

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2029 Session of
1993

INTRODUCED BY MICHLOVIC, VAN HORNE AND MARKOSEK,
SEPTEMBER 29, 1993

REFERRED TO COMMITTEE ON LABOR RELATIONS, SEPTEMBER 29, 1993

AN ACT

1 Amending the act of April 6, 1956 (1955 P.L.1414, No.465),
2 entitled, as amended, "An act to promote the welfare of the
3 people of this Commonwealth; creating Port Authorities to
4 function in counties of the second class as bodies corporate
5 and politic, with power to plan, acquire, construct, maintain
6 and operate facilities and projects for the improvement and
7 development of the port district and to borrow money and
8 issue bonds therefor; providing for the payment of such bonds
9 and prescribing the rights of the holders thereof; conferring
10 the right of eminent domain on the authorities; authorizing
11 the authorities to enter into contracts with and to accept
12 grants from the Federal government or any agency thereof; and
13 conferring exclusive jurisdiction on certain courts over
14 rates and services; and authorizing the authorities to
15 collect tolls, fares, fees, rentals and charges for the use
16 of facilities; defining the authorities' powers and duties,
17 and defining the port districts; granting Port Authorities
18 the exclusive right to engage in the business of owning,
19 operating, and maintaining a transportation system for the
20 transportation of persons in counties of the second class,
21 providing, when necessary, for extension of transportation
22 systems into adjoining counties and outside of said counties
23 as provided in the act; limiting the jurisdiction of the
24 Public Utility Commission over Port Authorities; authorizing
25 municipalities to make loans and grants and to transfer
26 existing facilities; authorizing Port Authorities to enter
27 into contracts with and to accept grants from State and local
28 governments or agencies thereof; exempting the property and
29 facilities of such Port Authorities from taxation and
30 limiting the time to commence civil action against said
31 Authorities," further providing for labor relations.

32 The General Assembly of the Commonwealth of Pennsylvania

1 hereby enacts as follows:

2 Section 1. Section 13.2 of the act of April 6, 1956 (1955
3 P.L.1414, No.465), known as the Second Class County Port
4 Authority Act, amended July 2, 1986 (P.L.309, No.76), is amended
5 to read:

6 [Section 13.2. (a) The authority through its boards shall
7 deal with and enter into written contracts with the employes of
8 the authority through accredited representatives of such
9 employes or representatives of any labor organization authorized
10 to act for such employes concerning wages, salaries, hours,
11 terms and conditions of employment, and pension or retirement
12 provisions. Collective bargaining and the employer-employee
13 relations of the authority and its public employes shall not be
14 subject to or governed by the terms and provisions of the act of
15 November 27, 1967 (P.L.628, No.288), entitled "An act protecting
16 the rights of employes of existing transportation systems which
17 are acquired by cities of the third class or any authority
18 thereof or certain joint authorities; requiring cities of the
19 third class or any authority thereof or any such joint authority
20 to enter into contracts with labor organizations acting for such
21 employes, and providing for arbitration in case of disputes."

22 (b) It shall be the duty of the authority and the authorized
23 representative to exert every reasonable effort to settle all
24 disputes by engaging in collective bargaining in good faith and
25 by entering into settlements by way of written agreements and
26 maintaining the same.

27 (c) The authority shall not be required to bargain over
28 matters of inherent managerial policy, which shall include, but
29 shall not be limited to, such areas of discretion or policy as
30 the functions and programs of the authority, standards of

1 services, its overall budget, utilization of technology, the
2 organizational structure and selection and direction of
3 personnel. The authority, however, shall be required to meet and
4 discuss on policy matters affecting wages, hours and terms and
5 conditions of employment as well as the impact thereon upon
6 request by the authorized representative.

