for such contempt may be by fine or by imprisonment in the prison of the county where the court is sitting or both in the discretion of the court.

Section 1008. Where any employe organization wilfully disobeys a lawful order of a court of competent jurisdiction issued for a violation of the provisions of this article, the punishment for each day that such contempt persists may be by a fine fixed in the discretion of the court.

Section 1009. In fixing the amount of the fine or imprisonment for contempt, the court shall consider all the facts and circumstances directly related to the contempt including but not limited to (i) any unfair practices committed by the public employer during the collective bargaining processes; (ii) the extent of the wilful defiance or resistance to the court's order; (iii) the impact of the strike on the health, safety or welfare of the public, and (iv) the ability of the employe organization or the employe to pay the fine imposed.

Section 1010. Nothing in this article shall prevent the parties from voluntarily requesting the court for a diminution or suspension of any fines or penalties imposed. Any requests by employe representatives for such participation by the public employer shall be subject to the requirements of "meet and discuss."

## ARTICLE XI: Picketing

Section 1101. Public employes, other than those engaged in a nonprohibited strike, who refuse to cross a picket line shall be deemed to

be engaged in a prohibited strike and shall be subject to the terms and conditions of Article X pertaining to prohibited strikes.

## ARTICLE XII: Unfair Practices

Section 1201. (a) Public employers, their agents or representatives are prohibited from:

(1) Interfering, restraining or coercing employes in the exercise of the rights guaranteed in Article IV of this act.

(2) Dominating or interfering with the formation, existence or administration of any employe organization.

(3) Discriminating in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any employe organization.

(4) Discharging or otherwise discriminating against an employe because he has signed or filed an affidavit, petition or complaint or given any information or testimony under this act.

(5) Refusing to bargain collectively in good faith with an employe representative which is the exclusive representative of employes in an appropriate unit, including but not limited to the discussing of grievances with the exclusive representative.

(6) Refusing to reduce a collective bargaining agreement to writing and sign such agreement.

(7) Violating any of the rules and regulations established by the board regulating the conduct of representation elections.

(8) Refusing to comply with the provisions of an arbitration award deemed binding under section 903 of Article IX.

(9) Refusing to comply with the requirements of "meet and discuss."

(b) Employe organizations, their agents, or representatives, or public employes are prohibited from:

(1) Restraining or coercing employes in the exercise of the rights guaranteed in Article IV of this act.

(2) Restraining or coercing a public employer in the selection of his representative for the purposes of collective bargaining or the adjustment of grievances.

(3) Refusing to bargain collectively in good faith with a public employer, if they have been designated in accordance with the provisions of this act as the exclusive representative of employes in an appropriate unit.

(4) Violating any of the rules and regulations established by the board regulating the conduct of representation elections.

(5) Refusing to reduce a collective bargaining agreement to writing and sign such agreement.

(6) CALLING, INSTITUTING, MAINTAINING OR CONDUCTING A STRIKE OR BOYCOTT AGAINST ANY PUBLIC EMPLOYER OR PICKETING ANY PLACE OF BUSINESS OF A PUBLIC EMPLOYER ON ACCOUNT OF ANY JURISDICTIONAL CONTROVERSY.

(7) ENGAGING IN, OR INDUCING OR ENCOURAGING ANY INDIVIDUAL EMPLOYED BY ANY PERSON TO ENGAGE IN A STRIKE OR REFUSAL TO HANDLE GOODS OR PERFORM SERVICES; OR THREATENING, COERCING OR RESTRAINING ANY PERSON WHERE ANY OBJECT THEREOF IS TO (I) FORCE OR require any public employer to cease dealing or doing business with any other person or (ii) force or require a public employer to recognize for representation purposes an employe organization not certified by the board.

(8) Refusing to comply with the provisions of an arbitration award deemed binding under section 903 of Article IX.

) Refusing to comply with the requirements of "meet and discuss."

## ARTICLE XIII: Prevention of Unfair Practices

Section 1301. The board is empowered, as hereinafter provided, to prevent any person from engaging in any unfair practice listed in Article XII of this act. This power shall be exclusive and shall not be affected by any other means of adjustment or prevention that have been or may be established by agreement, law, or otherwise.

Section 1302. Whenever it is charged by any interested party that any person has engaged in or is engaging in any such unfair practice, the board, or any member or designated agent thereof, shall have authority to issue and cause to be served upon such person a complaint, stating the charges in that respect, and containing a notice of hearing before the board, or any member or designated agent thereof, at a place therein fixed, not less than five days after the serving of said complaint. Any such complaint may be amended by the board, member or agent conducting the hearing at any time prior to the issuance of an order based thereon. The person so complained of shall have the right to file an answer to the original or amended complaint and to appear in person, or otherwise, to give testimony at the place and time set in the complaint. In the discretion of a member or agent conducting the hearing or of the board, any other person may be allowed to

intervene in the said proceeding and to present testimony. In any such proceeding, the rules of evidence prevailing in courts of law or equity shall be followed but shall not be controlling.

Section 1303. Testimony shall be taken at the hearing and filed with the board. The board upon notice may take further testimony or hear argument. If, upon all the testimony taken, the board shall determine that any person named in the complaint has engaged in or is engaging in any such unfair practice, the board shall state its findings of fact, and issue and cause to be served on such person an order requiring such person to cease and desist from such unfair practice, and to take such reasonable affirmative action, including reinstatement of employes, discharged in violation of Article XII of this act, with or without back pay, as will effectuate the policies of this act. Such order may further require such person to make reasonable reports, from time to time, showing the extent to which the order has been complied with. If, upon all the testimony, the board shall be of the opinion that the person or persons named in the complaint has not engaged in or is not engaging in any such unfair practice, then the board shall make its findings of fact and shall issue an order dismissing the complaint. A copy of such findings of fact, conclusions of law, and order shall be mailed to all parties to the proceedings.

Section 1304. Until a transcript of the record in a case shall have been filed in a court as hereinafter provided, the board may at any time, upon reasonable notice, and in such manner as it shall deem proper, modify or set aside, in whole or in part, any finding or order made or issued by it: Provided, That any agreement made between an employer and a bona fide employe organization, and all the provisions thereof, shall be entitled to full force and effect unless the board specifically finds that these provisions involve the commission of an unfair practice within the meaning of Article XII of this act.

Section 1305. The proceedings before the board or before any of its examiners shall be conducted with speed and dispatch. No findings shall be made on the basis of evidence relating to acts which occurred prior to the original passage of this act.

Section 1306. All cases in which complaints are actually issued by the board, shall be prosecuted before the board or its examiner, or both, by the representatives of the employe organization or party filing the charge, and, in addition thereto or in lieu thereof if the Department of Justice sees fit, by a deputy attorney general especially assigned to this type of case. No examiner shall have any other position with the government of this state or of the United States or with the Pennsylvania Labor Relations Board while in the employ of the board.

## ARTICLE XIV: Unfair Practices During Article VIII Procedures

Section 1401. Notwithstanding any of the provisions of Article XIII, the board upon the filing of a charge alleging the commission of an unfair labor practice committed during, or arising out of the collective bargaining procedures set forth in sections 801 and 802 of Article VIII of this act, shall be empowered to petition the court of competent jurisdiction for appropriate relief or restraining order.

Upon the filing of any such petition the board shall cause notice thereof to be served upon such person and thereupon the court shall have jurisdiction to grant to the board such temporary relief or restraining order as it deems just and proper.

## ARTICLE XV: Judicial Review

Section 1501. The board shall, except where an employe of the Commonwealth is involved, have power to petition the court of common pleas of any county wherein the unfair practice in question occurred, or wherein any person charged with the commission of any unfair practice resides or transacts business, for the enforcement of such order and for appropriate temporary relief or restraining order, and shall certify and file in the court a transcript of the entire record in the proceeding, including the pleadings and testimony upon which such order was entered and the findings and order of the board. In the instance of the exception involving the said Commonwealth employes, the board shall file its petition in the Commonwealth Court. Upon such filing, the court shall cause notice thereof to be served upon such person, and thereupon shall have jurisdiction of the proceeding and of the question determined therein, and shall have power to grant such temporary relief, restraining or mandamus order as it deems just and proper or requisite to effectuate the policies of this act and to make and enter upon the pleadings, testimony, and proceedings set forth in such transcript a decree enforcing, modifying and enforcing as so modified, or setting aside, in whole or in part, the order of the board. The parties before the court shall be the board, the person charged with the commission of any unfair labor practice, and may include the charging party. No objection that has not been urged before the board, its members or agents shall be considered by the court unless the failure or neglect to urge such objection shall be excused because of extraordinary circumstances. The findings of the board as to the facts, if supported by substantial and legally credible evidence, shall be conclu-

sive. If either party shall apply to the court for leave to adduce additional evidence, and shall show to the satisfaction of the court, that such additional evidence is material, and that there were reasonable grounds for the failure to adduce such evidence at the hearing before the board, its members or agent, the court may order such additional evidence to be taken before the board, its members or agent, and to be made a part of the transcript. The board may modify its findings as to the facts or make new findings by reason of additional evidence so taken and filed, and it shall file such modified or new findings which, if supported by substantial and legally credible evidence, shall be conclusive, and shall file its recommendations, if any, for the modification or setting aside of its original order. The jurisdiction of the court of common pleas, or the Commonwealth Court, as the case may be, shall be exclusive within the limits of its jurisdiction, and its judgment and decree shall be final, except that the same shall be subject to review by the Supreme Court on appeal by the board or any party in interest, irrespective of the nature of the decree or judgment or the amount involved. Such appeal shall be taken within a period of 30 days from the date of court's order and otherwise prosecuted in the same manner and form and with the same effect as is provided in other cases of appeal to the Supreme Court, and the record so certified shall contain all that was before the court of common pleas or the Commonwealth Court, as the case may be.

