
THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 401 Session of
2005

INTRODUCED BY MELLOW, KASUNIC, MUSTO, STOUT, KITCHEN, WOZNIAK,
COSTA, TARTAGLIONE AND LOGAN, MARCH 28, 2005

REFERRED TO LABOR AND INDUSTRY, MARCH 28, 2005

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) where the school entity is located in two or more
17 judicial districts, the judicial district where the
18 administrative office of the school entity is located.

19 "Bureau." The Pennsylvania Bureau of Mediation.

20 "Employee organization." Any of the following:

21 (1) A public school employee organization of any kind.

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

1 "Impasse." The failure of a public employer and an employee
2 organization to reach an agreement in the course of
3 negotiations.

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

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

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

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

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

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

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

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

30 Section 4. Bargaining process.

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

10 Section 5. Panel selection.

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

29 Northeast Region.--Eleventh District, Twenty-first

30 District, Twenty-second District, Twenty-sixth District,

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

1 compensation, if any, of the neutral panel member and any costs
2 or expenses incurred by the panel in connection with proceedings
3 under this act.

4 Section 7. Procedure.

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

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

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

1 Section 8. Determination.

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

7 (b) Judicial review.--

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

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

13 (i) Jurisdiction of the arbitrators.

14 (ii) Regularity of the proceedings.

15 (iii) Excess in exercise of power.

16 (iv) Constitutional issues.

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

29 Section 9. Strikes and lockouts prohibited.

30 No school employee may strike or participate in a strike or

1 similar interruption of government service. No public employer
2 may conduct a lockout or similar interruption of government
3 service. Any strike, lockout or interruption of government
4 service prohibited by this section shall constitute an
5 actionable breach of duty to members of the public.

6 Section 10. Standing to enforce.

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

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

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

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

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

16 (5) The secretary.

17 Section 11. Existing agreements.

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

24 Section 12. Time frame.

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

27 Section 13. Constitutional amendment.

28 If the Constitution of Pennsylvania is amended to authorize
29 the procedure set forth in this act, the Secretary of the
30 Commonwealth shall transmit notice of the ratification of the

1 amendment to the Legislative Reference Bureau for publication in
2 the Pennsylvania Bulletin.

3 Section 14. Construction.

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

7 (b) Retirement.--

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

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

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

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

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

28 (ii) would not result in the Public School
29 Employees' Retirement System's failure to be a qualified
30 plan under the Internal Revenue Code of 1986 (Public Law

1 99-514, 26 U.S.C. § 1 et seq.).

2 Section 15. Repeals.

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

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

8 Section 16. Effective date.

9 This act shall take effect as follows:

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

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