

COMMONWEALTH OF PENNSYLVANIA
HOUSE OF REPRESENTATIVES

LABOR RELATIONS COMMITTEE HEARING

STATE CAPITOL
MAJORITY CAUCUS ROOM
ROOM 140
HARRISBURG, PENNSYLVANIA

MONDAY, AUGUST 18, 2008
1:00 P.M.

PRESENTATION ON HOUSE BILL 2626
LAY EMPLOYEES OF
RELIGIOUSLY-AFFILIATED SCHOOLS

BEFORE :

HONORABLE JAMES E. CASORIO, MAJORITY VICE CHAIRMAN
HONORABLE GENE DiGIROLAMO, MINORITY CHAIRMAN
HONORABLE SCOTT W. BOYD
HONORABLE JIM COX
HONORABLE EUGENE DePASQUALE
HONORABLE WILL GABIG
HONORABLE MARC J. GERGELY
HONORABLE NEAL GOODMAN
HONORABLE CARL W. MANTZ
HONORABLE DARYL D. METCALFE
HONORABLE JOHN P. SABATINA, JR.
HONORABLE TIM SEIP
HONORABLE FRANK ANDREWS SHIMKUS
HONORABLE RONALD G. WATERS

IN ATTENDANCE :

HONORABLE EDDIE DAY PASHINSKI
HONORABLE EDWARD G. STABACK

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ALSO PRESENT:
VICKI DiLEO
MAJORITY EXECUTIVE DIRECTOR
MARYANN ECKHART
MAJORITY LEGISLATIVE ASSISTANT
JOANNE MANGANELLO
MAJORITY RESEARCH ANALYST
BRUCE HANSON
MINORITY EXECUTIVE DIRECTOR

DEBRA B. MILLER
REPORTER

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3 VICE CHAIRMAN CASORIO: The hour of
4 1 o'clock having arrived, I would like to call the
5 House Labor Relations Committee to order.

6 Everyone please rise for the Pledge to the
7 flag.

8 (The Pledge of Allegiance was recited.)

9 VICE CHAIRMAN CASORIO: Thank you.

10 Thank you for coming out today to attend the
11 House Labor Relations Committee hearing on House Bill
12 2626.

13 I am the majority Vice Chair, Representative
14 Casorio, from Westmoreland County. I am chairing the
15 meeting instead of Representative Belfanti, who, you
16 may know, has undergone back surgery recently, and he
17 is recuperating. So we send from the committee best
18 wishes for a speedy and a safe recovery to the
19 Chairman, Representative Belfanti.

20 We are joined by a couple of members here
21 now, and we expect more as the hearing proceeds into
22 the afternoon. And before we get into the testimony,
23 I will ask the members of the Labor Relations
24 Committee that are here to introduce themselves,
25 please.

1 REPRESENTATIVE METCALFE: Good afternoon.
2 I am State Representative Daryl Metcalfe from the
3 12th District.

4 REPRESENTATIVE DiGIROLAMO: Good afternoon.
5 Gene DiGirolamo, Bucks County, 18th District.

6 VICE CHAIRMAN CASORIO: Thank you, Geno.
7 Thank you, Daryl.

8 I would remind all testifiers before we
9 begin today's hearing that we are on a schedule.
10 as you can see the agenda in front of you, it is
11 quite ambitious and quite lengthy. I would ask
12 that everyone keep within those time frames. If
13 not, I will be a constant reminder of those time
14 frames.

15 And I would ask that you also refrain, I
16 would ask that you refrain from reading your
17 testimony verbatim. We, as you may know, have a
18 series of testifiers, and the testimony is here in
19 front of us today, so we are well versed on your
20 testimony. Summarize them, if you will, and then we
21 will certainly have some questions.

22 So with those things in mind -- and also, we
23 have been joined by Representative Staback.
24 Representative Staback, thank you for joining us
25 today.

1 At this time, I would like to call the prime
2 sponsor of House Bill 2626, Representative Pashinski,
3 for his remarks. Representative, thank you.

4 REPRESENTATIVE PASHINSKI: Thank you very
5 much Vice Chairman Casorio.

6 I would like to thank the committee, and, of
7 course, Chairman Belfanti, Chairman DiGirolamo, for
8 allowing this opportunity to hear testimony relative
9 to House Bill 2626.

10 Two months ago, I introduced this bill in
11 order to make serious connections and corrections to
12 parts of the law that neglect certain workers'
13 rights.

14 I saw firsthand that an entire class of
15 workers was falling through loopholes in our laws and
16 that no government agency recognized the problem,
17 resulting in no action.

18 Specifically, you may be aware that there
19 are Federal and State laws that protect workers'
20 rights to choose or not to choose unions. These laws
21 have enabled workers to organize their labor
22 membership for the purpose of securing a fair labor
23 agreement.

24 Appropriate wages, benefits, and working
25 conditions have modernized our society and advanced

1 the living conditions for millions of Pennsylvanians
2 and provided security that the workforce would not be
3 at the mercy of unscrupulous employers.

4 These laws cover most employees and provide
5 oversight boards for enforcement. Many employees in
6 the private sector fall under the jurisdiction of the
7 National Labor Relations Board, and the Pennsylvania
8 Labor Relations Board picks up those private workers
9 that fall through the cracks. The State Labor
10 Relations Board, the PLRB, also oversees most public
11 workers.

12 As you may be aware, Pennsylvania courts
13 have decided that employees of religiously-affiliated
14 schools are not currently appropriately covered under
15 these laws.

16 I am sure that you will hear references of
17 these cases as we move ahead. However, please keep
18 in mind that it is the Legislator's job to make laws
19 and it is the court's job to interpret and enforce
20 these laws.

21 As such, my legislation, House Bill 2626,
22 seeks to allow lay teachers and other lay employees
23 of religiously-affiliated schools to elect to join or
24 not to join unions and collectively bargain.

25 The bill would establish protections for

1 these rights by incorporating these employees into
2 the Pennsylvania Labor Relations Act, the PLRA, which
3 will provide oversight by the Pennsylvania Labor
4 Relations Board.

5 With this legislation, teachers and other
6 employees of religiously-affiliated schools, who are
7 not members of the clergy or in a recognized or
8 substantial religious vocation related to the
9 employer, would have the same rights as their
10 counterparts in public schools and/or other private
11 sector workers in Pennsylvania.

12 When the National Labor Relations Act and
13 the PLRA were crafted and enacted in the 1930s,
14 educators at religiously-affected schools were
15 largely nuns, priests, or similar members of the
16 church. Now, however, the times have changed, and
17 these schools employ primarily lay persons.

18 For example, last year, the Catholic News
19 Service reported that in 1950, lay teachers only made
20 up approximately 14 percent of the workforce at
21 Catholic schools in the United States, and now, 70
22 years later, lay teachers make up over 90 percent of
23 the workforce.

24 There are religiously-affiliated schools in
25 each town and city in Pennsylvania which now draw on

1 the general public for employees. This means that
2 there are employees throughout the State who are
3 being denied or could be denied basic labor rights.
4 By incorporating these workers into the PLRA, we can
5 ensure fairness and equality in employment to this
6 section of the workforce.

7 I would also like to make an important
8 point. Please note that while my legislation seeks
9 to protect workers, at the same time, my legislation
10 would insure and respect the rights of
11 religiously-affiliated employers.

12 It specifically states that employment
13 decisions based on dedicated religious beliefs and
14 doctrines will be recognized and upheld by the PLRB.
15 This legislation would not give the PLRB the
16 authority to affect any religious doctrine.

17 I wanted to include this language in the
18 bill in order to illustrate that we can reach a
19 balance on workers' rights and the right to practice
20 religious beliefs.

21 You can be assured that I certainly realize
22 that the ability to practice a religion as one
23 chooses is of paramount importance. However, I
24 also believe that, like any employer, a
25 religiously-affiliated employer has the

1 responsibility of recognizing and abiding by fair and
2 decent employment standards and honoring the rights
3 of their employees.

4 Because of the present and outdated
5 loopholes in the labor laws, neither our government
6 nor the courts could provide a fair course of action
7 for these lay teachers.

8 We as Pennsylvanians often celebrate our
9 ancestors' role in our country's arduous labor
10 history, and it is unfortunate that our State now can
11 overlook certain injustices and loopholes in these
12 laws.

13 Whether we remember the anthracite coal
14 strike, the railroad conflict, steelworkers'
15 concerns, we remember the hardships and struggles
16 that these workers had to overcome.

17 As a proud Representative of the northeast,
18 I am keenly aware of our coal miners' efforts to
19 ensure fair labor practices, and I am aware of the
20 significance of the role played by our government as
21 well as the church in securing these efforts.

22 In no way will our current working
23 conditions in the United States ever equal our
24 ancestors' conditions. However, we must continue to
25 identify labor injustices, no matter how small.

1 We look to our laws for protection,
2 equality, and fairness. As legislators, our
3 responsibility is to continue to work to improve and
4 grow these laws if we see something amiss.

5 Like all laws, our labor laws may need to be
6 adjusted from time to time, and as societal
7 commonalities change, so must our laws.

8 Over 50 members of the Legislature have
9 cosponsored my legislation, including many of the
10 members of the Labor Committee. For this, I am
11 grateful, and I thank you for your support and giving
12 me the opportunity to present testimony and support
13 of House Bill 2626.

14 I thank you, sir.

15 VICE CHAIRMAN CASORIO: Thank you,
16 Representative Pashinski.

17 Before you leave the table there and before
18 I invite you to come join the committee, just a
19 couple points of clarification.

20 One, I introduced Chairman Staback earlier.
21 He is not a member of the Labor Relations Committee
22 but very interested in this issue. He is the
23 majority Chairman of the Game and Fisheries
24 Committee, so I wanted to make sure we noted that on
25 the record.

1 We have also been joined by Representative
2 Shimkus, Representative DePasquale, Representative
3 Boyd, and Representative Goodman.

4 I will entertain any questions for
5 Representative Pashinski. Are there any questions?

6 Representative Metcalfe.

7 REPRESENTATIVE METCALFE: Thank you,
8 Mr. Chairman.

9 Representative Pashinski, does your
10 legislation allow for the rights of those teachers
11 that would be teaching in these private schools,
12 that might not want to be part of the union that
13 would be brought into their school, does it allow for
14 them---

15 REPRESENTATIVE PASHINSKI: Absolutely.

16 REPRESENTATIVE METCALFE: ---to not be
17 required to be a part nor to have to pay for
18 representation by that union that they don't want to
19 be part of?

20 REPRESENTATIVE PASHINSKI: Well, step one
21 would be, first, for the lay teachers to decide
22 whether they want a union or not. So step one would
23 be an election which would be sanctioned by the
24 proper rules -- secret ballot; third party -- to make
25 sure that it was objective and unbiased.

1 If they chose, if the majority chose not to
2 have a union represent them, then the particular
3 school or whatever that would be would continue on as
4 they normally do.

5 If they did choose to have a union represent
6 them, then they would have to abide by the laws
7 surrounding that.

8 REPRESENTATIVE METCALFE: So if we have
9 50 percent plus 1 of the teachers at a given school
10 decide that, yes, they want to unionize against the
11 leadership of that school, the parents of that
12 school, because they are not getting what they
13 believe they should be receiving for teaching at
14 that school, then that 49 percent or that almost
15 50 percent that just lacked the 1 vote, they would be
16 required to pay union dues and be a part of that
17 union, so they would lose their right to not be part
18 of the union?

19 REPRESENTATIVE PASHINSKI: Well, we have to
20 be careful how we say that.

21 First of all, a union is not necessary if
22 you have no conflicts between employer and employee,
23 and unions wouldn't exist today if people of working
24 status were not abused throughout history.

25 The act in the 1930s was designed and

1 developed because of the kinds of injustices that the
2 working people experienced. So the concept in
3 democracy is the majority rules, and both sides of a
4 particular situation will have equal opportunity, as
5 we have here today to present our case.

6 So in your example, as you point out, if
7 51 percent choose to have union representation and
8 49 percent choose not to, then that is correct; the
9 rest of those folks would have to abide by whatever
10 the rules were of that particular association,
11 keeping in mind that the purpose of the union would
12 be to represent all of the teachers or all of those
13 members justly and fairly.

14 REPRESENTATIVE METCALFE: See, I think that
15 is where we part ways and have a real basic
16 difference of beliefs in what kind of government we
17 actually have.

18 I believe we have a constitutional republic
19 where we have rights, no matter what the majority
20 says, that we have rights that are given to us, and I
21 think one of those rights should be to be able to
22 choose who you are affiliated with and associated
23 with and who you are forced to pay dues to.

24 So if I am part of the 49 percent, or just
25 under 50 percent, because it could be 49.9 percent,

1 and I am forced to pay dues to an organization that
2 I do not support what they are attempting to do,
3 I think you have taken away a right that should be
4 guaranteed to me as a basic right as an American.

5 So, you know, I think trying to bring this
6 into the schools where it has never been part of
7 their process or part of the law that governs them
8 and to not allow for those individuals that do not
9 want to be part of it to remain free and independent
10 of that organization, I think, is a very serious
11 violation of those individuals' rights, to try and
12 expand this and infringe on those rights.

13 REPRESENTATIVE PASHINSKI: Well, if I could
14 answer that.

15 And you have, of course, every right, and
16 that's the greatest part about America -- we can all
17 express our feelings.

18 First of all, under the present conditions,
19 those lay teachers do not have the same rights as the
20 regular working-class people in the United States of
21 America.

22 REPRESENTATIVE METCALFE: But they do have a
23 right to go teach somewhere else if they would choose
24 to.

25 REPRESENTATIVE PASHINSKI: That is correct.

1 REPRESENTATIVE METCALFE: They are not slave
2 labor.

3 REPRESENTATIVE PASHINSKI: That is correct.

4 REPRESENTATIVE METCALFE: I mean, they can
5 leave that employment if they are not being treated
6 properly, which is what I think some of them may do.

7 And for the most part, they make a lot less
8 money than teachers in our public school systems, but
9 it remains a fact that we still see many of these
10 schools attracting some of the brightest teachers,
11 some of whom I know and have known. They are doing a
12 very fine job of teaching those students without
13 union representation.

14 In fact, I sent a letter to the Chairman of
15 this committee just prior to the budget being
16 completed requesting that we actually hold a hearing
17 on the teachers' strike issue that is really
18 impacting our State, because we have 37 States in the
19 nation that do not allow teachers' strikes.

20 Now if we would allow for teachers to
21 unionize in these schools, now we have these schools,
22 that some of my constituents have been looking to as
23 an outlet, because my school district went on strike
24 for 5 weeks last year, so they are looking for an
25 outlet of where can we put our child so that they

1 have a strike-free education that is not interrupted
2 by this heavy-handedness of some of these unions that
3 are out there representing teachers, and now you are
4 proposing that we create the same problem in those
5 schools that are now independent of what is
6 problematic when you bring in teacher unions.

7 That is the conclusion from my perspective.
8 Thank you for your engaging in these questions.

9 REPRESENTATIVE PASHINSKI: No; I respect
10 your remarks very much, Representative Metcalfe.

11 And once again, just keep in mind, and I am
12 not sure that you are aware of this, it is my
13 understanding that in Pennsylvania, there are eight
14 dioceses, six of which have been unionized, and they
15 have been unionized for decades. And they have
16 conducted themselves accordingly and, as you pointed
17 out, provide a quality education for the children
18 that have engaged in this form of education.

19 This has all come about because of the fact
20 that one particular diocese now is not recognizing
21 that particular group of people, and in this process,
22 we have discovered that they have no other recourse
23 other than to do exactly what you said -- to leave
24 that particular diocese and find employment someplace
25 else.

1 But it becomes alarming when we realize that
2 70 years later, the intent of that law in the 1930s
3 was just to bring about a balance of fairness between
4 employer and employee, and that is what I am trying
5 to seek here for the lay teachers that work within
6 the Catholic schools.

7 Keep in mind that out of those eight
8 dioceses, maybe they will not even select the idea of
9 having union representation. The fact is, they do
10 not even have that right now for what everybody else
11 has, and that is at least to choose whether they can
12 or cannot unionize.

13 VICE CHAIRMAN CASORIO: Thank you,
14 Representative Pashinski.

15 We have also been joined by Representative
16 Waters and Representative Sabatina. They have joined
17 us today.

18 Representative Boyd with a question.

19 REPRESENTATIVE BOYD: Thank you,
20 Mr. Chairman.

21 As a follow-up to--- Nice to see you,
22 Eddie.

23 REPRESENTATIVE PASHINSKI: Good to see you,
24 Representative Boyd.

25 REPRESENTATIVE BOYD: As a follow-up to

1 Representative Metcalfe's question, this would apply
2 to all private schools, not just, you know, the
3 Catholic schools per se. I mean, in the area I
4 represent, we have a lot of Mennonite schools.

5 The question I had is, would this apply to
6 cyber schools? Teachers that teach at cyber schools?

7 REPRESENTATIVE PASHINSKI: If they are at a
8 cyber school, are they affiliated with a public
9 school or is it a private entity? Is it a business?

10 REPRESENTATIVE BOYD: To my knowledge, they
11 are a private entity, but we call them cyber charter
12 schools at this point. So they are chartered at some
13 point by the local public school but they are owned
14 by private entities.

15 REPRESENTATIVE PASHINSKI: Okay.

16 REPRESENTATIVE BOYD: I mean, I would
17 imagine the way it is drafted that they would apply.

18 REPRESENTATIVE PASHINSKI: I would have to
19 agree with you on that.

20 REPRESENTATIVE BOYD: The reason I wanted to
21 clarify that is, kind of taking a reverse tack from
22 Representative Metcalfe, I know I visited a number of
23 these cyber schools over the last, say, 3 months, and
24 they have attracted educators from all walks of life,
25 not necessarily certified by the State.

1 I think in the law, 25 percent of their
2 teachers do not have to be certified, but some of
3 them have doctorates in physics, and they are
4 teaching advanced physics classes. Some of them are,
5 in their field, heads and tails above many educators
6 in terms of that knowledge in, say, chemistry,
7 advanced physics, those kinds of things.

8 My question is, if a cyber school would vote
9 to collectively bargain, and in that contract it will
10 specify -- normally we focus on the minimum starting
11 salary, but also, from my understanding, there are
12 normally maximums. In other words, the best public
13 school teacher in the universe can only make whatever
14 the maximum allowable within that contract is.

15 I would imagine some of these folks that are
16 in their fields have been attracted to teach at some
17 of these schools for probably well over what some of
18 those dollar amounts are because they are, you know,
19 they are renowned scientists in their field.

20 Could this actually have kind of a potential
21 reverse effect and limit what some people could
22 actually earn who are far exceeding the
23 qualifications and training of a standard
24 schoolteacher? I mean, do you see that as
25 potentially being a problem?

1 REPRESENTATIVE PASHINSKI: No, because this
2 law simply gives them the right for representation.

3 This law does not interfere with the
4 negotiation process, which means that that particular
5 private entity can choose whatever kind of
6 remuneration it sees fit. And if they choose to hire
7 someone two or three or four times the rate of their
8 regular teachers because they feel that this person
9 is that qualified and will enhance that particular
10 institution, they are well within their rights. If
11 they were unionized, that would be part of that
12 discussion.

13 We do not touch the negotiation process in
14 2626 at all.

15 REPRESENTATIVE BOYD: But to Representative
16 Metcalfe's point, basically, if I'm using the right
17 terminology, this would then ultimately be a closed
18 shop, meaning that if your district, if the school
19 chooses to unionize and 51 percent of the members
20 vote to unionize, the 49 percent, and let us say that
21 there are a number of folks that have advanced
22 doctorate degrees in specific fields who may have
23 been making, you know, mid-100s or more in terms of
24 salary, and the agreement comes down that the minimum
25 takes everybody up but the maximum brings everybody

1 down, which is potentially kind of a typical
2 agreement, those folks actually could be adversely
3 affected, because they could not opt out of being a
4 part of the union, right?

5 REPRESENTATIVE PASHINSKI: But again, you
6 know, you are talking about a big "if." It is the
7 negotiation process. Well, we don't know how that is
8 going to work.

9 First of all, if the school is being run in
10 a manner as you are suggesting and a lot of people
11 are moving toward that particular institution, and
12 the rapport is productive, and not only productive
13 but it is a healthy environment, people do not choose
14 to join the union.

15 Now, you and I can probably point out many
16 private institutions that are not unionized because
17 the rapport between employer and employee is a
18 healthy one, and they together have dedicated a
19 particular philosophy and developed their goals in
20 order to achieve whatever their final goal is.

21 So this is simply trying to bring a large
22 group of people that were never considered when this
23 law came forward to provide equal justice and rights
24 for the working folks to now be a part of that
25 process.

1 Keep in mind, those eight dioceses
2 throughout the State of Pennsylvania can all choose
3 not to unionize, and that is it. Okay? So I think
4 that that is a key factor.

5 And again, the word "if" is such a -- it is
6 only two letters, but it means so much that it is
7 hard to put all those things -- we do not get into
8 the negotiations. This just gives them the chance to
9 unionize or not.

10 REPRESENTATIVE BOYD: Thank you,
11 Mr. Chairman.

12 VICE CHAIRMAN CASORIO: Thank you,
13 Representative Boyd.

14 Before we get to the next question, we have
15 been joined by Representative Gergely as well.

16 With a question, Representative Shimkus.

17 REPRESENTATIVE SHIMKUS: Thank you,
18 Mr. Chairman.

19 Representative Pashinski, I want to pick up
20 on something that Representative Metcalfe said and
21 something that you said.

22 He talked about the right to choose, and you
23 made a point and said if there were a vote and they
24 decided not to be unionized, not to organize, then it
25 almost becomes a moot point.

1 Help me to understand this again, and I know
2 I have been with you since the beginning of this and
3 we have been to several meetings, but isn't one of
4 the major sticking points is that the Diocese of
5 Scranton has said no vote; we just have decided that
6 there will not be a vote whether or not you want to
7 unionize? So the right to choose has been eliminated
8 here; it is just a matter of, you know, take what we
9 offer and that is it.

10 REPRESENTATIVE PASHINSKI: Well, you
11 basically have hit the nail on the head.

12 The way each diocese is operated is that the
13 bishop holds the, you know, the final say, and in
14 this case, the Scranton Diocese that has had a union
15 for nearly three decades, or I think 30 years, and
16 has functioned, you know, with positive results, now
17 all of a sudden is not recognized, and that is what
18 has caused the furor, that they do not have the right
19 to choose.

20 In a major discussion that we engaged in
21 with various officials of the Scranton Diocese, that
22 was the question that we posed. I believe that there
23 are 700 teachers in the Scranton Diocese, and of
24 those 700, we were told 200 belong. I have also been
25 told about 300 to 350 belong to that union.

1 We then said, why don't you just have them
2 take the vote, and if they take the vote and it goes
3 down, then we don't have to worry about any of this,
4 and the response was, they didn't want to go through
5 that process.

6 My response back again was, but now we are
7 going to go through another process that will be, if
8 anything, time-consuming, and it certainly will be an
9 education as we move forward.

10 REPRESENTATIVE SHIMKUS: And one follow-up
11 question.

12 If the XYZ Corporation with 200 employees
13 making, you know, hinges, if a group of people there
14 decided that they wanted to try and become members of
15 the Teamsters union and someone went around signing
16 petitions and they were stopped or told you cannot
17 do this, that would be a violation of law, wouldn't
18 it?

19 REPRESENTATIVE PASHINSKI: That is correct.

20 REPRESENTATIVE SHIMKUS: Okay. And this is
21 where your bill came from, that basically what we
22 have here is the same situation where a group of
23 people are saying, we want to form a union; we want
24 to be recognized, and the right to choose has been
25 eliminated.

1 REPRESENTATIVE PASHINSKI: That is correct.

2 REPRESENTATIVE SHIMKUS: Thank you.

3 REPRESENTATIVE PASHINSKI: They will not let
4 them take the vote.

5 REPRESENTATIVE SHIMKUS: Thank you.

6 VICE CHAIRMAN CASORIO: Thank you,
7 Representative Shimkus.

8 Representative Goodman with a question.

9 REPRESENTATIVE GOODMAN: Thank you,
10 Mr. Chairman.

11 Hi, Eddie.

12 Just a point of clarity. Under the "if"
13 scenario, isn't it also true that, in a scenario that
14 was laid out before us by Representative Metcalfe, if
15 you are in a situation where 51 percent vote in favor
16 of the union and 49 vote against, isn't it also true
17 that the 49 percent do benefit from all negotiations
18 that are then done by the active members of the
19 organization, and if one of them were to get into any
20 type of trouble or have any type of legalities, it
21 would be the union that would come to their behalf
22 simply because they are members of a union?

23 REPRESENTATIVE PASHINSKI: The union has to
24 represent all of its members, whether they voted for
25 it or not. That is correct.

1 REPRESENTATIVE GOODMAN: And that is why,
2 under those situations, whenever the majority rules
3 in favor of organizing, that all members that are
4 under that umbrella are asked to participate.

5 REPRESENTATIVE PASHINSKI: That is
6 correct.

7 REPRESENTATIVE GOODMAN: Thank you,
8 Mr. Chairman.

9 VICE CHAIRMAN CASORIO: Thank you.
10 Chairman DiGirolamo with a question.

11 REPRESENTATIVE DiGIROLAMO: Thank you.
12 How are you doing, Eddie?

13 REPRESENTATIVE PASHINSKI: Good, sir. How
14 are you?

15 REPRESENTATIVE DiGIROLAMO: Good to see you.

16 Just one quick question. Any idea of any
17 data out there on how many teachers this might affect
18 throughout the State of Pennsylvania if this went
19 into law?

20 REPRESENTATIVE PASHINSKI: As far as the
21 Catholic dioceses are concerned?

22 REPRESENTATIVE DiGIROLAMO: Yes.

23 REPRESENTATIVE PASHINSKI: I think somebody
24 here could verify that number better than I.

25 REPRESENTATIVE DiGIROLAMO: Okay.

1 REPRESENTATIVE PASHINSKI: But there would
2 be a couple thousand.

3 REPRESENTATIVE DiGIROLAMO: Maybe I'll ask
4 Rita when she testifies.

5 REPRESENTATIVE PASHINSKI: 5,000.

6 REPRESENTATIVE DiGIROLAMO: About 5,000,
7 just in the Catholic? About 5,000? And then some of
8 the other religious schools, so it will be a number
9 probably higher than 5,000 across the State.

10 REPRESENTATIVE PASHINSKI: That is correct.

11 REPRESENTATIVE DiGIROLAMO: Okay.

12 Thank you, Mr. Chairman.

13 VICE CHAIRMAN CASORIO: Thank you.

14 We have also been joined by Representative
15 Gabig.

16 Representative Gergely with a question.

17 REPRESENTATIVE GERGELY: Thank you,
18 Mr. Chairman.

19 Representative Pashinski, we do not have a
20 clarification on charter schools. Has anyone from
21 the charter schools approached you about their right
22 to unionize, or are you aware that they already have
23 that right?

24 REPRESENTATIVE PASHINSKI: Once again, there
25 are public charter schools and there are private

1 charter schools.

2 REPRESENTATIVE GERGELY: Right.

3 REPRESENTATIVE PASHINSKI: If you are a
4 public charter school, you are already probably
5 within that union. A private charter can choose as
6 well.

7 REPRESENTATIVE GERGELY: They can choose
8 already?

9 REPRESENTATIVE PASHINSKI: I believe so;
10 yes.

11 REPRESENTATIVE GERGELY: We are not sure
12 though?

13 REPRESENTATIVE PASHINSKI: Maybe we can get
14 some---

15 REPRESENTATIVE GERGELY: The question I pose
16 to you is, if they are not already allowed to, would
17 you support additional amendments that would provide
18 for them also the opportunity to organize?

19 REPRESENTATIVE PASHINSKI: I do not have a
20 problem with the democratic function of Americans to
21 be able to choose or not to choose to be part of the
22 union. That is correct.

23 REPRESENTATIVE GERGELY: Thank you. That is
24 my question, and I would like to look at that, and if
25 not, we can pursue that also.

1 REPRESENTATIVE PASHINSKI: Is that your
2 assignment?

3 REPRESENTATIVE GERGELY: That will be my
4 assignment. Thank you.

5 VICE CHAIRMAN CASORIO: We will make sure
6 that he follows through with that. A neighboring
7 district of mine, Representative Gergely.