Section 1502. Any person aggrieved by a final order of the board granting or denying, in whole or in part, the relief sought in any unfair practice case, or by an order certifying or refusing to certify a collective bargaining agent of employes in any representation case, may obtain a review of such order in the court of common pleas of any county where the unfair practice in question was alleged to have been engaged in, or wherein such person or employer in a representation case resides or transacts business, or in the instance of Commonwealth employes in the Commonwealth Court, as the case may be, by filing in such court, within 30 days after the final order has been issued by the board, a written petition praying that the order of the board be modified or set aside. A copy of such petition shall be forthwith served upon the board, and the board shall file in the court a transcript of the entire record in the proceeding certified by the board, including the pleadings and testimony and order of the board. Upon such filing, the court shall proceed in the same manner as in the case of an application by the board under section 1501, and shall have the same exclusive jurisdiction to grant to the board such temporary relief, restraining or mandamus order as it deems just and proper or requisite to effectuate

the policies of this act, and in like manner to make and enter a decree enforcing, modifying, and enforcing as so modified, or setting aside, in whole or in part, the order of the board, and findings of the board as to the facts, if supported by substantial and legally credible evidence, shall in like manner be conclusive. The parties before the court shall be any person aggrieved by an order of the board, as foresaid, and the board and any other party to the board proceeding. The jurisdiction of the court of common pleas, or the Commonwealth Court, as the case may be, shall be exclusive within the limits of its jurisdiction, and its judgment and decree shall be final, except that the same shall be subject to review of the Supreme Court on appeal by the person aggrieved, or the board, irrespective of the nature of the decree or judgment or the amount involved. Such appeal shall be taken within 30 days of the date of the court's order and otherwise prosecuted in the same manner and form, and with the same effect, as is provided in other cases of appeal to the Supreme Court, and the record so certified shall contain all that was before the court of common pleas or the Commonwealth Court, as the case may be.

Section 1503. The commencement of proceedings under sections 1501 or 1502 of this article shall not, unless specifically ordered by the court, operate as a stay of the board's order.

Section 1504. When granting appropriate temporary relief, a restraining or mandamus order or making and entering a decree enforcing, modifying, or enforcing as so modified, or setting aside, in whole or in part, an order of the board, as provided in this section, the jurisdiction of courts sitting in equity shall not be limited by acts pertaining to equity jurisdiction of courts. The act of June 2, 1937 (P.L. 1198), known as the "Labor Anti-Injunction Act," shall not be applicable to orders of the board, or to court orders enforcing orders of the board, or any provision of this act, or to violations of any order of the board, or of court orders enforcing orders of the board, or any provisions of this act.

Section 1505. Petitions filed under this act shall be heard expeditiously and, if possible, within 10 days after they have been docketed. No petitions or charges involving questions arising under clause (2) of subsection (a) of section 1201 of Article XII shall relieve the board of determining any questions arising under sections 603, 604 and 605 of Article VI immediately, and in their regular and normal order, and the making of a certification thereon if such is warranted. No petition or charge shall be entertained which relates to acts which occurred or statements which were made more than four months prior to the filing of the petition or charge.

## ARTICLE XVI: Investigatory Powers

Section 1601. For the purpose of all hearings and investigations which, in the opinion of the board, are necessary and proper for the exercise of the powers vested in it by Article VI and Article XIII, and for the purpose of investigating and considering disputes, other than a question concerning the representation of employes, which it shall be the duty of the board to undertake whenever petitioned so to do by either an employe organization, an employer, or the representative of any unit of employes, the board shall have the investigatory powers granted in this article.

Section 1602. The board or its duly authorized agents shall at all reasonable times have access to, for the purpose of examination and the right to copy, any evidence of any person being investigated or proceeded against that relates to any matter under investigation or in question. Any member of the board shall have the power to issue subpoenas requiring the attendance and testimony of witnesses and the production of any evidence that relates to any matter under investigation or in question before the board, its members or agent conducting the hearing or investigation. Such subpoenas shall be issued as a matter of right upon the request of either party at any time during the pendency of a proceeding. Any member of the board, or any agent designated by the board for such purposes, may administer oaths and affirmations, examine witnesses, and receive evidence.

Section 1603. If any witness resides outside of the Commonwealth or through illness or other cause is unable to testify before the board or its members or agent conducting the hearing or investigation, his or her testimony or deposition may be taken within or without this Commonwealth, in such manner and in such forms as the board or its members or agent conducting the hearing, may by special or general rule prescribe.

Section 1604. In case of contumacy or refusal to obey a subpoena issued to any person except to any person representing the Commonwealth as an employer, when jurisdiction will be in the Commonwealth Court, the court of common pleas of any county within the jurisdiction of which the inquiry is carried on or within the jurisdiction of which said person is guilty of contumacy or refusal to obey is found or resides or transacts business, upon application by the board, shall have jurisdiction to issue to such person an order requiring such person to appear before the board, its members or agent, there to produce evidence if so ordered, or there to give testimony touching the matter under investigation or in question, and any failure to obey such order

of the courts may be punished by said court as a contempt thereof.

Section 1605. No person shall be excused from attending and testifying or from producing books, records, correspondence, documents or other evidence in obedience to the subpoena of the board on the ground that the testimony or evidence required of him may tend to incriminate him or subject him to a penalty or forfeiture, but no individual shall be prosecuted or subjected to any penalty or forfeiture for, or on account of, any transaction, matter or thing concerning which he is compelled, after having claimed his privilege against self-incrimination, to testify or produce evidence, except that such individual so testifying shall not be exempt from prosecution and punishment for perjury committed in so testifying.

Section 1606. Complaints, orders and other process and papers of the board, its members or agent may be served, either personally or by registered mail or by telegraph or by leaving a copy thereof at the principal office or place of business of the person required to be served. The verified return by the individual so serving the same, setting forth the manner of such service, shall be proof of the same and the return post office receipt or telegraph receipt therefor when registered and mailed or telegraphed as aforesaid, shall be proof of service of the same. Witnesses summoned before the board, its members or agent shall be paid the same fees and mileage that are paid witnesses in the courts of this Commonwealth, and witnesses whose depositions are taken and the person taking the same shall severally be entitled to the same fees as are paid for like services in the courts of the Commonwealth.

Section 1607. All process of any court to which application may be made under this act may be served in the county wherein the defendant or other person required to be served resides or may be found.

## ARTICLE XVII: Employe Organizations

Section 1701. No employe organization shall make any contribution OUT OF THE FUNDS OF THE EMPLOYE ORGANIZATION either directly or indirectly to any political party or organization or in support of any political candidate for public office. The BOARD shall establish such rules and regulations as IT may find necessary to prevent the circumvention or evasion of the provisions of this section. IF AN EMPLOYE ORGANIZATION HAS MADE CONTRIBUTIONS IN VIOLATION OF THIS SECTION IT SHALL FILE WITH THE BOARD A REPORT OR AFFIDAVIT EVIDENCING SUCH CONTRIBUTIONS WITHIN 90 DAYS

OF THE END OF ITS FISCAL YEAR. SUCH REPORT OR AFFIDAVIT SHALL BE SIGNED BY ITS PRESIDENT AND TREASURER OR CORRESPONDING PRINCIPALS Any employe organization which violates the provisions of this section or fails to file any required report or affidavit or files a false report or affidavit shall be subject to a fine of not more than two thousand dollars ($2,000).

Any person who wilfully violates this section, or who makes a false statement knowing it to be false, or who knowingly fails to disclose a material fact shall be fined not more than one thousand dollars ($1,000) or imprisoned for not more than 30 days or both. Each individual required to sign affidavits or reports under this section shall be personally responsible for filing such report or affidavit and for any statement contained therein he knows to be false. NOTHING HEREIN SHALL BE DEEMED TO PROHIBIT VOLUNTARY CONTRIBUTIONS BY INDIVIDUALS TO POLITICAL PARTIES OR CANDIDATES.

## ARTICLE XVIII: Conflict of Interest

Section 1801. (a) NO person who is a member of the same local, state, national OR INTERNATIONAL organization as the employe organization with which the public employer is bargaining or who has an interest in the outcome of such bargaining which interest is in conflict with the interest of the public employer, shall participate on behalf of the public employer in the collective bargaining processes WITH THE PROVISO THAT SUCH PERSON MAY, WHERE ENTITLED, VOTE ON THE RATIFICATION OF AN AGREEMENT.

(b) Any PERSON who violates the subsection (a) of this section shall be immediately removed by the public employer from his role, if any, in the collective bargaining negotiations or in any matter in connection with such negotiations.

## ARTICLE XIX: Penalties

Section 1901. Any person who shall wilfully resist, prevent, impede or interfere with any member of the board, or any of its agents, in the performance of duties pursuant to this act, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be sentenced to pay a fine of not more than five thousand dollars ($5,000), or by imprisonment for not more than one year, or both.

## ARTICLE XX: Savings Provisions

Section 2001. The rights granted to certain public employes by the following acts or parts thereof shall not be repealed or diminished by this act:

(1) Section 24 of the act of August 14, 1963 (P.L. 984), known as the "Metropolitan Transportation Authorities Act of 1963."

(2) The act of November 27, 1967 (P.L. 628), entitled "An act protecting the rights of employes of existing transportation systems, which are acquired by cities of the third class or any authority thereof or certain joint authorities; requiring cities of the third class or any authority thereof or any such joint authority to enter into contracts with labor organizations acting for such employes, and providing for arbitration in case of disputes."

(3) Section 13.2 of the act of April 6, 1956 (P.L. 1414), known as the "Second Class County Port Authority Act."

Section 2002. This act shall not be construed to repeal the act of June 24, 1968 (Act No. 111), entitled "An act specifically authorizing collective bargaining between policemen and firemen and their public employers; providing for arbitration in order to settle disputes, and requiring compliance with collective bargaining agreements and findings of arbitrators."

Section 2003. Present provisions of an ordinance of the City of Philadelphia approved April 4, 1961, entitled "An Ordinance to authorize the Mayor to enter into an agreement with District Council 33, American Federation of State, County and Municipal Employes, A.F.L.-C.I.O., Philadelphia and vicinity regarding its representation of certain City Employes," which are inconsistent with the provisions of this act shall remain in full force and effect so long as the present provisions of that ordinance are valid and operative.

## ARTICLE XXI: Separability

Section 2101. If any clause, sentence, paragraph or part of this act, or the application thereof to any person or circumstances, shall, for any reason, be adjudged by a court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder of this act and the application of such provision to other persons or circumstances, but shall be confined in its operation to the clause, sentence, paragraph, or part thereof, directly involved in the controversy in which such judgment shall have been rendered and to the person or circumstances involved. It is hereby declared to be the

legislative intent that this act would have been adopted had such invalid provisions not been included.

