
THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 1064 Session of
2004

INTRODUCED BY MELLOW, KASUNIC, SCHWARTZ, MUSTO, STOUT, COSTA,
KUKOVICH, KITCHEN AND LOGAN, MARCH 24, 2004

REFERRED TO LABOR AND INDUSTRY, MARCH 24, 2004

AN ACT

1 Providing for third-party binding resolution of collective
2 bargaining disputes between public school employees and their
3 public employers; imposing duties on the Secretary of the
4 Commonwealth and the Legislative Reference Bureau; imposing
5 penalties; and making repeals.

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

6 Section 1. Short title.

7 This act shall be known and may be cited as the Public School
8 Collective Bargaining Act.

9 Section 2. Definitions.

10 The following words and phrases when used in this act shall
11 have the meanings given to them in this section unless the
12 context clearly indicates otherwise:

13 "Appropriate court." The court of common pleas in the
14 judicial district in which:

- 15 (1) the school entity subject to impasse is located; or
16 (2) the most populous portion of the school entity
17 subject to impasse is located.

18 "Bureau." The Pennsylvania Bureau of Mediation.

19 "Employee organization." Any of the following:

- 20 (1) A public school employee organization of any kind.
21 (2) An agency or employee representation committee or
22 plan in which membership is limited to public school
23 employees and which exists for the purpose, in whole or in
24 part, of dealing with public school employers concerning
25 grievances, public school employee-public school employer
26 disputes, wages, rates of pay, hours of employment or
27 conditions of work. The term does not include an organization
28 which practices discrimination in membership because of race,
29 color, creed, national origin or political affiliation.

30 "Impasse." The failure of a public employer and an employee

1 organization to reach an agreement in the course of
2 negotiations.

3 "Public employer." A school entity. The term does not
4 include an employer covered or presently subject to coverage
5 under the act of June 1, 1937 (P.L.1168, No.294), known as the
6 Pennsylvania Labor Relations Act, or the National Labor
7 Relations Act (49 Stat. 449, 29 U.S.C. § 151 et seq.).

8 "Representative." An individual acting for a public employer
9 or a school employee. The term includes an employee
10 organization.

11 "School employee." An employee of a school entity who
12 bargains collectively with a school entity. The term does not
13 include:

14 (1) an employee covered or presently subject to coverage
15 under the act of June 1, 1937 (P.L.1168, No.294), known as
16 the Pennsylvania Labor Relations Act, or the National Labor
17 Relations Act (49 Stat. 449, 29 U.S.C. § 151 et seq.); or

18 (2) a management-level employee of any other school
19 district.

20 "School entity." A public school district, intermediate unit
21 or area vocational-technical school.

22 "Secretary." The Secretary of Education of the Commonwealth.
23 Section 3. Neutral third-party resolution.

24 Notwithstanding any other provision of law to the contrary,
25 the adjustment or settlement of an impasse in collective
26 bargaining between an employee organization and a public
27 employer shall be by neutral third-party resolution pursuant to
28 this act.

29 Section 4. Bargaining process.

30 The representative shall commence bargaining a successor

1 agreement no later than January 5 of the year in which the
2 collective bargaining agreement between the parties shall by its
3 terms expire. Both parties shall submit to mediation by the
4 bureau by February 28 if no agreement is reached between the
5 parties. Mediation shall continue for so long as the parties
6 have not reached an agreement. If no agreement is reached by
7 April 30, both parties shall submit an impasse in collective
8 bargaining to neutral third-party resolution.

