

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 130 Session of
1997

INTRODUCED BY HECKLER, PICCOLA, BRIGHTBILL, MADIGAN, CORMAN,
HART, THOMPSON, HELFRICK, DELP, GERLACH AND MOWERY,
JANUARY 21, 1997

REFERRED TO LABOR AND INDUSTRY, JANUARY 21, 1997

AN ACT

1 Amending the act of July 23, 1970 (P.L.563, No.195), entitled
2 "An act establishing rights in public employes to organize
3 and bargain collectively through selected representatives;
4 defining public employes to include employes of nonprofit
5 organizations and institutions; providing compulsory
6 mediation and fact-finding, for collective bargaining
7 impasses; providing arbitration for certain public employes
8 for collective bargaining impasses; defining the scope of
9 collective bargaining; establishing unfair employe and
10 employer practices; prohibiting strikes for certain public
11 employes; permitting strikes under limited conditions;
12 providing penalties for violations; and establishing
13 procedures for implementation," prohibiting strikes; and
14 providing for penalties and remedies.

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

17 Section 1. The title of the act of July 23, 1970 (P.L.563,
18 No.195), known as the Public Employee Relations Act, is amended
19 to read:

AN ACT

21 Establishing rights in public employes to organize and bargain
22 collectively through selected representatives; defining
23 public employes to include employes of nonprofit

1 organizations and institutions; providing compulsory
2 mediation and fact-finding, for collective bargaining
3 impasses; providing arbitration for certain public employees
4 for collective bargaining impasses; defining the scope of
5 collective bargaining; establishing unfair employee and
6 employer practices; prohibiting strikes [for certain public
7 employees; permitting strikes under limited conditions];
8 providing penalties for violations; and establishing
9 procedures for implementation.

10 Section 2. Sections 1001, 1002, 1003, 1004, 1005, 1006,
11 1007, 1008, 1009 and 1010 of the act are repealed.

12 Section 3. The act is amended by adding sections to read:

13 Section 1011. No public employee or employee organization may
14 engage in a strike and no public employee or employee organization
15 may cause, instigate, encourage or condone a strike.

16 Section 1012. (a) An employee who is absent from work
17 without permission or who abstains wholly or in part from the
18 full performance of duties in the normal manner without
19 permission, on the date or dates when a strike occurs, shall be
20 presumed to have engaged in the strike.

21 (b) No person exercising, on behalf of any public employer,
22 authority, supervision or direction over employees may authorize,
23 approve, condone or consent to a strike.

24 (c) If it appears that a violation of this article may have
25 occurred, the chief executive officer of the government involved
26 shall, on the basis of investigation and affidavits as
27 appropriate, determine whether or not a violation has occurred
28 and the date of the violation. If the chief executive officer
29 determines that the violation has occurred, the officer shall
30 further determine, on the basis of further investigation and

1 affidavits as appropriate, the names of employees who committed
2 the violation and the date of the violation. The determination
3 shall not be deemed final until the completion of the procedures
4 provided for in this section.

5 (d) The chief executive officer shall notify each affected
6 employee of the violation, the date of the violation and of the
7 right to object to the determination under subsection (f) of
8 this section. The chief executive officer shall also notify the
9 chief fiscal officer of the names of all such employees and of
10 the total number of days, or parts thereof, on which it has been
11 determined that violations occurred. Notice to each employee
12 shall be by personal service or by certified mail to the last
13 address filed with the public employer.

14 (e) Not earlier than thirty nor later than ninety days
15 following the date of determination, the chief fiscal officer of
16 the government involved shall deduct from the compensation of
17 each affected employee an amount equal to twice the daily rate of
18 pay for each day or part thereof that it was determined that the
19 employee violated this article. The rate of pay shall be computed
20 as of the time of the violation. In computing the deduction,
21 credit shall be allowed for amounts already withheld from the
22 employee's compensation on account of absence from work or other
23 withholding of services.