## ARTICLE XXII: Repeals

Section 2201. The act of June 30, 1947 (P.L. 1183), entitled "An act relating to strikes by public employes; prohibiting such strikes; providing that such employes by striking terminate their employment; providing for reinstatement under certain conditions; providing for a grievance procedure; and providing for hearings before civil service and tenure authorities, and in certain cases before the Pennsylvania Labor Relations Board," is hereby repealed as to those public employes covered by the provisions of this act, and any penalties or other limitations currently in force or presently pending against any public employes, shall be deemed null and void.

## ARTICLE XXIII: Effective Date

Section 2301. This act shall take effect in 90 days, except that the provisions of Article V and the amnesty provisions of the repealer shall take effect immediately.

# ACT 84

**(Signed July 13, 1988)**

Amending the act of April 9, 1929 (P.L.177, No.175), entitled "An act providing for and reorganizing the conduct of the executive and administrative work of the Commonwealth by the Executive Department thereof and the administrative departments, boards, commissions, and officers thereof, including the boards of trustees of State Normal Schools, or Teachers Colleges; abolishing, creating, reorganizing or authorizing the reorganization of certain administrative departments, boards, and commissions; defining the powers and duties of the Governor and other executive and administrative officers, and of the several administrative departments, boards, commissions, and officers; fixing the salaries of the Governor, Lieutenant Governor, and certain other executive and administrative officers; providing for the appointment of certain administrative officers, and of all deputies and other assistants and employes in certain departments, boards, and commissions; and prescribing the manner in which the number and compensation of the deputies and all other assistants and employes of certain departments, boards and commission shall be determined," further providing for the powers and duties of the State Board of Education; requiring certain public State and Public School employees to pay a fair share fee; and providing for objections to payment of a fair share fee.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. Section 1317 of the act of April 9, 1929 (P.L.177, No.175), known as The Administrative Code of 1929, amended October 18, 1972 (P.L.935, No.224) and October 21, 1972 (P.L.985, No.244), is amended to read:

Section 1317. The Powers and Duties of the State Board of Education. –

(a) The State Board of Education shall have the power, and its duty shall be, to review the policies, standards, rules and regulations

formulated by the Council of Basic Education and the Council of Higher Education, and adopt broad policies and principles and establish standards governing the educational program of the Commonwealth.

(b) The State Board of Education shall have the authority and duty to:

(1) Hear appeals of school districts which consider themselves aggrieved by a decision of the Council of Basic Education approving a county plan of organization of administrative units, or approving or disapproving an application for the creation of a new school district, or change in the boundaries of an existing school district;

(2) Establish, whenever deemed advisable, committees of professional and technical advisors to assist the councils in performing research studies undertaken by them:

(3) Annually review the budget request of the Department of Education and of the educational institutions not part of the public school system and of institutions of higher education financed wholly or in part from State appropriations recommending approval or disapproval of such budget requests and return such budget requests to the Secretary of Education with comments, if any, prior to their submission to the Budget Secretary, and submit these recommendations and findings to the General Assembly subsequent to the submission of the Governor's budget to the General Assembly; (3.1) (i) Apply for, receive and administer, subject to any applicable regulations or laws of the Federal Government or any agency thereof, any Federal grants, appropriations, allocations, and programs for the development of academic facilities on behalf of the Commonwealth of Pennsylvania, any of its school districts or any institution of higher education, public or private, within the Commonwealth;

(ii) Subject to criteria developed by the Secretary of Education and subject to any applicable regulations or laws of the Federal Government or any agency thereof, to develop, alter, amend and submit to the Federal Government State plans for participation in Federal grants, appropriations, allocations, and programs for the development of academic facilities and to make regulations, criteria, methods, forms, procedures, and to do all other things which may be necessary to make possible the participation of the Commonwealth in such Federal grants, appropriations, allocations, and programs for the development of academic facilities;

(iii) Hold hearings, issue subpoenas, and render decisions as to the priority assigned to any project, or as to any other matter or determination affecting any applicant for Federal grants, appropriations, allocations, and programs for the development of academic facilities;

(iv) Adopt rules or procedure and prescribe regulations for the submission to it of all matters within its jurisdiction; and

(v) Submit, annually, to the Governor, on or before the first Monday of December, a report of its proceedings during that year, together with such recommendations as the board shall deem necessary; and

(4) Adopt policies under which the Secretary of Education shall approve or disapprove any action of the State System of Higher Education, a community college or State-related or State-aided college or university in establishing additional branches or campuses, or in discontinuing branches or campuses;

(5) Adopt policies under which the Secretary of Education shall approve or disapprove any action of the State System of Higher Education, a community college or State-related or State-aided college or university is establishing new professional schools, or upper division programs by two-year institutions;

(6) Approve or disapprove applications by two-year institutions to become four-year institutions;

(7) Adopt policies under which the Secretary of Education shall approve or disapprove the request of any private institution of higher education for admission to State-related or State-aided status, or for eligibility for other State financial support;

(8) Require the submission of long-range plans for all public and private institutions of higher education at the times and in the form requested by the board.

(d) No institution of higher education may proceed with any action unless it has been approved by the Secretary of Education under the provisions of clauses (4) through (7) of subsection (b) of this section 1317 of this act.

(e) With regard to approval by the Secretary of Education under the provisions of clauses (4) through (7) of subsection (b) of this section 1317, no action to be financed wholly or in part from State appropriations shall be taken by an institution of higher learning (i) prior to the next fiscal year or until the General Assembly approves the Governor's budget for the next fiscal year, and (ii) prior to the General Assembly, the Governor and the Budget Secretary being provided with written notification of such approval, including projected five-year fiscal analysis and an explanation as to the necessity for the proposed action in relation to the master plan for higher education.

(f) The State Board of Education shall adopt and periodically review and revise a master pl n for higher education which shall be for the guidance of the Governor, the General Assembly, and all institutions of higher education financed wholly or in part from State appro-

priations. Such master plan shall (i) define the role of each type of institution (State System of Higher Education, State-related universities, community colleges, private colleges and universities and off-campus centers of any of these and other institutions authorized to grant degrees) in the Commonwealth System of Higher Education, (ii) recommend enrollment levels for each such institution, (iii) recommend a method for governance of the system, (iv) provide formulas for the distribution of State funds among the institutions, and (v) otherwise provide for an orderly development of the system.

(g) The State Board of Education shall make all reasonable rules and regulations necessary to carry out the purposes of this act.

Section 2. The act is amended by adding a section to read:

Section 2215. Fair Share Fee: Payroll Deduction. – (a) As used in this section, the following words and phrases shall have the meanings given to them in this subsection:

"Bona fide religious objection" shall mean an objection to the payment of a fair share fee based upon the tenets or teachings of a bona fide church or religious body of which the employe is a member.

"Commonwealth" shall mean the Commonwealth of Pennsylvania, including any board, commission, department, agency or instrumentality of the Commonwealth.

"Employe organization" shall mean an organization of any kind or of any agency or employe representation committee or plan in which membership includes public employes and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, employe-employer disputes, wages, rates of pay, hours of employment, or conditions of work, but shall not include any organization which practices discrimination in membership because of race, gender, color, creed, national origin or political affiliation.

"Exclusive representative" shall mean the employe organization selected by the employes of a public employer to represent them for purposes of collective bargaining pursuant to the act of July 23, 1970 (P.L.563., No.195), known as the "Public Employe Relations Act."

"Fair share fee" shall mean the regular membership dues required of members of the exclusive representative less the cost for the previous fiscal year of its activities or undertakings which were not reasonably employed to implement or effectuate the duties of the employe organization as exclusive representative.

"Nonmember" shall mean an employe of a public employer, who is not a member of the exclusive representative, but who is represented in a collective bargaining unit by the exclusive representative for purposes of collective bargaining.

"Public employer" shall mean the Commonwealth of Pennsylvania or a school entity.

"School entity" shall mean any school district, intermediate unit or vocational-technical school.

"Statewide employe organization" shall mean the Statewide affiliated parent organization of an exclusive representative, or an exclusive representative representing employes Statewide, and which is receiving nonmember fair share payments.

(b) If the provision of a collective bargaining agreement so provide, each nonmember of a collective bargaining unit shall be required to pay to the exclusive representative a fair share fee.

(c) To implement fair share agreements in accordance with subsection (b), the exclusive representative shall provide the public employer with the name of each nonmember who is obligated to pay a fair share fee, the amount of the fee that he or she is obligated to pay, and a reasonable schedule for deducting said amount from the salary or wages of such nonmember. The public employer shall deduct the fee in accordance with said schedule and promptly transmit the amount deducted to the exclusive representative.

(d) As a precondition to the collection of fair share fees, the exclusive representative shall establish and maintain a full and fair procedure, consistent with constitutional requirements, that provides nonmembers, by way of annual notice, with sufficient information to gauge the propriety of the fee and that responds to challenges by nonmembers to the amount of the fee. The procedure shall provide for an impartial hearing before an arbitrator to resolve disputes regarding the amount of the chargeable fee. A public employer shall not refuse to carry out its obligations under subsection (c) on the grounds that the exclusive representative has not satisfied its obligation under this subsection.

(e) Within forty (40) days of transmission of notice under subsection (d), any nonmember may challenge as follows:

(1) to the propriety of the fair share fee; or

(2) to the payment of fair share fees for bona fide religious grounds.

(f) Any objection under subsection (e) shall be made, in writing, to the exclusive representative and shall state whether the objection is made on the grounds set forth in subsection (e) (1) or (2).

(g) When a challenge is made under subsection (e) (1), such challenge shall be resolved along with all similar challenges by an impartial arbitrator, paid for by the exclusive representative, and selected by the American Arbitration Association, or the Federal Mediation and Conciliation Service, pursuant to the rules for impartial determination

of union fees promulgated by the American Arbitration Association. The decision of the impartial arbitrator shall be final and binding.