8 Representative Waters with a question.

9 REPRESENTATIVE WATERS: Thank you,
10 Mr. Chairman.

11 Thank you, Representative Pashinski, for
12 bringing this issue forward.

13 I just wanted to follow up on something that
14 Representative Goodman addressed.

15 I can always refer back to when I was
16 working, before I came here, with the Philadelphia
17 Parking Authority and how, when I first started there
18 in '86, it was more like an open shop operation that
19 took place there. And over the years, because there
20 were so many people that didn't belong to the union
21 that were benefiting from the actions that the union
22 had taken in terms of vacation, sick time, pay
23 increases, in terms of protection in case management,
24 they felt as though management was acting a little
25 overaggressively or overzealous towards them, that

1 sooner or later they started asking the people who
2 were not necessarily members voluntarily of the union
3 to start contributing because of the costs that were
4 incurred there.

5 And as things grew and grew, it became where
6 the people who were nonunion, not in a union
7 voluntarily, were almost paying the same thing as the
8 people who were, and eventually more people said, I
9 might as well join. But they didn't have any problem
10 with benefiting from all the efforts that the unified
11 union was able to accomplish. And I just want to say
12 that in the end, almost everybody became a part of
13 the union, because they all saw the good that came
14 from being unionized.

15 So I just think that what you are doing
16 right here, I just want to make a comment that I want
17 to commend you on what you are doing in terms of
18 trying to organize protection for all employees.

19 Thank you, Mr. Chairman.

20 REPRESENTATIVE PASHINSKI: I appreciate
21 that, Representative Waters.

22 Again, it is just trying to develop a
23 balance and a justice here. And if we go back in
24 history, you know, I often in discussions with people
25 remind them of a few things.

1 If life was good and everyone was being
2 treated fairly, the words "union" and "unionism"
3 would not be a part of our society. But because of
4 the injustices that have been experienced by
5 unscrupulous employers, you know, a union finally
6 became a realization.

7 And I might add that the union concept has
8 also developed what I consider to be the middle
9 class, giving the opportunity for people to rise from
10 poverty into a position where they are able to
11 improve their lives.

12 So I just think that -- especially when you
13 realize that the Catholic Church has been such an
14 integral part of the concept of unionizing people,
15 the concept of giving equal rights and justice to
16 people who may not have the means. From time
17 immemorial that particular organization has organized
18 countless groups of people all over the world so that
19 they could improve their standards of living.

20 So in any case, I thank you very much for
21 that comment, and thank you, Mr. Chairman.

22 VICE CHAIRMAN CASORIO: Thank you,
23 Representative Pashinski.

24 This will be the last question for you, and
25 it will be a brief question. A follow-up question

1 from Representative Boyd.

2 REPRESENTATIVE PASHINSKI: This is his
3 second time?

4 VICE CHAIRMAN CASORIO: We are timing him;
5 yes.

6 REPRESENTATIVE PASHINSKI: Okay.

7 REPRESENTATIVE BOYD: The qualifications to
8 be a private school teacher, the same as the
9 qualifications to be a public school teacher?

10 REPRESENTATIVE PASHINSKI: I think that
11 varies amongst the various private institutions, but
12 I know that throughout---

13 REPRESENTATIVE BOYD: By State law.

14 REPRESENTATIVE PASHINSKI: By State law, now
15 certification is required.

16 REPRESENTATIVE BOYD: So if you teach in a
17 private school, you have to be certified the same as
18 a public school teacher?

19 REPRESENTATIVE PASHINSKI: I think in most
20 instances it does occur, but because it is a private
21 institution, they can hire whoever they want. The
22 public schools are governed by a more stricter group
23 of laws and codes.

24 REPRESENTATIVE BOYD: So it is possible that
25 a part of a collective bargaining agreement could be

1 that all teachers in that district would be required
2 to be certified.

3 REPRESENTATIVE PASHINSKI: Once again, that
4 "if" comes into play in the negotiation process.

5 REPRESENTATIVE BOYD: Ah; we deal in "ifs,"
6 don't we, Eddie? Thanks, buddy.

7 VICE CHAIRMAN CASORIO: Thank you.

8 Representative Pashinski, we would ask you
9 to join us here for the rest of this afternoon's
10 testimony. Thank you very much.

11 REPRESENTATIVE PASHINSKI: Thank you,
12 Vice Chairman. Thank you.

13 VICE CHAIRMAN CASORIO: Thank you, Eddie.

14 As we do that, we would like to call to the
15 microphone our first group of testifiers: Rita
16 Schwartz, President of the National Association of
17 Catholic School Teachers; and Michael A. Milz,
18 Executive Vice President, National Association of
19 Catholic School Teachers.

20 We will let them get settled in, and the
21 lady and gentleman, whenever you are ready.

22 MS. SCHWARTZ: Thank you, Representative.

23 VICE CHAIRMAN CASORIO: Thank you.

24 MS. SCHWARTZ: Mr. Chairman and members of
25 the House Labor Relations Committee, I am

1 appreciative of the opportunity to come before the
2 House Labor Relations Committee today to speak on
3 behalf of the thousands of nonrepresented and
4 unprotected workers who are employed as teachers in
5 Catholic elementary and secondary schools throughout
6 the Commonwealth of Pennsylvania. These teachers
7 would benefit greatly from the passage of House Bill
8 2626.

9 My name is Rita Schwartz, and I am the
10 President of the National Association of Catholic
11 School Teachers, a union with affiliated locals in
12 the Archdiocese of Philadelphia and the Dioceses of
13 Scranton-Wilkes-Barre, Altoona-Johnstown, Greensburg,
14 and Pittsburgh.

15 I also serve as President of the Association
16 of Catholic Teachers, which represents almost a
17 thousand lay teachers in the archdiocesan high
18 schools in the Archdiocese of Philadelphia.

19 I have worked closely with Catholic school
20 teachers for 45 years, first as a teacher at
21 St. Hubert High School in northeast Philadelphia and
22 later in my capacity as a staff person and officer of
23 both the Association of Catholic Teachers and the
24 national association.

25 Lay teachers in Catholic elementary and

1 secondary schools in Pennsylvania have been unionized
2 since the 1960s. In fact, the Association of
3 Catholic Teachers in Philadelphia was the first
4 Catholic teachers' union in the country, and ACT won
5 a representation election in February of 1968.

6 In the beginning, union recognition was
7 voluntary on the part of the dioceses. There was no
8 need for teachers to seek recourse either to the
9 State or to the Federal agency. Prior to January 24,
10 2008, six of the eight dioceses had recognized unions
11 that engaged in collective bargaining.

12 And I would like to respond just a moment to
13 what Representative Metcalfe was talking about
14 between representation -- there is a difference
15 between representation by a union and membership in a
16 union. We do not really look at a closed shop for
17 our teachers, because we want people who want to be a
18 part of the union. We do also say that they should
19 be paying their fair share that goes with the
20 negotiating of a contract and the policing of that
21 contract.

22 So if 50 percent of the teachers vote for a
23 union, plus 1, vote for a union, those 49 percent do
24 not necessarily have to join the union but they are
25 represented.

1 You can look at the voting for President of
2 the United States. How many people actually vote for
3 President, yet he is everybody -- or she, some day --
4 will be everybody's President. So there is a
5 difference between representation and membership.

6 The dioceses determine how schools, and
7 consequently, labor relations, will be structured.
8 In the Commonwealth, Pittsburgh has one systemwide
9 high school contract and one systemwide elementary
10 contract. Greensburg has one systemwide high school
11 contract. Altoona-Johnstown had one systemwide high
12 school contract, but they will now be going to three
13 individualized contracts. Allentown has one
14 systemwide contract for both elementary and high
15 school, and Philadelphia has one systemwide high
16 school contract.

17 You will be hearing about
18 Scranton-Wilkes-Barre when Mr. Milz speaks.
19 Harrisburg and Erie are the only two dioceses in
20 Pennsylvania with no unions.

21 Voluntary recognition hit some bumps along
22 the way, and as recently as 2005 in the Diocese of
23 Harrisburg, teachers in an elementary school tried
24 unsuccessfully to gain recognition of their union.
25 The pastor refused to deal with it, and they had no

1 recourse.

2 When elementary teachers in Philadelphia
3 sought to unionize in the early 1970s, the
4 Association of Catholic Teachers approached
5 Cardinal Krol and attempted to work within the
6 church to gain representation, as we had gone to
7 Cardinal Krol to seek representation of the high
8 schools.

9 When talks fell apart -- and they did -- on
10 the issue of unfair labor practices, ACT petitioned
11 the Pennsylvania Labor Relations Board, and a
12 systemwide election occurred in 1972. The election
13 was never certified because of the number of unfair
14 labor practice charges.

15 Before a new election could be scheduled,
16 the National Labor Relations Board took jurisdiction.
17 Once again, ACT went to the archdiocese and sought
18 in-house recognition. We were turned away, and we
19 went to the NLRB, and in June 1977, a systemwide
20 election occurred. The ballots were impounded, and
21 in 1979 when the U.S. Supreme Court decision on *NLRB*
22 *v. Catholic Bishop of Chicago* came down, the ballots
23 were shredded and we had no union.

24 This was a very dark day, because the U.S.
25 Supreme Court denied all teachers in Catholic schools

1 the protection of State and Federal labor law,
2 leaving us at the mercy of our employers, employers
3 who were becoming more and more antiunion.

4 Subsequent attempts to gain representation
5 and collective bargaining proved unsuccessful. Under
6 the guise of protecting the rights of pastors and
7 parishes, the Archdiocese of Philadelphia drew up
8 what they called a Statement of Principles, and they
9 asked that and mandated that the Association of
10 Catholic Teachers sign it before, not an election
11 could happen, but before discussions leading to an
12 election would happen.

13 The statement contained language that
14 appears in all Catholic teacher contracts about the
15 rights of the church in matters of faith and morals,
16 including disciplinary actions involving the
17 teachings of the church, and this was never, ever in
18 dispute.

19 The sticking point was the paragraph which
20 effectively signed away teachers' rights to due
21 process. "Any dispute relating" -- and this is a
22 quote -- "Any dispute relating to disciplinary action
23 against a lay teacher that results in the suspension
24 or termination of employment shall be resolved on the
25 Parish level with a right of appeal to the Parish

1 Elementary Schools' Appeal Board."

2 The Parish Elementary Appeal Board is
3 composed of five people: a pastor, a principal, a
4 representative of the diocesan office, and two lay
5 teachers picked by their principals. It is not an
6 automatic that you go before this board. The pastor
7 you are bringing before the board has to agree to be
8 bound by the decision, and the decision has to be
9 reviewed first by the archdiocesan school's
10 office.

11 So the association could not sign the
12 document, and we had no place to take our legitimate
13 charge of unfair labor practices. I call it a
14 Catholic catch-22.

15 In June 1993, our association petitioned the
16 Pennsylvania Labor Relations Board for teachers at
17 Norwood-Fontbonne Academy, which is a private school
18 run by the Sisters of St. Joseph in Chestnut Hill.

19 Two teachers who had attempted to form a
20 union there had been fired. The end result was a
21 1997 Pennsylvania Supreme Court decision that closely
22 followed the 1979 U.S. Supreme Court decision.

23 The Norwood-Fontbonne teachers were not
24 covered under the PLRA because they were not, quote,
25 "public employees." They had not been included, and

1 therefore, there was no election, and the two
2 teachers who were summarily fired for union activity
3 had no recourse.

4 Teachers in Catholic elementary and
5 secondary schools in the Commonwealth of Pennsylvania
6 should not be forced to leave their rights at the
7 schoolhouse door.

8 Just this past spring, a teacher in the
9 elementary schools contacted me. She was 61 years
10 old, had 34 years of teaching, was making \$44,000.
11 She was 6 months away from collecting her pension.
12 The teacher had been informed by her pastor that he
13 had to cut his budget, and since she was making too
14 much money, he was not going to hire her for the
15 following year. She had no protection and no
16 recourse.

17 In an attempt to prevent maintenance men
18 from organizing in our high schools, the archdiocese
19 declared that they were ministerial workers because
20 they repaired crucifixes and polished pews.

21 All of these occurrences have not one thing
22 to do with separation of church and State. There are
23 no ministerial connections and no impact on the
24 mission of the church. This is only about power and
25 money. It is secular, not spiritual.

1 Teachers in Catholic elementary and
2 secondary schools throughout the Commonwealth need to
3 be protected against these and similar situations,
4 and on behalf of the thousands of unorganized and
5 unprotected employees who only seek a level playing
6 field when they seek recognition and collective
7 bargaining, I urge the passage of House Bill 2626.

8 Thank you.

9 VICE CHAIRMAN CASORIO: Thank you,
10 Ms. Schwartz.

11 Before we hear from Mr. Milz -- and we will
12 take questions for Ms. Schwartz and Mr. Milz
13 collectively -- again, I just want to, Ms. Schwartz's
14 pages were 4 long in testimony, 3 1/2, and I am just
15 looking briefly at the summaries coming up: 11, 9 --
16 these are pages of testimony -- 20, 23, 13, 19, 16.

17 So we have some rather lengthy testimonies,
18 and I can assure you that we will not be able to hear
19 every single one of those pages of testimony. So as
20 you prepare, maybe try to pare 20, 23, 19 of those
21 pages down.

22 I know the committee is very interested in
23 House Bill 2626, but it is our understanding to try
24 to get this entire hearing in this afternoon. So
25 just a word of caution.

1 Mr. Milz, we are looking forward to hearing
2 from you, sir.

3 MR. MILZ: You will be glad to know that I
4 have got mine down to 7 minutes, so blow the whistle.

5 I am very appreciative and honored to speak
6 here today to urge the passage of House Bill 2626.

7 I come before you as the Executive
8 Vice President of the National Association of
9 Catholic School Teachers. I also serve as the
10 President of my local, the Scranton Diocese
11 Association of Catholic Teachers.

12 I also come before you as a Catholic, proud
13 of my faith, my heritage, my church's long tradition
14 of support for workers' rights and social justice.

15 Finally, I appear before you as a former
16 teacher. Until last year when I was fired for my
17 union activity, I had been a 33-year veteran of
18 Catholic schools.

19 It is as a spokesperson for the thousands of
20 elementary and secondary lay teachers across the
21 Commonwealth that I here and now petition you for
22 relief, for unless the Pennsylvania Labor Relations
23 Act is amended by the passage of House Bill 2626, our
24 devoted teachers as well as other employees of
25 religiously-affiliated schools will continue to

1 suffer from a lack of protection of what we see as
2 the basic rights due to us as workers and as citizens
3 of the nation and this Commonwealth.

4 Others who will appear before you in support
5 of House Bill 2626 will provide you with details on
6 how and why the current laws fail in protecting our
7 rights. My presentation will be limited to providing
8 information to demonstrate why such protection is so
9 badly needed.

10 I am sure that before these hearings end,
11 you will hear from opponents of the bill who will
12 tell you that if you pass this legislation, it could
13 create a conflict with the United States
14 Constitution's First Amendment, specifically that it
15 might bring about an unwelcome extrusion of
16 government control over the affairs of a religious
17 group.

18 Soon you will hear from legal experts who
19 support the bill, who will tell you that such fears
20 are unwarranted and unfounded, the language of the
21 bill being carefully crafted to specifically avoid
22 any such violation of rights.

23 However, I ask that as the discussion of
24 First Amendment rights goes forward, you never lose
25 sight of the fact of what is currently taking place

1 across the Commonwealth, which is that other
2 First Amendment rights belonging to my colleagues and
3 I are definitely being denied us by our religious
4 employers -- our right to freedom of assembly and
5 association, as well as our right of freedom of
6 speech.

7 Unless HB 2626 becomes law, we will continue
8 to lack these basic rights which belong to all
9 Americans, except us.

10 When the National Labor Relations Act was
11 written in 1935 and the Pennsylvania Labor Relations
12 Act 2 years later, both laws had taken their cue from
13 the prevailing evidence presented by their times.

14 For more than a century before the passage
15 of these pieces of legislation, exploited American
16 workers had been rightfully complaining that their
17 First Amendment rights of free speech and freedom of
18 assembly and association were rights experienced only
19 in the breach, for nowhere existed laws that
20 protected those rights -- the right to free speech in
21 advancing unionism; the right to freely elect a
22 representative union; the right to protest unfair
23 labor practices and to seek redress of grievances.

24 Then the United States Congress and the
25 Pennsylvania General Assembly finally acted in what

1 both believed to be the best interests of the
2 community.

3 Here in part is the language of Section 1 of
4 the National Labor Relations Act, and I quote:

5 "It is hereby declared to be the policy of
6 the United States to eliminate the causes of certain
7 substantial obstructions to the free flow of commerce
8 and to mitigate and eliminate these obstructions
9 where they have occurred by encouraging the practice
10 and procedure of collective bargaining and by
11 protecting the exercise by workers of full freedom of
12 association, self organization, and designation of
13 representatives of their own choosing, for the
14 purpose of negotiating the terms and conditions of
15 their employment or other mutual aid or protection."

16 Both the NLRA and the PLRA gave workers the
17 right to organize. They legally permitted workers to
18 form "unions of their own choosing" and put forth
19 five rights of the basis of legal legislation
20 concerning unions. I will refer to three of those a
21 bit later.

22 So one would think that with the passage of
23 these laws in the 1930s, the year of the employer as
24 the unregulated exploiter of the worker had come to
25 an end. Unfortunately, I am here as living proof to

1 inform you that this is not the case.

2 The very same basic rights once denied to
3 all workers prior to the passage of the labor laws in
4 the 1930s are at this minute being denied to the
5 employees of religiously-affiliated schools.

6 Although this abuse of rights takes place
7 across the Commonwealth, no better example exists
8 than the current situation affecting school employees
9 in the Roman Catholic Diocese of Scranton.

10 The Diocese of Scranton employs
11 approximately 700 people in their schools, most of
12 them lay teachers.

13 In my written submission, I provided a
14 detailed history of labor relations in the Scranton
15 Diocese between 1978 and 2008. That was a time of
16 harmonious relations, where the right to organize and
17 bargain had been respected by our employer.

18 Then in 2006, the diocese announced its
19 intention to restructure its schools. Schools which
20 engaged in collective bargaining sent notice to the
21 unions that they were going out of business and
22 that their bargaining relationship would cease as of
23 June 2007.

24 The school restructuring process took more
25 than a year to complete. Throughout the process,

1 diocesan officials promised the union that once the
2 process was completed, the union could seek
3 recognition from the newly formed school units.

4 Then on January 24, 2008, without consulting
5 the union, the diocese unilaterally announced it
6 would no longer consider recognizing or bargaining
7 with the union chosen by its own employees.

8 At the same time, it announced it would put
9 in place an "Employee Relations Program" and invited
10 employees from all work categories to participate.
11 Repeated attempts by the union to open dialogue on
12 the issue of union representation had been repeatedly
13 rejected by diocesan officials.

14 The diocesan announcement to break with the
15 established teachings of the Catholic Church and its
16 own stated policies has drawn a firestorm of
17 criticism from inside and outside the community
18 served by the diocese. It has caused turmoil that
19 has affected the entire community.

20 Since January, the union has vigorously
21 protested against the position of the diocese to deny
22 union representation. These actions include work
23 stoppages, informational picketing on a daily basis,
24 et cetera.

25 Support for the union's position in the

1 community has been incredibly strong. Numerous
2 public-opinion polls favor the restoration of the
3 teacher's right to bargain.

4 If the Diocese of Scranton remains unmoved,
5 despite criticism from the community and the harm
6 their actions have caused to the public welfare, the
7 diocese continues to deny its workers the same rights
8 now enjoyed by all workers in the Commonwealth.

9 Earlier, I referred to the five basic rights
10 that have been incorporated into the Federal and
11 State laws. Let's look at three of them in relation
12 to what is going on in the Scranton Diocese.

13 The first of those rights is that, and I
14 quote, "Employers must not interfere with, restrain
15 or coerce employees in their exercise of the right of
16 self organization, to bargain collectively through
17 representatives of their own choosing."

18 In fact, the Diocese of Scranton has denied
19 its employees the right of self-organization and
20 refuses to allow the teachers to choose the
21 representatives they wish to represent them.

22 In the July 31, 2008, edition of the
23 official diocesan newspaper, *The Catholic Light*, an
24 article mentioned the ongoing position taken by the
25 diocese, and again I quote: "The Employee Relations

1 Program is the format for regular dialogue between
2 the Diocese and all school employees. Its
3 implementation is part of the final decision that the
4 Scranton Diocese Association of Catholic
5 Teachers...will not be recognized as a bargaining
6 agent for teachers," unquote.

7 The second basic right, and again I quote:
8 "Employers must not dominate or interfere with the
9 formation or administration of any labor organization
10 or contribute to the financial support of it,"
11 unquote.

12 In fact, the Diocese of Scranton has created
13 an "Employee Relations Program" and completely
14 directs its actions as well as completely funds its
15 operation. This is a company union, a device that
16 would be illegal in any other workplace in America.

17 In 1934, Senator Robert Wagner stood on the
18 floor of the United States Senate to introduce the
19 National Labor Relations Act. He stated, and I
20 quote, "The greatest obstacles to collective
21 bargaining are employer-dominated unions. Such a
22 union makes a sham of equal bargaining power...the
23 worker who cannot select an outside representative to
24 bargain for him suffers...{for} only representatives
25 who are not subservient to the employer with whom

1 they deal can act freely in the interest of the
2 employees."

3 And finally, the third of those basic
4 rights, and again I quote: "Employers must not
5 discriminate in hiring, discharge, or any condition
6 of employment to encourage or discourage membership
7 in unions selected by majority vote."

8 In June of 2008, after 33 years as a teacher
9 with an exemplary record, I was fired from my union
10 activity. Although the diocese alleges that my
11 employment was terminated due to a lack of seniority
12 and a need to reduce staff, the subsequent
13 revelations of a diocesan school administrator who
14 was privy to the discussions that led to my
15 termination has shown otherwise. This
16 "whistleblower" is prepared to state under oath that
17 I was fired for my union activity.

18 Learning the truth of this matter caused me
19 to file charges with the PLRB, which, in accordance
20 with the current laws, had to deny jurisdiction to
21 hear the charges.

22 The fact is, though a legal injury has been
23 done to me, there is nowhere I can now go for relief.
24 This is contrary to the Pennsylvania Constitution,
25 which states, and I quote, "All courts shall be open;

1 and every man for an injury done him in his lands,
2 goods, person or reputation shall have remedy by due
3 course of law; and right and justice administered
4 without sale, denial or delay," unquote.

5 I hope I made it clear to the committee that
6 in the absence of legislation according lay employees
7 of religiously-associated schools the same rights and
8 privileges as are accorded to other workers in the
9 Commonwealth of Pennsylvania, such employers are
10 disadvantaged by being unable to select
11 representatives of their own choosing to bargain on
12 their behalf with their employers and suffer from the
13 same economic burdens as did workers when the
14 Pennsylvania Labor Relations Act was originally
15 adopted.

16 We ask for the same rights as all workers,
17 nothing more and nothing less. Thank you.

18 VICE CHAIRMAN CASORIO: Thank you. Thank
19 you, Mr. Milz, for your testimony.

20 We have also been joined by Representative
21 Seip. We want to welcome him.

22 And we will entertain questions beginning
23 with Chairman DiGirolamo.

24 REPRESENTATIVE DiGIROLAMO: Thank you,
25 Mr. Chairman.

1 Welcome, Rita, Mike.

2 MS. SCHWARTZ: Thank you.

3 MR. MILZ: Thank you.

4 REPRESENTATIVE DiGIROLAMO: Thank you for
5 your testimony.

6 Rita, maybe it is kind of a question for
7 you. And, you know, for full disclosure, I'm a '68
8 grad of Bishop Egan High School, and, you know,
9 I have four children that I put through, went through
10 8 years of St. Ephrem Catholic education, and also
11 all four of them graduated from Catholic high school.

12 And I look at my parish of Saint Ephrem's,
13 and, you know, they have 8 grades, 2 classes for each
14 grade, so that is approximately 16 classes, and I
15 look at the teachers that are there, and most of them
16 have been there since when they taught my kids. They
17 have been there 20, 25, I am assuming 30 years.

18 And I just do not know the answer to this
19 question, and it was a little bit troubling, the one
20 part where you have a teacher that has worked for
21 34 years, I am assuming within the Catholic school
22 system---

23 MS. SCHWARTZ: Yes.

24 REPRESENTATIVE DiGIROLAMO: ---34 years
25 teaching, and she was called in by the pastor and

1 told that she would not be needed for the following
2 year. Is that correct?

3 MS. SCHWARTZ: That is correct.

4 REPRESENTATIVE DiGIROLAMO: She was not
5 34 years at that parish.

6 MS. SCHWARTZ: I'm not quite sure if she was
7 or not, but I knew she was there for quite some time.

8 REPRESENTATIVE DiGIROLAMO: And she was
9 ready to collect her pension. She needed another
10 year?

11 MS. SCHWARTZ: In order to collect your---
12 Well, you have to understand, our pension in the
13 Catholic school system is a 30-percent pension, and
14 for every year under the years of service or the age
15 that you missed, they subtract from that.

16 So when you are 62 and have taught at least
17 30 years, you can collect your 30-percent pension.
18 So she would have been derived of really, clocking
19 from 61 to 65, 4/30ths of her pension just because
20 she was 6 months' shy of a full pension.

21 REPRESENTATIVE DiGIROLAMO: So she was
22 6 months' shy of a full pension.

23 MS. SCHWARTZ: Yes.

24 REPRESENTATIVE DiGIROLAMO: So she would
25 have to look for employment then, I guess, with

1 another school, is what you would probably try to do,
2 correct?

3 MS. SCHWARTZ: Correct.

4 REPRESENTATIVE DIGIROLAMO: If she could
5 find it.

6 MS. SCHWARTZ: If she could find it.

7 And again, think of the parishes who would
8 say, oh, she is making \$44,000; that is an awful lot
9 of money; I'm not going to hire her.

10 REPRESENTATIVE DIGIROLAMO: Because she is
11 at the top end of the pay scale.

12 MS. SCHWARTZ: Because she's at the top,
13 yes.

14 REPRESENTATIVE DIGIROLAMO: It just comes to
15 my mind, is this -- and I have not seen it at any of
16 the parishes in my district -- but is it a problem
17 sometimes when a new pastor comes to a school? Does
18 he have the absolute authority of hiring and firing
19 people?

20 MS. SCHWARTZ: According to the archdiocese,
21 the pastor decides who is hired and who isn't, yes.

22 And that is on a year-to-year basis. There
23 is no such thing as tenure in the elementary schools.
24 You could be, as she was, working all that length of
25 time, be that close to her full pension, and be told,

1 you are not coming back next year.

2 In fact, they are invited. It is sort of
3 demeaning to me after you have been at a school, as
4 you say, at St. Ephrem's for so many years, those
5 teachers are invited every year to come back. They
6 do not have a guaranteed right to a job, because they
7 just go on a year-to-year basis.

8 REPRESENTATIVE DiGIROLAMO: Well, it is up
9 to the pastor then to decide whether they come back
10 or not.

11 MS. SCHWARTZ: That is correct.

12 REPRESENTATIVE DiGIROLAMO: Is it a problem
13 within, let's say the Archdiocese of Philadelphia.
14 Is that a problem at times?

15 MS. SCHWARTZ: I think it has been and it is
16 from time to time. The fact that it can occur and
17 that this call came into me before the end of the
18 year shows me that it is out there, and it should not
19 happen at any time. Even if it is just this one
20 teacher, it should not have happened.

21 REPRESENTATIVE DiGIROLAMO: Okay.

22 As far as -- I do not know if you know the
23 answer to this -- medical benefits go for teachers
24 within the Catholic school system as compared to
25 teachers in the public school system, are they

1 comparable for the most part?

2 MS. SCHWARTZ: The teachers in the
3 elementary schools, I believe, are all covered
4 individually for medical, but if they want family
5 coverage, a lot of them have to pay for that
6 themselves.

7 REPRESENTATIVE DiGIROLAMO: So that they are
8 not really comparable to somebody---

9 MS. SCHWARTZ: No. Oh, absolutely not; no.

10 REPRESENTATIVE DiGIROLAMO: ---say, somebody
11 teaching in the Catholic school system than the
12 public school system.