9 Section 5. Panel selection.

10 The neutral third-party resolution of an impasse in
11 collective bargaining between an employee organization and a
12 public employer shall be conducted by a three-member panel
13 knowledgeable and qualified in the areas necessary to make a
14 determination. By May 7, the employee organization shall
15 designate one panel member; and the public employer shall
16 designate one panel member. The two panel members designated by
17 the parties shall by agreement designate a neutral panel member.
18 If a neutral panel member is not so designated by the panel
19 members designated by the parties by May 21, the president judge
20 of the appropriate court shall, by May 31, designate the neutral
21 panel member from a list provided by the bureau of qualified
22 persons who reside in the region in which the appropriate court
23 sits. The bureau shall compile and maintain a list for each of
24 six geographical regions of persons who reside in that region
25 and are qualified and knowledgeable in the school-related fields
26 of budget, finance, educational programs and taxation necessary
27 to make a determination. The six regions shall be:

28 Northeast Region.--Eleventh District, Twenty-first
29 District, Twenty-second District, Twenty-sixth District,
30 Thirty-fourth District, Forty-third District, Forty-

fourth District, Forty-fifth District, Fifty-sixth District and Sixtieth District.

Southeast Region.--First District, Third District, Seventh District, Fifteenth District, Twenty-third District, Thirty-first District, Thirty-second District and Thirty-eighth District.

Northcentral Region.--Fourth District, Eighth District, Seventeenth District, Twenty-fifth District, Twenty-ninth District, Forty-second District, Forty-ninth District and Fifty-fifth District.

Southcentral Region.--Second District, Ninth District, Twelfth District, Nineteenth District, Twentieth District, Twenty-fourth District, Thirty-ninth District, Forty-first District, Fifty-first District, Fifty-second District, Fifty-seventh District and Fifty-eighth District.

Northwest Region.--Sixth District, Eighteenth District, Twenty-eighth District, Thirtieth District, Thirty-fifth District, Thirty-seventh District, Forty-sixth District, Forty-eighth District, Fifty-fourth District and Fifty-ninth District.

Southwest Region.--Fifth District, Tenth District, Thirteenth District, Fourteenth District, Sixteenth District, Twenty-seventh District, Thirty-third District, Thirty-sixth District, Fortieth District, Forty-seventh District, Fiftieth District and Fifty-third District.

Section 6. Costs of resolution.

Each party shall pay the compensation, if any, of the panel member designated by that party. The Commonwealth shall pay the compensation, if any, of the neutral panel member and any costs

1 or expenses incurred by the panel in connection with proceedings
2 under this act.

3 Section 7. Procedure.

4 (a) Scope.--Neutral third-party resolution shall be limited
5 to those issues which may be bargained under Article VII of the
6 act of July 23, 1970 (P.L.563, No.195), known as the Public
7 Employe Relation Act, and which are not agreed to in writing
8 prior to the start of neutral third-party resolution.

9 (b) Operation.-- By June 5, each representative shall submit
10 to the panel that party's best offer with certification that the
11 offer was delivered to the opposing party. Thereafter, members
12 of the panel shall meet with both parties at least four times
13 prior to June 30 in an effort to resolve the impasse through
14 mediation. If no agreement between the parties is reached by
15 June 30, each party shall submit, on that date, to the neutral
16 member of the panel that party's final best offer. Once a final
17 best offer is submitted to the panel, a party may not make
18 changes to the offer. The neutral party may not submit a final
19 best offer to the other two members of the panel until both
20 final best offers have been received. The determination of the
21 panel shall be confined to a choice between the final best offer
22 of the public employer taken in its entirety and the final best
23 offer of the employee organization taken in its entirety. The
24 parties may voluntarily settle the impasse in collective
25 bargaining at any time prior to the final determination of the
26 panel.

27 (c) Falsification.--Documents submitted under this section
28 are subject to 18 Pa.C.S. § 4904 (relating to unsworn
29 falsification to authorities).

30 Section 8. Determination.

1 (a) General rule.--The panel shall begin hearings no later
2 than July 5. By August 31, the panel shall make a final
3 determination in writing. The final determination of a majority
4 of the panel shall be binding upon the public employer and the
5 employee organization.

6 (b) Judicial review.--

7 (1) Except as provided in paragraph (2), no appeal of a
8 determination under subsection (a) shall be allowed to any
9 court.

10 (2) A determination under subsection (a) is subject to
11 judicial review for any of the following:

12 (i) Jurisdiction of the arbitrators.

13 (ii) Regularity of the proceedings.

14 (iii) Excess in exercise of power.

15 (iv) Constitutional issues.