(h) When a challenge is made under subsection (e) (2), the objector shall provide the exclusive representative with verification that the challenge is based on bona fide religious grounds. If the exclusive representative accepts the verification, the challenging nonmember shall pay the equivalent of the fair share fee to a nonreligious charity agreed upon by the nonmember and the exclusive representative. If the exclusive representative rejects the verification because it is not based on bona fide religious grounds, the challenging nonmember may challenge that determination within forty (40) days from receipt of notification.

(i) When a challenge is made under subsection (e) (1), the exclusive representative shall place fifty per centum (50%) of each challenged fair share fee into an interest-bearing escrow account until such time as the challenge is resolved by an arbitrator. When a challenge is made under subsection (e) (2), the exclusive representative shall place one hundred per centum (100%) of each challenged fair share fee into an interest-bearing escrow account until such time as the challenge is resolved by an arbitrator.

(j) Every Statewide employe organization required to submit a report under Title II of the Labor-Management Reporting and Disclosure Act of 1959 (Public Law 86-257, 29 U.S.C. Section 401 et seq.) shall make available a copy of such report to the Secretary of Labor and Industry.

(k) All materials and reports filed pursuant to this section shall be deemed to be public records and shall be available for public inspection at the Office of the Secretary of Labor and Industry during the usual business hours of the Department of Labor and Industry.

(l) Any employe organization which violates the provisions of this section or fails to file any required report or affidavit or files a false report or affidavit shall be subject to a fine of not more than two thousand dollars ($2,000).

(m) Any person who willfully violates this section, or who makes a false statement knowing it to be false, or who knowingly fails to disclose a material fact shall be fined not more than one thousand dollars ($1,000) or undergo imprisonment for not more than thirty (30) days, or both. Each individual required to sign affidavits or reports under this section shall be personally responsible for filing such report or affidavit and for any statement contained therein he knows to be false.

Section 3. If any clause, sentence, paragraph or part of this act, or the application thereof to any person or circumstances, shall, for any

reason, be adjudged by a court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder of this act and the application of such provision to other persons or circumstances, but shall be confined in its operation to the clause, sentence, paragraph or part thereof directly involved in the controversy in which such judgment shall have been rendered and to the person or circumstances involved. It is hereby declared to be the legislative intent that this act would have been adopted had such invalid provisions not be included.

Section 4. Section 401 and 705 of the act of July 23, 1970 (P.L.563, No. 195), known as the Public Employe Relations Act, are repealed insofar as they are inconsistent with this act.

Section 5. This act shall take effect immediately.

# Sample Forms Used by the Bureau of Mediation and PLRB

LIMS 104
9/92

LIMS 104 8-82

ACT 88 amendment to the Public School Code of 1949

STATUS _____ NOTICE TO BUREAU OF MEDIATION FILE # _____

Department of Labor and Industry
Bureau of Mediation
1727 Labor and Industry Building
Harrisburg, Pennsylvania 17120

Date _____

Gentlemen:

In accord with the provisions of Section 1121-A of the Public School Code, Act 88 of 1992, you are hereby notified that a dispute exists between the following parties.

| | |
|---|---|
| Name of Public Employer (School Entity) | Name of Employe Organization |
| Street or Rural No | Street or Rural No. |
| Municipality County Zip | Municipality Zip |
| Name and telephone number of Employer Chief Negotiator/Representative | Name and telephone number of Employe Chief Negotiator/Representative |
| Employe work activity | Number of employes in bargaining unit |
| 1st day of school Last day of school (if established) | Check if 1st Contract _____ Renewal _____ |
| Budget Submission Date | Contract expiration or reopener date |
| Filed in Behalf of Employer _____ | Filed in Behalf of Union. _____ |
| Management Representative | Union Staff Representative |

Section 1121-A, Act #88 states "... if no agreement is reached between the parties within forty-five (45) days after negotiations have commenced, but in no event later than one hundred twenty-six (126) days prior to June 30 or December 31, whichever is the end of the school entity's fiscal year, and mediation has not been utilized by the parties, BOTH PARTIES SHALL IMMEDIATELY CALL IN THE SERVICE OF THE PENNSYLVANIA BUREAU OF MEDIATION"

This notice to the Bureau of Mediation shall be given in writing by the submission of three (3) copies of this form

| | |
|---|---|
| PHILA | cc _____ |
| HZLTN | cc _____ |
| PGH | cc _____ |

PLRB-25
10/92

PLRB-25 10/92

**COMMONWEALTH OF PENNSYLVANIA**
**PENNSYLVANIA LABOR RELATIONS BOARD**

**REQUEST FOR APPOINTMENT OF FACT-FINDING PANEL**

| DO NOT WRITE IN THIS SPACE |
| --- |
| Case No. |
| Date Filed |

Employer Name

Represented by
(NAME OF CHIEF NEGOTIATOR OR OTHER PERSON TO WHOM CORRESPONDENCE SHOULD BE SENT)

(ADDRESS) (TELEPHONE NUMBER)

Employee Representative

Represented by
(NAME OF CHIEF NEGOTIATOR OR OTHER PERSON TO WHOM CORRESPONDENCE SHOULD BE SENT)

(ADDRESS) (TELEPHONE NUMBER)

Contract Expiration Date

Name of Mediator

Please indicate who is initiating the request by checking the appropriate box. Include signatures of both parties if this is a joint request.

☐ Joint Request — Signature

☐ Employee Representative Request — Date

☐ Employer Request — Signature

Date

Name and address of other parties to be served with information (limit to only essential parties):

(NAME, ADDRESS & TELEPHONE NUMBER) (NAME, ADDRESS & TELEPHONE NUMBER)

PERA-1
REV 11/92

PERA-1
REV 11/92

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

JOINT REQUEST FOR CERTIFICATION

IN THE MATTER OF THE EMPLOYES OF

| DO NOT WRITE IN THIS SPACE |
| --- |
| Case No. |
| Date Filed |
| ABOVE IS FOR PLRB USE ONLY |

TO THE HONORABLE, THE MEMBERS OF THE PENNSYLVANIA LABOR RELATIONS BOARD

The Petition of the employe representative and the public employer herein respectfully sets forth

1 That the employe representative is _____
(state name, address, zip code,

_____
telephone number and affiliation, if any)

2. That the public employer is _____
(state name, address, zip code,

_____
telephone number)

3 That the employer has agreed to recognize the employe representative pursuant to Section 602(a) of the Public Employe Relations Act based on a determination that a majority of the employes in the proposed unit desire to be represented by the employe representative, which determination is based upon

_____
(state method used to determine the desire of the majority of employes)

_____

4 Description of the unit deemed to be appropriate

INCLUDED

EXCLUDED

5 Approximate number of employes in the unit claimed to be appropriate _____

(OVER)

FRONT

PERA-1
REV 11/92

6. The proposed unit includes [CHECK APPROPRIATE BOX(ES)]

- ☐ NONPROFESSIONAL EMPLOYES ONLY
- ☐ SECURITY GUARDS ONLY (Refer to Section 604(3) of the Act)
- ☐ PROFESSIONAL EMPLOYES ONLY
- ☐ PRISON GUARDS ONLY (Refer to Section 604(3) of the Act)
- ☐ PROFESSIONAL AND NONPROFESSIONAL EMPLOYES (Refer to Section 604(2) of the Act)
- ☐ FIRST LEVEL SUPERVISORS ONLY (Refer to Section 604(5) of the Act)

7. That there are no other employe representatives claiming to represent any of the employes in the proposed bargaining units except

_____

(state name, address, zip code, telephone number or write NONE)

_____

8. That the public employer has posted the five (5) day Notice pursuant to 34 Pa Code § 95.11(8) (Attach appropriate proof of posting.)

9. Other relevant facts _____

_____

WHEREFORE, Petitioners respectfully pray that the Pennsylvania Labor Relations Board pursuant to Section 602(a) of the Public Employe Relations Act approve the proposed unit as appropriate and certify the employe representative as the exclusive representative for all employes in the unit

| | |
|---|---|
| _____ | _____ |
| Petitioner - Employe Representative | Petitioner - Public Employer |
| By _____ | By _____ |
| Title _____ | Title _____ |
| Telephone Number _____ | Telephone Number _____ |

INCOMPLETE OR INACCURATE STATEMENTS HEREON MAY
RESULT IN A DISMISSAL OF THIS PETITION

PERA-3
REV 6/82

PERA 3
(REV 6 82)

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

JOINT ELECTION REQUEST

IN THE MATTER OF THE EMPLOYES OF

| DO NOT WRITE IN THIS SPACE |
| --- |
| Case No |
| Date Filed |
| ABOVE IS FOR PLRB USE ONLY |

TO THE HONORABLE THE MEMBERS OF THE PENNSYLVANIA LABOR RELATIONS BOARD

The Petition of the employe representative and the public employer herein respectfully sets forth

1 That the employe representative is
(state name address zip code telephone number)

2 That the public employer is
(state name address zip code telephone number)

3 That the employer has received from the employe representative written notification and request for Consent Election containing basis of determination of 30% interest pursuant to Section 603(a) of the Public Employe Relations Act on copy of which is attached hereto
(date)

4 Description of the Unit deemed to be appropriate

INCLUDED

EXCLUDED

5 Approximate number of employes in unit claimed to be appropriate

6 The proposed unit includes (CHECK APPROPRIATE BOXES)

- ☐ NONPROFESSIONAL EMPLOYES ONLY
- ☐ SECURITY GUARDS ONLY (Refer to Section 604(3) of the Act)
- ☐ PROFESSIONAL EMPLOYES ONLY
- ☐ PRISON GUARDS ONLY (Refer to Section 604(3) of the Act)
- ☐ PROFESSIONAL AND NONPROFESSIONAL EMPLOYES (Refer to Section 604(2) of the Act)
- ☐ FIRST LEVEL SUPERVISORS ONLY (Refer to Section 604(5) of the Act)

FRONT

PERA-3
REV 6/82

8 That there are no other employe representatives claiming to represent any of the employes in the proposed bargaining unit except

(state name address zip code telephone number or write NONE)

9 An agreed alphabetized eligibility list of those entitled to vote is attached hereto (If there is any question contact the Board)

10 That the parties hereto desire that the election be held on

(date and time period)

at

(specific location for voting)

and attached hereto is an agreed list of watchers

11 That the public employer has posted the five (5) day Notice pursuant to 34 Pa Code §95 13(c) (Attach appropriate proof of posting)

WHEREFORE the Petitioners respectfully pray that the Pennsylvania Labor Relations Board pursuant to Section 603(b) of the Public Employe Relations Act order an Election to ascertain the exclusive representative if any for the purposes set forth in the Public Employe Relations Act

(Public employer)

By

Title

Telephone Number

(Employe representative)

By

Title

Telephone Number

(INCOMPLETE OR INACCURATE STATEMENTS HEREON MAY RESULT IN A DISMISSAL OF THIS PETITION)

BACK

PERA-4
REV 3/87

PERA-4 REV 3-87

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

PETITION UNDER THE PUBLIC EMPLOYE RELATIONS ACT

IN THE MATTER OF THE EMPLOYES OF

| DO NOT WRITE IN THIS SPACE |
|---|
| Case No |
| Date Filed |
| ABOVE IS FOR PLRB USE ONLY |

1 Purpose of this Petition
(Check One) (File Original and Three (3) Copies)

☐ PETITION FOR REPRESENTATION (RC) Thirty percent or more of the employes wish to be represented by Petitioner and Petitioner desires to be certified as representative of the employes. Refer to Section 603(c) of the Public Employe Relations Act (Act) and 34 Pa. Code Sections 95.12 and 95.14.