13 MS. SCHWARTZ: No.

14 REPRESENTATIVE DiGIROLAMO: Okay.

15 Thank you, Mr. Chairman. That is all I
16 have.

17 VICE CHAIRMAN CASORIO: Thank you,
18 Chairman DiGirolamo.

19 Representative Pashinski.

20 REPRESENTATIVE PASHINSKI: Thank you,
21 Mr. Chairman.

22 Thank you, Ms. Schwartz and Mr. Milz.

23 MR. MILZ: Thank you.

24 REPRESENTATIVE PASHINSKI: Could you tell
25 me, how is this pension derived? Do you contribute?

1 MS. SCHWARTZ: No; we have a noncontributory
2 pension. Our employer would put in whatever the
3 pension board tells them percentage-wise. It varies
4 from year to year. It depends on how the plan is
5 doing, I guess. But we have no contributory---

6 REPRESENTATIVE PASHINSKI: No contribution.

7 MS. SCHWARTZ: No.

8 REPRESENTATIVE PASHINSKI: Okay.

9 Do you know how it works for the priests or
10 nuns?

11 MS. SCHWARTZ: They do not have a pension.
12 I know that a number of years ago, the female
13 religious orders paid into Social Security to be able
14 to at least cover their elderly religious under
15 Medicare. But they are not covered by a pension
16 plan.

17 REPRESENTATIVE PASHINSKI: When a priest or
18 a nun retires, and obviously many of them have worked
19 well beyond the normal 65---

20 MS. SCHWARTZ: Yes.

21 REPRESENTATIVE PASHINSKI: ---their living
22 conditions are supplied; their existence is taken
23 care of by the church. Is that correct?

24 MS. SCHWARTZ: Well, for the most part. The
25 religious orders of women, as I said, most of them

1 bought into Social Security so that they would be
2 getting Social Security payments plus Medicare.

3 The priests, as I understand it, they get
4 designated "senior priests," and so they have certain
5 duties around the parish and they get their room and
6 board certainly, and I would imagine they get some
7 type of a stipend.

8 REPRESENTATIVE PASHINSKI: Okay. So you are
9 not totally familiar with that.

10 MS. SCHWARTZ: No.

11 REPRESENTATIVE PASHINSKI: But the nuns have
12 contributed to Social Security?

13 MS. SCHWARTZ: Yes.

14 REPRESENTATIVE PASHINSKI: Okay.

15 And you mentioned there was no tenure.

16 MS. SCHWARTZ: Not for elementary. For high
17 school, yes, because we are unionized, but not for
18 elementary.

19 REPRESENTATIVE PASHINSKI: Oh; I see. So
20 high school has tenure because you are unionized.

21 MS. SCHWARTZ: Well, we negotiated.

22 REPRESENTATIVE PASHINSKI: You have
23 negotiated that.

24 MS. SCHWARTZ: Yes.

25 REPRESENTATIVE PASHINSKI: Okay.

1 Do they work the same amount of hours?

2 MS. SCHWARTZ: Basically they do, yes.

3 REPRESENTATIVE PASHINSKI: Are they paid the
4 same?

5 MS. SCHWARTZ: Absolutely not.

6 REPRESENTATIVE PASHINSKI: They are not paid
7 the same?

8 MS. SCHWARTZ: No. I believe it still takes
9 an elementary teacher in the Archdiocese of
10 Philadelphia about 20 years to make the starting
11 salary of a high school teacher.

12 REPRESENTATIVE PASHINSKI: Okay. All right.
13 Thank you, Ms. Schwartz, and thank you, Mr.
14 Milz.

15 Thank you, Mr. Chairman.

16 VICE CHAIRMAN CASORIO: Thank you,
17 Representative Pashinski.

18 We have also been joined by Representative
19 Cox, who is with us.

20 Representative Waters with a question.

21 REPRESENTATIVE WATERS: Thank you, Mr.
22 Chairman, and thank you, Ms. Schwartz and Michael---

23 MR. MILZ: Milz.

24 REPRESENTATIVE WATERS: Milz. Thank you.

25 The question I have is, I am sure, and I am

1 looking at this here saying that you are with the
2 National Association of Catholic School Teachers. So
3 on the national level, are there any other
4 archdioceses that are unionized?

5 MS. SCHWARTZ: We have about 23 locals in
6 our national from Saint Louis east through Ohio,
7 Pennsylvania, New Jersey, Massachusetts, Connecticut.

8 MR. MILZ: New York.

9 MS. SCHWARTZ: And New York.

10 REPRESENTATIVE WATERS: And they are
11 unionized with a collective bargaining agreement.
12 Are the employees there giving you more positive
13 feedback than elsewhere?

14 MS. SCHWARTZ: Well, more positive feedback
15 in what way, Representative?

16 REPRESENTATIVE WATERS: In terms of---

17 MS. SCHWARTZ: Are they happier in their
18 work? Yes.

19 REPRESENTATIVE WATERS: Do they feel better
20 about their employment?

21 MS. SCHWARTZ: Yes; they do.

22 We do have a very strange thing happening in
23 the Archdiocese of Saint Louis where the high school
24 teachers have been organized, as in Philadelphia, for
25 30 years, and the elementary teachers tried as best

1 they could to organize and they were told by their
2 archbishop that neither he nor any of the parishes
3 would ever recognize a representative to bargain for
4 the elementary teachers.

5 REPRESENTATIVE WATERS: Okay.

6 MS. SCHWARTZ: So again, our problem as
7 Catholic school teachers is that we are basically at
8 the mercy of the bishop of the diocese, as Mr. Milz
9 told you. He is basically at the mercy of his
10 bishop.

11 MR. MILZ: If I might add, there are only
12 three States where Catholic school teachers are
13 covered by law, those being New York, Minnesota, and
14 New Jersey.

15 In Minnesota and New York, there are laws
16 comparable to the law that we hope the General
17 Assembly will adopt.

18 In New Jersey, teachers are covered because
19 there is a statement in the preamble of the
20 New Jersey State Constitution that says that all
21 workers -- and they do not differentiate between
22 religiously-employed workers, just all workers --
23 have a constitutional right to organize and bargain.

24 So in those three States, when teachers want
25 to organize, they have the protection of law.

1 In other States, when teachers approach us
2 and say, can I be fired if I go down this road? We
3 have to say to them, absolutely, because they have no
4 rights otherwise.

5 REPRESENTATIVE WATERS: Well, I am always
6 under the impression that a happy employee is a more
7 productive employee.

8 Have you had a chance to poll the teachers
9 in the area of Philadelphia and wherever else you are
10 trying to organize to find out -- and I know that
11 this is a delicate issue for them, because we do not
12 want to put anybody's employment at risk -- but
13 keeping everyone, you know, anonymous, have you been
14 able to get any feedback as to their support for
15 this?

16 MR. MILZ: I can answer that for my diocese.

17 When the reorganization of the schools took
18 place in the diocese and we were told that we could
19 approach the diocese to gain recognition from these
20 new units, we had collected signed authorization
21 cards.

22 We have signed authorization cards from
23 80 percent of the teachers in the diocese.

24 REPRESENTATIVE WATERS: 80 percent?

25 MR. MILZ: 80 percent.

1 REPRESENTATIVE WATERS: Okay.

2 Thank you, Mr. Chairman.

3 VICE CHAIRMAN CASORIO: Thank you,
4 Representative Waters.

5 Representative Boyd with a question.

6 REPRESENTATIVE BOYD: Thank you, Mr.
7 Chairman.

8 Actually, you answered one of my questions.
9 So 47 other States currently do not have the right to
10 collectively bargain, correct?

11 MR. MILZ: Teachers in religious schools.
12 That is correct.

13 REPRESENTATIVE BOYD: And Ms. Schwartz, too,
14 your point about, back to what Representative
15 Metcalfe made earlier, the key issue is if the union
16 or if the members of the organization vote to
17 unionize 51 to 49, all 100 percent are assessed dues,
18 correct?

19 MS. SCHWARTZ: No.

20 REPRESENTATIVE BOYD: Oh, represented.

21 MS. SCHWARTZ: They are represented by the
22 contract. They are covered as the bargaining unit
23 under the contract. But representation and
24 membership are two totally different things. They
25 can join or not join the union.

1 REPRESENTATIVE BOYD: But will they be
2 assessed union dues?

3 MS. SCHWARTZ: No, not unless they are
4 members of the union.

5 MR. MILZ: Nor in my diocese either.

6 MS SCHWARTZ: No.

7 MR. MILZ: When we organized.

8 REPRESENTATIVE BOYD: Mr. Chairman, I would
9 like to make sure I get clarification on that,
10 because I was under the impression that in
11 Pennsylvania, if you are represented by a union as a
12 closed shop, that you are assessed dues.

13 MS. SCHWARTZ: No.

14 MR. MILZ: May I respond?

15 We are not covered by the labor laws, so
16 again---

17 REPRESENTATIVE BOYD: But if this would
18 become law, then you would be, and those 49 percent
19 that voted not to be unionized would then be assessed
20 dues.

21 MR. MILZ: They would have to be negotiated
22 into a contract.

23 MS. SCHWARTZ: Right.

24 Anytime we have had even an agency-fee
25 stipulation in a contract, it has been negotiated and

1 been agreed to by both parties.

2 REPRESENTATIVE BOYD: I mean, maybe staff
3 could clarify that for us, Jim? I mean, I am not
4 trying to argue with you. What Representative
5 Metcalf was going after was Pennsylvania is not a
6 right-to-work State, which means under other
7 circumstances, those dues are assessed. Maybe it
8 will be something different here that I don't
9 understand, but I think it is worth getting
10 clarification on.

11 MS. SCHWARTZ: And I was not aware you could
12 assess people dues unless, first of all, they signed
13 an authorization; and secondly, that it was part of
14 your collective bargaining agreement.

15 REPRESENTATIVE BOYD: Well, as an example,
16 I know I have some personal friends who are public
17 school teachers who would probably choose not to join
18 the union. However, they still are assessed the
19 dues.

20 Now, they enjoy the benefits of those
21 negotiated contracts, as well you made that point---

22 MS. SCHWARTZ: Absolutely.

23 REPRESENTATIVE BOYD: ---but they are
24 assessed the union dues.

25 MR. MILZ: They are assessed a service fee.

1 They are assessed a service fee, not dues.

2 REPRESENTATIVE BOYD: If it is the same
3 as---

4 MR. MILZ: It is not the same as dues. It
5 is of a lesser amount.

6 VICE CHAIRMAN CASORIO: Yes, Representative
7 Boyd, that is what we have been told, and I am sure,
8 staff just informed me, the fair-share fee. We are
9 getting those, as Representative Pashinski pointed
10 out, and correct me if I am wrong, that would pay for
11 the cost of bargaining, but they would be---

12 MS. SCHWARTZ: And for covering, you know,
13 any type of grievance.

14 VICE CHAIRMAN CASORIO: Right, but they
15 would not have to pay dues.

16 MS. SCHWARTZ: No.

17 VICE CHAIRMAN CASORIO: Correct. And there
18 are now religious exemptions, an exemption for
19 religious employees, as staff tells me, so you are
20 correct.

21 REPRESENTATIVE BOYD: All right.

22 VICE CHAIRMAN CASORIO: Representative Boyd.

23 REPRESENTATIVE BOYD: Okay. Thank you,
24 Mr. Chairman.

25 And--- I think that is all for now.

1 VICE CHAIRMAN CASORIO: Thank you,
2 Representative Boyd.

3 Representative Gergely.

4 REPRESENTATIVE GERGELY: Thank you,
5 Mr. Chairman.

6 You mentioned the three States that have
7 already recognized their labor relations, so this is
8 a State's issue, correct?

9 MR. MILZ: It is.

10 REPRESENTATIVE GERGELY: Has it been
11 challenged in the Supreme Court?

12 MR. MILZ: No.

13 REPRESENTATIVE GERGELY: By those three
14 States and those dioceses from those States?

15 MR. MILZ: It has been challenged in their
16 State Supreme Courts, yes, and you will hear from a
17 later testifier about the outcome. He will give you
18 more detail. But yes, they have been challenged in
19 their State Supreme Courts.

20 REPRESENTATIVE GERGELY: And have been found
21 to be?

22 MR. MILZ: They are okay; they have been
23 found to be---

24 MS. SCHWARTZ: Constitutional.

25 MR. MILZ: Constitutional.

1 REPRESENTATIVE GERGELY: Has it been taken
2 to the Supreme Court?

3 MR. MILZ: In those States. Not the United
4 States.

5 REPRESENTATIVE GERGELY: Not the United
6 States Supreme Court.

7 MR. MILZ: No; they have not.

8 REPRESENTATIVE GERGELY: So it has not moved
9 forward?

10 MR. MILZ: No; it has not.

11 REPRESENTATIVE GERGELY: So we could then do
12 this; it would remain a State's rights issue.

13 MR. MILZ: Correct.

14 REPRESENTATIVE GERGELY: Because I think in
15 the next testifier it is going to refer to the
16 Supreme Court quite often---

17 MR. MILZ: Yes.

18 REPRESENTATIVE GERGELY: ---in recognition
19 and specific States, including Pennsylvania. And one
20 of the things that I found most disturbing was the
21 Cardinal Clause, that you could just be removed for
22 any given -- anything that anybody might want, a
23 priest or a bishop. Is that correct?

24 MS. SCHWARTZ: No. The Cardinal's Clause or
25 the Bishop's Clause, the Faith and Morals Clause, is

1 something that, again, is in the collective
2 bargaining agreement. And we know as Catholic
3 teachers that we need to have a lifestyle that
4 mirrors the teachings of the church. We have never,
5 never had a problem with that.

6 Our problem is when our employers try to
7 hide behind religion and do something where they
8 would terminate somebody and say it is a religious
9 reason and it is not.

10 REPRESENTATIVE GERGELY: That is where I was
11 going with that.

12 MS. SCHWARTZ: Yes.

13 REPRESENTATIVE GERGELY: So there is no
14 defense to that---

15 MS. SCHWARTZ: The Cardinal's Clause itself,
16 we know that going in---

17 REPRESENTATIVE GERGELY: You would accept
18 that?

19 MS. SCHWARTZ: There is not a Catholic
20 teacher's contract that does not have the Faith
21 and Morals Clause in there, and that is not the
22 problem.

23 REPRESENTATIVE GERGELY: As long as it is
24 being used for the appropriate purposes.

25 MS. SCHWARTZ: Absolutely.

1 REPRESENTATIVE GERGELY: That is where I was
2 coming from.

3 Okay. Thank you very much.

4 MS. SCHWARTZ: Thank you.

5 VICE CHAIRMAN CASORIO: Thank you,
6 Representative Gergely.

7 We have also been joined by Representative
8 Mantz.

9 Representative Shimkus with a question.

10 REPRESENTATIVE SHIMKUS: Thank you,
11 Mr. Chairman.

12 I have a question. I think it is for Mike,
13 but, you know, please, Rita, feel free to jump in.

14 You did mention in your opening statement
15 that you are the President of the National
16 Association of Catholic School Teachers, a union with
17 affiliated locals, including the Diocese of
18 Scranton-Wilkes-Barre, and Mike, you represent. So
19 there is a union.

20 MR. MILZ: There is a union. There had been
21 a union that had bargained for teachers with the
22 employer from, in one way or another, between 1978
23 and 2007.

24 When the schools were reorganized, the
25 diocese made a unilateral decision that they would no

1 longer bargain with the union.

2 So the union as a group of teachers
3 organized, ready to bargain, ready to get
4 recognition, ready to prove we represent the majority
5 exists, but we have no one to approach, no method to
6 approach the employer to gain recognition for the
7 union.

8 REPRESENTATIVE SHIMKUS: Now, in several
9 meetings that I have had with officials, and there
10 are officials from the diocese here, I have said and
11 I will continue to say that there is a part of me
12 that is very uncomfortable as a government
13 representative being involved in church affairs. But
14 the reason that I cosigned on to Representative
15 Pashinski's bill and the reason that I have so many
16 questions is because I think, as several testifiers
17 have said, it comes down to a matter of workers'
18 rights.

19 Now, I have a very hard question that I have
20 asked many times before. I do not know that it has
21 been in the press, but it was kind of a shock to me
22 in your testimony, Mike, to read that up to this
23 moment, up until your testimony, I was still under
24 the impression that you were terminated because of
25 what the diocese said was a lack of seniority. But

1 you now say that there is a diocesan school
2 administrator, a whistleblower, who will say that you
3 were fired for union activity.

4 MR. MILZ: Yes.

5 REPRESENTATIVE SHIMKUS: Now, my question
6 is, in everything that we have seen, I have asked and
7 I have asked and I have asked and I have asked, is
8 this, in your opinion, an attempt to break the union
9 that began back in 2006 or earlier?

10 MR. MILZ: Sure. Yes.

11 REPRESENTATIVE SHIMKUS: Because in 2006, we
12 took the authority away from local pastors and
13 created the regional councils. Then we changed some
14 rules that affected your seniority. Then you were
15 gone, and then the union was not recognized. So I
16 kept asking the question, is it union breaking? Is
17 it union busting.

18 MR. MILZ: Sure it is. Absolutely.

19 REPRESENTATIVE SHIMKUS: And you are
20 absolutely convinced of that?

21 MR. MILZ: Absolutely convinced.

22 MS. SCHWARTZ: Yes.

23 REPRESENTATIVE SHIMKUS: Thank you,
24 Mr. Chairman.

25 VICE CHAIRMAN CASORIO: Thank you,

1 Representative Shimkus.

2 Chairman Staback with a question.

3 REPRESENTATIVE STABACK: Thank you,
4 Mr. Chairman.

5 I take this opportunity and say I appreciate
6 the courtesies you have extended to me, as a
7 nonmember of the union, to be an active part of
8 today's hearing.

9 Mr. Milz, on page 3 of your testimony, you
10 talk about your First Amendment rights being
11 infringed upon. Now, I am not certain whether you
12 are talking about those rights in the Scranton
13 Diocese or across the Commonwealth.

14 MR. MILZ: Historically, the right to
15 unionize is based on the First Amendment right to
16 freedom of assembly/association. It is mentioned in
17 the first section of the National Labor Relations
18 Act. That is where the right to organize stems from.
19 That is the decision the lawmakers came to in the
20 1930s, and that has been the basis that has allowed
21 workers to organize ever since. That is that right,
22 the right to freedom of assembly.

23 REPRESENTATIVE STABACK: Okay. So
24 specifically you are saying these rights were denied
25 you by the Diocese of Scranton.

1 MR. MILZ: Exactly. If every other worker
2 has a right to freedom of assembly by organizing and
3 choosing those that they wish to have represent them
4 in collective bargaining and were denied that right,
5 then we are being denied the right to freedom of
6 assembly.

7 REPRESENTATIVE STABACK: Okay. Can you be
8 just a little bit more specific and give me and the
9 committee examples of exactly how, when, and where in
10 the Scranton Diocese your right to assemble was
11 denied you and your right of freedom of speech was
12 denied.

13 MR. MILZ: Sure.

14 We were told, as the diocesan school
15 reorganization took place over the course of the year
16 between 2006 and 2007, that following an existing
17 school policy that provided a method to organize and
18 to get recognition, that we would be allowed to do
19 this.

20 So our right to freely assemble, to form an
21 organization to represent us -- okay? -- was at one
22 time honored by the diocese. Then in January, that
23 right that we thought we possessed was unilaterally
24 negated by the diocese, by our current bishop. He
25 flat-out said he will not recognize any union to

1 represent the teachers.

2 So again, you do not have a right to
3 assemble for the purpose of collective bargaining if
4 the employer says, well, you can form your little
5 group, but we will not recognize that group and will
6 not deal with that group.

7 So to fully have that right to assemble --
8 again, this is not my opinion; this is what the
9 lawmakers have said. You know, if you go back and
10 look at the history of the labor laws, that is the
11 purpose behind the labor laws, so you can fully, to
12 have a right of freedom of assembly, you have to have
13 a right to be able to form a group and have it
14 achieve the purpose for which the group was intended.

15 REPRESENTATIVE STABACK: Did you argue these
16 points with the diocese at that point?

17 MR. MILZ: Well, we did only through the
18 press. We have never been allowed to meet head to
19 head with any diocesan official. We have asked
20 repeatedly. We have asked to meet with the bishop.
21 We have asked to meet with anybody that the bishop
22 has appointed. He will not meet to discuss this. He
23 made the decision and has made it clear publicly over
24 and over that his decision is final; he will not
25 reconsider.

1 REPRESENTATIVE STABACK: Were there any
2 repercussions as a result of going to the press with
3 this?

4 MS. SCHWARTZ: You were fired.

5 MR. MILZ: I was fired for my union activity
6 eventually.

7 REPRESENTATIVE STABACK: Do you think that
8 was the reason you were fired?

9 MR. MILZ: I know for a fact it is.

10 REPRESENTATIVE STABACK: Was that ever
11 refuted by the diocese?

12 MR. MILZ: Oh, they refuted it and they
13 continue to refute it, and that is why, if there was
14 a method to put people under oath to hear testimony
15 to that effect, the truth would come out. But right
16 now, there is no place for me to go.

17 REPRESENTATIVE STABACK: Okay.

18 MR. MILZ: The Pennsylvania Labor Relations
19 Board turned down my case. There is no other court
20 that I can approach to make a claim.

21 REPRESENTATIVE STABACK: Okay. Thank you,
22 Mr. Chairman.

23 VICE CHAIRMAN CASORIO: Thank you,
24 Chairman Staback.

25 With a question, Representative DePasquale.

1 REPRESENTATIVE DePASQUALE: Thank you,
2 Mr. Chairman.

3 I think the first question would go to Rita.
4 You described that it takes 20 years for the
5 elementary school teacher in Philadelphia to equal
6 the pay of the high school teacher in the parochial
7 schools. I just wanted to make sure I understand
8 that that is what you stated.

9 MS. SCHWARTZ: That is what I stated.

10 REPRESENTATIVE DePASQUALE: And at least in
11 the public school system, now, there sometimes can be
12 varied rules depending on, you know, kindergarten,
13 high school, et cetera, but the contract is
14 school district-wide.

15 MS. SCHWARTZ: Correct.

16 REPRESENTATIVE DePASQUALE: Was it designed,
17 I mean, is there basically a -- I know you talked
18 about there is an individual contract and an
19 invitation to come back each year, but how is it that
20 the high school teachers have received that level of
21 pay higher than the elementary?

22 MS. SCHWARTZ: Because since 1968, the high
23 school teachers had been unionized and have been
24 negotiating collective bargaining agreements. The
25 elementary teachers have no union, have no

1 representation, have only the contract that, if they
2 have something written at all that they sign, is
3 presented to them by the employer who has made up the
4 contract.

5 REPRESENTATIVE DePASQUALE: Following up on
6 that point, when the high school organized, why did
7 the elementary not organize at the same time? Did
8 they choose not to, or was there a campaign that
9 succeeded at one level and didn't succeed at another
10 level?

11 MS. SCHWARTZ: When the high school teachers
12 first unionized, we met with the elementary teachers
13 and it was decided that the high school teachers
14 would go first and kind of get a foothold, and then
15 we would work with the elementary teachers and bring
16 them in, because---

17 REPRESENTATIVE DePASQUALE: But that was
18 1968.

19 MS. SCHWARTZ: That was 196--- Well, it was
20 really 1967 when we started that, and there were, at
21 that time, 32 Catholic high schools and there were
22 over 300 elementary schools.

23 REPRESENTATIVE DePASQUALE: Right; right.

24 MS. SCHWARTZ: So it was a logistics
25 question, too.

1 REPRESENTATIVE DePASQUALE: Has any effort
2 developed since '67 to begin to organize the
3 elementary schools?

4 MS. SCHWARTZ: Oh, please, I cry very
5 easily. Yes. There have been, over the last
6 30 years, repeated attempts to organize and to work
7 with the elementary teachers. We have been to the
8 Pennsylvania Labor Relations Board, to the National
9 Labor Relations Board---

10 REPRESENTATIVE DePASQUALE: Let me stop you
11 there.

12 So many teachers -- it is not as if the
13 teachers chose not to go down that path.

14 MS. SCHWARTZ: Oh, no; they definitely did.
15 And we even had a group of teachers from a parish in
16 South Philadelphia who were so adamant about wanting
17 their own contract that basically they lost their
18 jobs. The entire school was replaced because these
19 teachers would not sign the unilateral document
20 presented to them by their pastor.

21 REPRESENTATIVE DePASQUALE: Has there ever
22 been an effort -- and if this is speculative, then
23 you can choose not to answer, and that is fine -- to
24 try to get the high school to go back on organizing,
25 to get the teachers to change their minds?

1 MS. SCHWARTZ: Has anybody ever tried to do
2 that?

3 REPRESENTATIVE DePASQUALE: Has there been
4 an effort from the diocese to do that?

5 MS. SCHWARTZ: No, never.

6 REPRESENTATIVE DePASQUALE: So they have
7 accepted that the high school union have just
8 negotiated in good faith from when they have
9 organized.

10 MS. SCHWARTZ: Absolutely. And what they
11 did was, though, the parishes, in order to keep the
12 elementary teachers from organizing, made them, you
13 know, as a precondition, sign this Statement of
14 Principles and make us sign this Statement of
15 Principles that said we had to sign away their right
16 to due process before we could even talk about
17 unionization. Well, would you vote for my union if I
18 signed away your right to due process? I don't think
19 so.

20 REPRESENTATIVE DePASQUALE: So at the end of
21 the day, there is a higher pay scale in the high
22 school and a close to 30-, well, now close to a
23 41-year organized effort, and the elementary
24 basically have been blocked.

25 MS. SCHWARTZ: Yes.

1 REPRESENTATIVE DePASQUALE: What type of
2 campaign would you describe -- and this may go now to
3 either one of you -- when teachers look to organize
4 in any diocese, whether it be Philadelphia or beyond,
5 what type of campaign, does it go by diocese by
6 diocese on whether there is an organized campaign to
7 try to stop it or because some, you know, bishops may
8 be okay with it and some may not? Is it a
9 diocese-by-diocese situation?

10 MS. SCHWARTZ: It is always a
11 diocese-by-diocese, because the bishop basically, it
12 is like your own kingdom.

13 REPRESENTATIVE DePASQUALE: Right.

14 MS. SCHWARTZ: Yes.

15 REPRESENTATIVE DePASQUALE: But, I mean, in
16 some instances, it has gone rather smoothly though.

17 MS. SCHWARTZ: Yes.

18 REPRESENTATIVE DePASQUALE: From an
19 educational standpoint, has there ever been an
20 analysis done on the educational outcomes of schools
21 that are organized versus not organized?

22 I mean, have we seen any appreciable -- now,
23 I know it is tough comparing like what you described
24 in Philadelphia where you have an elementary and a
25 high school, so we are not dealing with the same

1 exact student body, but has there ever been an
2 analysis to determine or at least give a snapshot of
3 whether we see any difference in educational
4 outcomes?

5 MS. SCHWARTZ: I do not know that anyone has
6 ever done that. I do know that a former
7 superintendent of schools in Philadelphia, who later
8 went on to become Archbishop of New Orleans, was
9 very, very profuse in his saying that the union
10 made the schools better. That was Archbishop
11 Francis Schulte.

12 REPRESENTATIVE DePASQUALE: And yet he is
13 someone who, at one point, would have at least been
14 on the other side of that, at least from a management
15 standpoint.

16 MS. SCHWARTZ: He was on the other side of
17 the table negotiating with me, yes.

18 REPRESENTATIVE DePASQUALE: The teachers
19 that teach at the high school in Philadelphia, would
20 they at some level come before us or at least write
21 letters that say that they believe that they are able
22 to perform better as teachers because they are
23 organized?

24 MS. SCHWARTZ: I am sure they would,
25 yes.

1 REPRESENTATIVE DePASQUALE: And I understand
2 that they would likely be in a position where they
3 couldn't, but you would feel comfortable stating in
4 this position that the teachers in the elementary
5 school feel that they are not in a strong position
6 because of their lack of ability to organize. Is
7 that correct?

8 MS. SCHWARTZ: Representative, I get calls
9 so often from elementary teachers, and they won't
10 even tell me their names. They are so fearful
11 that something is going to happen. Maybe it is a
12 half hour into the conversation that I finally find
13 out who they are. And it is, to me, very distressing
14 that, you know, we are supposed to be all about love,
15 and I see an awful lot of fear.