24 (f) Any employee determined to have violated this article may
25 object to the determination by filing with the chief executive
26 officer, within twenty days of the date on which notice was
27 served or mailed pursuant to subsection (d) of this section, a
28 sworn affidavit supported by available documentary proof,
29 containing a short and plain statement of the facts upon which
30 the employee relies to show that the determination was incorrect.

1 The affidavit shall be subject to the penalties of perjury. If
2 the chief executive officer determines that the affidavit and
3 supporting proof establishes that the employee did not violate
4 this article, the officer shall sustain the objection. If the
5 chief executive officer determines that the affidavit and
6 supporting proof fails to establish that the employee did not
7 violate this article, the officer shall dismiss the objection
8 and so notify the employee. If the chief executive officer
9 determines that the affidavit and supporting proof raises a
10 question of fact which, if resolved in favor of the employee,
11 would establish that the employee did not violate this article,
12 the officer shall appoint a hearing officer to determine whether
13 the employee did violate this article after a hearing at which
14 the employee shall bear the burden of proof. If the hearing
15 officer determines that the employee failed to bear the burden of
16 proof, the chief executive officer shall so notify the employee.
17 If the chief executive officer sustains an objection or if the
18 hearing officer determines on a preponderance of the evidence
19 that the employee did not violate this article, the chief
20 executive officer shall notify the chief fiscal officer who
21 shall cease further deductions and refund deductions previously
22 made pursuant to subsection (e) of this section. Determinations
23 under this subsection are subject to 2 Pa.C.S. Ch. 7 Subch. A
24 (relating to judicial review of Commonwealth agency action) or
25 Subch. B (relating to judicial review of local agency action).
26 Section 1013. (a) An employee organization which violates
27 this article is subject to decertification by the Pennsylvania
28 Labor Relations Board, upon motion of the public employer or on
29 the board's initiative.
30 (b) In determining whether an employee organization has

1 violated this article, the board shall consider whether the
2 employe organization called the strike or tried to prevent it,
3 and whether the employe organization made or was making good
4 faith efforts to terminate the strike.

5 (c) If the board determines that an employe organization has
6 violated this article, the board shall order decertification for
7 such specified period of time as the board shall determine or,
8 in the discretion of the board, for an indefinite period of time
9 subject to restoration upon application, with notice to all
10 interested parties, supported by proof of good faith compliance
11 with the requirements of this article since the date of
12 violation. In fixing the duration of the decertification, the
13 board shall consider all the relevant facts and circumstances,
14 including, but not limited to, the extent of any wilful defiance
15 of articles; the impact of the strike on the public health,
16 safety, and welfare; and the financial resources of the employe
17 organization. The board may consider the refusal of the employe
18 organization or the appropriate public employer to submit to the
19 procedures provided in Article VIII of this act and whether, if
20 alleged by the employe organization, the appropriate public
21 employer or its representatives engaged in such acts of extreme
22 provocation as to detract from the responsibility of the employe
23 organization for the strike. In determining the financial
24 resources of the employe organization, the board shall consider
25 both the income and the assets of the employe organization.

26 (d) No compensation shall be paid by a public employer to a
27 public employe with respect to any day or part thereof when the
28 employe is engaged in a strike against the employer.
29 Notwithstanding the failure to receive notice under section
30 1012(d) of this article, no fiscal officer having knowledge that

1 an employe has engaged in a strike shall deliver or cause to be
2 delivered to the employe such compensation.

3 Section 1014. Within sixty days of the termination of a
4 strike, the chief executive officer of the government involved
5 shall prepare and make public a report, in writing, containing
6 the following information:

7 (1) the circumstances surrounding the commencement of the
8 strike;

9 (2) the efforts used to terminate the strike;

10 (3) the names of those employes whom the public officer or
11 body has reason to believe were responsible for causing,
12 instigating or encouraging the strike; and

13 (4) related to the varying degrees of individual
14 responsibility, the sanctions imposed or proceedings pending
15 against each individual employe.

16 Section 1015. The act of June 2, 1937 (P.L.1198, No.308),
17 known as the "Labor Anti-Injunction Act," shall not apply to
18 violations of this article.

19 Section 4. This act shall take effect in 60 days.