☐ PETITION FOR DECERTIFICATION (RD) Thirty percent or more of the employes assert that the certified bargaining representative is no longer their representative OR the Employer alleges a good faith doubt of the majority status of the present representative. Refer to Section 607 of the Act and 34 Pa. Code Sections 95.21 and 95.22.

☐ PETITION FOR ELECTION BY PUBLIC EMPLOYER - (EE) - If either a public employe, group of public employes, or employe organization has presented a claim to the Employer to be recognized as the representative of the employes of the Employer and thereafter does not seek an election. Refer to Section 603(d) of the Act and 34 Pa. Code Section 95.14.

☐ PETITION FOR UNIT CLARIFICATION (UC) An employe representative is currently recognized by Employer, but Petitioner seeks clarification of the unit previously certified in Case No. _____ _____ Refer to 34 Pa. Code Section 95.23.

☐ PETITION FOR AMENDMENT OF CERTIFICATION (UC) Petitioner seeks amendment of certification issued in Case No. _____ (ATTACH STATEMENT DESCRIBING THE SPECIFIC AMENDMENT SOUGHT.) Refer to Pa. Code Section 95.23.

2 NAME OF EMPLOYER ADDRESS (Street, Number, City, State, ZIP)

Representative to contact Telephone Number

3 NAME OF EMPLOYE ORGANIZATION ADDRESS (Street, Number, City, State, ZIP)

Telephone Number

4 Description of unit deemed to be appropriate (In UC Petition describe PRESENT unit and attach description of proposed clarification and reasons for the request.)

INCLUDED

EXCLUDED

5 Approximate number of employes in the unit claimed to be appropriate

PRESENT _____ PROPOSED BY PETITION _____

FRONT



130

PERA-4
REV 3/87

6 The proposed unit includes (CHECK APPROPRIATE BOX(ES))

- ☐ NONPROFESSIONAL EMPLOYES ONLY
- ☐ PROFESSIONAL EMPLOYES ONLY
- ☐ PROFESSIONAL AND NONPROFESSIONAL EMPLOYES (Refer to Section 604(2) of the Act)
- ☐ SECURITY GUARDS ONLY (Refer to Section 604(3) of the Act)
- ☐ PRISON GUARDS ONLY (Refer to Section 604(3) of the Act)
- ☐ FIRST LEVEL SUPERVISORS ONLY (Refer to Section 604(5) of the Act)

7 Petitioner alleges that 30% or more of the employes in the proposed unit (Desire to be represented by Petitioner R Petitions only) OR (No longer desire to be represented by the present employe organization Employe filed D Petitions only) which allegation is supported by _____ (Not applicable to Employer D Petition)
METHOD USED*

*DATED SHOWING OF INTEREST MUST BE ATTACHED HERETO (Refer to 34 Pa Code Section 95 1)

8 There are no other employe representatives claiming to represent any of the employes in the proposed bargaining unit except

_____

_____
(Name Address, Telephone Number, or write NONE)

9 Date of expiration of current agreement, if any _____
(Month, Day Year or write NONE)

10 The employe organization notified the public employer pursuant to Section 603(c) of the Act on _____ (Date) and requested the public employer to join in a petition for an election A copy of the notification is attached hereto (Applicable to R Petitions only)

11 The public employer refused said request on _____ (Date) OR (failed to reply) (Applicable to R Petitions only)

12 The public employer agreed on _____ (Date) to join in an election request with the employe representative, however, the employe representative failed to seek an election (Applicable to E Petitions only)

13 Other relevant facts _____

_____

_____

_____

I declare that I have read the above petition and that the statements therein are true to the best of my knowledge and belief

_____
(Petitioner and affiliation if any)

BY _____
(Signed and printed name of representative or person filing Petition) (Title, if any)

ADDRESS _____ PHONE NUMBER _____
(Street & Number, City, State and ZIP)

(INCOMPLETE OR INACCURATE STATEMENTS HEREON MAY RESULT IN A DISMISSAL OF THIS PETITION)

BACK

PERA-9
REV 3/88

PERA-9
REV 3-88

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

| DO NOT WRITE IN THIS SPACE |
| --- |
| Case No. |
| Date Filed |

_____
COMPLAINANT

v.

_____
RESPONDENT

CHARGE OF UNFAIR PRACTICES

TO THE HONORABLE, THE MEMBERS OF THE PENNSYLVANIA LABOR RELATIONS BOARD:

The Complainant, _____
(name of public employe, employe organization or public employer)

by and through _____
(name and title of person filing charge)

_____
(address, zip code, telephone number of person filing charge)

HEREBY CHARGES

that Respondent, _____
(public employer, employe organization or public employe alleged to have committed unfair practices)

of _____
(address, zip code, telephone number)

has engaged in unfair practices contrary to the provisions of the Public Employe Relations Act, Section 1201, subsection (a) or (b), clause(s) (1), (2), (3), (4), (5), (6), (7), (8), (9). (Cross out subsection and clauses inapplicable prior to filing with the Board.)

If more than one Respondent, place X in block ☐ and list on separate sheet.

If a grievance relating to this issue has been filed, place X in block ☐ If X is placed in block, please send a copy of the grievance and the contract to assist in review of this charge.

(over)

FRONT

PERA-4
REV 3/87

SPECIFICATION OF CHARGES

Set forth all of the events alleged to constitute the unfair practice(s). Include specific facts, dates, names, addresses, place of occurrence, and other relevant facts If additional space is needed, please continue on additional sheet(s) (8½" x 11")

WHEREFORE, the Complainant respectfully requests the Pennsylvania Labor Relations Board to enter the charge upon the Docket of the said Board and to issue and cause to be served upon the Respondent above named a Complaint stating the charge(s) of unfair practice(s)

_____
Signature of Complainant or Representative

COMMONWEALTH OF PENNSYLVANIA

ss

COUNTY OF

On this _____ day of _____, 19 _____, before me, a

_____, in and for said County and State, personally appeared

_____, who being duly sworn according to law, deposes and says that he/she is the person filing the foregoing CHARGE OF UNFAIR PRACTICES and is aware of the contents thereof and that the matters and facts set forth therein are true and correct to the best of his or her knowledge, information and belief

SWORN AND SUBSCRIBED TO before me
the day and year first aforesaid

_____
Signature of Notary Public

_____
Signature of Complainant or Representative

FAILURE TO FILE AN ORIGINAL AND 3 COPIES OF THE CHARGE AND ALL ACCOMPANYING EXHIBITS MAY DELAY PROCESSING

[illegible]

# Schedule of Rates and Costs Adopted by PLRB Pursuant to the Rules and Regulations (34 PA. Code Chapter 95)

*Adopted Sept. 15, 1992*

Pursuant to the Rules and Regulations of the Pennsylvania Labor Relations Board, the Board hereby adopts the following schedule of rates and costs for the compensation of arbitrators and fact-finders appointed according to provisions of law.

## I. Per Diem Rates

Compensation for professional services of individuals appointed as impartial member arbitrators and fact-finders shall be at the per diem rate which shall have been filed as provided in the Board's rules. Adjustments to per diem rates shall be made by submission of the revised rate to the Board in writing. Payments in all cases shall be made at the rate on file with the Board at the time of assignment of the case not to exceed $500. A copy of the report or award should be forwarded with the invoice.

When a third member arbitrator is selected by the parties without a list supplied by the Board, and the arbitrator so selected is not on the Boards list of candidates, or has not filed a resume of qualifications and requested fees for services pursuant to the Board's rules and regulations, the arbitrator so selected shall be compensated by the Board the lesser of his or her usual per diem rate for these services or

$500 per day. To the extent that the Board is required by law to compensate partisan arbitrators, compensation shall be based on a per diem rate of no more than $300 per day.

## II. Travel and Meal Expenses

Reasonable costs of lodging and meals incurred in the course of fact-finding and arbitration meetings shall be reimbursed in full upon provision of receipts or other proof of these expenditures. Transportation costs of public transportation (plane, bus, taxi) and tolls shall be reimbursed in full.

Mileage costs for use of personal automobile shall be reimbursed at the current rate for Commonwealth employes.

## III. Incidental Expenses

Costs of telephone calls incidental and necessary to the fact-finding or arbitration procedure shall be reimbursed in full upon provision of receipts or other proof of such expenditures.

Costs of secretarial, reporting and clerical services shall not be reimbursable.

## IV. Cancellation Fees

The Board will not pay fees imposed as "cancellation fees" for days when hearings are scheduled but not held.

## Adopted September 15, 1992

**Fiscal Note:** 104-1. (1) General Fund; (2) Implementing year is 1992-93: $345,800; (3) 1st succeeding year is 1993-94: $356,200; 2nd succeeding year is 1994-95: $366,800; 3rd succeeding year is 1995-96: $377,800; 4th succeeding year is 1996-97: $389,200; 5th succeeding year is 1997-98: $400,900; (7) General Government Operations; (8) recommends adoption. The cost relating to these regulations are imposed by Act 88 of 1992. There are no funds provided in the budget for these costs.