16 REPRESENTATIVE DePASQUALE: A final
17 question.

18 What is the turnover rate in the
19 Philadelphia Elementary compared to the Philadelphia
20 High School system?

21 MS. SCHWARTZ: Well, with the job market
22 right now, I'm not sure, but it has usually been
23 25 percent a year.

24 REPRESENTATIVE DePASQUALE: At the
25 elementary.

1 MS. SCHWARTZ: Yes.

2 REPRESENTATIVE DePASQUALE: What about the
3 high school?

4 MS. SCHWARTZ: High school, well, again,
5 with the high, very high salaries in the suburban
6 elementary schools, we are seeing a number of our
7 teachers -- we used to be able to have a pretty
8 steady group, but now what we are seeing, especially
9 the younger teachers, it is kind of just pass
10 through.

11 REPRESENTATIVE DePASQUALE: So, I mean, you
12 would describe it as they sometimes can come in as
13 sort of their training ground and then go on to the
14 higher paid suburban schools in Philadelphia---

15 MS. SCHWARTZ: Correct.

16 REPRESENTATIVE DePASQUALE: ---afterwards
17 as a way to get a higher pay and more secure
18 employment.

19 MS. SCHWARTZ: Right, which is not what we
20 are looking for at all.

21 REPRESENTATIVE DePASQUALE: Okay. Thank
22 you.

23 I have no more questions, Mr. Chairman.

24 VICE CHAIRMAN CASORIO: Thank you,
25 Representative DePasquale.

1 And as the last question for Ms. Schwartz
2 and Mr. Milz and a follow-up to his first question,
3 Chairman DiGirolamo.

4 REPRESENTATIVE DiGIROLAMO: Thank you,
5 Mr. Chairman.

6 Rita, again -- and I'm trying to get a grasp
7 of this myself and learn -- would I be safe to
8 assume, and just looking at the Archdiocese of
9 Philadelphia, that a teacher who teaches biology with
10 20 years' experience at St. Hubert's makes the same
11 salary as a teacher who is teaching at Conwell-Egan
12 with 20 years of experience?

13 MS. SCHWARTZ: Yes.

14 REPRESENTATIVE DiGIROLAMO: Would they make
15 exactly---

16 MS. SCHWARTZ: With the same educational
17 background, yes.

18 REPRESENTATIVE DiGIROLAMO: With the same
19 credentials?

20 MS. SCHWARTZ: It is one salary negotiated
21 for the 20 high schools.

22 REPRESENTATIVE DiGIROLAMO: But it is
23 entirely different within the elementary school
24 system. Is it possible that a third-grade teacher
25 teaching at Queen of the Universe can make

1 significantly more or less than a third-grade teacher
2 teaching at St. Rita's?

3 MS. SCHWARTZ: Generally not,
4 Representative, because there are archdiocesan
5 guidelines---

6 REPRESENTATIVE DiGIROLAMO: Okay.

7 MS. SCHWARTZ: ---for the salary scale, and
8 I would like to think that they would go above that.
9 But I'm pretty sure that most parishes keep right to
10 that.

11 REPRESENTATIVE DiGIROLAMO: When you say
12 there are guidelines, guidelines on the bottom of the
13 scale---

14 MS. SCHWARTZ: Well, there's a salary listed
15 as a guideline for, like, if you were a 20th-year
16 teacher, that would be probably what teachers would
17 be paid. I doubt that they would get a much higher
18 salary than that.

19 REPRESENTATIVE DiGIROLAMO: Okay.

20 Thank you, Mr. Chairman.

21 VICE CHAIRMAN CASORIO: Thank you,
22 Mr. Chairman.

23 Ms. Schwartz, Mr. Milz, thank you for your
24 testimony today.

25 MS. SCHWARTZ: Thank you.

1 MR. MILZ: Thank you.

2 VICE CHAIRMAN CASORIO: Our next testifiers
3 will be Dr. Robert J. O'Hara, Jr., Executive
4 Director, Pennsylvania Catholic Conference,
5 and Philip J. Murren, Esq., Ball, Murren &
6 Connell.

7 I think, Dr. O'Hara, once you are settled
8 in, we are ready to begin with you.

9 DR. O'HARA: Thank you, Mr. Vice Chairman.

10 I have nine pages of testimony, and I will
11 not be reading them.

12 VICE CHAIRMAN CASORIO: Very good. Thank
13 you.

14 DR. O'HARA: I will, however, say a few
15 words about some of what is in there.

16 Mr. Chairman, members of the Pennsylvania
17 House Labor Relations Committee, Representative
18 Pashinski and Representative Staback and other
19 members that are here, my name is Robert J. O'Hara,
20 Jr. I am Executive Director of the Pennsylvania
21 Catholic Conference.

22 The Pennsylvania Catholic Conference is the
23 public affairs agency that speaks officially for the
24 Catholic Dioceses of Pennsylvania on issues of public
25 policy in this Commonwealth.

1 With me is Philip J. Murren of the law firm
2 of Ball, Murren & Connell. Mr. Murren has served as
3 legal counsel to the Pennsylvania Catholic Conference
4 since 1977.

5 He has been directly involved in each
6 litigation in the State and Federal courts in this
7 Commonwealth since 1976 that has related to the
8 constitutionality of the exercise of jurisdiction
9 over Catholic schools by governmental labor relations
10 agencies.

11 Let me say that up until now, you have heard
12 a lot about teachers' rights, and I think that they
13 are very important, and I represent the Catholic
14 Church in Pennsylvania. The Catholic Church
15 recognizes teachers' rights and people's rights and
16 certainly does not set out in any way to harm
17 employees that work for the Catholic Church in
18 Pennsylvania.

19 I think you also have to look at this issue
20 from the church's point of view. The Catholic Church
21 has established its schools as the principle means of
22 transmitting the Catholic faith to new generations of
23 Catholics.

24 Our schools are different from our
25 charities, are different from our hospitals. We do

1 things in our charities and in our hospitals because
2 we want to do good, because we want to help the poor
3 and the vulnerable.

4 In our schools, we evangelize. We try to
5 teach the gospel. We are spreading the faith in our
6 schools.

7 The whole life of a Catholic school should
8 be directed to religious ends. This, of course, is
9 most dramatically reflected in the teachers who
10 integrate the gospel into their private and
11 professional lives.

12 They are the lifeblood of the teaching
13 ministry. In effect, a person who chooses to work in
14 a Catholic school chooses to be a minister of the
15 gospel.

16 Civil courts have repeatedly recognized that
17 Catholic and other religious schools, unlike public
18 or nonsectarian schools, exist for a religious
19 purpose to which everything in the life and the
20 operation of the school is subordinate.

21 The Pennsylvania General Assembly gave the
22 Pennsylvania Labor Relations Board the legal
23 authority to compel nonprofit employees in
24 public school districts to bargain with unions in
25 1970.

1 Now, in 1970, there were a lot of lay
2 teachers in Catholic schools. As a matter of fact, I
3 hesitate to say it, but I think that certainly at
4 that point, we were certainly pushing 50 percent.
5 However, the Pennsylvania General Assembly declined
6 to include lay teachers in Catholic schools in their
7 law.

8 The Pennsylvania Labor Relations Board
9 customarily oversees collective bargaining and
10 employee discipline between employers and employees
11 concerning all of the terms and conditions of
12 employment. However, in religious schools, many of
13 those terms and conditions of employment are
14 religiously sensitive.

15 In a Catholic school, the terms and
16 conditions of employment relate not only to what
17 doctrine is taught but also how it is taught, by whom
18 it is taught, and how the truth of those teachings
19 are demonstrated by the example of the teachers
20 themselves.

21 Although our dioceses are not required by
22 law to have unions, most of them do. But even in
23 those ones that do, there is no negotiating over
24 those terms and conditions of employment that impact
25 upon the religious integrity or Catholic identity of

1 the school or the authority of the religious
2 officials to interpret and apply church laws to
3 determine the best way to accomplish the school's
4 religious mission.

5 To give you an example, all of Pennsylvania
6 dioceses include a Cardinal's Clause, and these are
7 included in their lay teachers' contracts. Under
8 such clauses, each diocese reserves the right to
9 immediately dismiss a teacher for conduct that is
10 incompatible with the role of the teacher as a
11 witness to the gospel of Jesus Christ.

12 You can also be dismissed for words or
13 conduct that result in the giving of scandal to the
14 school's faith community or that constitute a public
15 rejection of the doctrines, teachings, religious
16 principles, or laws of the Catholic Church.

17 These clauses cannot be bargained over since
18 they are a key means of ensuring the fidelity of
19 Catholic teachings, nor should they be set aside by a
20 government agency that believes that they are a
21 pretext for some illicit motive.

22 The Catholic Church is governed by its code
23 of canon law and by statutes that are adopted by the
24 individual diocese. These laws have been developed
25 and refined in the course of 2,000 years. Thus, the

1 church has objected to the presence of governmental
2 agencies acting as a referee over relationships
3 within the religious-faith community, such as a
4 Catholic school.

5 For decades, teachers' unions have sought to
6 invoke the jurisdiction of the National Labor
7 Relations Board and the Pennsylvania Labor Relations
8 Board over collective bargaining matters in Catholic
9 schools in Pennsylvania.

10 In addition to having been denied by the
11 Pennsylvania General Assembly, as seen in the 1970
12 Public Employe Relations Act, thus far, each attempt
13 in Pennsylvania has also been rebuffed by the courts.

14 In 1977, a Federal district court issued an
15 injunction preventing the National Labor Relations
16 Board from certifying the union to represent teachers
17 in the elementary schools in the Archdiocese of
18 Philadelphia.

19 Similarly, in 1978, another Federal district
20 court reached the same conclusion on a claim by the
21 National Labor Relations Board on a petition filed by
22 the teachers' union at Bishop Hoban High School in
23 the Diocese of Scranton.

24 Ultimately, the Supreme Court of the United
25 States definitively ruled that the National Labor

1 Relations Board lacked jurisdiction over labor
2 relations between lay teachers and Catholic schools.

3 After being turned away from the Federal
4 labor relations jurisdiction, a teachers' union in
5 the Archdiocese of Philadelphia sought the
6 Pennsylvania Labor Relations Board's jurisdiction.

7 That attempt was turned away by the Supreme
8 Court of Pennsylvania, holding that the
9 Pennsylvania's 1970 Public Employe Relations Act did
10 not apply to Catholic schools.

11 At this point, I would like to turn it over
12 to Mr. Murren for a few minutes so that he can
13 highlight the impact that House Bill 2626 would have
14 on all our religious schools in Pennsylvania.

15 MR. MURREN: Thank you, Mr. Chairman.

16 First let me say that we do have
17 representatives of the Diocese of Scranton here today
18 to testify in a later panel, and they will address
19 specifically what Mr. Milz had asserted as his
20 treatment, the nature of his treatment and the nature
21 of the treatment of the union that he represents in
22 the Diocese of Scranton.

23 What I am going to address right now is the
24 constitutional issues with respect to the assertion
25 of governmental jurisdiction over labor relations in

1 Catholic schools.

2 You have a law, the Pennsylvania Labor
3 Relations Act, that mandates certain things of
4 employers and gives certain protections to workers,
5 but the referee in every case is going to be a
6 governmental agency.

7 There are terms and conditions of employment
8 within Catholic schools that are, as Dr. O'Hara,
9 said, religiously sensitive. They are religiously
10 sensitive because they originate in the doctrines,
11 teachings, values, laws, customs, and traditions of
12 the Catholic Church that have been developed over
13 2,000 years.

14 If you subject Catholic schools to the
15 jurisdiction of the PLRB, those schools, the Catholic
16 schools, will be compelled to bargain with teachers'
17 unions over every term and condition of their
18 employment.

19 There is a limited exclusion for religious
20 doctrine and organizational structure, but even that
21 is within the determination of the Labor Relations
22 Board as to what constitutes religious doctrine or
23 organizational structure, that neither have very
24 limited exclusions. And in fact they are illusory,
25 because the bill would allow the PLRB to set aside

1 religious doctrine or church structure so long as the
2 PLRB in its own discretion finds that the doctrine or
3 church principle is a pretext.

4 So even under House Bill 2626 with its
5 limited exclusions, the PLRB could still examine
6 whether a church's espousal of religious doctrine --
7 as Ms. Schwartz said, hiding behind religion -- is a
8 pretext for an action that is challenged as an unfair
9 labor practice.

10 The PLRB could also set aside religious
11 disciplinary decisions based on what would be church
12 laws, policies, or practices as opposed to church
13 doctrine that illustrates that the doctrine exclusion
14 is much too narrow.

15 The PLRB could also examine whether the
16 asserted religious grounds for an employment action
17 is a pretext for an unfair labor practice.

18 And because of the exclusion of this law to
19 the review that the General Assembly adopted under
20 the Religious Freedom Protection Act, the PLRB would
21 be free to substantially burden the religious
22 liberties of any religious employer without having to
23 establish a compelling State interest in doing so.

24 Now, these exclusions are much too narrow to
25 protect the full range of religiously-sensitive

1 matters within a Catholic school. The pretext
2 inquiry itself is an outright invitation for the
3 State to second-guess religious authorities on
4 religious issues and to substitute its judgment for
5 that of the church authorities.

6 House Bill 2626 would allow the PLRB to
7 override religious doctrine when, in the judgment of
8 the PLRB, religious doctrine was utilized as a
9 pretext for a refusal to bargain or for some other
10 form of unfair labor practice.

11 The pretext inquiry would require the PLRB
12 to choose whether to believe church officials about
13 doctrinal matters or not. It would invite dissenting
14 teachers and their representatives to question the
15 good faith, integrity, and authority of those church
16 officials.

17 Moreover, it will entangle a governmental
18 agency in disputes over whether a diocese's view of
19 doctrine is authoritative or is in error.

20 Now, all of these effects were identified by
21 the courts in the *Catholic Bishop of Chicago* cases,
22 both in the Seventh Circuit and in the U.S. Supreme
23 Court, and in the two Federal cases that were brought
24 at the insistence of labor unions in the Commonwealth
25 of Pennsylvania.

1 They were identified and warned against by
2 these courts on constitutional grounds. Those
3 warnings are very clear. They have not changed,
4 and they are not eliminated by the exclusions in
5 House Bill 2626.

6 If House Bill 2626 is adopted, then the
7 General Assembly has provoked a church-State
8 confrontation of constitutional proportions and it
9 will be litigated, and that litigation is wasteful
10 and unnecessary if you would but read what the
11 Supreme Court warned against in the *Catholic Bishop*
12 *of Chicago* case in 1979.

13 Thank you.

14 VICE CHAIRMAN CASORIO: Thank you,
15 Mr. Murren.

16 And just let me remind the members, as I
17 have been reminded by staff, that we are some four
18 panels behind now, about an hour and 15 minutes
19 beyond our schedule.

20 So if the members would please keep their
21 questions brief. If there are any lengthy questions,
22 we would certainly entertain them in writing and do a
23 follow-up.

24 Representative Gabig for questions for
25 Dr. O'Hara and Attorney Murren.

1 REPRESENTATIVE GABIG: Thank you,
2 Mr. Chairman.

3 Thank you for serving as Acting Chairman
4 today, and thank you for permitting the prime sponsor
5 and others to sit on and ask questions on our panel.

6 I think that is fair, and I think it has
7 been a custom of our institution, although I have
8 served on committees where it was denied the right.
9 So I do appreciate your fairness.

10 In that -- although I notice they both are
11 Democrats and so are you all -- the question I have
12 has to do with finally what I think we are getting
13 to, not whether you are prounion or antiunion or this
14 or that. You know, you can go down that road
15 forever, and we can be here many, many panels beyond
16 what we have been.

17 I would like to take a look at this act. It
18 was handed to me by my Chairman, and it just seems
19 very, very disturbing to me. I do not think it is
20 accomplishing anything of what we heard was the
21 intent of it, and I think it is extremely dangerous.

22 I look at section (d) on page 5: "This
23 section shall apply notwithstanding the provisions of
24 the act...known as the 'Religious Freedom Protection
25 Act.'" It is a direct attack on our State's

1 Religious Freedom Protection Act. That is what this
2 proposed bill is. It is restricting the religious
3 freedoms and liberty of every citizen in the
4 Commonwealth of Pennsylvania. That is what they are
5 trying to do here under a pretext of some other
6 motive, in my humble opinion.

7 When I look up here and I see the proposed
8 bill under Section 2, Section 10.2, "Disputes
9 Involving Religious Employers," "In disputes
10 involving a religious employer," this proposed bill
11 says, "the board" -- meaning the Labor Relations
12 Board, I assume -- "may neither define nor interpret
13 religious doctrine." But, and here is the big "but"
14 monkey, "The board may inquire into whether the
15 espoused" -- whatever that is -- "doctrine is a
16 pretext for the action of the employer."

17 And then when you go to (b), "Where the
18 evidentiary record before the board shows that a
19 religious employer made an employment decision based
20 on religious grounds" -- now, I don't know what
21 "evidentiary record" means; somebody comes up and
22 says hearsay and everything else that we have heard
23 in here -- "on religious grounds...." So the board
24 is going to be sitting there deciding, is this
25 religious or is this not religious?

1 For example, say a churchman that has a
2 school, a bishop, a Catholic bishop -- in my area, I
3 have a lot of Protestant schools, Christian schools
4 -- say they say we have to reduce the number of
5 schools, say they have to reduce salaries, because
6 otherwise, we would have to close a number of schools
7 and people will be denied religious education, and in
8 order to do that, some people are going to have to
9 suffer for the greater good, the common good. They
10 make that decision. Is that a religious ground? And
11 can the board then say, no, you can't do that?

12 That is what is wrong with this bill, and I
13 just ask the panel if they agree with me or not.

14 DR. O'HARA: That is a long question.

15 REPRESENTATIVE GABIG: You can give me a
16 short answer.

17 DR. O'HARA: Well, then maybe I'll turn it
18 over to our lawyer, who can speak very quickly.

19 MR. MURREN: There are certain things that I
20 think I would definitely agree with in your question,
21 Representative Gabig.

22 I think that the specific exclusion or
23 exemption from the application of the standard
24 established in the Religious Freedom Protection Act
25 is actually a tacit acknowledgment that this bill

1 will burden the religious liberties of church
2 employers.

3 And I think it is clear from the evidentiary
4 record made in all of the cases that went before here
5 that the courts believed that there would be
6 substantial burdens on religious liberties if
7 government agencies were to become the referees
8 of employment relations within Catholic
9 schools.

10 Catholic teaching ministries are not like
11 secular employers. They get their life from their
12 religious ministry, from religious mission and
13 purpose, and you take that back theologically all the
14 way to divine revelation, and that is a serious set
15 of circumstances, a serious set of obligations, for
16 the people who establish and maintain Catholic
17 schools.

18 Remember also that there is not an unlimited
19 well of resources that churches, especially
20 individual parishes, have to establish and maintain
21 these schools. They struggle. They perform heroic
22 attempts to try to keep these schools open for the
23 greater good of the community as a whole.

24 They do what they can with what they have.
25 They do not have unlimited access. They do not have

1 the taxing power. They cannot be judged by the same
2 standards that public schools may be.

3 REPRESENTATIVE GABIG: Thank you,
4 Mr. Chairman.

5 VICE CHAIRMAN CASORIO: Thank you,
6 Representative Gabig.

7 Representative Gergely.

8 REPRESENTATIVE GERGELY: Just a quick
9 follow-up. Thank you, Mr. Chairman.

10 You had stated that you would believe you
11 would challenge this to the Supreme Court. Is that
12 correct, sir?

13 MR. MURREN: If this bill were adopted, I am
14 sure that the Catholic Dioceses in Pennsylvania would
15 not rest until it was tested all the way.

16 REPRESENTATIVE GERGELY: All the way.

17 And in the three States that this is already
18 recognized, I suppose there's an incredible
19 stranglehold now, the way that you are already
20 asserting?

21 MR. MURREN: In New Jersey, we tried to --
22 in preparation for this hearing, we spoke with
23 diocesan attorneys from the various States that were
24 involved. There are still confrontations and
25 conflicts that occur in those States.

1 New Jersey is a different circumstance
2 altogether, because it is not a Labor Relations Board
3 operating under a Labor Relations Act. It is a
4 court-administered type of circumstance, and they
5 were talking in that case about bargaining over
6 secular wages and compensation and things of that
7 nature. House Bill 2626 does not exclude that at
8 all.

9 We were told that in the State of Minnesota,
10 at least, by the counsel for the Archdiocese of
11 Minneapolis-Saint Paul that there is only one union
12 in one school in that State. So their experience
13 there, they find, is relatively limited, and they
14 cannot really project on a greater level than that.

15 REPRESENTATIVE GERGELY: And in New York?
16 No?

17 MR. MURREN: New York, we didn't really get
18 much feedback on that level, but even in New York in
19 the decision that was issued there, the court said
20 that inquiry into pretext is out; it is out of
21 bounds.

22 REPRESENTATIVE GERGELY: Okay.

23 I think for both interested parties, more
24 follow-up from the States that already have adopted
25 somewhat what we are looking at, including those

1 advocates for this, should follow up with those
2 respective States with some more information for us
3 to review so we can further look at that.

4 MR. MURREN: Okay. I'd be happy to do so.

5 REPRESENTATIVE GERGELY: Thank you very
6 much. I appreciate it.

7 VICE CHAIRMAN CASORIO: Thank you,
8 Representative Gergely.

9 Representative Pashinski with a
10 question.

11 REPRESENTATIVE PASHINSKI: Thank you, sir.

12 Thank you for your testimony. Just a couple
13 of quick things here.

14 If by some chance a priest or nun falls and
15 breaks a bone, what is the process after that? What
16 happens?

17 DR. O'HARA: Breaks a bone, did you say?

18 REPRESENTATIVE PASHINSKI: Yeah; they need
19 some medical assistance in that.

20 DR. O'HARA: They would go to a doctor, and
21 depending on whether or not they have the means to
22 pay for it and take care of it themselves, they
23 would.

24 REPRESENTATIVE PASHINSKI: Who would pay for
25 that?

1 DR. O'HARA: Well, they could themselves.
2 Depending if they are in a religious order and taken
3 a vow of poverty, then very likely the religious
4 order would pay for it.

5 If they are a diocesan priest, they may have
6 their own means. There is nothing to prevent them
7 from having their own means.

8 Beyond that, they would have to turn to
9 their bishop to help them; then he would have to pay.

10 REPRESENTATIVE PASHINSKI: Okay. In any
11 case---

12 DR. O'HARA: And they would probably have
13 insurance through their diocese, but I cannot speak
14 specifically to every diocese.

15 REPRESENTATIVE PASHINSKI: And how is that
16 paid for?

17 DR. O'HARA: That would very likely be paid
18 for by the bishop and the diocese.

19 REPRESENTATIVE PASHINSKI: And where does
20 that money come from?

21 DR. O'HARA: From collections and charity.

22 REPRESENTATIVE PASHINSKI: Okay.

23 If a layperson working for the diocese
24 fell and broke their leg, what would their process
25 be?

1 DR. O'HARA: Hopefully the diocese would
2 have insurance upon them also.

3 REPRESENTATIVE PASHINSKI: The diocese would
4 have the insurance.

5 DR. O'HARA: Hopefully. I mean, as
6 Mr. Murren has just said, depending on the particular
7 parish, depending on their particular situation, they
8 may or may not be able to afford certain levels of
9 insurance and they may or may not be able to pay them
10 to various standards.

11 REPRESENTATIVE PASHINSKI: Okay.

12 If their injury was such that they would be
13 unable to work, could they apply for workmen's
14 compensation?

15 DR. O'HARA: Yes.

16 REPRESENTATIVE PASHINSKI: Disability?

17 DR. O'HARA: Yes.

18 REPRESENTATIVE PASHINSKI: They could do
19 that?

20 DR. O'HARA: I believe that just workers'
21 compensation is -- I think every diocese other than
22 the Diocese of Greensburg, which the Diocese of
23 Greensburg has a system very akin to workers'
24 compensation but it does not directly work with the
25 workers' compensation program in this State, but all

1 the other dioceses do.

2 REPRESENTATIVE PASHINSKI: If that priest or
3 nun was disabled for any length of time, could they
4 apply for workmen's compensation?

5 DR. O'HARA: I believe they are also
6 covered.

7 REPRESENTATIVE PASHINSKI: Disability?

8 DR. O'HARA: I believe they are also
9 covered. We pay into that for them, too.

10 REPRESENTATIVE PASHINSKI: Okay.

11 You know, in the process of trying to
12 put together a piece of legislation that is fair,
13 you know, this particular document can be
14 altered.

15 When we talked about the doctrine and the
16 exclusion, you said it is too narrow. How would you
17 broaden that? Is it possible to broaden, in your
18 mind?

19 MR. MURREN: I do not think that just by
20 broadening the exclusion you eliminate the threshold
21 problems, and the threshold problems begin with
22 certification, government certification, of a
23 collective bargaining agent. And that is a
24 collective bargaining agent of the employee's own
25 choosing.

1 And there is nothing in this law, this
2 statute, that would require teachers in any
3 particular school to vote for Ms. Schwartz's union.
4 They could vote for another union. They could vote
5 for a union that may hold views on moral issues that
6 are antithetical to church teachings, and this
7 legislation would force the diocese to accept that
8 union.

9 REPRESENTATIVE PASHINSKI: Okay.

10 In the process of doing business here in
11 Harrisburg, and there are countless problems that
12 come before us, and each one of us struggle with a
13 way to try to correct them, would you agree that
14 there is some justification here on the part of those
15 that are striving for this equalization with respect
16 to those that you employ, the teachers?

17 MR. MURREN: Would you like to answer that?

18 DR. O'HARA: I believe that we have
19 House Bill 2626 in front of us and we have certain
20 concerns with that. I am not sure what you are
21 getting at.

22 Do I believe that certain things should be
23 done? Is that what you are saying?

24 REPRESENTATIVE PASHINSKI: Well, what I am
25 saying is, in order for us to try to develop a

1 balance and to do a little give and take, as the
2 prime sponsor of this legislation, I am willing to
3 listen to both sides to see if we can refine it.

4 DR. O'HARA: Okay.

5 REPRESENTATIVE PASHINSKI: Once again, this
6 came about because of a conflict that occurred within
7 the district, and that is why I asked the question,
8 you know, to what degree could we change the doctrine
9 exclusion? Is there any room for that? Can this
10 particular piece of legislation be modified, which it
11 could be a working document that would benefit both
12 sides. That is what I am looking for.

13 DR. O'HARA: Well, I think we see a lot of
14 problems with this document, because essentially the
15 legislation itself interjects the State as an arbiter
16 between a bishop and his minister, if you look at it
17 that way.

18 REPRESENTATIVE PASHINSKI: But we---

19 DR. O'HARA: And as I started this
20 discussion out, you know, we have been looking at
21 this as though we have a combative relationship
22 between employees and employer.

23 REPRESENTATIVE PASHINSKI: Did you say
24 "combative"?

25 DR. O'HARA: Yes, and that seems to have

1 been the discussion up to this point.

2 You have heard complaints about the Catholic
3 Church and how it treats its employees, and I would
4 suggest that in this particular instance, the
5 Catholic Church, its mission in education is that of
6 ministers, in effect, ministers of the gospel. These
7 are people who teach the faith.

8 The purpose of Catholic education is to
9 evangelize and teach the gospel, and to interpose a
10 referee between a bishop and those who teach the
11 gospel is a very difficult thing for us to
12 countenance. And therefore, just doing that is a
13 problem with the bill.

14 The facts of a particular situation, you
15 have heard one point of view at this point.
16 later on today, you will hear, I am sure, a
17 different set of facts from the Diocese of Scranton.
18 You are going to hear from constitutional lawyers
19 from both sides of the aisle. But with regard
20 to looking at how the church views its teaching
21 mission, it is different than how it may view
22 its mission in Catholic hospitals or Catholic
23 charities.

24 We try to be doing good there in trying to
25 help the poor and vulnerable, but when we teach, we

1 are trying to teach the gospel, and the person who
2 has to direct that has to be the Catholic bishop.

