

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2626 Session of
2008

INTRODUCED BY PASHINSKI, MUNDY, BELFANTI, McCALL, EACHUS, SURRA,
DERMODY, ADOLPH, BLACKWELL, CARROLL, CASORIO, COHEN, CONKLIN,
CURRY, DeLUCA, DePASQUALE, FRANKEL, FREEMAN, GALLOWAY,
GEORGE, GERBER, GERGELY, GIBBONS, GOODMAN, GRUCELA, HALUSKA,
JAMES, JOSEPHS, KENNEY, LEVDANSKY, MAHONEY, MANDERINO,
McGEEHAN, McILVAINE SMITH, MELIO, MURT, M. O'BRIEN, OLIVER,
O'NEILL, QUINN, RAMALEY, RAYMOND, SAMUELSON, SHIMKUS,
SIPTROTH, K. SMITH, SOLOBAY, STABACK, R. STEVENSON, VITALI,
WAGNER, WANSACZ, WOJNAROSKI, YOUNGBLOOD AND YUDICHAK,
JUNE 11, 2008

REFERRED TO COMMITTEE ON LABOR RELATIONS, JUNE 11, 2008

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

1 papers and process of the board; prescribing certain
2 penalties," further providing for definitions; and providing
3 for disputes involving religious employers.

4 The General Assembly finds and declares as follows:

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

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

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

27 (4) The Pennsylvania Supreme Court, in Association of
28 Catholic Teachers, Local 1776 v. Pennsylvania Labor Relations
29 Board, 547 Pa. 594, 692 A.2d 1039 (1996), found that in the
30 absence of a clear intention on the part of the General
31 Assembly to include lay teachers as employees covered by the

1 act of July 23, 1970 (P.L.563, No.195), known as the Public
2 Employe Relations Act, lay teachers were not to be considered
3 employees under that statute.

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

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

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

27 (8) The purpose of this legislation is to extend a
28 facially neutral law of general applicability, benefiting
29 both employees and employers, to lay employees of
30 religiously-affiliated schools while preserving for lay

1 employers an exemption with respect to coverage under the
2 Pennsylvania Labor Relations Act relating to those employees
3 who are directly employed as members of a religious society,
4 order or association.

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

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

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

12 * * *

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

26 * * *

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

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

30 Section 10.2. Disputes Involving Religious Employers.--(a)

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

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

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

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

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