# Annex A

# TITLE 34. EMPLOYMENT SECURITY PART V. LABOR RELATIONS CHAPTER 95. PUBLIC EMPLOYES COLLECTIVE BARGAINING IMPASSE

## § 95.61. Fact-finding panels.

(a) If the Bureau of Mediation notifies the Board of the failure of the parties to have reached an agreement within the time provided by the act, the Board may appoint a fact-finding panel consisting of either one or three members.

(b) If the Board is requested by a school entity or employe organization to appoint a fact-finding panel under section 1122-A(a)(2) of the Public School Code of 1949 (24 P. S. § 11-1122-A), the Board will appoint a fact-finding panel which may consist of either one or three members.

(c) If a school entity and employe organization mutually agree to fact-finding under section 1122-A(a)(3) of the Public School Code of 1949, the Board will appoint a fact-finding panel which may consist of either one or three members.

(d) The Board may appoint a fact-finding panel under section 1122-A(a)(4) of the Public School Code of 1949 which may consist of either one or three members.

(e) Immediately following the appointment, the Board will notify the panel members and all parties of the appointment, requesting the panel to proceed with the holding of hearings giving due notice of the time and place of the hearing in writing to all parties.

## § 95.62. Filing of issues.

Within 5 days of receipt of notice from the panel, the parties shall

file with the panel written statements of the issues in dispute, a copy of the current collective bargaining agreement, if any, and a summary of the position of the party regarding each unresolved issue. A copy of the statements shall be served upon the other party. The matters to be considered by the panel shall be limited to those set forth in the statements.

## § 95.63. Hearings and report.

(a) The hearings before the panel are private. While the panel need not insist upon adherence to the legal rules of evidence, it shall, however, base its findings of fact and recommendations upon reliable and credible evidence produced at the hearings.

(b) The panel shall conduct evidentiary hearings as required. For purposes of hearing, the fact-finding panel shall have the power to direct the time, place, course and conduct of the hearings, administer oaths and affirmations, examine witnesses and documents, take testimony and receive evidence, and issue subpoenas to compel attendance of witnesses and the production of papers and records relevant to the matters before the panel. Costs associated with obtaining a hearing room will be borne by the parties.

(c) The panel shall issue its findings of fact and recommendations in writing to the parties and thereafter make them public in accordance with the provisions of law.

## § 95.64. Fact-finding and arbitration compensation.

The Board will maintain a list of candidates available for service on the panels to be appointed. Prior to the appointment, fact-finders shall have filed with the Board a resume of their qualifications and requested fees for services to be rendered. The services provided by the fact-finders shall be compensated in accordance with a schedule of rates approved by the Board.

## § 95.65a. Arbitration for school entities and their employes.

(a) *Voluntary binding arbitration.* Notwithstanding the provisions of the act of July 9, 1992 (P. L. 403, No. 88) (Act 88), which amended

the act, a school entity and an employe organization may submit an impasse to voluntary binding arbitration under section 804 of the act (43 P. S. § 1101.804) with the proviso that a decision of the arbitration which would require legislative enactment to be effective shall be considered advisory only.

(b) *Compensation for arbitrators under Act 88.*

(1) The partisan arbitrators selected by the parties under section 1124-A(1) of the Public School Code of 1949 (24 P. S. § 11-1124-A) and the impartial arbitrator selected under section 1124-A(2) shall be compensated for purposes of section 1124-A(3)(ii) in accordance with a schedule of rates approved by the Board at a regularly scheduled meeting. Once adopted, the schedule of rates and costs shall continue in effect until redetermined by the Board. Compensation for partisan arbitrators selected under section 1124-A(1) in excess of the Board approved schedule of rates shall be borne solely by the party which selected the arbitrator.

(2) Within 30 days of the completion of the arbitration process, the impartial arbitrator and partial arbitrators, if any, shall submit to the Board a detailed statement of the costs, setting forth the dates and time spent in hearing and preparation of the award.

## § 95.66. Impasses involving court employes, guards at prisons and mental institutions.

(a) Impasses involving units of guards at prisons or mental hospitals or units of employes directly involved with the functioning of courts of this Commonwealth, unresolved by the intervention of mediation, shall be submitted to arbitration under section 805 of the act (43 P. S. § 1101.805). The Bureau of Mediation shall notify the Board of an impasse and the need for invoking arbitration.

(b) Prior to appointment, arbitrators shall have filed with the Board a resume of their qualifications and requested fees for services to be rendered. The services provided by arbitrators will be compensated in accordance with a schedule of rates approved by the Board.

(c) The impartial arbitrator chosen under section 806(1) or (2) of the act (43 P. S. § 1101.806(1) or (2)) shall notify the Board of the selection or appointment prior to assuming duties as third member and chairperson.

(d) Third member arbitrators chosen under section 806(1) or (2) of the act (43 P. S. § 1101.806(1) or (2)) will be compensated by the Board. See 43 P. S. § 1101.806(a). Within 30 days of completion of the arbitration process, the third member arbitrator shall submit to the Board a detailed statement of costs, plus expenses, setting forth the dates and time spent in research, hearing and preparation of the report. The Board will periodically determine a schedule of rates and costs for these purposes at a regularly scheduled meeting. The schedule will be published and made of record and continued in effect until redetermination by the Board.

## § 95.67. (Reserved).

(Pa.B. Doc. No. 92-2225. Filed for public inspection November 6, 1992, 9:00 a.m.)

# Where to contact a mediator

Mediators are on call 24 hours a day in regional offices throughout the commonwealth. Contact the Bureau of Mediation in Harrisburg or the regional office nearest you. These offices also have the forms for filing dispute notices and requesting arbitration panels.

## Central Office

Rm. 1727 Labor & Industry Bldg. Harrisburg, PA 17120 Tel: (717) 787-2803

## Regional Offices

State Office Bldg.
35 W. Maple St.
Hazleton, PA 18201
Tel: (717) 459-3881

Third Floor, Rm. B
444 N. Third St.
Philadelphia, PA 19123
Tel: (215) 560-1855

1206 State Office Bldg.
300 Liberty Ave.
Pittsburgh, PA 15222
Tel: (412) 565-5293

# Glossary

**Across the board increase** – A raise in wages, in terms of the same dollars or percentage, given at one time to all workers, or to a large group of workers.

**Act 84 (1988)** – Provides for negotiable agency shop. Requires certain state and public school employees to pay a fair share fee; and provides for objections to payment of a fair share fee. 71 P.S. Sec. 575.

**Act 88 (1992)** – Transfers various collective bargaining provisions from Act 195 of 1970 to the Public School Code and establishes a revised process for negotiations. Among its provisions, the bill: establishes a mandatory timeline for bargaining; ensures a minimum complement of state mediators; authorizes either party to initiate fact-finding; prohibits selective strikes; requires a 48-hour advance notice of any legally authorized strike; establishes nonbinding arbitration as a new impasse procedure; and grants the secretary of education standing to seek injunctions whenever a strike threatens completion of the minimum 180-day school year.

**Act 111 (1968)** – Act governing collective bargaining between police and firefighters and their employers, mandating binding arbitration at impasse and precluding the right to strike. 43 P.S. 217.

**Act 111 Arbitration** – Process under Act 111 through which impasse is resolved by submitting issues to third party panel for binding resolution.

**Act 195 (1970)** - Pennsylvania Public Employe Relations Act (PERA) governing collective bargaining between the commonwealth's public employers and their employees.

**Agency Shop** – A provision in a collective agreement which requires that all employees in the negotiating unit who do not join the exclu-

sive representative pay a fixed amount monthly, usually the amount of organization dues, as a condition of employment. An "agency shop" is not permitted under Act 195. However, this provision was repealed by Act 84, Section 4.

**Agreement** – A written contract between an employer and an employee organization, usually for a definite term, defining conditions of employment; that is, hours, wages, vacations, holidays, working conditions, etc., rights of employees and the employee organizations and the procedure to be followed in settling disputes or handling issues that arise during the life of the agreement.

**American Arbitration Association (AAA)** – A private, nonprofit organization established to aid professional arbitrators in their work through legal and technical services and to promote arbitration as a method of settling commercial and labor disputes. The AAA provides lists of qualified arbitrators on request.

**American Association of School Administrators (AASA)** – A national organization which enrolls public school superintendents and other types of administrative personnel.

**American Federation of Labor-Congress of Industrial Organization (AFL-CIO)** – A federation of approximately 130 autonomous national and international unions created by the merger of the American Federation of Labor (AFL) and the Congress of Industrial Organizations (CIO). The initials AFL-CIO, after the name of a union, indicate that the union is an affiliate.

**American Federation of State, County and Municipal Employes (AFSCME)** – A union organization made up of many types of public employes.

**American Federation of Teachers (AFT)** – A national organization of public school and college teachers affiliated with the AFL-CIO.

**Arbitrability** – The extent to which management is obligated by contract to take a particular issue or dispute to arbitration. The answer is usually determined by an arbitrator or by a court.

**Arbitration** – A method of settling employment disputes through recourse to an impartial third party, whose decision is usually final and

binding. It may be voluntary when both parties agree to submit disputed issues to arbitration or compulsory if required by law. It is advisory when arbitration is without a final and binding award.

**Arbitrator** – A third party chosen to hear a case or group of cases that are submitted for arbitration.

**Authorization Card** – A statement signed by an employee authorizing an organization to act as his/her representative in dealing with an employer; may also be used to permit the employer to deduct organizational dues from an employee's pay. A card employees are asked to sign, usually during a campaign, stating that the employee wants the union to represent him/her as bargaining agent.

**Award** – The final decision of an arbitrator which may or may not be binding on both parties to the dispute in labor-management arbitration.

**Bargaining Agent** – An organization recognized by the employer as the exclusive representative of all employees in the negotiating unit for purposes of collective negotiations.

**Bargaining Unit** – An employee organization, or part thereof, approved by the Pennsylvania Labor Relations Board as appropriate representatives of the organization for purposes of collective bargaining. (Section 604.)

**Binding Arbitration** – See "Grievance Arbitration" or "Interest Arbitration."

**Bona fide Religious Objection** – An objection to the payment of a fair share fee based upon the tenets or teachings of a bona fide church or religious body of which the employee is a member.