16 (c) Effect.--The final determination shall constitute a
17 mandate to the public employer to take whatever action necessary
18 to carry out the determination. The executed agreement shall be
19 enforceable by each party in the manner as provided by law,
20 including the mandatory arbitration of disputes or grievances
21 under the act of July 23, 1970 (P.L.563, No.195), known as the
22 Public Employee Relations Act. If a public employer or an
23 employee organization refuses to execute a written agreement
24 under this section, the employee organization or the public
25 employer may institute a cause of action in the appropriate
26 court to compel compliance with this section and, as
27 appropriate, specific performance of the determination.

28 Section 9. Strikes and lockouts prohibited.

29 No school employee may strike or participate in a strike or
30 similar interruption of government service. No public employer

1 may conduct a lockout or similar interruption of government
2 service. Any strike, lockout or interruption of government
3 service prohibited by this section shall constitute an
4 actionable breach of duty to members of the public.

5 Section 10. Standing to enforce.

6 The following may petition the appropriate court for an
7 injunction and other appropriate equitable relief to enforce the
8 provisions of this act:

9 (1) Parties to an impasse under this act.

10 (2) A panel member designated under this act.

11 (3) A parent or guardian of a student affected by an
12 impasse under this act.

13 (4) A resident of the school district involved in an
14 impasse under this act.

15 (5) The secretary.

16 Section 11. Existing agreements.

17 A provision of a collective bargaining agreement in existence
18 on the effective date of this act which is inconsistent with
19 this act shall continue valid until the expiration of the
20 collective bargaining agreement. The procedure for entering into
21 any new collective bargaining agreement, however, shall be
22 governed by this act.

23 Section 12. Time frame.

24 The time periods set forth in this act are mandatory and
25 shall not be construed to be directory.

26 Section 13. Constitutional amendment.

27 If the Constitution of Pennsylvania is amended to authorize
28 the procedure set forth in this act, the Secretary of the
29 Commonwealth shall transmit notice of the ratification of the
30 amendment to the Legislative Reference Bureau for publication in

1 the Pennsylvania Bulletin.

2 Section 14. Construction.

3 (a) *Pari materia*.--This act is to be construed in *pari*
4 *materia* with the act of July 23, 1970 (P.L.563, No.195), known
5 as the Public Employee Relations Act.

6 (b) Retirement.--

7 (1) Except as provided in paragraph (2), nothing in this
8 act or any other law shall be construed to do any of the
9 following:

10 (i) Permit or require collective bargaining,
11 mediation or binding arbitration to establish or modify
12 pension or retirement benefits set forth in 24 Pa.C.S.
13 Pt. IV (relating to retirement for school employees) or
14 administered by the Public Employees' Retirement Board.

15 (ii) Permit or require a public employer, through
16 collective bargaining, mediation, binding arbitration or
17 otherwise, to establish or modify a pension or retirement
18 plan or to pay pension or retirement benefits or other
19 compensation that modifies or supplements the benefits
20 set forth in 24 Pa.C.S. Pt. IV or administered by the
21 Public School Employees' Retirement Board.

22 (2) Notwithstanding paragraph (1), the parties may
23 negotiate and agree to early retirement incentive or
24 severance pay provisions if the provisions:

25 (i) do not affect the retirement benefits identified
26 in paragraph (1); and

27 (ii) would not result in the Public School
28 Employees' Retirement System's failure to be a qualified
29 plan under the Internal Revenue Code of 1986 (Public Law
30 99-514, 26 U.S.C. § 1 et seq.).

1 Section 15. Repeals.

2 (a) Absolute.--Article XI-A of the act of March 10, 1949
3 (P.L.30, No.14), known as the Public School Code of 1949, is
4 repealed.

5 (b) General.--All other acts and parts of acts are repealed
6 insofar as they are inconsistent with this act.

7 Section 16. Effective date.

8 This act shall take effect as follows:

9 (1) Section 13 and this section shall take effect
10 immediately.

11 (2) The remainder of this act shall take effect January
12 1 following the publication of the notice under section 13.