

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 26 Session of 2009

INTRODUCED BY PASHINSKI, BELFANTI, BISHOP, BRADFORD, BRIGGS, CASORIO, COHEN, CONKLIN, CURRY, DALEY, DePASQUALE, DeWEESE, GEIST, GEORGE, GERGELY, GIBBONS, HALUSKA, HARKINS, JOHNSON, JOSEPHS, KIRKLAND, MAHONEY, McCALL, McGEEHAN, MELIO, MICOZZIE, MIRABITO, MUNDY, MURPHY, M. O'BRIEN, O'NEILL, OLIVER, PARKER, PRESTON, ROEBUCK, SABATINA, SAMUELSON, SEIP, SIPTROTH, STABACK, STURLA, THOMAS, WANSACZ, WATERS, WHITE, WILLIAMS, YOUNGBLOOD AND YUDICHAK, APRIL 28, 2009

REFERRED TO COMMITTEE ON LABOR RELATIONS, APRIL 28, 2009

AN ACT

1 Amending the act of June 1, 1937 (P.L.1168, No.294), entitled  
 2 "An act to protect the right of employes to organize and  
 3 bargain collectively; creating the Pennsylvania Labor  
 4 Relations Board; conferring powers and imposing duties upon  
 5 the Pennsylvania Labor Relations Board, officers of the State  
 6 government, and courts; providing for the right of employes  
 7 to organize and bargain collectively; declaring certain labor  
 8 practices by employers to be unfair; further providing that  
 9 representatives of a majority of the employes be the  
 10 exclusive representatives of all the employes; authorizing  
 11 the board to conduct hearings and elections, and certify as  
 12 to representatives of employes for purposes of collective  
 13 bargaining; empowering the board to prevent any person from  
 14 engaging in any unfair labor practice, and providing a  
 15 procedure for such cases, including the issuance of a  
 16 complaint, the conducting of a hearing, and the making of an  
 17 order; empowering the board to petition a court of common  
 18 pleas for the enforcement of its order, and providing a  
 19 procedure for such cases; providing for the review of an  
 20 order of the board by a court of common pleas on petition of  
 21 any person aggrieved by such order, and establishing a  
 22 procedure for such cases; providing for an appeal from the  
 23 common pleas court to the Supreme Court; providing the board  
 24 with investigatory powers, including the power to issue  
 25 subpoenas and the compelling of obedience to them through  
 26 application to the proper court; providing for service of  
 27 papers and process of the board; prescribing certain  
 28 penalties," further providing for definitions; and providing

1 for disputes involving religious employers.

2 The General Assembly finds and declares as follows:

3 (1) When the Pennsylvania Labor Relations Act was  
4 originally passed in 1937, teachers in religiously affiliated  
5 elementary and secondary schools were almost exclusively  
6 members of religious orders. Since the passage of the act,  
7 teachers in religiously affiliated schools have become  
8 predominately lay employees who do not belong to religious  
9 orders and who, in many instances, are not members of the  
10 religious group sponsoring the education.

11 (2) Thousands of lay teachers and other lay employees  
12 now teach or provide services to religiously affiliated  
13 schools in this Commonwealth. Lay employees are paid salaries  
14 or work for hourly wages, pay Federal, State and local taxes  
15 and utilize resources provided by tax dollars, such as  
16 police, fire and public health services. The religiously  
17 affiliated schools are engaged in commerce.

18 (3) Lay teachers and other lay employees, such as  
19 librarians, guidance counselors, nurses and janitors have the  
20 right to contract for their services, as do other  
21 nonreligious employees in this Commonwealth, but they do not  
22 have the right to form, join or refrain from joining  
23 organizations based on elections conducted by the  
24 Pennsylvania Labor Relations Board.