**Boycott** – Effort by an employee union to discourage the participation or use of services or products of an employer or employer's representative with whom the union is in dispute. When such action is extended to another employer doing business with the employer involved in the dispute, it is termed a "secondary boycott."

**Budget Submission Date** – The date by which a government's proposed budget, or a budget containing proposed expenditures applicable to such government, must be submitted to the Legislature or other similar body of the government for final action. The date is determined by law. In the case of school districts, the budget submission date is June 30. (Section 301(12))

**Business Agent** – Usually a full-time, paid employee of a local union whose duties include day-to-day dealing with employers and workers, the adjustment of grievances, enforcement of agreements and similar activities.

**Card Check** – A procedure whereby signed authorization cards are checked against the list of employes to determine if the organization has majority status. An employer may recognize the organization based upon this procedure without the formal election. Such cards are reviewed for validity by the PLRB, however, they cannot be seen by the employer.

**Caucus** – A meeting of a small group of members of an organization to plan strategy prior to or during collective bargaining negotiations. When the union or employer requests a recess to discuss, by itself, a proposal or offer made by the other party or by a mediator during a negotiating session.

**Certification** – The formal determination by the state administrative agency (PLRB) that a particular union is the majority choice, and hence the exclusive bargaining agent, of all employes in a given bargaining unit. (Section 605.)

**Checkoff** – Regular deduction by an employer of union dues, assessments, initiation fees, and fines from employees' wages for the union.

**Checkoff, automatic** – An agreement between a union and an employer for deducting union dues from employees' wages.

**Checkoff, compulsory** – Same as Checkoff, automatic.

**Checkoff, voluntary** – An agreement between an employee and an employer for deducting union dues from wages.

**Closed Shop** – A form of organizational security provided in an agreement which binds the employer to hire and retain only organization members in good standing. This is not permitted under Act 195.

**Collective Bargaining** – The performance of the mutual obligation of the employer and the exclusive representative of its employees to meet at reasonable times and confer in good faith regarding mandatory bargaining subjects, usually, wages, hours, and other terms and conditions of employment. The obligation includes the execution of a written agreement incorporating any agreement reached by the parties as a fruit of collective bargaining. (Section 701 .)

**Commonwealth** – The Commonwealth of Pennsylvania, including any board, commission, department, agency or instrumentality of the Commonwealth.

**Commonwealth Employee** – A public employee employed by the commonwealth or any board, commission, agency, authority, or any other instrumentality thereof. (Section 301(15))

**Conciliation** – Attempts by a neutral party to reconcile opposing viewpoints in a labor dispute in order to help the negotiating parties come to a voluntary settlement.

**Confidential Employee** – An employee whose unrestricted access to confidential personnel files or to knowledge or information pertinent to the labor relations activity of the employer makes him/her inappropriate for membership in a labor organization. Labor relations statutes usually exclude confidential employees from the regular employee bargaining unit and often exclude them from coverage under the enabling framework. (Section 301(13))

**Conflict of Interest** - A person who is a member of the same local, state, national, or international organization as the employee organization with which the public employer is bargaining or who has an interest in the outcome of such bargaining which interest is in conflict with the interest of the public employer. (Section 1801)

**Consumer Price Index (CPI)** - Statistics issued monthly by the U.S. Department of Labor, Bureau of Labor Statistics measuring the average change in prices of goods and services purchased by moderate income families and describing shifts in the purchasing power of the consumer's dollar.

**Coordinated Bargaining** – An effort of a group (usually geographical) of union locals to impede the bargaining process until all negotiating interests are met.

**Crisis Bargaining** – Collective bargaining that takes place under the threat of an imminent strike deadline.

**Decertification** – Removal by a labor board of a union's certification as the exclusive bargaining representative. (Section 607)

**Department of Education (DOE)** – See Pennsylvania Department of Education.

**Dispute** – A disagreement between employers and the employee organization which requires resolution.

**Dues Deduction** – The agreement of a public employer to deduct from the wages of a public employee, with his/her written consent, an amount for the payment of his/her membership dues in an employee organization, which deduction is transmitted by the public employer to the employee organization. (Section 705)

**Employee Organization** – An organization of any kind or any agency or employee representation committee or plan in which membership includes public employees and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, employee-employer disputes, wages, rates of pay, hours of employment or conditions of work, but shall not include any organization which practices discrimination in membership because of race, gender, color, creed, national origin or political affiliation.

**Exclusive Negotiating Rights** – The right and obligation of employee organization designated as majority representative to negotiate for all employees included in the bargaining unit.

**Exclusive Representative** – The employee organization selected by the employees of a public employer to represent them for purposes of collective bargaining pursuant to the act of July 23, 1970 (P.L. 563, No. 195), known as the Public Employe Relations Act.(Act 195)

**Fact-finding** – Identification of the major issues in a particular bargaining impasse dispute and resolution of factual differences by one or more impartial fact-finders. This process includes non-binding recommendations issued by the fact-finder in an attempt to resolve the impasse. (Section 802)

**Fact-finder** - An individual who holds formal or informal hearings, on disputed items, subpoenas documents or individuals, submits his/her report to the parties and the public in accordance with the procedures in Act 195. This is the only public participation in the collective bargaining process. A fact-finder's report is advisory under Act 195.

**Fair Share Fee** – The regular membership dues required of members of the exclusive representative less the cost for the previous fiscal year of its activities or undertakings which were not reasonably employed to implement or effectuate the duties of the employee organization as exclusive representative.

**"Favored Nations" Clause** – A provision in a collective bargaining agreement that gives one party to the contract, either the employer or the union, the chance to share in the terms of a more favorable contract if the other party negotiates a more favorable contract with another employer or union. This is illegal, an unfair labor practice.

**Final-Best-Offer Arbitration** - Provided for in Act 88, Section 1125-A, by allowing either party to request it by notifying the other party and the PLRB. Final-best-offer arbitration requires that the arbitration panel make a decision by selecting one party or the other's last position.

**First Level Supervisor** - Any individual having authority in the interests of the employer to hire, transfer, suspend, layoff, recall, pro-

mote, discharge, assign, reward or discipline other employees or responsibly to direct them or adjust their grievances; or to a substantial degree effectively recommend such action, if in connection with the foregoing, the exercise of such authority is not merely routine or clerical in nature but calls for the use of independent judgment. (Sections 301(19), 301(6), 704)

**Good Faith Bargaining** – The requirement that the two parties to negotiations meet at reasonable times and confer in good faith with a willingness to reach an agreement on new contract terms. Good faith bargaining does not compel either party to make a concession or agree to any proposal. (Section 701)

**Grievance** – An alleged misinterpretation or misapplication of the provisions of the collective bargaining agreement. (Section 903)

**Grievance Arbitration** – The final step of the grievance proceedings that attempt to settle disputes arising out of the interpretation of a collective bargaining agreement.

**Grievance Procedure** – A formal plan set forth in the collective agreement which provides for the adjustment of alleged grievances through discussions at progressively higher levels of authority in management and the employer organization.

**Hickman Commission** – Commission established in 1968 by Governor Raymond P. Shafer to review the matter of public employee collective bargaining and to make recommendations regarding changes to the 1947 No-Strike Law.

**Illegal Strike** – A strike called in violation of a collective bargaining agreement, or in violation of a statutory prohibition on strikes, as exist in most public sector collective bargaining laws. (Sections 1001-1010)

**Impasse** – That point in labor-management negotiations at which either party determines that no further progress can be made toward reaching an agreement. Impasses are often resolved by the intervention of a neutral third party, such as a mediator or fact-finder. (Section 801)

**Injunction** – A court order restraining one or more persons or the union from performing some act which the court believes should be prohibited under Act 195. The order may be in the form of a temporary or permanent injunction. (Section 1002, 1003)

**Interest Arbitration** – Use of a third party to determine what provisions will be place in a collective bargaining agreement. This is not required under Act 195.

**Job Action** – Any concerted effort by employees in the public sector to exert pressure on management during negotiations by using tactics which affect the quality and/or the quantity of their work performance. (Section 301(9))

**Job Security** – A contract provision which protects or constrains the reduction of positions in a bargaining unit or diminishes an employee's property right to a position within the organization.

**Jones Commission** – Governor's Study Commission of Public Em-

ploye Relations formed by Governor Milton J. Shapp in 1976 to review and make recommendations for legislative and administrative change to the public sector collective bargaining laws of Pennsylvania.

**Just Cause** – A clause or provision which protects employees from employer action without reasonable cause. Term is somewhat ambiguous and is liberally applied in contract disputes.

**Local Presumption Rule** – Used to determine the amount a nonmember must pay in fair share fees to a local labor association which presumes that the local labor association spends at least the same percentage as the statewide organization in matters related to collective bargaining and improving employment conditions.

**Lockout** – Shutdown of a place of work or a change of the status quo by the employer to discourage union strike activity or to enforce economic demands.

**Maintenance of Membership** – A union security system under which an employee is not required to join a union, but if she/he does, or is already a member, binds him/herself to remain a member for the duration of the union contract. The procedure contains an escape period during which the employee may resign from the union. (Sections 301(18), 705)

**Management Level Employee** – Any individual who is involved directly in the determination of policy or who responsibly directs the implementation thereof and shall include all employees above the first level of supervision. (Section 801(16))

**Management Prerogative** – Employer functions which management feels are intrinsic to the ability to manage. These rights are often ex-

pressly reserved to management in the management rights clause of the bargaining agreement. (Section 702)

**Management Rights Clause** – A provision in the collective bargaining agreement which describes the scope of management rights, functions, and responsibilities. The clause sets forth those activities which management can carry out without obtaining the agreement of the union. See Management Prerogatives.

**Mandated Final-Best-Offer** – Provided for in Act 88 with a requirement that the parties must submit their open issues to an arbitration panel whenever the bargaining unit has been on strike and the strike prevents the school entity from providing the period of instruction required by Section 1501 of the School Code (180 days), by the later of June 15 or the last day of the school entity's scheduled school year.

**Mandatory Bargaining Subject (701's)** – Items that must be negotiated if demanded by either party. It will be a matter that affects wages, hours, or terms and conditions of employment.