3 REPRESENTATIVE PASHINSKI: Well, first of
4 all, I do not think this is combative. I think this
5 is informative. I think that it is an education for
6 all of us to absorb the information and make a very
7 sincere and heartfelt attempt to try to rectify it
8 for the good of the teachings, because without a
9 solid and cooperative teaching staff, I would
10 strongly think that the result of the education would
11 be marred.

12 Thank you very much.

13 DR. O'HARA: Yes, and let me just say the
14 choice of that word resulted from testimony that you
15 have heard up to now, which was at this point pretty
16 much complaining about conditions in Catholic schools
17 as though people are being treated poorly, et cetera.

18 So I just wanted to identify exactly what
19 our mission is in Catholic schools and what we are
20 trying to do.

21 VICE CHAIRMAN CASORIO: Thank you,
22 Representative Pashinski.

23 Representative DePasquale.

24 REPRESENTATIVE DePASQUALE: Thank you,
25 Mr. Chairman.

1 Thank you for your testimony. I know we are
2 under time constraints, so I will try to be as quick
3 as possible.

4 There are already significant government
5 regulations that already exist with private and
6 Catholic schools. I mean, for instance, the food,
7 the cafeteria.

8 DR. O'HARA: Oh, absolutely. Health and
9 safety.

10 REPRESENTATIVE DePASQUALE: Yeah; you have
11 to cook the hamburger. So from that point, there is,
12 at least starting from that point of view, the
13 possibility of having government regulation that does
14 not infringe on religious freedom. Would you agree?

15 DR. O'HARA: On health and safety matters,
16 certainly we comply with all of them.

17 REPRESENTATIVE DePASQUALE: No; no; no.
18 Right. I understand. I'm just saying, at least for
19 now, not all government regulations you would oppose.

20 DR. O'HARA: Absolutely not.

21 REPRESENTATIVE DePASQUALE: All right.

22 And I understand that you would have some
23 significant disagreements with some portion of the
24 bill, if not the whole bill. But at least from when
25 we began our discussion, it is not that you oppose

1 all government involvement or at least regulation;
2 it is when it involves a specific religious
3 tenet.

4 And I just want to make sure I understand
5 the opposition correctly, because you would view that
6 as a direct, however you want to say it, attack or
7 disagreement, but it is on a religious freedom tenet
8 as opposed to all government regulations.

9 DR. O'HARA. Certainly.

10 REPRESENTATIVE DePASQUALE: I just wanted to
11 make sure of that.

12 DR. O'HARA: We do adhere to many government
13 regulations.

14 REPRESENTATIVE DePASQUALE: And I
15 understand. I just wanted to make sure I understand
16 the opposition---

17 DR. O'HARA: And we get new ones every year.

18 REPRESENTATIVE DePASQUALE: No doubt about
19 it.

20 Is there--- Let's put it like this. I
21 think one of the things that Representative Pashinski
22 wants to get at with his legislation is -- and I know
23 him well, and he can certainly speak for himself -- I
24 know him well enough to know that he would not want
25 to attack any religious tenet.

1 I think one of the things we would probably
2 want to see, at least myself included, is to see if
3 there is a vehicle that we can at least discuss a way
4 that we can make sure that the workers are
5 appropriately protected, at least from points of view
6 of ones that have a significant concern, but at the
7 same time making sure a religious tenet isn't
8 attacked.

9 And I think that a lot of us would want to
10 make sure that we are open to at least discussing
11 that, if there is some room there to get some
12 agreement.

13 DR. O'HARA: We are always open to
14 discussion; absolutely.

15 REPRESENTATIVE DePASQUALE: A final point.
16 I just want to get this on the record and make sure,
17 and if I am wrong, please tell me I am wrong.

18 We talked about many instances where State
19 courts have decided not to take it up on a case
20 before the Pennsylvania Labor Relations Board because
21 of the specific exclusion or lack of inclusion in the
22 1970 law. Is that correct?

23 And I would actually agree with the
24 Pennsylvania courts even, because it is not part of
25 Pennsylvania law. I just want to make sure that when

1 we talk about the Federal and the State issues, you
2 know, there was at least a discussion about the
3 possibility of taking this through the Federal court
4 system as well if this were to become law.

5 What specific piece of this bill do you
6 think raises it to a Federal issue that the other
7 States that have similar laws did not become a
8 Federal issue? Is there specific language of this
9 bill that is different from those?

10 MR. MURREN: There are differences, of
11 course, between the underlying Pennsylvania Labor
12 Relations Act and other State labor relations laws
13 and the National Labor Relations Act. What makes a
14 case a Federal case is whether any statute, State or
15 Federal, might infringe on Federal constitutional
16 rights.

17 And so the cases that were brought, for
18 example, the case that went up through the State
19 courts in Pennsylvania, we were allowed to raise the
20 Federal constitutional issues in our defense, and the
21 court ultimately concluded that because those issues
22 were so significant, it would construe the statute to
23 avoid them.

24 REPRESENTATIVE DePASQUALE: What in this
25 bill, at least as it is drafted right now, is

1 different from what happened in the other States that
2 have already passed the law that would make where the
3 Federal issue did not become determinative, at least
4 for the Federal courts in the other States? What I
5 am trying to get at is, is there a specific problem
6 in this bill that can be addressed?

7 MR. MURREN: Well, what you have to
8 understand, too, is that two Federal courts in this
9 State have already said that features of the National
10 Labor Relations Act that are the same as the features
11 of the Pennsylvania Labor Relations Act are
12 unconstitutional.

13 Those two courts did reach the
14 constitutional issue, and they both said that the
15 National Labor Relations Act as applied to the
16 Archdiocese of Philadelphia and the Diocese of
17 Scranton would be unconstitutional.

18 REPRESENTATIVE DePASQUALE: Was that in the
19 district court, or---

20 MR. MURREN: That was the Federal district
21 courts. Those cases were appealed to the Third
22 Circuit, but in the meantime, the *Catholic Bishop of*
23 *Chicago* case went up through the Seventh Circuit
24 Court of Appeals, which also said that it was
25 unconstitutional, got to the U.S. Supreme Court.

1 The U.S. Supreme Court affirmed the result
2 of the Seventh Circuit's case but did so by saying
3 these constitutional issues identified by the Seventh
4 Circuit are so serious that we are going to look very
5 closely at the National Labor Relations Act to see if
6 it actually does apply or whether we can construe it
7 in some way that we do not have to make a definitive
8 ruling.

9 REPRESENTATIVE DePASQUALE: And I
10 understand, because, you know, sometimes what the
11 Supreme Court obviously does is when they make a
12 decision, it really matters legally, so sometimes
13 they allow things to brew in the districts in the
14 court of appeals. I understand that.

15 What -- I want to make sure I am phrasing
16 this right -- their issue, though, is in the makeup
17 and how the National Labor and the Pennsylvania Labor
18 Relations Boards are specifically construed on this?
19 And what brought that up as opposed to what happened
20 in New York and New Jersey?

21 MR. MURREN: Well, again, I do not think
22 that the New York and Minnesota and New Jersey
23 decisions are reconcilable with the decision
24 of the U.S. Court of Appeals for the Seventh
25 Circuit.

1 REPRESENTATIVE DePASQUALE: So you see a
2 conflict in the courts?

3 MR. MURREN: Oh, yeah. Absolutely.

4 REPRESENTATIVE DePASQUALE: That will
5 eventually probably meet---

6 MR. MURREN: But I think that from our
7 perspective, the decisions in those three States are
8 distinguishable.

9 We didn't address that in our written
10 testimony. I didn't realize it was going to be of
11 such concern, and what I would offer to do, as well
12 as we have already offered to at Representative
13 Gergely's invitation, to supplement the record on
14 experiences. And what we would like to do is be very
15 precise in our distinctions so that this committee
16 has a good written record of testimony on the
17 distinctions between those situations and this.

18 But just in generalities, the National Labor
19 Relations Act is very similar to the Pennsylvania
20 Labor Relations Act in the frictions and
21 confrontations that would engender.

22 REPRESENTATIVE DePASQUALE: I appreciate it.
23 I look forward to the analysis. Thank you very much.

24 VICE CHAIRMAN CASORIO: Thank you,
25 Representative DePasquale.

1 Representative Seip.

2 REPRESENTATIVE SEIP: Thank you,
3 Mr. Chairman.

4 I know Representative DePasquale just kind
5 of touched on a question I had, but I just want to
6 comment for the record that in my past and being a
7 CASSP Coordinator, coordinating all the child-serving
8 agencies in Schuylkill County, I know that the
9 Catholic charities, Catholic social agency adoption
10 centers, have to adhere by those DPW regulations, and
11 certainly the health-care organizations that the
12 Catholic Church is involved in adhere to all the
13 Department of Health standards. Certainly their
14 teachers are mandated reporters for child abuse or
15 neglect or at least suspicion of those situations.

16 So I would think that the Legislature does
17 have a role to play here in this discussion. I would
18 commend Representative Pashinski for trying to
19 forward legislation that is going to remedy this
20 issue for his constituents and try and clear this up,
21 and I also commend him for being willing to offer to
22 work with both sides to come to some agreeable
23 conclusion here.

24 So I just wanted to state that for the
25 record. Thank you, Mr. Chairman.

1 VICE CHAIRMAN CASORIO: Thank you,
2 Representative Seip.

3 And as a last question for this panel,
4 Representative Goodman.

5 REPRESENTATIVE GOODMAN: Thank you,
6 Mr. Chairman.

7 Representative DePasquale did hit on many of
8 the points, so I will be very quick. But what I am
9 trying to get my arms around is the due process.

10 When we hear that an employee who can work
11 for 28 years and be a very good employee is suddenly
12 fired for no apparent reason -- in fact, one of the
13 testifiers said, after 33 years of service, they were
14 let go for lack of seniority and then went on to say
15 that there was no other option available to them,
16 like they could not take it to the courts to object
17 to this because it would not fall under something
18 that the Pennsylvania Labor Relations Board would
19 cover.

20 And I understand the Statement of Principles
21 that every teacher signs at the beginning of the
22 year, and I understand that. I mean, I am very
23 uncomfortable having the State step into something
24 like this, because I understand why you would want to
25 have that if you have someone that should profess the

1 values and faiths and beliefs and live within the
2 community in a way that, you know, depicts the school
3 that they represent.

4 My question is, though, is it true that
5 someone who is fired for what I would consider to be
6 a reason that the Federal Labor Relations or the
7 State Relations Board would consider to be egregious,
8 can someone take a case like that forward, or was the
9 prior testifier accurate when they said, you can work
10 for a school for 20 years and, for no good reason,
11 they can simply remove you?

12 Like let us say we have decided, you know,
13 if you have been here for 28 years and your salary is
14 too high and I would rather get rid of you and pick
15 up a young kid coming right out of college, I mean,
16 is there -- because at the beginning of your
17 statement you said that you are under the PLRB; you
18 are answerable to them in many cases, except for
19 those that fall under the Statement of Principles, if
20 I understood your testimony right.

21 MR. MURREN: No, I don't believe so.

22 DR. O'HARA: No.

23 REPRESENTATIVE GOODMAN: So you are or you
24 are not?

25 MR. MURREN: We are not.

1 DR. O'HARA: Not currently.

2 REPRESENTATIVE GOODMAN: So if someone were
3 to work for a school for 20 years and come in at the
4 springtime like they do every year and they expect to
5 sign a contract to continue working and you say, you
6 no longer work here, they have no recourses through
7 our legal system?

8 MR. MURREN: You wouldn't have any recourse
9 under the Pennsylvania Labor Relations Act unless
10 that was a violation of a negotiated contract.

11 REPRESENTATIVE GOODMAN: But there are no
12 negotiated contracts.

13 MR. MURREN: The presumption of law in
14 Pennsylvania is that all employment is at will.
15 There can be contracts entered into that defeat that
16 presumption, and union contracts are an example of
17 that.

18 But as to due process, due process is a
19 feature, and you will see it if you examine every
20 employee handbook of the dioceses in Pennsylvania,
21 all of the school handbooks of the dioceses of
22 Pennsylvania.

23 You will hear from the Diocese of Scranton
24 with respect to Mr. Milz's particular situation, but
25 you will also hear from the Diocese of Scranton as to

1 what they are doing to establish grievance
2 procedures, employee councils, in that diocese.

3 I am not prepared to respond to the
4 specifics of the circumstances that Ms. Schwartz
5 alluded to with respect to the Archdiocese of
6 Philadelphia, but I assure you that I will be
7 checking with the archdiocese to get the other side
8 of the story.

9 REPRESENTATIVE GOODMAN: I'm not comfortable
10 with the Commonwealth or even the Federal government
11 sticking its nose into Catholic affiliated or any
12 religious affiliation, but I think that we should be
13 careful with regard to due process, because under
14 that circumstance, if I was working for somebody for
15 20 years and I was a good and faithful employee and
16 all of a sudden I was just let go, I mean, there is a
17 damage done to me, and I believe that that person
18 should have the ability to at least take this in
19 front of the PLRB or someone just to have that case
20 heard, or am I--- Would you object to something like
21 that?

22 MR. MURREN: Well, again, just trying to
23 point out that the PLRB would hear unfair labor
24 practice claims if there were antiunion animists
25 involved in the firing.

1 If the person was let go for reasons of the
2 parish not having the resources to continue paying
3 them, then what is the PLRB going to do, order the
4 congregation to increase the collection amount? That
5 is just not something that would be within the
6 purview of the PLRB.

7 It is not every grievance and every
8 injustice that can be addressed through governmental
9 agencies, especially the PLRB. The PLRB has a
10 limited function, and that is with respect to
11 collective bargaining and union activities.

12 REPRESENTATIVE GOODMAN: Thank you,
13 Mr. Chairman.

14 VICE CHAIRMAN CASORIO: Thank you,
15 Representative Goodman.

16 Gentlemen, thank you for your testimony.

17 Moving right along, our next group of
18 testifiers, our next panel: Theodore E. Clater,
19 Pd.D., Executive Director, Keystone Christian
20 Education Association; Jeffrey A. Hollier, Ph.D.,
21 Associate Professor and Director of Neurosurgical
22 Education, Hershey Medical Center; Jonathan Lucas,
23 M.A., Grace Community Church; and Gregory R. Reed,
24 J.D., parent and church member.

25 Gentlemen, when you are ready, please.

1 MR. CLATER: Thank you, Mr. Chairman.

2 I am the Executive Director of the
3 Keystone Christian Education Association, and it
4 appears that of all of the whole of the evangelical
5 community, we may be the only people here today.
6 But we will attempt to speak not only for our
7 association, as mentioned in the second paragraph,
8 but give insight into the whole of the evangelical
9 community.

10 Representative Boyd spoke earlier that he
11 has Mennonites in his constituency. Frankly, there
12 are Protestant people of faith that have preschools,
13 have elementary schools, have secondary schools, have
14 post-high school institutions all across the
15 Commonwealth, and it appears to us that they would be
16 heavily influenced by this piece of legislation.

17 I have been contacted personally by a number
18 of the other groups that have not made it to this
19 occasion, whether in person or in writing, and I can
20 assure you that, Mr. Chairman, if there are further
21 hearings, I would anticipate some of them will speak,
22 or else I would anticipate they would give written
23 testimony, for it is perceived this would be a very
24 dangerous bill for religious liberty among those of
25 the Protestant faith.

1 The nature of the testimony of this bank
2 today could be described, as we are attempting to
3 condense evangelical, of Protestant-faith thought
4 that would be usually in a library, and we have it
5 down to 20 pages.

6 We will attempt to adhere to your admonition
7 to not read, although frankly, I have worked with the
8 men in advance to cut it and cut it and cut it,
9 because I have been in a few of these previously.

10 On page No. 2 of your testimony, I have
11 attempted to give you all insight as to what is this
12 "evangelical" word? The evangelical is a group of
13 people of faith that have, as their primary focus,
14 that the Bible is Jehovah's inherent word.

15 It is true that Jesus Christ is part of the
16 Trinity, that he died a sacrificial death on Calvary
17 to pay the price for man's sin, and that individuals
18 who place their personal trust in this
19 substitutionary death are the recipients of eternal
20 life in heaven instead of hell.

21 I must be very careful to indicate that
22 placing one's faith in Christ is far different from
23 just mental ascent to history. Saying a prayer,
24 being born into a religious family, identifying with
25 a church, doing any types of religious activities --

1 totally different. And so we are attempting to
2 understand what are evangelicals, which obviously
3 Keystone would be part of that.

4 And the evangelical church is one where all
5 of the adult members have personally made that mental
6 ascent that we have just described, and you can feel
7 free to read that further.

8 And then when you come to an evangelical
9 school -- that is at the top of page 3 -- an
10 evangelical school is a community, a religious
11 community, where these people of faith have joined
12 together in the effort to train the next generation
13 in the faith to embellish the world's secular
14 learning, to integrate Bible truth into all of it.

15 These schools can be sponsored by an
16 individual congregation. They can be sponsored by a
17 group of congregations. They can be totally
18 independent, operating under the auspices of a board,
19 leaders. Many times, your post-high school
20 institutions are that way.

21 In our attempts to help you understand why
22 KCEA must stand in strong opposition to this, I take
23 two different parts for today.

24 First, I reiterate what I had provided to
25 each of you as committee members 2 months ago in the

1 form of a three-page letter, and that is pages 7, 8,
2 and 9 in this attachment, and that, I hope, is
3 something that you can ponder. Those things are
4 important. I realize you have already memorized all
5 of those points and have them in mind.

6 But in summary, the appeal to 2626 appears
7 to be that we need government intervention,
8 mediation, and employee-employer relationships. But
9 we find the findings section of that bill is very out
10 of touch with what has happened and is happening all
11 across the Commonwealth in every one of the
12 Protestant religious faith, especially the whole
13 evangelical community.

14 The whole nature of what is a layman and
15 what is a clergyman is very much infused in that
16 whole debate.

17 In summary, you will find those three pages
18 describe -- we believe it is very inaccurate for
19 describing anything that is happening.

20 Page No. 4, the second part of our attempt
21 before you today, is to give some face to what is
22 it to have this evangelical faith and to be involved
23 as an employee, to be involved as the decisionmaker
24 affecting employees, in this whole complex
25 issue.

1 There are four of us here today.

2 Personally, I am an ordained minister. My card has
3 the word "Reverend." But when I go to my church on
4 any given Sunday, I am an ordinary person. I have no
5 special place.

6 And ultimately, when you come down through
7 this paragraph, you will notice that my church where
8 I attend -- there is a "polity" word; we will talk
9 about polity -- we are a congregational church. Many
10 in evangelicalism in your districts are congressional
11 in government.

12 Now, that means, in summary, when we come
13 together in a business meeting, if I were a member of
14 that church, I have one vote, just like every other
15 adult who is a member has one vote.

16 As you come to the bottom of page four, I
17 describe the education experience for the three
18 children that came to my household -- a Michael, a
19 Michelle, and a Mary. Those children were enrolled
20 in the Christian school that was part and ministry of
21 my local church.

22 We as a congregation determine all matters
23 about policies, procedures, everything imaginable in
24 my church. We as a congregation decide how much the
25 pastor will be paid. We decide the payscale for the

1 ones who will be elementary teachers, secondary
2 teachers, janitors.

3 We as a congregation, as a community of
4 believers, wrestle with the problems of, your word,
5 the "collection." How do we disburse that collection
6 among all of the priorities that press us as a
7 religious community?

8 There is a huge need, from our viewpoint,
9 for missions around this world. There is a huge need
10 for missions in America. There is a huge need for
11 missions in my community. How does the budget of my
12 school impact with everything else? In reality, as
13 my congregation makes those decisions, there is no
14 difference between sacred decisions and secular
15 decisions.

16 As you turn to page No. 5, I briefly comment
17 even when my young people went to religious college.
18 I am part of the religious community that makes
19 decisions there. Albeit that there is a board of
20 trustees that is empowered to make those heavy
21 decisions that, frankly, I would hate to have to be
22 making, but that is why we have delegated them to
23 that task.

24 Now, on this panel today I have some
25 individuals who, like me, when they go to their

1 church, they are part of the decisionmaking process.

2 Beside me and going next is Dr. Jeff
3 Hollier. He has a background in higher education,
4 and he is responsible for that arena of, how do we
5 program to get quality in this education experience?
6 In his field, quality is very important. You will
7 see that later.

8 As a Christian, you will notice that Jeff
9 and his wife are raising a preschool daughter. You
10 should notice that all of the things that they are
11 doing are shaped towards the transmission of this
12 Christian life to their daughter. They are involved
13 in their church, albeit as laymen, and yet you will
14 see that Jeff teaches adult Bible studies.

15 He is not a clergyman. He wears clothes, a
16 business suit, just like you and me. This spiritual
17 community plans an array of activities for all of the
18 people in that congregation, because they are trying
19 to work that this next generation will understand
20 God's precepts and want to follow them.

21 You will notice that Jon follows. Jon
22 currently is a pastor of a congregation. He has a
23 diverse background. He was in that place of being
24 the teacher in the religious school. He has been the
25 place of the adjunct professor in the Bible College.

1 He has teachers in his own congregation
2 right now, and he is the pastor of these people that
3 teach in a religious school. And obviously he has
4 got a number of families in his church that have
5 chosen a religious school, although it is not one
6 that his church sponsors.

7 Mr. Reed is at the end, will go fourth
8 today. He is a Christian layman that happens to be
9 an attorney by his trade. His children have been in
10 a religious school, at times one sponsored by a local
11 church, at times one that is sponsored by a group of
12 churches, at times one that has been controlled by a
13 board of directors, Christian men of faith. And
14 again, three different illustrations as to how the
15 community, the religious community, will work
16 together to organize themselves to accomplish the
17 task with our young people.

18 The nature of Mr. Reed, he happens to have
19 some formal Bible training. He is not ordained, but
20 he, like every other layman in his church, these are
21 important in the whole decisionmaking and the
22 transmission of faith from this generation to the
23 next.

24 And with that, we will let Jeff take
25 over.

1 DR. HOLLIER: Good afternoon. Thank you for
2 this opportunity.

3 My name is Jeff Hollier. I am a professor.
4 I have been a professor for over a dozen years. My
5 Ph.D. is in cognitive psychologist, a specialty in
6 human learning and memory.

7 My faculty appointments have focused around
8 my consulting role. I was at the University of
9 Virginia. My job was to consult with departments on
10 curricular development, development of their teaching
11 missions, their teaching materials, and I teach
12 professors how to teach.

13 I have been recently recruited up here to
14 the Hershey Medical Center, and I am doing the same
15 thing in the Department of Neurosurgery. And I speak
16 to you today as a private citizen, not as a
17 representative of Penn State Hershey.

18 Now, I have no formal training in religion,
19 yet as a layman, I teach an adult Sunday School
20 class. I serve on a deacon board elected by the
21 congregation, and I am sure that should the need
22 arise, the congregation would not object to me
23 delivering teaching during a Sunday morning message
24 or evening service.

25 These duties have serious religious

1 implications, and yet I am not a clergyman, and that
2 is a theme that parallels teachers in Christian
3 schools.

4 Now, the conclusion of my testimony is that
5 from a curricular point of view, it is impossible to
6 separate the religious mission of an institution from
7 the activities of their teachers, whether they be
8 instructors in secular knowledge or the groundskeeper
9 or the custodian.

10 It is impossible to talk about a learning
11 system without first developing an appreciation for
12 what it is being taught.

13 The focus of Christian education is
14 education within a Christian context. Rarely is it
15 just a set of facts, but it is a set of facts and a
16 mindset, tools to think about those facts.

17 I can give you an example from my day-to-day
18 professional life. There are medical schools that
19 train doctors to be practitioners, to go out and
20 provide care. There are other medical schools that
21 train doctors to go out and be researchers, to be
22 academic physicians, to advance the field when they
23 are done.

24 Penn State Hershey is one of those latter.
25 We expect our residents to come out trained in

1 research and to be academics when they are done, and
2 we would not consider hiring someone who is not
3 involved in research. They could not provide the
4 training, because they do not have the mindset, they
5 do not have the skill set, in order to instruct in
6 medicine from that sort of a framework, from that
7 mindset.

8 Applying the same analysis to a Christian
9 school requires us to first identify what is being
10 taught. What is being taught in a Christian
11 education is the content of the educational courses
12 and how to think about that from a Christian
13 perspective.

14 In other words, Christian schools provide
15 religious instruction and education in a religious
16 context, and that context embodies the core essence
17 of religious education, that secular knowledge
18 understood not in opposition to but in harmony with
19 the Christian faith.

20 With that understanding of what is being
21 taught, instructors at these institutions cannot be
22 characterized as secular. It is embodied in what
23 they do every day -- modeling appropriate behavior,
24 appropriate reactions, teaching how to think about
25 this material, again, in harmony with the tenets of

1 the Christian faith. All of those are religious
2 missions that are tied into the transmission of
3 secular knowledge.

4 The most common models for teaching:
5 modeling, shaping, and contextualizing. And I will
6 not go into that here, but I have left it in my
7 written testimony. All of those have serious
8 implications, not just for their knowledge but for
9 their mindset, for how they think about information
10 and how they think about the world and what the
11 information means.

12 To be effective, the instructor must be
13 operating from an intimate knowledge and from an
14 acceptance of doctrinal faith and internalized
15 belief, and all of these methods have great
16 implications, not just for their behavior but the
17 scope of the behavior that is germane to their
18 fitness as instructors.

19 Now, as I mentioned before, there are
20 aspects of performance in the physicians we hire to
21 teach our neurosurgery residents. Their research
22 activities are germane to our assessment of them as
23 instructors. There are some bounds to the scope that
24 we can provide that analysis for, though.

25 The issue of sin outside the hospital doors

1 does not enter into it. That is outside the scope.
2 But when we are talking about modeling behavior and
3 modeling the Christian walk, then that extends the
4 scope to personal behavior. So those issues are
5 germane to the interaction of the administration with
6 the faculty. Because they are religious duties, they
7 fall within that scope.

8 Now, that does not mean that it is just
9 instant termination, for instance, or that our
10 instructors have to live a sinless life. But
11 submission to the tenets of interaction with
12 authority, with church authority, are part of what
13 they model.

14 So characterization of the nonclergy staff
15 as secular is inappropriate, because all of the
16 interactions with administration are governed by
17 tenets of the Christian faith.

18 Aside from their interactions with
19 administration, inherent in their duties are also
20 religious tasks.

21 Christian disciplinary practice,
22 socialization, living testimony, Christian counseling
23 and witnessing, and even interpretation of the
24 content, interpretation of science and philosophy
25 within a Christian context, are all part of the

1 duties of an instructor in a Christian school.

2 So remember that the educational mission is
3 twofold: religious instruction and education in the
4 context of doctrine.

5 If this bill, HB 2626, is allowed to
6 redefine nonclergy staff as secular, then the ability
7 of the religious school to fulfill its educational
8 mission is not only undermined but made impossible.

9 Thank you.

10 PASTOR LUCAS: Thank you, committee members,
11 for the opportunity to speak with you very briefly
12 here this afternoon.

13 Two words that I think capture the concerns
14 that bring me here this afternoon are these:
15 "unintended consequences." I choose those words with
16 great deliberation, because I think they both apply
17 very poignantly to this situation at hand, the
18 proposed HB 2626.

19 I say "unintended" because I would never
20 want to in any way challenge or question the motives
21 behind the legislation. I don't think there would
22 ever be any desire to knowingly undermine evangelical
23 Christianity in its desire to provide education for
24 its children in schools. You would never intend to
25 do that, but that is precisely what is going to

1 happen if this bill passes, and that is why I am here
2 to speak to you this afternoon about the consequences
3 of what is being proposed here. Unintended, but we
4 dare not ignore them.

5 House Bill 2626 I believe directly
6 interferes and undermines the biblical rights and
7 duties of Christians who are involved in evangelical
8 Christian schools.

9 As you already heard here this afternoon, I
10 would like to reiterate, the distinction between
11 clergy and laity that was made so pronounced in
12 earlier testimony I do not believe is nearly so
13 distinct in evangelical circles.

14 And I think you owe it to your constituents
15 to be aware that within the evangelical community,
16 those distinctions are definitely not pronounced.
17 Whether one is indeed a pastor, a clergy member, or a
18 layperson in any community of evangelical believers,
19 both are under equal obligation, both share the same
20 responsibilities to adhere to the authority of
21 scripture.