25 (4) The Pennsylvania Supreme Court, in *Association of*  
26 *Catholic Teachers, Local 1776 v. Pennsylvania Labor Relations*  
27 *Board*, 547 Pa. 594, 692 A.2d 1039 (1996), found that in the  
28 absence of a clear intention on the part of the General  
29 Assembly to include lay teachers as employees covered by the  
30 act of July 23, 1970 (P.L.563, No.195), known as the Public

1       Employe Relations Act, lay teachers were not to be considered  
2       employees under that statute.

3           (5)   Similarly the Pennsylvania Supreme Court, in Western  
4       Pennsylvania Hospital v. Lichliter, 340 Pa. 382, 17 A.2d 206  
5       (1941), held that nonprofit corporations were not covered by  
6       the Pennsylvania Labor Relations Act because nonprofit  
7       corporations, such as hospitals, were not engaged in  
8       industry, commerce, trade, business or production within the  
9       meaning of the act and that to cover nonprofit institutions  
10      the act would have to be amended by the General Assembly.

11          (6)   Experience has proven that, in the absence of  
12      legislation according lay employees of religiously affiliated  
13      schools the same rights and privileges as are accorded to  
14      other workers in this Commonwealth, the employees are  
15      disadvantaged by being unable to select representatives of  
16      their own choosing to bargain on their behalf with their  
17      employers and suffer from the same economic burdens as did  
18      workers when the act was originally adopted.

19          (7)   The relative inequality in the bargaining power  
20      between lay employees and their employers adversely affects  
21      the general welfare of this Commonwealth in the same manner  
22      as originally described in the findings and policy of the  
23      Pennsylvania Labor Relations Act when it was first adopted.  
24      Therefore, the Commonwealth has a compelling State interest  
25      in affording protections to lay employees.

26          (8)   The purpose of this legislation is to extend a  
27      facially neutral law of general applicability, benefiting  
28      both employees and employers, to lay employees of religiously  
29      affiliated schools while preserving for lay employers an  
30      exemption with respect to coverage under the Pennsylvania

1 Labor Relations Act relating to those employees who are  
2 directly employed as members of a religious society, order or  
3 association.

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

6 Section 1. Section 3(d) of the act of June 1, 1937  
7 (P.L.1168, No.294), known as the Pennsylvania Labor Relations  
8 Act, is amended and the section is amended by adding a clause to  
9 read:

10 Section 3. Definitions. When used in this act--

11 \* \* \*

12 (d) The term "employee" shall include any employee, and shall  
13 not be limited to the employes of a particular employer, unless  
14 the act explicitly states otherwise, and shall include any  
15 individual whose work has ceased as a consequence of, or in  
16 connection with, any current labor dispute, or because of any  
17 unfair labor practice, and who has not obtained any other  
18 regular and substantially equivalent employment, but shall not  
19 include any individual employed as an agricultural laborer, or  
20 in the domestic service of any person in the home of such  
21 person, or any individual employed by his parent or spouse[.],  
22 or any individual employed by a religious organization in a  
23 ministerial capacity, except lay teachers or other lay employes  
24 at religious schools.

25 \* \* \*

26 (k) The term "religious employer" includes a religiously  
27 affiliated profit or nonprofit school acting as an employer.

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

29 Section 10.2. Disputes Involving Religious Employers.--(a)  
30 In disputes involving a religious employer, the board may

1 neither define nor interpret religious doctrine. The board may  
2 inquire into whether the espoused doctrine is a pretext for the  
3 action of the employer.

4 (b) Where the evidentiary record before the board shows that  
5 a religious employer made an employment decision based on  
6 religious grounds, the board shall deem the grounds the cause of  
7 that decision but for which the decision in question would not  
8 have occurred unless the employe or the employe's representative  
9 establishes that the employer's religious justification is a  
10 pretext for engaging in any of the unfair labor practices listed  
11 in section 6.

12 (c) In disputes involving a religious employer, the board  
13 may not alter the employer's organizational structure, nor  
14 determine who within the employer's organization has the power  
15 to resolve religious controversies relating to the structure of  
16 the employer.

17 (d) This section shall apply notwithstanding the provisions  
18 of the act of December 9, 2002 (P.L.1701, No.214), known as the  
19 "Religious Freedom Protection Act."

20 Section 3. This act shall take effect in 60 days.