**Mediation** – The attempt by a third party to assist in the settlement of an employment dispute through advice or other suggestions but not dictating any specific provisions. (Section 801, 802)

**Mediator** – An individual who acts as an impartial third party to help settle labor-management disputes.

**Meet and Discuss** – The obligation of a public employer upon request to meet at reasonable times and discuss recommendations submitted by representatives of public employees: Provided, that any decisions or determinations on matters so discussed shall remain with the public employer and be deemed final on any issue or issues raised. (Section 301(17))

**Memorandum of Understanding** – A non-binding agreement that may be the product of meet and discuss sessions. It becomes binding, in most cases, only when accepted by the appropriate public body.

**Merit Increase** – An increase in employee compensation awarded on the basis of that person's efficiency and performance.

**National Education Association (NEA)** – A national employee union for teachers and educational support personnel.

**National Labor Relations Board (NLRB)** – A board established by the National Labor Relations Act to conduct elections and hear and determine unfair labor practice charges in the private sector.

**Negotiated Final-Best-Offer Arbitration** – Requires the parties to bargain what method of arbitration impasse procedures will be employed if necessary. This provision does not compel either party to agree to a proposal or make a concession.

**Negotiation** – The process by which employee representatives and management attempt to reach agreement on conditions of employment, such as wages, hours, fringe benefits, and the procedure for handling grievances.

**Negotiator** – The person who represents the employer or union in the collective bargaining process. Often committees or "teams" represent each party, and one of the committee's members acts as chief negotiator or spokesman for the group.

**Nonmember** – An employee of a public employer, who is not a member of the exclusive representative, but who is represented in a collective bargaining unit by the exclusive representative for purposes of collective bargaining.

**No-Strike** – A provision in a collective agreement in which the employee organization agrees not to strike during the duration of the contract.

**Parity** – A standard relationship between the wage schedules of different categories of employees.



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**PAESP** – Pennsylvania Association of Elementary School Principals.

**PASA** – Pennsylvania Association of School Administrators.

**PASBO** – Pennsylvania Association of School Business Officials.

**PASSP** – Pennsylvania Association of Secondary School Principals.

**PSBA** – Pennsylvania School Boards Association.

**PSSPA** – Pennsylvania School Service Personnel Association, a service union associated with the Pennsylvania State Education Association.

**Pennsylvania Labor Relations Board (PLRB)** – A specially appointed board which adjudicates labor disputes and develops regulations governing labor practices.

**Pennsylvania State Education Association (PSEA)** – A state employee union for teachers and educational support personnel.

**Permissive Bargaining Subject (702s)** – Items which are neither illegal nor required. If a party chooses not to negotiate upon such items, the other party cannot require that it be negotiated.

**Picketing** – The patrolling of the entrance to an establishment by union members, with the express purpose to persuade other workers to stop work; discourage customers from patronizing the establishment; publicize the existence of a dispute, or prevent by force or persuasion the delivery of goods and services to the establishment.

**Private-Sector Collective Bargaining** – Bargaining for non-public employees through unions representing employees of the private industry.

**Professional Employee** – Any employee whose work: (i) is predominantly intellectual and varied in character; (ii) requires consistent exercise of discretion and judgment; (iii) requires knowledge of an advanced nature in the field of science or learning customarily acquired by specialized study in an institution of higher learning or its equivalent; and (iv) is of such character that the output or result accomplished cannot be standardized in relation to a given period of time. (Section 301(7))

**Public Bargaining** – Negotiating in view and/or hearing of the public or representatives of the public as opposed to elected or appointed persons representing each party.

**Public Employee** – Any individual employed by a public employer but shall not include elected officials, appointees of the governor with the advice and consent of the Senate as required by law, management level employees, confidential employees, clergy or other persons in a religious profession, employees or personnel at church offices or facilities when utilized primarily for religious purposes and those employees covered under the act of June 24, 1968 (Act No. 111), entitled "An act specifically authorizing collective bargaining between police and firefighters and their public employers; providing for arbitration in order to settle disputes, and requiring compliance with collective bargaining agreements and findings of arbitrators." (Section 301(2))

**Public Employer** – The Commonwealth of Pennsylvania or a school entity.

**Public Employe Relations Act** – Act 195 (1970), 43 P.S. Sec. 1101.201 et seq.

**Public Employers** – The Commonwealth of Pennsylvania, its political subdivisions including school districts and any officer, board, commission, agency, authority, or other instrumentality thereof and any nonprofit organization or institution and any charitable, religious, scientific, literary, recreational, health, educational or welfare institution receiving grants or appropriations from local, state or federal governments but shall not include employers covered or presently subject to coverage under the act of June 1, 1937 (P.L. 1168), as amended, known as the "Pennsylvania Labor Relations Act," the act of July 5, 1935, Public Law 198, 74th Congress, as amended, known as the "National Labor Relations Act." (Section 301(1))

**Public-Sector Collective Bargaining** – Bargaining for public employees under Act 195 (1970) and Act 111 (1968).

**Rank and File** – Regular union members who are not officers or union officials.

**Ratification** – The formal approval of a newly-negotiated agreement by vote of the organization members affected.

**Recognition** – Employer acceptance of a union organization having authorization to negotiate, for all of the members of a bargaining unit.

**Reduction-In-Force (RIF)** – A personnel action that may be required due to changes in staffing patterns due to declining enrollments, curtailment of programs, or other matters impacting on staffing levels.

**Reopener Clause** – A provision in a collective agreement stating the time or the circumstances under which negotiations may be reopened, which restricts bargaining certain provisions of the agreement but not to the agreement as a whole.

**Representation** – The act of presenting a party's position to another party or before a hearing authority or a court of adjudication.

**Representative** – An individual acting for employers or employees including employee organizations.

**School Code** – The Public School Code of 1949, as amended. The general body of laws governing operations of the public schools. (24 P.S. 1-101 et seq.)

**School Entity** – Any school district, intermediate unit or vocational-technical school.

**Scope of Bargaining** – The range of issues that are made bargainable by the labor relations statute, or by the agreement of the parties. (Sections 701-706)

**Seniority** – An employee's status in relation to other employees accorded to his/her years of employment.

**State Board of Education** – Appointed by the governor to develop regulations affecting public education.

**Statewide Employee Organization** – The statewide affiliated parent

organization of an exclusive representative, or an exclusive representative representing employees statewide, and which is receiving non-member fair share payments.

**Statutory Savings Clause** – A clause or provision which states the protection of statutory rights in an agreement. Such right when so included in a contract subject said rights to all conditions of the contract including grievance arbitration.

**Steward** – The union representative who carries out duties for the union within an operation.

**Strike** – A stoppage of work by a group of employees to enforce a demand for changes in the conditions of employment, obtain recognition or resolve a dispute with management. (Section 301(9))

**Strike, Outlaw** – Work stoppage by union members not authorized by appropriate union officers.

**Strike, Wildcat** – Same as Strike, Outlaw.

**Strikebreaker** – An individual who is hired to take the place of a striking employee. (Act 88 1992, Section 1172-A)

**Strike Fund** – Fund maintained by a union to aid striking members and to finance publicity and other union activities during a strike.

**Strike Notice** – Statement required by federal or state law to be filed by a union with a designated government agency or school official a specified number of days before any work stoppage. (Act 88 1992 Article XI-(A))

**Strike Vote** – A vote taken among members of an employee organization to determine whether or not a strike should be authorized. Such a vote is usually taken during negotiations or near the expiration of the old contract.

**Subcontracting** – A procedure to sublet certain parts of the operation to subcontractors frequently on the ground that the work can be performed more efficiently and with less expense through independent companies.

**Super Mediation** – Mediation which provides a mediator with additional power, such as the reporting of all recommendations to the public.

**Unemployment Compensation** – Same as Unemployment Insurance.

**Unemployment Insurance** – System providing payments to eligible unemployed persons from funds obtained by payroll taxes on employers and, in some states, employees. (43 P.S. Sec. 751 et seq.)

**Unfair Employment Practice** – Any action by an employer or union in violation of a fair employment practices law or executive order forbidding discrimination in employment or conditions of work because of race, color, religious creed, ancestry, age, sex, national origin or non-job related handicap or disability.

**Unfair Labor Practice** – Certain actions by an employer or union prohibited by the national Labor Management Relations Act or by state labor relations acts. (Section 1201)

**Unilateral Action** – Decisions made by only one of the parties involved in the collective bargaining process.

**Uniserv Rep** – A representative of NEA/PSEA who serves employee unions in all aspects of collective bargaining.

**Wages** – A payment for services according to a contractual or other agreement.

**Waiver Clause** - A provision in a collective bargaining agreement that specifically states that the written agreement is the complete agreement of the parties and that anything not contained therein is not agreed to unless put into writing and signed by both parties following the date of the agreement. The zipper clause is intended to stop either party from demanding renewed negotiations during the life of the con-

tract. It also works to limit the freedom of a grievance arbitrator because she/he must make his/her decision based only on the contents of the written agreement. See Reopener Clause.

**Whipsawing** – The union tactic of negotiating with one employer at a time, using each negotiated gain as a pattern or base, from which to negotiate equal or better terms of settlement with the next employer.

**Workers' Compensation** – State-regulated insurance systems providing payments to workers or their relatives for occupational injuries or fatalities. (77 P.S. Sec. 1 et seq.)

# Educational Management Services available through PSBA

**Employee Relations Services** - including contract administration, contract analysis, negotiations and personnel management practices.

**Individualized Training Services** - including local supportive training, personnel training programs, management team training, management leadership development, human development and superintendent search.

**Management Studies** - including consultation and analysis in the areas of administrative organization, evaluation and compensation.

**On-Site Training** - workshops by PSBA staff members for boards, administrators and teachers provided on site, structured to the needs of local school officials, specialized to specific needs and topics.

**Policy Services** - including legal policy review, training assistance, policy maintenance, supporting workshops, timely revisions, research recommendations and comprehensive manual development and supporting regulations.

**Research and Information Services** - including fact-finding, cost analysis, state and national data bases, inquiry research, legislative information and information dissemination and retrieval.

**Superintendent Search** - professional, competent and comprehensive assistance in all aspects of superintendent selection, including inservice workshops.



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