7 (d) First-level supervisors shall not be included in
8 bargaining units with other employees of the authority.
9 Incumbents holding first-level supervisory positions on the
10 effective date of this subsection will be given the opportunity
11 to continue in represented status or to terminate their
12 bargaining unit status. Those who choose to continue in
13 represented status shall retain the individual right to
14 terminate their bargaining unit status at any time. All newly
15 appointed first-level supervisors shall not be included in
16 bargaining units with other employees of the authority. "First-
17 level supervisor" shall mean the lowest level at which an
18 employe functions as a supervisor. For the purposes of this
19 section "supervisor" shall mean any individual having authority
20 in the interests of the employer to hire, transfer, suspend,
21 layoff, recall, promote, discharge, assign, reward or discipline
22 other employes or responsibly to direct them or adjust their
23 grievances; or, to a substantial degree, effectively recommend
24 such action, if, in connection with the foregoing, the exercise
25 of such authority is not merely routine or clerical in nature,
26 but calls for the use of independent judgment. In the event that
27 an employe in a position defined as a "first-level supervisor"
28 is removed from his or her position due to a layoff or other
29 reduction in force, such employe may elect to return to the
30 position he or she held immediately prior to becoming a "first-

1 level supervisor." In all cases, such job placement will be made
2 in accordance with full seniority.

3 (e) Collective bargaining shall commence at least one
4 hundred days prior to the expiration of a collective bargaining
5 agreement.

6 (f) In the case of any labor dispute where collective
7 bargaining does not result in an agreement, the dispute, with
8 the written consent of both parties, shall be submitted to final
9 and binding interest arbitration. The board of arbitration shall
10 be composed of three persons, one appointed by the authority,
11 one appointed by the labor organization representing the
12 employees and a third member to be agreed upon by the labor
13 organization and the authority. The member selected by the labor
14 organization and the authority shall act as chairman of the
15 board. The determination of the majority of the board of
16 arbitration thus established shall be final and binding on all
17 matters in dispute. If, after a period of ten days from the date
18 of the appointment of the two arbitrators representing the
19 authority and the labor organization, the third arbitrator has
20 not been selected, then either arbitrator may request the
21 American Arbitration Association to furnish a list of five
22 persons from which the third arbitrator shall be selected. The
23 arbitrators appointed by the authority and the labor
24 organization, promptly, after the receipt of such list, shall
25 determine, by lot, the order of elimination, and, thereafter,
26 each shall, in that order alternately, eliminate one name until
27 only one name remains. The remaining person on the list shall be
28 the third arbitrator. All contract provisions shall remain
29 status quo during the period of arbitration, and there shall be
30 no lockouts, strikes or other interference with or interruption

1 of transit operations during the arbitration proceedings or
2 during any action which may be instituted to upset the
3 arbitration award. The term "labor dispute" shall include any
4 controversy regarding written provisions of a collective
5 bargaining agreement between the parties concerning wages,
6 salaries, hours, terms and conditions of employment or benefits,
7 including health and welfare, sick leave insurance or pension or
8 retirement provisions. The term "interest arbitration" shall
9 mean formulation by a neutral arbitrator of provisions governing
10 wages, hours of work and other terms and conditions of
11 employment after consideration of proposals relating to wages,
12 hours of work and other terms and conditions of employment
13 advanced by the authority and the authorized representative of
14 the employees of the authority. Each party shall pay one-half of
15 the expenses associated with any arbitration which may be
16 conducted pursuant to this subsection.

17 (g) If an agreement has not been reached within forty-five
18 days of the termination date of the collective bargaining
19 agreement, either party may, in writing, call upon the
20 Pennsylvania Labor Relations Board to appoint a neutral fact-
21 finder. The fact-finder may hold hearings and take oral or
22 written testimony and shall have subpoena power. Collective
23 bargaining may continue during fact-finding. In the event an
24 agreement has not been reached by the expiration date of the
25 collective bargaining agreement and fact-finding has not
26 previously been requested, both parties shall immediately, in
27 writing, call upon the Pennsylvania Labor Relations Board to
28 appoint a neutral fact-finder. The fact-finder may hold hearings
29 and take oral or written testimony and shall have subpoena
30 power. Collective bargaining may continue during fact-finding.

1 (h) The Commonwealth shall pay one-half of the cost of fact-
2 finding; the remaining one-half of the cost shall be divided
3 equally between the parties. The Pennsylvania Labor Relations
4 Board shall establish rules and regulations under which the
5 fact-finder shall operate.

6 (i) The findings of facts and recommendations shall be sent
7 by registered mail to the Pennsylvania Labor Relations Board and
8 to both parties not more than forty-five days after the
9 appointment of the fact-finder.

10 (j) Not more than fifteen days after the findings and
11 recommendations shall have been sent, the parties shall notify
12 the Pennsylvania Labor Relations Board and each other whether or
13 not they accept the recommendations of the fact-finder, and, if
14 they do not, the fact-finder shall publicize his findings and
15 recommendations.