22 One of the primary teachings in the
23 New Testament that evangelical Christians take very
24 seriously is the need to reconcile differences and
25 conflict by following biblical precepts.

1 Now, I say this with all due respect. That
2 biblical process is directly undermined if the State
3 injects itself in that process. The State can have
4 no role in reconciling differences between believers
5 without compelling evangelical Christians to violate
6 their consciences. I do not think you can accomplish
7 both.

8 The State, through legislation, through
9 labor unions, can indeed inject itself, but I do not
10 think that can take place without compelling
11 evangelical Christians to violate their conscience.
12 And I said earlier "unintended"; I do not believe for
13 a moment you would ever intend for that to happen,
14 but that would be the inevitable outcome.

15 I would not want your job. I hope you want
16 it. I know it is difficult. It carries with it a
17 great responsibility.

18 Though I would not like your job, I would
19 love to work in this building, because as I came here
20 this afternoon and walked through the hallways and
21 saw the portraits, this is a tremendous place of
22 history, and the Commonwealth of Pennsylvania has a
23 rich religious heritage, a place where religious
24 freedom and separation of church and State has always
25 been honored.

1 I think here this afternoon there have been
2 two models that have been portrayed, two historical
3 models that our country has lived through before, in
4 its Colonial days, even predating the Commonwealth of
5 Pennsylvania. There actually were colonies before
6 Pennsylvania. They maybe do not count anymore, but
7 back then, they really did.

8 The two major models, first of all, is the
9 colony of Massachusetts, a Puritan model. Its chief
10 spokesman was John Cotton.

11 Shortly after Massachusetts was established,
12 a man came over from England by the name of
13 Roger Williams. He shared many beliefs with the
14 Puritans, but he recognized that they were failing to
15 separate church-State domains.

16 Within the Puritan model, the church viewed
17 the State as a co-disciplinarian of believers. If
18 there was some kind of church matter that required
19 discipline, rebuke, or punishment, the offending
20 believer would be turned over to the civil
21 magistrates for punishment.

22 Roger Williams came on the scene and
23 recognized that directly countermands and contradicts
24 biblical teaching. His criticism was not well
25 received, and that is why we have the State of

1 Rhode Island today.

2 In the early days of this country, the
3 Massachusetts model appeared like it would be the one
4 that would prevail and the church and State would be
5 closely working together. But we know from history,
6 James Madison, Thomas Jefferson--- By the way, I
7 know you didn't come here to go back to history
8 class, but I can't help myself.

9 Thomas Jefferson and James Madison were very
10 much aware of the heritage of Roger Williams, who
11 maintained that an absolute distinction must exist
12 between church and State. And when the State seeks,
13 even for the best of reasons, to mediate differences
14 that exist within a Christian community, matters of
15 conflict, if the State takes authority and in any way
16 tries to mediate or resolve those differences, it
17 absolutely prevents Christians from carrying out
18 their biblical duties to mediate and resolve those
19 disputes within the community.

20 Roger Williams was right. He was the one,
21 not Thomas Jefferson, who coined the phrase "wall of
22 separation," and I believe HB 2626's unintended
23 consequences will do great damage to the
24 wall of separation that has served this country
25 well.

1 I thank you for the opportunity to voice
2 those concerns with you here this afternoon.

3 MR. REED: I am Greg Reed. For very obvious
4 reasons, I will be very brief. I promise you.

5 I am an attorney in private practice. At
6 one time, I served as an assistant district attorney
7 and a county solicitor in the Commonwealth of
8 Pennsylvania.

9 Although the county that I worked for hired
10 labor counsel, I became familiar with the labor
11 relations procedures and labor proceedings in that
12 capacity.

13 Nevertheless, I am here primarily as a
14 layperson in the evangelical community. I speak
15 regularly in evangelical churches. Just 2 weeks ago,
16 I had a long-scheduled appointment to speak in a
17 church in Snyder County on Sunday morning and Sunday
18 evening. That is a habit for me.

19 I have been a lay pastor, and I am very
20 familiar with the workings of evangelical churches.
21 I will remind you of this as I begin my testimony,
22 which, again, shall be brief, that the Commonwealth
23 is where the Quakers and the Amish and the Mennonites
24 and the Catholics and the fundamentalists and the
25 evangelicals have thrived and grown for hundreds of

1 years. Yet, there are substantially diverse methods
2 of church polity, church government, among all of
3 those various religious groups.

4 In an age and a climate when diversity is
5 promoted on bumper stickers and billboards and
6 public service announcements, these churches and
7 groups have epitomized religious diversity in modern
8 times.

9 With this diversity comes diversity in
10 decisionmaking in their respective religious bodies.
11 I mention that not so much as a history lesson but to
12 support the proposition that in evangelical churches,
13 we make very little, if any, distinction between the
14 clergy and the lay leaders, the laypersons; in other
15 words, even between the administrators of a Christian
16 school and the teachers of a Christian school.

17 House Bill 2626 has been promoted as an
18 effort to codify the right of association for
19 teachers in parochial schools. These associations --
20 in other words, labor unions -- by their very nature
21 and the administrative process of which they are a
22 part would burden, if not crush, the free exercise of
23 religion. How? By depleting the authority of the
24 local church, whatever form of polity that local
25 church may believe in or exercise.

1 It will deplete the authority of the local
2 church and the local church's members while granting
3 heretofore nonexistent authority to nonmembers.

4 It is basic to an understanding of the
5 likely impact of this proposed legislation that at
6 least in the evangelical community, the schools are
7 not just owned, controlled, or sponsored by religious
8 organizations, they are the church. Evangelical
9 schools in this Commonwealth are integral ministries
10 of the local church.

11 I urge you to develop an understanding that
12 the decisionmaking process in evangelical churches
13 and schools is guided by scripture, by biblical
14 principles, not by whim, not by culture, not by
15 business concerns, not by economics.

16 If House Bill 2626 is adopted, evangelical
17 churches will be bound by the Pennsylvania Labor
18 Relations Act, and government and secular principles
19 and criteria will be superimposed on the church and
20 the schools.

21 As such, government will be thrust into the
22 decisionmaking process. Government will be entangled
23 in the day-to-day operation and decisionmaking in
24 religious schools. This is a proposition that is
25 extremely foreign to the evangelical schools in the

1 Commonwealth of Pennsylvania.

2 Churches and religious schools will be
3 prohibited from following their current practices of
4 solving problems and dealing with issues based on
5 scripture. Two very quick examples.

6 First Corinthians, Chapter 6, verses 1
7 through 6; I will somewhat paraphrase or shorten:
8 "Dare any of you, having a matter against another, go
9 to law...." I can tell you from personal experience,
10 on a day-to-day basis, as a practicing attorney, that
11 I receive calls from pastors, from laypeople, from
12 church members who have nothing to do with the
13 Christian school, having legal concerns, and the
14 first issue that comes up in discussion is, I cannot
15 go to law; First Corinthians, Chapter 6, forbids me
16 of this.

17 That passage goes on to say, "If then ye
18 have judgments of things pertaining to this life, set
19 them to judge who are least esteemed in the church."
20 The traditional and current way of resolving problems
21 in the evangelical community is to do it internally
22 before a board of elders or a board of deacons or a
23 board of trustees, whatever the case might be, not
24 through the process, the grievance process, that
25 would be established by the Pennsylvania Labor

1 Relations Act.

2 Matthew 18 says moreover, if a brother shall
3 trespass against thee, go and tell him his fault
4 between thee and him alone. In other words, and I
5 might emphasize, and I heard very little discussion
6 of this in the whole time that we were here today,
7 that this is reciprocal. This is not just a
8 grievance of the teacher or the staff against the
9 administration or the principal. There are
10 grievances in the biblical sense that the church may
11 have against the teacher, and in both situations,
12 regardless of which way it is going, they are to be
13 resolved by going one on one. Then it says, that
14 same passage of scripture, take a brother or two, and
15 then if not resolved before a body in the church.

16 I will cut this short, but may I emphasis
17 this: There was a question asked by two
18 Representatives as it relates to the church's
19 willingness to obey health laws. One Representative
20 mentioned child abuse reporting laws. Probably
21 building codes would be included in that. And what
22 is the difference in the church, the evangelical
23 church, although the question was asked of those from
24 the Catholic Conference, but what is the difference
25 between the evangelical church heeding those laws and

1 this proposed legislation?

2 There are at least three major distinctions
3 between this proposed legislation and those
4 health-type laws, building codes. First of all, they
5 do not involve relationships between brothers and
6 sisters in Christ. They do not involve interpersonal
7 disputes in the local church and the school ministry
8 of that local church.

9 Secondly, they do not involve the
10 problem-solving issues in the local church or the
11 school. In other words, there is no distinction; if
12 there is a resolution, you go before the Labor
13 Relations Board or before the deacon board.

14 And thirdly, these laws, these child abuse
15 reporting laws and building code laws, et cetera, do
16 not prohibit or impact religious belief or practice
17 in any respect.

18 Notwithstanding the language of the bill, in
19 which there is an effort made to prohibit the Labor
20 Relations Board from making decisions relative to
21 religious issues, notwithstanding that, which has
22 already been addressed, it will have a dramatic
23 impact on instruction and practice, whereas all these
24 other laws that the question was raised as to do not
25 have that impact.

1 With this, I close. Although there is
2 diversity of church polity in the evangelical
3 community, in all groups of which I am aware,
4 laypeople hold vital spiritual leadership roles.
5 Those include deacons, elders, pastors, assistant
6 pastors, music directors, children's workers, and
7 schoolteachers.

8 Actually, teachers and staff in the
9 evangelical Christian schools are essentially
10 ministers or clergy.

11 I have four children. One is an attorney
12 and has an M.B.A. I have another who just passed his
13 C.P.A. and will, when he gets his hours in, be a
14 C.P.A. Another who is a physician's assistant, and
15 one who is still in college. Every one of them
16 attended an evangelical school of some sort every bit
17 of their formal education.

18 Never once did I look at any of their
19 teachers as being anything less than a minister to
20 those children of mine. I always expected those
21 teachers to be keenly aware of doctrine, to teach
22 doctrine, to spend time with my children, to
23 set them aside if they needed some spiritual
24 counsel, and ultimately to come to me as the
25 parent.

1 It is a great disservice to religious
2 practice and belief to think that you can distinguish
3 the clergy or the ministers from the teachers in
4 evangelical Christian schools.

5 I thank you.

6 VICE CHAIRMAN CASORIO: Gentlemen, thank
7 you.

8 Let me again be a sobering reminder, we are
9 at the hour where we should be adjourning.
10 Obviously, we are not going to do that.

11 We have only heard from three panels. We
12 have six more to go. We have only heard from three;
13 we have six more to go.

14 I just implore you, if we want to get all
15 those folks in, and I know some of you have come
16 great distances, and that is our intent to get
17 everyone in, we have only heard from 33 percent of
18 our testifiers today.

19 I would ask that you, please, with all due
20 respect, again as we move forward, give us a
21 synopsis, and the members on the committee ask some
22 questions, and if you have a general question, give
23 us written questions.

24 I do have two Representatives that would
25 like to ask this panel questions, and that would be,

1 first, Representative Boyd.

2 REPRESENTATIVE BOYD: Thank you,
3 Mr. Chairman.

4 I sense a similar piece of an argument that
5 you guys are basically making to something that
6 Dr. O'Hara made, and I want to see if I got it clear.
7 I wanted to seal it down.

8 The basic argument is religious education.
9 Inherent within it is a mission that religious
10 education is evangelistic, is to propagate the faith.
11 Agreed?

12 DR. HOLLIER: Agreed.

13 REPRESENTATIVE BOYD: All right.

14 Evangelism is more than just what is taught,
15 it is what is caught? The lifestyle of evangelism?

16 MR. CLATER: Yes.

17 REPRESENTATIVE BOYD: If this bill becomes
18 law, 2626, the State Pennsylvania Labor Relations
19 Board will become the arbiter or decider of
20 employment disagreements, issues. So what is a
21 justifiable reason to terminate a religious teacher?
22 Frequenting a local pub? Public drunkenness?

23 MR. CLATER: Everything would depend upon
24 the individual congregation and a myriad of things.
25 Each of the examples that you gave would be

1 inconsistent with any evangelical congregation that I
2 know.

3 REPRESENTATIVE BOYD: Extramarital affair?

4 MR. CLATER: That would be legitimate for --
5 that is not a modeling of the child.

6 REPRESENTATIVE BOYD: Would the Pennsylvania
7 Labor Relations Board require to be blindfolded to
8 the tenets of the local religious entity in deciding
9 on fair labor disputes? Maybe the lawyer can answer
10 that question.

11 MR. REED: I suppose that is a fair way of
12 stating it. I honestly think it would be impossible
13 for an administrative board to make decisions with
14 regard to virtually any grievance or dispute
15 involving a teacher in an evangelical school and not
16 touch on religion.

17 I actually, for purposes of this afternoon,
18 made a list of potential grievances, disputes, that
19 might end up before the board, and I had a lengthy
20 list of them. Some of them would be trite, yet may
21 end up there. All of them have some nexus or some
22 link to the doctrine that teaches the expectations.

23 Even church attendance; teachers staying
24 after school. Theoretically, he or she is not paid
25 for that time, but a child has a need. That teacher

1 would be expected to stay after school to pray with
2 that child. That could give rise to a grievance.

3 There would be so many areas that -- I made
4 up my mind when I came here this afternoon I was not
5 going to address other issues, but the economic
6 impact to trying to defend these things and hire
7 special counsel and develop an understanding for our
8 schools would be devastating, just absolutely
9 devastating.

10 REPRESENTATIVE BOYD: Do you guys currently
11 have discriminatory hiring practices? Do you hire
12 only people who have specific Christian beliefs?

13 MR. CLATER: The answer is yes. You know,
14 the only question is who wants to say it.

15 REPRESENTATIVE BOYD: That is fine; I'm just
16 asking the question.

17 MR. CLATER: You cannot model the faith of a
18 congregation if you do not believe what the
19 congregation believes is essential scripture that all
20 of us together as a community are going to follow.

21 REPRESENTATIVE BOYD: And are you currently
22 having trouble getting teachers?

23 MR. CLATER: There are all kinds of warm
24 bodies that say they are teachers, that have
25 bachelor's degrees or master's degrees in education,

1 that may not be qualified to work with our young
2 people.

3 REPRESENTATIVE BOYD: Okay.

4 One last point I would like to make, just
5 real briefly.

6 You might want to use Second Corinthians
7 522, I believe, that says we are all competent as
8 ministers of the New Covenant.

9 VICE CHAIRMAN CASORIO: Thank you,
10 Representative Boyd.

11 Representative Shimkus.

12 REPRESENTATIVE SHIMKUS: Thank you,
13 Mr. Chairman.

14 Gentlemen, thank you for your testimony.

15 I, too, am an ordained minister, a pastor of
16 the Trinity Congregational Church in Scranton, and I,
17 too, understand your position about government
18 involvement. I graduated from a seminary where not
19 even Federal loan funds were taken so as not to allow
20 anyone to interfere with curriculum.

21 But I do not understand how this bill would
22 undermine. I do not understand, because the purpose
23 of this bill is to allow lay teachers and lay
24 employees of religiously-affiliated schools to
25 collectively bargain.

1 Your issue, I guess, is that you are
2 concerned about the definition of what a lay teacher
3 is, and you are saying that everybody that ministers
4 in your church is no longer a lay teacher but a
5 minister, which I understand about a ministry, but I
6 also have a problem of violating conscience and even
7 getting some scripture involved.

8 For instance, there are instances where, as
9 the attorney quoted, Matthew 18 would not come into
10 play. If one of your teachers noticed a child coming
11 in with black-and-blue marks, you wouldn't pull him
12 aside and then try and get two witnesses or three
13 witnesses and take it before the church; you would
14 call the police right away or a social worker to
15 report suspected child abuse. That would be
16 required. You would not be allowed to circumvent
17 that with Matthew 18, as far as I understand. Am I
18 correct?

19 MR. REED: Well, where would the conflict be
20 within the church? I mean, where would the conflict
21 be between individuals in that example?

22 REPRESENTATIVE SHIMKUS: There would be
23 none, but what I am saying is, where would the
24 conflict be if -- first of all, I find it very
25 difficult to believe that anybody in your

1 organization or my church would ever want to
2 unionize. This merely gives them that right. But if
3 indeed you are teaching and they are following
4 scripture, then they probably wouldn't, so I'm
5 wondering where the undermining is and where the
6 violation of the conscience is. The violation of the
7 conscience would come if they took actions that were
8 contrary to their understanding of scripture, not
9 this law. Pastor?

10 And while you are thinking about that, I'm
11 thinking of scripture, too. I'm thinking of First
12 Timothy 5, which says, you know, don't muzzle the ox
13 while he's treading grain. The ox decides how much
14 grain he is going to eat, not the grain master. And
15 also, the worker is worthy of his wages.

16 So there is some scripture here that talks
17 about how the worker is entitled to some
18 compensation, and in a just and righteous world, it
19 would be where they could approach someone and say,
20 hey, we need to talk about this.

21 Where there is an unjust situation, perhaps
22 there needs to be some government intervention, and
23 you should not fear that according to Roman's. You
24 should be glad that there is government intervention.
25 And I do not mean to get into a situation of

1 exegeting scripture with you, but I'm trying to
2 understand the undermining.

3 PASTOR LUCAS: Two passages of scripture
4 that do come to mind, since you mentioned Roman's,
5 Chapter 13. I would add to that Acts, Chapter 5.
6 The apostles were more than willing to submit to the
7 authority of the Sanhedrin right up until the point
8 they were convinced that a command given to them by
9 that Sanhedrin violated the greater mission that they
10 had to obey the Lord Jesus Christ.

11 And so within Christian theology -- I don't
12 think we are advocating civil disobedience; that is
13 not what we are here to talk about -- but there is a
14 threshold where when a Christian believes that a
15 command given -- in this case, a law -- established
16 by government would countermand greater duty to the
17 Lord Jesus Christ, he has to choose the greater duty,
18 and that is to Christ.

19 Regarding wages, you heard mentioned here
20 this afternoon evangelical polity. Even the wages,
21 the one I received as a pastor, is voted on by our
22 entire congregation, and I welcome that process. I
23 happen to think my congregation is very generous with
24 me. But if I personally believed that I was being
25 treated unjustly, I would approach them using

1 biblical methods.

2 And at some point if I believed they were
3 unjust in spite of my attempts to reconcile and reach
4 an agreement with them, I would leave. I would no
5 longer serve, because it would be violating my
6 conscience. But I would not sue them, nor would I go
7 to the State and ask the State to intervene for me.

8 In my opinion, that would be directly
9 countermanding the New Testament.

10 REPRESENTATIVE SHIMKUS: Thank you,
11 Mr. Chairman.

12 MR. CLATER: That same principle would apply
13 to a layman.

14 REPRESENTATIVE SHIMKUS: You know, I have a
15 million other questions, but I think it would be
16 arguing.

17 PASTOR LUCAS: Well, I would love to talk at
18 some other time. Those are very thoughtful
19 questions.

20 VICE CHAIRMAN CASORIO: Thank you,
21 Representative Shimkus.

22 Gentlemen, thank you for your testimony.

23 PASTOR LUCAS: Thank you.

24 VICE CHAIRMAN CASORIO: Next we will hear
25 from Mark E. Chopko, Esq., Constitutional Lawyer,

1 Stradley, Ronon, Stevens & Young, LLP, also a former
2 Chief Counsel, United States Conference of Catholic
3 Bishops.

4 And again, as is my job today, I am
5 imploring you to give us the synopsis, if you will,
6 please, and we will move forward.

7 Thank you, sir.

8 MR. CHOPKO: Mr. Chairman, members of the
9 committee, thank you very much.

10 I am tempted at this point, of course, just
11 to say, does anyone have any questions? You will be
12 also reassured that I will not do any exegesis of
13 scripture. I may try to do some exegesis of
14 Supreme Court cases.

15 Let me tell you a little bit about who I am,
16 what I looked at, and what are the problems,
17 difficulties, concerns, that I have identified with
18 this bill.

19 I am the chair of the Religious and
20 Nonprofit Organizations Practice Group of Stradley,
21 Ronon, Stevens & Young in the Washington, DC, office.
22 I am also an adjunct professor of law at Georgetown
23 University, where I teach the course on church-State.

24 I am a member of various things, including
25 the International Academy of Freedom of Religion and

1 Belief, and I serve as a consultant to the American
2 Law Institute, which is writing down the law that is
3 applicable to nonprofit organizations.

4 For two decades, I served as the Chief
5 Counsel for the Catholic Bishops of the United
6 States, which meant that for more than 20 years, I
7 was involved in every public policy issue that
8 confronted the Catholic Church in the United States.

9 I participated in more than 30 Supreme Court
10 cases, and I am the author of more than
11 40 professional articles. A lot of my scholarship, a
12 lot of my teaching and writing, advocacy, has to do
13 about the rights of religious organizations.

14 For your purposes, also I am a native
15 Pennsylvanian. I grew up in Luzerne County,
16 Pennsylvania. I was educated in the Catholic
17 schools.

18 I find the underlying disagreement to be
19 personally very upsetting, and my family, my
20 household, were union members. My grandfather was a
21 lifelong UMW worker and was a proud proponent of his
22 union in our home.

23 And I also personally owe a lot to the
24 teachers in the Scranton Diocese. They helped make
25 me who I am, so I find this to be very disconcerting.

1 I commend the committee's concern in your
2 search for a solution. I think that it is very
3 American to try to figure these things out. When you
4 see a problem, when you see something that has been
5 identified as a problem, the natural concern of
6 Americans is there must be a solution and that there
7 must be a government solution.

8 I think that there are aspects of our common
9 life and our common constitutional life, though they
10 counsel in the other direction. What I looked at
11 here was church-State law from the United States
12 Supreme Court, and I have provided written testimony,
13 which I hope would be admitted to the record and
14 reviewed in full in your more quiet deliberations,
15 and I will not attempt to read or revisit that.

16 I did not look at every issue, every nuance,
17 every comma, everything that could be said about this
18 bill, but I also did look at it from the perspective
19 of all faiths, not just Catholic faith.

20 Most of my clients now are not Catholic
21 institutions, and most of the problems that they
22 bring to me require a broader understanding of the
23 relationships between church and State than had been
24 part of my practice for 20 years with the Catholic
25 Bishops.

1 So in brief, what do I see as potential
2 difficulties with this bill? Some of this has been
3 alluded to already, and I cannot do it either as
4 thoroughly or as eloquently as some of the other
5 panelists, especially the last panel did.

6 But one is that it would open the door to
7 litigation with ministerial employees. The bill
8 attempts a classification among, and admittedly,
9 there's a ministerial group of people involved in the
10 transmission of faith, and it is actually opening the
11 door and fostering litigation as a potential way to
12 resolve these concerns. So if there is a concern
13 with wages or hours or working conditions or anything
14 else that can be made into an unfair labor practice,
15 it opens the door to litigation.

16 One of the Black Letter Law rules that
17 exists in the United States is that ministerial
18 employees may not litigate the terms and conditions
19 of their ministry with their supervisory religious
20 authorities. This bill attempts to alter that
21 balance, and I think in an unconstitutional way.

22 A second point is that it takes sides in a
23 religious dispute. The genesis of this is the
24 dispute within the Diocese of Scranton between the
25 bishop and the teachers. It has to do with the

1 allocation of authority; it has to do with the
2 decisionmaking power; it has to do with the
3 allocation of resources.

4 Although it can be styled as restoring
5 balance or imposing balance or imposing fairness on a
6 process that some believe is unfair and imbalanced,
7 it in fact is taking sides in this dispute, because
8 members legitimately are concerned that not enough
9 has been done within the diocese.

10 There is another side to that story, and it
11 will be told by others. It is not my job to do this.
12 I am simply pointing out that as I review the
13 church-State decisions from the United States
14 Supreme Court, that is one of the aspects that the
15 Supreme Court has highlighted as saying what the
16 government may not do; it may not intervene to take
17 sides in a religious dispute, even if it has a good
18 reason.

19 The third point. You are displacing
20 religious authority with secular authority, and
21 again, you have to look at the impact of this law on
22 all faiths. This is not just a Catholic issue.

23 You have a letter in the record from the
24 Columbia Union Conference of the Seventh-Day
25 Adventist Church, which talks about their teachings,

1 that their members should not join the union, should
2 not form organizations, but yet they have more than
3 40 schools in the Commonwealth of Pennsylvania.

4 You have heard testimony about the
5 Mennonites and about other schools of faith that ask
6 their members not to be involved in entangling
7 relationships with the government and not to take
8 positions that would undermine what they believe as
9 the faith community demonstrates the proper
10 relationship between religious people and religious
11 authority.

12 Some more will be said about that from the
13 perspective of Catholic teaching in the next few
14 panels. But for purposes of my analysis, displacing
15 religious authority and secular authority by making
16 religious authority no longer the final arbiter of
17 things that happen in ministerial positions and
18 evangelical aspects of a religious organization is
19 unconstitutional. It violates one of the fundamental
20 principles of the Free Exercise Clause.

21 And even if -- if we are going to deal with
22 "ifs" -- even if a religious authority should decide,
23 you know, it is just not worth it to be involved in
24 this sort of activity; maybe we need to close our
25 school; maybe we need to withdraw from certain

1 aspects of our ministry because we just do not want
2 to run that risk, we do not want to be entangled with
3 this kind of government work and government
4 relations, that sort of chilling effect has also been
5 recognized in the cases as violating the
6 Constitution, because you are undermining legitimate
7 religious authority.

8 And from your perspective as legislators who
9 are concerned about what is the common good and what
10 is the common good asked of you as legislators, this
11 sort of chilling effect, I think, impoverishes the
12 community, impoverishes the social fabric, if
13 religious authorities make the decision to withdraw
14 from education because it is just not worth the
15 effort.

16 And then the last point I would make is that
17 the bill, if passed, will create entangling
18 relationships between religion and government that
19 I think are unavoidable.

20 This bill, for example, talks about
21 religious grounds as being a barrier between the
22 authority of the State and the authority of the
23 religious institutions. How is that going to be
24 defined, and who is going to define it? Is it going
25 to be defined broadly or narrowly?

1 If it is going to be defined as broadly as
2 the last panel would suggest, would any of their
3 teachers have a realistic remedy in a State system if
4 you passed the bill? Is that really what you want to
5 achieve with this legislation? I suggest not. I
6 think that something more is at stake here.

7 The analysis that I picked up today about
8 the bill says, "The PLRB must recognize employment
9 decisions that are based on an established religious
10 doctrine...." What does "established" mean and who
11 gets to establish it? Does it have to be biblical?
12 Can it be canonical? Magisterial? Can it be a
13 matter of custom? Or can it be a matter that the
14 community as a faith community decides among
15 themselves?

16 And who in the end is going to make that
17 decision? Under this regulatory authority, the State
18 will make that decision for religious people, not
19 religious people for themselves.

20 It says that the State may not decide and
21 interpret religious law. That is fine, and that is,
22 again, a commendable way of trying to cabin this
23 legislation, but there is no barrier to applying
24 religious principles.

25 So, for example, if there is a particular

1 dispute about whether a biblical passage means X or
2 Y, whose view is going to prevail in this?

3 If the judge happens to have the same
4 training as Representative Shimkus, is he going to be
5 able to say, well, counsel, what about this? And if
6 I decide against you in this case, am I really
7 advancing biblical principles over your objections or
8 am I allowed to disagree with them? Again, the State
9 will make that decision, not religious people.

10 And then finally, the pretext inquiry. The
11 pretext inquiry allows a government agency, a court,
12 or in this case, a State board, to discuss the
13 plausibility, centrality, sincerity, even the
14 reasonableness of a religious tenet. And who is to
15 say that in particular cases a religious tenet would
16 be decided to be unreasonable?

17 Or as was said to me by a juror in one of my
18 cases a couple of weeks ago after the court ruled on
19 First Amendment grounds for my client, interviewing
20 the jury afterwards, one of the jurors said, well,
21 don't you think it is time for the church to get into
22 the 21st century, and don't you think some of these
23 views about the relationship between, in that case it
24 was a teacher and a school, have to be reformed and
25 have to be modernized; you have to get brought up to

1 date. And that was precisely what the Federal
2 district judge who ruled in our favor from the bench
3 said could happen, and it was a risk that she was
4 unwilling to take in dismissing the case. But that
5 is actually at the heart of the pretext inquiry.

