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THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 910 Session of 2005

INTRODUCED BY MELLOW, SCARNATI, LOGAN, RHOADES, KASUNIC, CONTI, STOUT, EARLL, O'PAKE, RAFFERTY, MUSTO, WOZNIAK, BOSCOLA, COSTA, FERLO AND FONTANA, NOVEMBER 1, 2005

REFERRED TO LABOR AND INDUSTRY, NOVEMBER 1, 2005

AN ACT

Providing for collective bargaining dispute resolution between public school employees and their public employers; imposing duties on the Secretary of the Commonwealth and the Legislative Reference Bureau; imposing penalties; and making repeals.

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

Section 1. Short title.

This act shall be known and may be cited as the Collective Bargaining Dispute Resolution Act.

Section 2. Definitions.

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

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

(1) the school entity subject to impasse is located; or

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

"Bureau." The Pennsylvania Bureau of Mediation.

"Employee organization." Any of the following:

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

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

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

organization to reach a labor contract in the course of negotiations.

"President Judge." The president judge of the appropriate court.

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

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

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

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

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

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

"Secretary." The Secretary of Education of the Commonwealth.

Section 3. Collective bargaining dispute resolution.

Notwithstanding any other provision of law to the contrary, the settlement of an impasse in collective bargaining between an employee organization and a public employer shall be by collective bargaining dispute resolution pursuant to this act.

Section 4. Collective bargaining timeline.

The representative shall commence bargaining a successor agreement no later than January 5 of the year in which the collective bargaining agreement between the parties shall by its terms expire. Both parties shall submit to mediation by the bureau by February 28 if no agreement is reached between the parties. Mediation shall continue for so long as the parties have not reached an agreement. If no agreement is reached by April 30, both parties shall submit an impasse in collective bargaining to the process established by this act.

Section 5. Panel selection.

The settlement of an impasse in collective bargaining between an employee organization and a public employer shall begin by the selection of a three-member panel, each of whom is knowledgeable and qualified in public school financial, administrative or instructional matters. By May 7, the employee organization shall designate one panel member; and the public employer shall designate one panel member. The two panel members designated by the parties shall by agreement designate an impartial third member, who shall serve as chair. If an impartial chair is not selected by the panel by May 21, the president judge of the appropriate court shall, by May 31, select an impartial chair from a list provided by the bureau of qualified persons who reside in the region in which the appropriate court sits. The bureau shall compile and maintain a list for each of six geographical regions of persons who reside in that region and are qualified and knowledgeable in public school financial, administrative or instructional matters. The six regions shall be:

Northeast Region.--Eleventh District, Twenty-first 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

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

Section 7. Procedure.

(a) Scope.--Collective bargaining dispute resolution shall be limited to those issues which may be bargained under Article VII of the act of July 23, 1970 (P.L.563, No.195), known as the Public Employe Relation Act, and which are not agreed to in writing prior to the start of collective bargaining dispute resolution process.

(b) Operation.--

(1) By June 5, each representative shall submit to the panel that party's best offer with certification that the offer was delivered to the opposing party. Thereafter, members of the panel shall meet with both parties at least four times prior to June 30 in an effort to resolve the impasse through mediation.

(2) If no agreement between the parties is reached by June 30, each party shall submit, on that date, to the impartial chair that party's final best offer. Once a final best offer is submitted to the panel, a party may not make changes to the offer, withdraw the offer or make another offer. The impartial chair may not submit a final best offer to the other two members of the panel until both final best offers have been received.

(3) The panel shall hold public hearings. No later than August 1, the panel shall make a recommendation, prepare a supporting report and submit both to the president judge of the appropriate court. The recommendation of the panel shall be confined to a choice between the final best offer of the

public employer in its entirety or the final best offer of the employee organization taken in its entirety. The supporting report shall specify the reasons for selecting the final best offer contained in the recommendation.

(4) The president judge shall review the recommendation and supporting report and shall issue a written determination by August 10. Such determination shall be confined to the issue of whether to adopt the determination, as submitted by the panel. The president judge shall not consider any additional issues that have not been submitted to collective bargaining dispute resolution. The president judge shall consider the following factors, in addition to any other relevant factors, in issuing the determination:

(i) The interest and welfare of the public and the financial ability of the public employer to fund the potential costs.

(ii) A comparison of the wages, hours and conditions of employment of the employees involved in the proceeding with the wages, hours and conditions of employment of other employees performing similar services or requiring similar skills under similar working conditions and with other employees generally in public and private employment in comparable communities within the region.

(iii) The terms of collective bargaining agreements negotiated between the parties in the past providing for compensation and benefits, including, but not limited to, the provisions for salary, insurance and retirement benefits, and medical and hospitalization benefits.

If the president judge does not adopt the recommendation as submitted by the panel, the alternative final best offer that

was not recommended by the panel shall be deemed adopted.

(5) The parties may voluntarily settle the impasse in collective bargaining at any time prior to the issuance of the determination by the president judge.

Section 8. Finality.

(a) General rule.--The decision of the president judge shall be final and binding on the public employer and the employee organization.

(b) Judicial review.--No appeal of a determination under subsection (a) shall be allowed to any court.

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

Section 9. Strikes and lockouts prohibited.

No school employee may strike or participate in a strike or similar interruption of government service. No public employer may conduct a lockout or similar interruption of government service. Any strike, lockout or interruption of government service prohibited by this section shall constitute an actionable breach of duty to members of the public.

Section 10. Standing to enforce.

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

(1) Parties to an impasse under this act.

(2) A panel member designated under this act.

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

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

(5) The secretary.

Section 11. Existing agreements.

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

Section 12. Time frame.

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

Section 13. Construction.

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

(b) Retirement.--

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

(i) Permit or require collective bargaining,

mediation or collective bargaining dispute resolution to establish or modify pension or retirement benefits set forth in 24 Pa.C.S. Pt. IV (relating to retirement for school employees) or administered by the Public Employees' Retirement Board.

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

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

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

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

Section 14. Repeals.

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

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

Section 15. Effective date.

This act shall take effect immediately.