16 (k) If the authority and the authorized representative of
17 the employees of the authority do not accept the recommendations
18 of the fact-finder and refuse to mutually agree to final and
19 binding interest arbitration in accordance with subsection (f),
20 the employees shall have the right to strike in regard to that
21 dispute, and such strike shall not be prohibited unless or until
22 such a strike creates a clear and present danger or threat to
23 the health, safety or welfare of the public: Provided, That such
24 strike shall not be prohibited on the grounds that it creates a
25 clear and present danger or threat to the health, safety or
26 welfare of the public unless the court's order granting relief
27 further mandates that both parties submit the labor dispute to
28 final and binding interest arbitration by a board of arbitration
29 under the provisions of this section. No party, other than the
30 authority, shall have any standing to seek any relief in any

1 court of this Commonwealth under this subsection.

2 (l) Notwithstanding the provisions of subsection (k), no
3 strike shall be permitted until the completion of a thirty-day
4 "cooling-off" period, commencing immediately following the
5 termination of the collective bargaining agreement, during which
6 time the parties may reevaluate their respective positions.
7 Nothing herein contained shall prohibit fact-finding during the
8 "cooling-off" period.

9 (m) Although the arbitrators may consider any factors deemed
10 to be relevant, the arbitrators shall consider and give weight
11 primarily to, and describe in the award, the impact of the
12 following factors in determining the award:

13 (1) The ability of the authority to maintain levels of
14 transit service sufficient to serve the service area.

15 (2) The appropriated amounts of Federal, State and county
16 operating subsidies.

17 (3) The amount, if any, of any fare increase and/or
18 additional public subsidy which would be necessary to fund the
19 economic cost increase (including, but not limited to, increases
20 in wages, pensions and other fringe benefits) and the ability of
21 the public to bear such a fare increase, with consideration
22 given to the per capita income of persons in the service area
23 and the impact upon future ridership levels.

24 (4) A comparison between the overall wage, salary and fringe
25 benefit levels of the authority's represented employees and other
26 workers in the public and private sectors of the metropolitan
27 area who perform similar work.

28 (5) A comparison of the hours and working conditions of the
29 authority's represented employees and other workers in the public
30 and private sectors of the metropolitan area who perform work

1 requiring similar skills.

2 (6) The cost of consumer goods and services within the
3 metropolitan area.

4 (7) Any stipulation entered into between the authority and
5 the authorized representative.

6 (n) No employe of the authority shall engage in any strike,
7 walkout or other concerted cessation or curtailment of work, and
8 no authorized representative of employes of the authority shall
9 cause, instigate, encourage, promote or condone any strike,
10 slowdown, walkout or other concerted cessation or curtailment of
11 work by any employe of the authority where, in either case, such
12 action is taken in support of any labor dispute involving the
13 formulation of any contract provisions until fifteen days
14 following the issuance of the fact-finder's report.

15 (o) The authority shall submit disputes involving the
16 interpretation of specific provisions of collective bargaining
17 agreements, including formal written supplemental understandings
18 and agreements directly related to contract provisions, in
19 effect from time to time, to grievance arbitration. In any
20 grievance arbitration, the arbitrator must base the award upon
21 the express terms and conditions of a labor agreement between
22 the authority and the authorized representative. Each party
23 shall pay one-half of the expenses associated with any
24 arbitration which may be conducted pursuant to this subsection.

25 (p) If the authority or the authorized representative
26 refuses to submit to the procedures set forth in this section,
27 such refusal shall be deemed a refusal to bargain in good faith,
28 and unfair practice charges may be filed by the submitting
29 party, or the Pennsylvania Labor Relations Board may, on its
30 own, issue an unfair practice complaint and conduct such

1 hearings and issue such orders as provided by law.]

2 Section 13.2. The authority shall, through its board, have
3 the authority to bargain collectively with its public employes
4 and their representative employe organizations. All such
5 bargaining and all employer-employe relations of the authority
6 and its employes shall be governed by and shall be in accordance
7 with the terms and provisions of the act of July 23, 1970
8 (P.L.563, No.195), known as the "Public Employe Relations Act."

9 Section 2. This act shall take effect immediately.