6 So I leave you with a quick story, and
7 the story comes from the 1780s and involves
8 Benjamin Franklin.

9 Benjamin Franklin, as Minister to France at
10 the court of the French King, was visited by a
11 representative of the Pope who said words to this
12 effect: It looks like you Americas may win this
13 conflict with the Mother Country, and we are
14 concerned, because we would like to know how you in
15 the new government would like to organize
16 relationships between Catholics in your new country
17 and the Holy See.

18 Franklin's answer is instructive here, I
19 think. Franklin said, it is not part of the
20 government of our new United States to have anything
21 to do with relationships between individual believers
22 and religious authority. And so you and the church
23 will have to figure these things out for yourselves,
24 and don't expect any benefit and don't expect any
25 interference from the government, because that is not

1 our job.

2 And so my counsel here would be restraint,
3 and that this bill as drafted certainly creates a
4 number of problems, and I would ask that you
5 reconsider the decision to move this forward.

6 Thank you for your time.

7 VICE CHAIRMAN CASORIO: Thank you,
8 Dr. Fahey, and I believe the remaining committee
9 members have no questions, so you will get off
10 lightly.

11 Thank you for being conscious of the time,
12 and we appreciate you testifying.

13 MR. CHOPKO: Thank you.

14 VICE CHAIRMAN CASORIO: Thank you, sir.

15 Next, our panel--- I'm sorry; Mark Chopko.
16 Dr. Fahey is next. I'm ahead of myself.

17 Joseph J. Fahey, Ph.D., Chairman, Catholic
18 Scholars for Worker Justice, and Professor of
19 Religious Studies, Manhattan College.

20 And I apologize; the last testifier was
21 Attorney Chopko. This is Dr. Fahey. And as I will
22 with the other four panels after you, Dr. Fahey, we
23 would ask that you maybe not read your entire
24 testimony verbatim -- we have it here -- but give us
25 more of your insight into House Bill 2626.

1 Whenever you are ready, sir.

2 DR. FAHEY: Okay; I will be very, very
3 short. I appreciate your time spread.

4 I just want to say to the committee how
5 happy and privileged I am to be here today. I
6 realize that you cannot mention the words
7 "Commonwealth of Pennsylvania" without mentioning
8 workers' rights and workers' struggles. So I know
9 the great history this State has contributed to that
10 cause.

11 And even in our own tradition, Monsignor
12 Charles Owen Rice of Pittsburgh is renowned
13 throughout the Catholic teaching circles, so that I
14 am grateful to be in this State for that reason as
15 well.

16 Catholic Scholars for Worker Justice is a
17 brand-new organization. We were founded really
18 2 years ago but legally found this year, and we were
19 founded to continue the work of the great labor
20 priests in the Catholic Church.

21 There were at one time 150 labor schools in
22 the church; there is only 1 left, and that is the
23 Labor Yield up in Boston. So we decided to form an
24 independent, basically a lay organization to continue
25 advocating for workers' rights and for union

1 representation faithful to Catholic teaching in
2 another forum -- through research, advocacy, and
3 testimony such as this.

4 One of the first issues that confronted us
5 was indeed the Scranton teachers' situation, and we
6 investigated that and we have issued a statement of
7 support for the teachers.

8 Basically, our investigation revealed to us
9 that the Diocese of Scranton violates both the spirit
10 and the letter of Catholic teaching on the right to
11 teachers seeking representation.

12 I will read this briefly and then make one
13 or two other comments.

14 The Catholic Scholars for Worker Justice
15 supports the right of the teachers of the Diocese of
16 Scranton to bargain collectively with the diocese
17 through an independent union of their choice.

18 The Catholic Scholars for Worker Justice
19 calls upon the Diocese of Scranton to end its
20 campaign against the teacher's right to free
21 association.

22 The Catholic Scholars for Worker Justice
23 calls upon the Diocese of Scranton to once again
24 recognize the Scranton Diocese Association of
25 Catholic Teachers and to begin collective bargaining

1 with SDACT immediately.

2 One of the reasons we were founded was to
3 support Catholic institutions that follow Catholic
4 teaching on matters of labor unions. Just so you are
5 aware, we are in the process now of writing a
6 statement to support the four bishops of Kentucky who
7 are mandating that all capital projects, diocesan
8 capital projects, have to use union labor. We
9 applaud that, because we think they are following
10 Catholic social teaching.

11 However, another reason we were founded is
12 we are painfully aware that the church in so many
13 instances will use civil law to its benefit, which
14 will take money, as it should, for busing and a host
15 of other types of things when it comes to this.

16 One specific issue the church -- and by the
17 church, I am talking about the hierarchy of the
18 church, because I think it is very important to
19 remember what the panel of evangelical members said
20 to us: The Catholic Church is the people of God. It
21 is not just the clergy, it is not just the hierarchy;
22 it is all of us. It is very important to keep that
23 in mind.

24 But we have found in Catholic hospitals and
25 schools, we have found an intentional use of civil

1 law to subvert the natural or the divine law, which
2 guarantees the right of free association for workers,
3 including workers in Catholic institutions, and some
4 of what the testimony I have read so far and some of
5 what we are hearing, that is reminiscent of so many
6 other campaigns that we have done research on and
7 found.

8 Now, you could put any kind of legislation
9 on this table and it is not going to be supported.
10 Why? Because it gives the workers power, and that is
11 something that their employers generally do not want
12 them to have. It is not just money and benefits and
13 all of those things.

14 In fact, I teach in a Catholic college. I
15 didn't take this job because I was going to be rich
16 or anything like that, et cetera. We all realize
17 that, but it does give the workers a certain degree
18 of power.

19 Now, I could quote a great many quotations
20 that are in the testimony that I have submitted to
21 you, and especially read Father Sinclair Oubre. He
22 has quotations from canon law that are critical here
23 in understanding.

24 Unlike the evangelical tradition, the
25 Catholic Church supports -- vigorously supports --

1 labor unions and it supports them for its own ranks
2 as well. And by the way, regarding the distinction
3 between clergy and laity, that distinction really
4 isn't made in canon law.

5 For example, priests are forbidden to be
6 union officials. It doesn't say even priests can't
7 belong to labor unions. Deacons who are clergy in
8 the Catholic Church can belong to labor unions. And,
9 of course, laypeople, the church calls upon them to
10 promote this.

11 This legislation is made necessary,
12 tragically, because the Diocese of Scranton failed to
13 do its job. It had a union, and according to
14 Catholic teaching, it should have continued
15 negotiating with that union.

16 Therefore, under the principle of
17 subsidiarity in Catholic social thought, since the
18 subsidium or the aid or assistance is not forthcoming
19 from the diocese or the church, they have to turn to
20 you, the State, for the kind of assistance and
21 protection that they need and that they deserve and
22 that the Catholic Church teaches at many, many levels
23 they should have.

24 I will stop there, Mr. Chairman.

25 VICE CHAIRMAN CASORIO: Thank you,

1 Dr. Fahey.

2 Before I recognize Representative Cox, I
3 just want to thank you also for your testimony, and
4 the panelists we have had before.

5 And to the core of this hearing,
6 Representative Pashinski, thank you for doing this.
7 Whether you are a cosponsor -- and the Labor
8 Committee is obviously holding this hearing for the
9 sponsorship of House Bill 2626 -- whether you are a
10 cosponsor or not, that is your right to cosign on or
11 not, and what I am hearing from you, Dr. Fahey, is, I
12 guess the reason that we are here is because we are
13 hearing now a different point of view from what we
14 have heard before -- right, wrong, left, right. We
15 are just taking this information in, and now we are
16 hearing -- as a Catholic myself, and you as a
17 Catholic -- saying the Catholic Church is supporting
18 this. We have heard from evangelicals before. We
19 have heard from some other Catholics. We will hear
20 from some folks in the Diocese of Scranton. We are
21 hearing things that run counter to what had been said
22 prior, and that is what this type of hearing is
23 supposed to do.

24 So I want to thank all of the testifiers --
25 at this point, we still have four more panels to go

1 -- but again, for putting this bill out,
2 Representative Pashinski, and for having this
3 dialogue today, from not only you, Dr. Fahey, but all
4 of the gentlemen and the lady before us for giving us
5 points of view, because we are learning, we are
6 hearing different perspectives that may not be just
7 our own district, and this is a good opportunity.

8 So I just wanted to throw that out there,
9 that although we may be moving along a little bit at
10 the end here, I am certainly learning a lot today.

11 Representative Cox.

12 REPRESENTATIVE COX: Thank you,
13 Mr. Chairman.

14 Dr. Fahey, I am hearing over and over and
15 over today that the right of free association is
16 being violated. I am having a whole lot of trouble
17 figuring out where, because they have a right to form
18 any type of association. They can form a union;
19 anyone can form a union. Whether a private entity
20 such as a diocese recognizes that entity, to me, it
21 seems like a clear matter of choice for that private
22 religious entity.

23 And so in the same way that individuals,
24 these teachers, would have a right to form an
25 association or otherwise -- call it a union; call it

1 an association; call it what you will -- I am finding
2 it hard to make the leap of logic that appears to be
3 necessary to say that they have no right to form that
4 entity. I cannot find that the right of association
5 is being violated.

6 I went through 3 years of law school, sat
7 for the bar. You know, I feel like I have a decent
8 handle on the law. Constitutional law was one of the
9 areas that I dug into the deepest.

10 You know, I worked for a public interest law
11 firm for the first 2 years out of law school. They
12 focused on defending the rights of individuals, many
13 religious.

14 And I have to tell you, one of the most
15 common calls we got was a religious individual
16 calling who was employed by a local public school
17 district, whether it was Pennsylvania or any other
18 State in the country. For the most part, they were
19 calling to ask the question, do I have to be part of
20 the union? They are telling me I do, and I don't
21 like what that union stands for.

22 As a Representative, I have received those
23 same types of calls. I have had people sit in my
24 office saying, why can I not get out of the union?
25 Why must I pay if they call this fair share?

1 People have a right to choose where they
2 work, and in every instance, they know what they are
3 getting into. Now, I would say that is especially so
4 for individuals who teach in a religious school
5 setting.

6 I have got a child in a public school and I
7 have got a child in private school. It is a
8 religious school. As a parent, I choose what is best
9 for my child, depending on individual needs and so
10 forth.

11 The teachers at the private school make a
12 lot less than many of those at the public school, yet
13 this private school where my children go and many of
14 the private schools in Berks County consistently
15 score higher on numerous standardized tests and other
16 measured levels of performance.

17 So I cannot make the argument that some
18 people might that, well, people at private schools
19 aren't as qualified as those in the public schools.
20 The test results may indicate otherwise.

21 With all that said, teachers know what they
22 are getting into, whether it is a public school or a
23 private school. They know going into a private
24 religious setting, they are not going to make as
25 much.

1 I am a graduate of a high school. I had
2 12 years of religious education in Illinois. My
3 teachers wanted to be there. Not to say public
4 school teachers are any different, but I can speak
5 from personal perspective, those teachers wanted to
6 be there, regardless of the pay. There was a
7 personal passion; it was a personal ministry to them,
8 much like the gentleman who testified earlier talked
9 about. They see themselves as ministers. They see
10 themselves as those who are responsible in a parent's
11 stead to teach doctrine.

12 I found a lot of the testimony -- and
13 perhaps it is just the first real opportunity that
14 has been nutshelled here -- I find this idea of free
15 association to be disingenuous. Free association, I
16 cannot see how it is being violated. They have every
17 right to form, and that religious entity has every
18 right to not recognize it.

19 If we as a legislative body step in and say
20 you must recognize it, I think that is the first step
21 in the wrong direction of interfering with the rights
22 of a religious body. Whether it is the Catholic
23 Church or an evangelical church or otherwise, I think
24 it is the first step in the wrong direction that will
25 create problems between church and State that to this

1 point have not existed. It has pretty much been
2 hands-off to this point. There have been areas where
3 the State has tried to interfere.

4 I would ask you, can you help -- and I
5 realize I have given a little bit of a background
6 there, but I wanted to share my perspective -- can
7 you help me understand more about this free
8 association? And I have one comment after that that
9 I know I want to make, depending on your answer.

10 DR. FAHEY: I do think you are using my
11 present sentiment a little bit, and that is fine.

12 The church teaches that the right to
13 association is the fundamental basis for labor
14 unions. And again, it is not a new teaching; it is
15 quite ancient.

16 And the right to select a union to represent
17 the workers is theirs and theirs alone. It is not
18 the employers. So the Catholic Church vigorously --
19 I could produce volumes of documents, et cetera, that
20 support this right.

21 Rights is not the only way to look at this.
22 We also need to look at duties. In Catholic
23 theology, we all say, what is the duty, okay? And so
24 I would ask the Diocese of Scranton, what is its duty
25 toward its teachers who have freely chosen to form a

1 union? And according to Catholic social thought, the
2 legal system may be different, but according to
3 Catholic social thought, they have a clear duty to
4 recognize and to work with that union, because that
5 union mirrors and follows explicitly Catholic social
6 teaching.

7 Indeed, I was hoping that there would be
8 more Catholics today promoting this legislation,
9 because it is consistent with Catholic social
10 teaching. This is exactly what Catholic social
11 teaching is about, is helping and assisting the
12 rights of workers.

13 So it is not just the right -- the right to
14 association is what the unions are based on, but
15 there is also a duty in Catholic social thought for
16 employers to recognize those unions where in fact
17 they are desirous of coming into existence.

18 In this case, this was an open-and-shut case
19 for us. I mean, how do you -- and the bishop
20 reformulated the diocese and it broke the union; it
21 busted the union.

22 I am not going to get into his intentions,
23 whether he did that purposely or not, but the
24 de facto conclusion is, a cardinal teaching of
25 Catholic social thought was violated in the Diocese

1 of Scranton when the church announced that it would
2 no longer negotiate with that union. We believe it
3 has a duty to continue to do so, unless the teachers
4 themselves want to stop the union or whatever the
5 case may be.

6 That is how I would see that.

7 REPRESENTATIVE COX: And I think you have
8 kind of underscored the testimony of some of the
9 other gentlemen, that you keep referencing Catholic
10 teaching, religious teaching. And I would look at
11 that situation and say, because that is in fact the
12 teaching rather than the law, the law has no place
13 stepping in, if we have the ability as a Legislature
14 to step in, and begin telling a church of any
15 denomination how to function and what they must or
16 must not recognize.

17 It is different than a situation where child
18 abuse or other abuse is occurring. This is not a
19 safety issue; this is not a health issue, which is
20 many of the areas that we have seen government step
21 this. This is a paycheck issue, you know, whether
22 they are going to pay the teacher or a group of
23 teachers enough.

24 And again, not to create a combative spirit
25 here -- that is not my goal -- I wanted to bring some

1 points out that I think we have heard, but I wanted
2 to summarize them and get your take on them.

3 I am hearing you talk about giving workers
4 power, and there had been legislation that was
5 introduced years and years ago; I think it has been
6 introduced this session. There is a right-to-work
7 statute that many other States have. Would your
8 organization support the effort of those of us who
9 believe that there should be a right-to-work and that
10 union membership should not be mandatory?

11 DR. FAHEY: We have not taken a position,
12 but I would strongly doubt it. That would not be
13 consistent with Catholic social thought at all.

14 REPRESENTATIVE COX: Are you talking
15 about---

16 DR. FAHEY: You need to know, you need to
17 know that there would not be a National Labor
18 Relations Act without the Catholic Church.

19 The Catholic Church has, from the 1919
20 statement of the bishops on up, has vigorously
21 supported political action to create rights for
22 workers. Monsignor John A. Ryan was enounced, and
23 there was a biography written about him called
24 *Right Reverend New Dealer*. He had a lot to do with
25 writing that. There were some scholars who think the

1 preamble to the National Labor Relations Act is
2 directly quoted, practically, from *Rerum novarum* of
3 1891.

4 And so the church has always been involved.
5 See, unlike some traditions that regard the State or
6 the political system as antithetical toward religion,
7 that has never been the Catholic tradition. The
8 Catholic tradition has always argued that the civil
9 law, if it is based on natural law, is something to
10 be encouraged in supporting human rights.

11 In this case, the church has vigorously
12 supported, testified before Congress. Charles Owen
13 Rice; I could go on and on with some of the great
14 people in the past who have worked with civil
15 authorities to protect and to enhance church
16 rights.

17 REPRESENTATIVE COX: And one last question.

18 DR. FAHEY: Oh, no inconsistency there at
19 all.

20 REPRESENTATIVE COX: I appreciate your
21 response.

22 One last question. You talked about having
23 the right to form a union, and that is kind of the
24 underscoring of this, that's the full intent here,
25 giving them the right to form a union.

1 There was some disagreement earlier on
2 whether there is a right to join, not to join,
3 whether they have to pay union dues or whatever, and
4 I look at that and say we are into semantics here,
5 that they don't have to pay dues because of the
6 existence of the Fair Share Act. But would your
7 organization or do you feel that Catholic teaching
8 would say that while they have a right to form a
9 union, would you say that there is also a right of
10 individuals not to be forced to join that union and
11 not to be forced to pay anything, even the fair
12 share? Where would you fall on that, because I am
13 looking for consistency within your position, and I
14 am curious as to where that would land.

15 DR. FAHEY: First of all, I think I would
16 say, or we would say, that the voters decide whether
17 they want a union or not. If 51 percent say they
18 don't want a union, the 49 percent lost. They do not
19 have a union. They do not get to negotiate; they do
20 not get -- that is the way the system works. And if
21 the reverse is true, that is the way the system works
22 as well.

23 But unlike the situation where the people
24 who wanted a union lost, they are not going to get
25 the benefits; nobody is going to get the benefits of

1 a union. Whereas if 51 percent support the union,
2 all the workers are going to get the benefits of the
3 union.

4 Based on that, I think that is much more
5 consistent with Catholic social teaching since it
6 stands up for the rights of workers, and more
7 importantly, it benefits all of the workers.

8 We can debate, and I do not know enough
9 about whether or not there should be open and closed
10 shops and right to work -- I realize those are
11 complications -- but I think the general principle,
12 that when workers vote, that vote should be
13 respected.

14 You are going to vote on this bill. Some of
15 you are going to win and some of you are going to
16 lose, but nobody is going to walk out of here crying
17 in their beer and saying, oh, too bad we lost; our
18 rights were violated. No, they weren't. You voted,
19 and that's the way things worked out, and I would say
20 the same with union elections as well.

21 REPRESENTATIVE COX: Thank you.

22 DR. FAHEY: Thank you.

23 VICE CHAIRMAN CASORIO: Thank you,
24 Representative Cox.

25 Representative Pashinski.

1 REPRESENTATIVE PASHINSKI: I just want to
2 thank you very much for your testimony, Dr. Fahey,
3 and you just brilliantly summed up at the end.

4 It is just the right to choose, and I always
5 felt as though the Catholic religion would allow that
6 kind of freedom and honesty to take place, and it
7 does not appear that it does.

8 And if I could just clarify, please, this
9 point: There is a major difference between a private
10 school where people pay tuition and choose to send
11 their children to that school as opposed to a public
12 school.

13 Now, public schools are there for every
14 individual, no matter what socio or economic
15 background, and the conditions by which they have to
16 work are far different, and in many respects, far
17 more difficult than in a private institution.

18 And I think sometimes it is just unfair when
19 you are comparing apples to oranges, and that is
20 exactly what you are doing when you are comparing
21 public to private.

22 Thank you very much.

23 DR. FAHEY: Thank you.

24 VICE CHAIRMAN CASORIO: Thank you,
25 Representative Pashinski.

1 Representative Gabig.

2 REPRESENTATIVE GABIG: Thank you,
3 Mr. Chairman.

4 Just to follow up on that point. You know,
5 it seems like I am hearing Cardinal Pashinski and
6 Cardinal Fahey come in here and rule over, you know,
7 saying this guy didn't make the right decision; I
8 know church law, and by golly, we are going to force
9 it down their throat through the State General
10 Assembly. I have some concerns about that.

11 But on that specific point, you know, you
12 are from New York, I guess, a professor, and I know
13 you are not a Cardinal. I was just saying that
14 somewhat as a--- Although you could be a Cardinal
15 for all I know.

16 DR. FAHEY: You never know. I could be one.

17 REPRESENTATIVE GABIG: The way the priests
18 dress today.

19 But you probably don't know Pennsylvania law
20 that well, so let me just read a Democratic bill
21 analysis on a single case that is referenced,
22 actually, in the findings of the legislation, Western
23 Pennsylvania Hospital v. Lichliter. The Pennsylvania
24 Supreme Court ruled that nonprofit corporations are
25 not covered by the Pennsylvania Labor Relations Act

1 because nonprofit corporations such as hospitals, and
2 what we are talking about here, private religious
3 nonprofit schools, were not engaged in industry, were
4 not engaged in commerce, trade, business, or
5 production within the meaning of the act. That is
6 what this whole bill is about.

7 Right now, they are not covered, and the
8 maker of the bill, because of an incident that
9 happened in his district, that, quite frankly, I am
10 not that aware of, has this bill.

11 And you agree that religious schools,
12 nonprofits, religiously-affiliated, they are not
13 engaged in commerce and trade, et cetera. Is that
14 right?

15 DR. FAHEY: They are engaged in the exchange
16 of goods and services.

17 REPRESENTATIVE GABIG: Correct.

18 DR. FAHEY: Now, I am not a lawyer, but I
19 understand some people think that is commerce.

20 REPRESENTATIVE GABIG: Okay. So you think
21 it is commerce then, what they are engaged in. Is
22 that right?

23 DR. FAHEY: Well, again, you are not going
24 to get me to say that, because I just do not have
25 enough expertise.

1 REPRESENTATIVE GABIG: All right; I get you.
2 You are a professor of law---

3 DR. FAHEY: Yes.

4 REPRESENTATIVE GABIG: ---and a chairman of
5 a department, I guess. But we just heard the maker
6 of the bill say there is a big difference between
7 private schools and public schools and we got to
8 treat them differently, and I happen to agree with
9 that basic point.

10 But public schools are engaged in the
11 exchange of goods and services, all right? They are
12 providing a good, a service, educational services.
13 Is that correct? Public schools are.

14 DR. FAHEY: I am not competent to answer
15 that.

16 REPRESENTATIVE GABIG: Right, and to say
17 that they are commercial because of that is quite a
18 stretch in legal analysis. Would you agree with me
19 on that?

20 DR. FAHEY: Well, I think you should make
21 the statement, because you are asking me questions
22 that really are your---

23 REPRESENTATIVE GABIG: But you are a
24 professor, and a lawyer? Are you a lawyer?

25 DR. FAHEY: I'm a theologian.

1 REPRESENTATIVE GABIG: Oh, a theologian.

2 VICE CHAIRMAN CASORIO: Representative Gabig
3 -- gentlemen -- yield, please.

4 DR. FAHEY: Get me on theology.

5 VICE CHAIRMAN CASORIO: If you are going to
6 ask Dr. Fahey or any other panelist a question, allow
7 him, please, to answer, and we will allow you ample
8 time to ask a question as well. But please allow the
9 gentleman to answer your question.

10 I just didn't want either of you talking
11 over each other. Please, just let him answer the
12 question, please.

13 REPRESENTATIVE GABIG: I am mum after that
14 admonition from my fellow bureaucrat.

15 DR. FAHEY: I guess I am, too. I see where
16 you are coming from.

17 REPRESENTATIVE GABIG: See, I am asking a
18 question and you are talking, so I'm not sure who is
19 interrupting who. But I just wanted to make that
20 point.

21 VICE CHAIRMAN CASORIO: No; no. Excuse me
22 again.

23 REPRESENTATIVE GABIG: I am talking and he
24 is talking over me, so.

25 VICE CHAIRMAN CASORIO: The gentleman will

1 yield, please.

2 If you ask the question, as we have all
3 afternoon, if you pause, the gentleman, I am sure,
4 would give you his answer, and then you can have a
5 rebuttal.

6 REPRESENTATIVE GABIG: But he is from New
7 York, so he sort of talks---

8 VICE CHAIRMAN CASORIO: That is unnecessary,
9 Representative Gabig. If you have a question for the
10 gentleman, I would ask it. If not, we will move on
11 to the next panel of testifiers.

12 REPRESENTATIVE GABIG: That is fine. We're
13 ready to go. Keep going.

14 VICE CHAIRMAN CASORIO: Thank you,
15 Representative.

16 Dr. Fahey, thank you for being here
17 today.

18 DR. FAHEY: Thank you, gentlemen.

19 VICE CHAIRMAN CASORIO: The next testifier,
20 the next panel, will be James Brian Benestad, Ph.D.,
21 Professor of Theology at the University of Scranton,
22 and The Very Reverend William J. King, J.C.D., Canon
23 Lawyer, Adjunct Instructor in Canon Law, Catholic
24 University of America, and Vicar General, Diocese of
25 Harrisburg.

1 Gentlemen, I will again ask you both,
2 because I see you have some 23 pages of combined
3 testimony, maybe give us the abridged version and we
4 can move forward.

5 Thank you both for being here.

6 DR. BENESTAD: Thank you, Mr. Chairman, and
7 thank you, members of the House Labor Relations
8 Committee and your distinguished guests.

9 I am a professor of theology at the
10 University of Scranton. I have specialized in
11 Catholic social doctrine all my life, written many
12 articles on it, and this summer I just submitted a
13 manuscript on the subject to the Catholic University
14 of America Press.

15 When I first got interested in this issue,
16 when I heard Catholics and non-Catholics alike very
17 dogmatically asserting that the Bishop of Scranton
18 had violated Catholic social teaching by not
19 recognizing the union, they often mentioned
20 "*Rerum novarum*." Saying "*Rerum novarum*" requires the
21 bishop to recognize the union in all situations.

22 Now, my subject is Catholic social doctrine
23 on unions with an emphasis on this question: Does
24 Catholic social doctrine recognize an absolute or
25 unqualified right to join a union regardless of

1 circumstances? And I use the word "recognize"
2 advisedly and "confer" advisedly. "Recognize," you
3 know, may be a natural right, as Professor Fahey
4 said, a natural right to join a union. If you
5 "confer" a right, the law, you know, would give it
6 and it is not something based in nature.

7 I think the Catholic Scholars for
8 Worker Justice are right to say that there is a
9 priori presumption for labor unions in Catholic
10 social doctrines. This is certainly true. The
11 Catholic social teaching has defended unions because
12 of what they have done to secure better working
13 conditions, wages, and benefits. But it is not just
14 any kind of union that the church wholeheartedly
15 endorses.

16 Let me just mention some things that *Rerum*
17 *novarum* teaches about unions. It says, Pope Leo XIII
18 on *Rerum novarum* -- which means, by the way, "of new
19 things" -- he said that the moral and religious
20 perfection of the worker ought to be regarded as the
21 principal goal of unions. Now, you do not hear that
22 mentioned very often.

23 Pope Leo also said this: It is gratifying
24 that society is composed of either workers alone or
25 that workers and employees together are being formed

1 everywhere. Now, as far as I know, that statement
2 was never repeated in a subsequent church document,
3 but it sounds very much like the employment councils
4 that Bishop Martino is using in Scranton.

5 John Paul II, in his encyclical on *Human*
6 *Work*, said this. He said that "...thanks to the work
7 of their unions, workers will not only have more, but
8 above all be more: in other words, that they will
9 realize their humanity more fully in every respect."
10 This is very similar to what Leo said about moral and
11 religious perfection.

12 And then he went on to say that the unions
13 have to keep in mind the common good of the whole of
14 society, and this certainly means that unions in
15 Catholic schools should not bargain for anything
16 contrary to the common good of the Catholic school,
17 namely its mission, its faith community, and its
18 viability.

19 The recently published *Catechism of the*
20 *Catholic Church*, published around 1994, recognizes
21 that a company or an institution might not be able to
22 pay the ideal salary because of the, quote, "state of
23 the business."

24 For example, tuition and contributions from
25 parishes do not provide enough income to match the

1 pay of teachers in public schools.

2 Now, let us ask this question: In the light
3 of Catholic social teaching on unions, does a bishop
4 have an obligation to recognize every association
5 that wants to unionize?

6 Now, while the bishop should try to give a
7 favorable response to such a request, he may
8 ultimately and reasonably decide that recognizing a
9 particular union would be an obstacle to maintaining
10 the Catholic identity, collegiality, academic
11 excellence, or financial viability of the
12 diocesan schools. In that case, the bishop might
13 have a duty to deny recognition to a particular
14 union.

15 As a matter of fact, in Catholic teaching,
16 just about every right is subject to various kinds of
17 limitations for the sake of the common good, and it
18 is also true in American law. You know, rights are
19 subject to limitations in the area of American
20 constitutional law.

21 You know, the Bill of Rights gives us the
22 right of free speech and it gives us the right to
23 bear arms, and yet the courts have consistently
24 upheld certain legislative regulations of pornography
25 and weapons.

1 Now, we do in America have a tendency to
2 absolutize rights. Those of you who are lawyers
3 probably remember that from the late 19th century to
4 the mid-1930s, the courts used a notion of property
5 rights and contractual rights to invalidate all sorts
6 of legislation on health and safety.

7 You know, the most famous were in 1905.
8 New York State passed a law forbidding workers to,
9 you know, work more than 60 hours a week, and the
10 Supreme Court declared it unconstitutional, you know,
11 on the basis of property rights and contractual
12 rights.

13 So we do absolutize rights. But both in
14 America and in the Catholic tradition, all rights are
15 subject to certain limitations.

16 Now, when a bishop doesn't recognize a
17 union, he must be even more attentive to the needs of
18 his school employees, including their religious and
19 moral perfection, and be intent on establishing lines
20 of communication and collegiality between
21 administrators and employees in the school. And the
22 bishop should do all that he can to find a way to
23 raise the salaries of those insufficiently paid. He
24 has that duty as, you know, the bishop of the
25 diocese.

1 Now, when a bishop denies recognition to a
2 particular union, government, in my mind, should not
3 become entangled in a dispute between a bishop
4 and his critics, which is required by House Bill
5 2626.

6 The government should respect the religious
7 liberty of the church and not attempt to settle a
8 dispute among Catholics about the proper
9 interpretation of Catholic social doctrine with
10 respect to unions or any other matter.

11 House Bill 2626 is not consistent, I would
12 say, with Catholic social doctrine, because it really
13 infringes on human liberty, and it is wrong to assert
14 that there is an absolute or unqualified right to
15 join a union. How could one say that? I mean, if a
16 union was not doing what it was supposed to do, the
17 church would still have to recognize it? That would
18 simply make no sense.

19 Thank you very much.

20 FATHER KING: Mr. Chairman, committee
21 members, I again echo the gratitude of others in
22 allowing us to testify today.

23 I will not echo what you have already heard.
24 You have some of that in my written statement, which
25 is part of the record of today's hearing.

1 I come from a different perspective, and not
2 that of theology, not that of teaching or education,
3 but that of canon law, which has sometimes been
4 called the practical element of the theology of the
5 church.

6 The canon law is a very small set of norms
7 which attempt to protect the most important values in
8 the life of the church.

9 The set of norms in canon law are
10 essentially a set of lessons learned by the church
11 over the centuries and methods for resolving problems
12 that we have encountered in the life of the church
13 through to millennia.

14 My professor of the history of canon law
15 began, the first day of class, by noting the first
16 principle of historicity in canon law is there
17 wouldn't be a law against it if somebody hadn't done
18 it.

19 And two, I commend the well-intentioned
20 effort of this committee to address a specific
21 problem, but I am not certain that the cloak you wish
22 to throw over the fire is not too big and will hit
23 areas in the life of the Commonwealth and of the
24 church which are not really appropriate, I believe,
25 for this General Assembly to enter into.

1 For instance, you have heard Catholic
2 theologians debate publicly here back and forth
3 whether a particular bishop has acted in specific
4 ways in fulfillment of or in violation of Catholic
5 social teaching. That demonstrates alone the peril
6 of this bill.

7 I think it is impossible for the work of a
8 State actor, a State agency, to enter into a
9 discussion of polity, discipline, the content or
10 conduct of teaching or administration in an
11 individual Catholic school or a diocesan school
12 system where such exists without engaging in the type
13 of discussion and debate and razor-edge, fine-line
14 distinctions that are made here today entering into
15 discussions of Catholic theology.

16 No organization in history has advocated as
17 zealously and as strenuously for the right of persons
18 to enter into associations to promote common values
19 or common efforts as has the Catholic Church.

20 Long before *Laborem exercens*, long before
21 *Rerum novarum*, long before the modern Catholic social
22 doctrine of the church, we were entering into
23 associations to promote the life and ministry of the
24 church. That is how a lot of the religious orders of
25 the Catholic Church began, individuals who assembled

1 together for a common purpose.

2 But no order came to existence without
3 entering into conversation with the local bishop or
4 the Holy Father, the Pope, and it is precisely that
5 value that is protected in canon law.

6 Balancing the right of individuals to
7 associate for a common purpose in harmony with the
8 life of the church is also the right of the bishop to
9 discern with them the activity of the Holy Spirit in
10 pursuit of the mission of the church.

11 And so as we just heard, it is well within
12 the rights of a bishop to discern whether or not to
13 recognize a particular association over another and
14 to offer an alternative.

15 It is that type of discernment that is made
16 precisely within the church, and it is the same
17 authority that gave us Catholic social teaching that
18 gives us this canon law, which tries to protect and
19 balance those rights.

20 Asking the Pennsylvania Labor Relations
21 Board to discern a purely secular motive for a
22 decision or action is, if you will forgive a homey
23 example, a homesy-folksy example, is like asking
24 someone to retrieve a fish from a fish tank without
25 ever touching the water.

1 There is such a pervasive character of
2 religion and faith in a Catholic school that it would
3 be impossible, without entering into the type of
4 theological debate and discernment heard today, for a
5 State actor to make that discernment of what
6 constitutes nonreligious versus religious
7 motivations.

8 In the end, my concern about this proposed
9 legislation arises from two sources.

10 First, as you have heard, I believe there is
11 historical wisdom in the early centuries of our
12 country, a wisdom that not only speaks of this wall
13 of separation between church and State -- a wisdom
14 which reminds us that where no bright line exists to
15 distinguish religious values from secular values,
16 government ought to stop at the threshold and not
17 enter into a discussion or inquiry -- but also a
18 wisdom, a historical wisdom, by which the courts have
19 reminded us of the peril of this very type of
20 inquiry, and I think we ought to heed that.

21 My second source of concern arises from
22 this: In 2,000 years of forming associations and
23 co-discerning between the bishops and persons of the
24 church, no doubt we have encountered disputes and
25 disagreements before, which is why the Catholic

1 Church operates a system of tribunals and has for
2 well over a millennium; why we also have systems of
3 administrative recourse and review of decisions that
4 may have been improperly made or based on unjust
5 rationale or lead to an unjust consequence.

6 I was a judge in an ecclesiastical tribunal
7 in the Diocese of Brownsville, Texas. The case was
8 handed to that ecclesiastical tribunal by a State
9 judge. It dealt with a contract question between a
10 parish, a Catholic parish, and a labor union.

11 The judge handed it back to the
12 ecclesiastical court using the venerable doctrine of
13 deference in the legal system which states that if a
14 religious body has its own judicial system, its own
15 means of testing and trying facts and coming to a
16 decision, the State government ought to defer to
17 the internal operations of that church in matters
18 that refer to the internal operations of the
19 church.

20 There exist within the Catholic Church
21 structures for recourse and remedy which have not
22 been tried or tested in the particular situation
23 which gave rise to today's inquiry and to the bill at
24 hand.

25 I believe for those two reasons, it is

1 somewhat perilous to consider this type of
2 legislation, and that I offer as my testimony.

3 VICE CHAIRMAN CASORIO: Thank you, Father.
4 Thank you, Doctor.

5 Representative Gabig.

6 REPRESENTATIVE GABIG: Thank you,
7 Mr. Chairman.

8 I want to thank you gentlemen for your
9 testimony.

10 Would you agree that nonprofit private
11 religious schools in Pennsylvania are not engaged in
12 commercial activity?

13 FATHER KING: I am tempted to say we have
14 a prophet motive, but we spell "profit" a bit
15 differently. I would agree with that, yes.

16 REPRESENTATIVE GABIG: In other words, you
17 know, you are speaking biblically about saving souls,
18 et cetera.

19 FATHER KING: Precisely.

20 REPRESENTATIVE GABIG: But as a lawyer, I
21 guess, Father King, it is clearly established law
22 here in Pennsylvania that these schools, whether they
23 are Catholic schools, Mennonite schools, Baptist
24 schools, as they have in my district, other
25 Protestant schools and religious schools, are not

1 engaged in commercial activity. These are nonprofit
2 educational institutions. Is that correct?

3 FATHER KING: I cannot speak to that, but my
4 own doctoral research in canon law dealt with a
5 comparative history of the notion of public and
6 private in Anglo-American common law and in canon
7 law.

8 And I believe it is fair to say that the
9 public school system was set up by a State in order
10 to deliver public goods and services. However, a
11 private, particularly a religious-oriented school, it
12 only tangentially offers a public good and service.
13 It exists primarily to offer a private good, a
14 private service, and that is in service of the
15 religion itself.

16 REPRESENTATIVE GABIG: Thank you,
17 Mr. Chairman. Thank you, panel.

18 VICE CHAIRMAN CASORIO: Thank you,
19 Representative Gabig.

20 Representative Cox.

21 REPRESENTATIVE COX: I would like to read a
22 brief one paragraph from Dr. Benestad's testimony,
23 and I will ask both of you a very brief question. I
24 know we have heard the quite liberal use of the word
25 "brief" today, but I will keep my comments to that.

1 At the end of your testimony, Dr. Benestad,
2 you state, "Catholics, of course, may disagree among
3 themselves about a decision made by a bishop denying
4 recognition to a particular union. When such
5 disputes occur, they should be resolved by Catholics
6 themselves, not by the government. Government
7 agencies must refrain from intervening to resolve
8 disputes about the proper interpretation of Catholic
9 social doctrine regarding unions or other Catholic
10 matters. The government cannot possibly decide
11 whether a bishop is interpreting the Church's
12 doctrine correctly or not. Furthermore, government
13 agencies and institutions cannot determine whether a
14 bishop is correct in determining that recognition of
15 a particular union would jeopardize Catholic
16 identity, academic excellence, or the financial
17 viability of schools."

18 With that statement, I would like to ask
19 the two of you a simple yes or no question: Do you
20 feel that that essentially summarizes not only your
21 position but the best reason why this bill should
22 never see the light of day outside of this
23 committee?

24 DR. BENESTAD: I would say so.

25 FATHER KING: Yes.

1 REPRESENTATIVE COX: Thank you. That was
2 the answer I suspected and kind of the point I have
3 been trying to make since I started talking earlier
4 today.

5 FATHER KING: Forgive me for adding one
6 remark.

7 It is not out of a fear of collective
8 bargaining. Those who think we might fear that
9 cannot imagine what it was like to deal with
10 Mother Superior a few decades ago who had Sisters
11 in every Catholic school of the diocese. There was
12 collective bargaining at its best or worst at the
13 same time.

14 REPRESENTATIVE COX: But in effect this is
15 illustrative of the concept that within that church
16 body, whether it be Catholic, evangelical, or
17 otherwise, it is best to let that internal body
18 govern itself outside of issues such as child abuse
19 and other instances where the health or welfare of
20 individuals outside that church body would come into
21 play.

22 FATHER KING: Questions and answers can be
23 sought and obtained using a shared set of values
24 which are beyond those which reach the public sector
25 through the Legislature. Yes.

1 REPRESENTATIVE COX: Thank you both for your
2 testimony.

3 DR. BENESTAD: May I say this?

4 There is no union. The bishop, you know,
5 has a serious responsibility before God, you know, to
6 do what he can to be just to his workers. You know,
7 he is certainly not excused. I hope everybody
8 understands that, that he is seriously bound to do
9 what he can.

10 REPRESENTATIVE COX: Thank you.

11 VICE CHAIRMAN CASORIO: Thank you,
12 Representative Cox.

13 Representative Pashinski.

14 REPRESENTATIVE PASHINSKI: Thank you,
15 Mr. Chairman.

16 Thank you to both of you. Just one, real
17 quickly. It is a complicated issue, is it not?

18 Could you tell me, where do you think
19 government could get involved in the Catholic Church?

20 FATHER KING: Questions of the health and
21 safety of students have been raised today in terms of
22 building code, in terms of providing for the public
23 safety as it touches the operation and design of
24 schools. That sort of thing clearly does not enter
25 into doctrinal issues.

1 REPRESENTATIVE PASHINSKI: That is it?

2 FATHER KING: I really am not prepared to do
3 that kind of analysis at this moment. There may be
4 other areas, without a doubt.

5 REPRESENTATIVE PASHINSKI: I mean, you study
6 canon law and you know it inside and out, and
7 basically it appears that -- and we want to keep that
8 separation of church and State, absolutely; I agree
9 with that -- but that is the only example that you
10 can point out that may allow government to enter
11 into, you know, some discussion---

12 DR. BENESTAD: How about school
13 requirements? You have to go to school until you
14 finish, until you are 16. I mean, the church would
15 have no objections to that.

16 Now, certainly the Amish had an objection to
17 it. Remember *Wisconsin v. Yoder* in 1971, and the
18 court provided an exemption for them. But the
19 Catholic Church would accept that kind of regulation,
20 that you must stay in school for a certain period of
21 time.

22 REPRESENTATIVE PASHINSKI: Okay.

23 FATHER KING: And there are over 120 --
24 the number eludes me at the moment -- well over
25 120 references to the civil law within the code of

1 canon law. Most of those refer to financial
2 transactions and legal enactments to make certain
3 that they are valid under both laws.

4 Canon 1286, which appears in the written
5 testimony submitted to you today, refers to the
6 preparation of contracts of employment and urges
7 administrators within the church to fulfill social
8 policy in accord with the teaching of the church but
9 also to fulfill the civil rights that may exist as,
10 again, in the lens or through the lens of the social
11 teaching and moral life of the church.

12 There are numerous examples which could be
13 given. Again, at this moment, I am not prepared to
14 cite those.

15 REPRESENTATIVE PASHINSKI: We should share
16 those, if that is okay. If you could get that over
17 us to, I would appreciate that.

18 In the Catholic system, what other financial
19 entities do they control?

20 FATHER KING: The Catholic? The structure
21 of the Catholic Church is not monolithic. There are
22 religious orders.

23 Religious orders themselves do own property.
24 They may operate schools. In Philadelphia, La Salle
25 Prep and Saint Joseph's Prep are operated by

1 religious orders.

2 Academies may be operated by religious
3 orders -- male, female, or coed. A diocese may
4 itself operate a school or a charitable organization,
5 a hospital or university, any number of entities such
6 as that.

7 Most of the educational ministry of a church
8 is conducted as an extension of the bishop's role of
9 teaching through the agency of a parish. So most of
10 the elementary schools are parish or parochial
11 elementary schools.

12 High schools may be operated by the diocese,
13 by a religious order, or as occurs in the Diocese of
14 Harrisburg where we have seven high schools, each is
15 a joint venture of several parishes that contribute
16 monetarily through the donations of God's good people
17 to the Catholic education at that level.

18 REPRESENTATIVE PASHINSKI: Other than
19 hospitals, are nursing homes---

20 FATHER KING: Certainly. Many of those, in
21 fact, most are owned by orders, by religious orders,
22 and not by a diocese per se.

23 REPRESENTATIVE PASHINSKI: And the financial
24 requirements in operating that particular
25 establishment, is that strictly from the funds

1 received for the services rendered, or are funds
2 acquired from other sources?

3 FATHER KING: It certainly depends on the
4 nature of the apostolic work, the nature of the
5 organization or entity.

6 Some are supported fully through the
7 voluntary contributions of the faithful. Some are
8 supported largely through planned giving, bequests,
9 estates, other major gifts. Some receive public
10 appropriations for narrow purposes within the
11 activities of the church.

12 REPRESENTATIVE PASHINSKI: Okay. Very good.

13 And just for the sake of everyone here, it
14 just seemed to me that just the position that we were
15 trying to acquire here was just to give the folks a
16 chance to choose. I just didn't think that that was
17 going to be a difficult situation given the fact
18 that, you know, if things are run well, people will
19 choose not to participate in this association. If
20 they are not, then they at least have a right to try
21 a different venue.

22 Okay. Thank you very much. I appreciate
23 it.

24 VICE CHAIRMAN CASORIO: Thank you.

25 Doctor, Father, thank you very much.

1 Our next group of testifiers, and I would
2 again remind you we have three more to go, so please
3 be cognizant of that: Joseph Casciano, Secretary for
4 Catholic Schools, Diocese of Scranton; Mary Tighe,
5 Assistant Superintendant of Schools, also the Diocese
6 of Scranton; and James Burke, Director of Human
7 Resources, Diocese of Scranton.

8 Gentlemen and the lady, whenever you are
9 ready, we are glad to have you.

10 MR. CASCIANO: Mr. Vice Chairman and
11 Representatives, thank you for your patience, and
12 thank you for hearing us. We will try to summarize
13 our testimony to the best of our ability.

14 I think it is important to note that in the
15 Diocese of Scranton, much of this has been brought
16 about because upon the arrival of our bishop, there
17 was great concern for the stability and the
18 organization of our Catholic schools and our Catholic
19 parishes.

20 At that point in time, our schools had lost
21 25 percent of the student population. There was
22 financial instability in many of our parishes. Many
23 of our schools were on the brink of bankruptcy, and
24 there were concerns about the viability of the
25 parishes supporting those schools.

1 So the decision was made to hire a
2 professional consulting firm and that we would look
3 to a new model in order to provide Catholic education
4 for the 21st century. The process began in 2005 and
5 was finalized and implemented at the beginning of
6 July 1, 2007.

7 The results of the planning process divided
8 our diocese into four systems for the sake of
9 geography and the needs of the various locations in
10 the diocese. There were four legal corporations set
11 up, both State and civilly and canonically were set
12 up with boards of limited jurisdiction.

13 Each pastor was asked to relinquish their
14 jurisdiction over the parish school or over the
15 regional school that they were in order that these
16 boards of limited jurisdiction and the corporate
17 board of the bishop and his advisors would now take
18 over the governance of the schools.

19 So it was a very dramatic change for us, and
20 we are in our infancy. These are uncharted waters.
21 They have not been done in many places throughout the
22 country, and so we are trying to navigate through
23 these waters as carefully and as appropriately as we
24 can.

25 The four systems were established, as I

1 said. We met with the teachers throughout those
2 systems to talk about the future.

3 It is important to note that prior to our
4 reorganization, when a Catholic school closed in the
5 Diocese of Scranton, the teachers and administrators
6 had no place to go, that that school closed, it was a
7 separate entity, and therefore, the teachers had to
8 apply to other schools, other Catholic schools, and
9 the same with administrators.

10 We were very concerned about that, the
11 bishop himself being very concerned that the teachers
12 not be treated like that going forward, that he
13 wanted us to develop something that within these
14 systems we would have an order.

15 So we came to a certain order. I will let
16 Mr. Burke talk about that a little bit more. But I
17 just want the committee to know that there was great
18 concern for the employees, that we would not leave
19 people with years of service without someplace to go.
20 So we did do that.

21 I think it is also very important to note
22 that there were major concerns about the Catholic
23 identity of our schools, and there were many
24 initiatives instituted simultaneously to this
25 strategic planning. The bishop did not just do the

1 strategic planning and not address some of the other
2 concerns that had to be done.

3 A new high school religion curriculum was
4 instituted, along with the decision that there would
5 be one textbook used in all of our Catholic high
6 schools to ensure that the lessons were in accord
7 with Catholic doctrine.

8 The bishop wrote a booklet on chastity that
9 was implemented into our high school curriculum.

10 The bishop visits with the seniors every
11 year. He has a holy hour with them. He spends time
12 with them, celebrates mass with them.

13 He also meets with the religion teachers
14 once a year in order to discuss in particular their
15 role and how important that responsibility is.

16 In addition to that, he certainly celebrates
17 mass for all of our teachers at our annual inservice
18 day for them.

19 He also instituted a change to increase the
20 opportunity for our students to go to mass, wanted it
21 on a more regular basis. As many of those who would
22 be of the Catholic faith would understand, that we do
23 have a shrinkage of the number of priests available.
24 But so important is this ministry that the bishop
25 insisted that mass be offered every other week, that

1 holy hours be made a routine part of the day.

2 I share all of that with you because I want
3 you to get a picture of how drastic an approach we
4 were taking to establish a real plan for the future
5 of Catholic education in the Diocese of Scranton.

6 A priest chaplain has been appointed to
7 every one of the high schools. The whole sense of
8 asking for us to raise the level of our Catholic
9 identity, that in some ways, like many things, may
10 have been taken for granted. We think just because
11 we open our doors, that everybody understands that we
12 are a Catholic institution, but sometimes we need to
13 be challenged as well to do the job better.

14 So our goal and our purpose has been to
15 preserve and advance Catholic education in the
16 Diocese of Scranton.

17 We went from eight Catholic high schools to
18 four, and in one system, it was four Catholic high
19 schools to one, which has brought together this
20 course of action.

21 And certainly you can imagine taking four
22 high schools and putting them into one. The needs
23 are not as great now of the number of employees that
24 we will need to man that particular school, but it
25 was our belief that that was the best we could do,

1 and we wanted to do the best we could do.

2 So with that said, we also established, and
3 I will let Mr. Burke address the employee relations
4 council that went simultaneously and how that came to
5 be and how we came up with the criteria for hiring
6 going forward.

7 MR. BURKE: Thank you, Joe, and thank you to
8 the members of the committee for being patient. I
9 know it has been a long day, and I will try to be
10 brief as well.

11 In my capacity as the Diocesan Director of
12 Human Resources, I think the committee deserves to
13 know exactly, again, we are all for our employees.
14 We need to look out for the rights of our employees,
15 and I am going to give you some examples of what we
16 have done so far along those lines.

17 First and foremost, as Joe referenced,
18 through this very difficult process, this very
19 comprehensive reorganization effort that took place
20 in the Catholic school system, 5 days after the
21 original announcement was made, or the preliminary
22 announcement was made on what schools would be
23 closing, obviously a lot of anxiety, a lot of
24 uncertainty, 5 days after that announcement, I began
25 meeting with the teaches and all the other employees

1 as well, but particularly the teachers, as we moved
2 forward.

3 We must have met at least 8 or 10 times with
4 teachers throughout the end of that school year in
5 order for them to work with the diocese and develop
6 criteria for staffing as we moved forward.

7 I do not see a lot of organizations out
8 there today in the private sector meeting with their
9 employees to develop criteria and try to address as
10 many of the concerns as possible. More likely, you
11 will probably get a letter, thanks for your years of
12 service.

13 We spent 6 months working on, with direct
14 input from all the educators and all the other staff
15 members, on how we were going to staff our schools
16 going forward. So if that is not respecting the
17 rights of the employees, I'm not sure what is.

18 We also followed that up with the
19 implementation of these employee councils and the
20 employee relations program that we instituted.

21 I am not going to go into all the detail of
22 it. It is part of the record. You have the written
23 document of what these employee councils look like.

24 The most important piece of that is, we
25 spent a lot of time on being, you know, fair and

1 just to our employees.

2 We spent a lot of time with the word
3 "teacher" today. Teachers are, obviously, a primary
4 part of what we are doing in our educational system,
5 but they are not alone.

6 The employee relations program that was
7 developed by the diocese in conjunction with these
8 system boards gets representation from every single
9 classification in our Catholic schools. So I can't
10 see how that would be defined as we are not
11 respecting the rights of our employees.

12 We have teachers, and we gave them
13 additional consideration, because the primary role
14 that they play in our educational setting, there are
15 two teachers from each of these schools that are
16 participating in these employee councils.

17 And we also have representation from teacher
18 aides, maintenance employees, cafeteria employees,
19 secretaries, fiscals. These are all people who
20 didn't have a forum leading up to this
21 reorganization.

22 We wanted to make sure that the Catholic
23 Church, again, you hear a lot about social teaching,
24 it is for all the employees, and we wanted to give
25 them a forum to participate in a constructive and

1 productive dialogue with the diocese and also these
2 system boards. And the majority of the schools have
3 full participation with these employee councils at
4 this point in time.

5 We have moved forward. It has been
6 implemented. The majority of our schools, as I said,
7 are participating in this employee council format,
8 and I would respectfully request the members of the
9 committee, especially the members who have
10 constituents in the Diocese of Scranton and the
11 county making up the diocese, that obviously you have
12 heard from the union side of things in how they view
13 they were treated or whatnot and how their rights
14 have been violated. I would challenge you to talk to
15 the people who are participating in these employee
16 councils to see if it has been a genuine and
17 productive dialogue. I think you will be very
18 surprised to hear some of the comments that they are
19 going to make.

20 Because we have moved forward. We have
21 already addressed issues. Our retirement package
22 was developed with these employee councils. We
23 have talked sick days, personal days, insurance --
24 a litany of things that we have already
25 accomplished.

1 And there is a long way to go. As Joe
2 indicated, we are in the beginning stages of this
3 reorganization. It is a very delicate time for the
4 Diocese of Scranton.

5 And we are no different than other dioceses
6 out there. On top of, obviously, school
7 reorganization, we are talking parish restructuring.
8 There are limited finances.

9 So it is a very delicate time at this point
10 in time, and we are trying to do our best to respect
11 the rights of all the employees, and that is, in my
12 capacity as the Diocesan Director of Human Resources,
13 I am the point person on that, and I think we have
14 accomplished that through these employee councils.

15 Unions are not the only forum to have a
16 healthy work environment. With regard to the union
17 that you heard about here today, I just want to make
18 one point of clarification for the members of the
19 committee that are still here.

20 I think there is an overall impression,
21 because I still hear it in our neck of the woods in
22 the diocese, that this association, the Scranton
23 Diocese Association of Catholic Teachers, represented
24 all of our teachers. That is not the case. It never
25 was the case. They never represented anywhere close

1 to the majority of our teachers.

2 Based on a report that was filed -- and I
3 don't know what the actual number is now; I am using
4 a report that was actually filed by the union and
5 signed by Mr. Milz in '06 or '07 -- 217 paying
6 members of the union.

7 There are over 700 teachers in the Diocese
8 of Scranton. So for almost 30 years of the union's
9 existence, the majority of our Catholic school
10 teachers have chosen not to go that direction. They
11 felt like the healthy work environment that
12 Representative Pashinski was referring to before has
13 been in place, and they have seen no need to go that
14 route in over 30 years of existence.

15 MR. CASCIANO: The other thing that is
16 necessary is that the three boards of limited
17 jurisdiction voted not to recognize the union and
18 presented that to the corporate board. The corporate
19 board concurred and moved forward with the employee
20 relations.

21 It is important to note that some of the
22 concerns from the past that came up were the fact
23 that we had to write into contracts attendance at the
24 graduation mass. We again would believe as
25 ministers, as those who are expected to be a faith

1 community, that that would be an automatic, that
2 there would be no thinking other than to say, yes, of
3 course we have to be there for that.

4 Certainly attendance during mass; when a
5 teacher had a free period or a planning period, that
6 very often they did not believe they needed to attend
7 mass.

8 Teachers walking out of religious or
9 educational presentations because the end of the day
10 hit, according to the number of hours they were
11 supposed to serve. Again, we would certainly not
12 want to take advantage of anybody, but common
13 courtesy and certainly those of us who are true to
14 our faith would see that even if we didn't agree with
15 the fact that we should stay, that as a courtesy, we
16 should stay beyond that time and then maybe have a
17 discussion afterwards that, you know, really you
18 should not go over the time. But as all of us know,
19 like today, you cannot always control how long a
20 speaker is going to go, and we just think that is
21 necessary.

22 There were times when Christmas programs
23 could not be held because of contract restrictions.
24 And in some associations, the division among the
25 faculty became so great that it, again, was contrary

1 to what and who we are as Catholics.

2 Mary, do you have---

3 MRS. TIGUE: I know you are anxious for us
4 to be very brief, and I will be.

5 We are here today because we oppose this
6 legislation, 2626. We oppose it because we believe
7 it is not only unnecessary, as you heard Mr. Burke
8 explain what the diocese has tried to do to be fair
9 to its employees, but we also feel that it is
10 dangerous.

11 As a Catholic school educator, what I
12 believe is that a Catholic school is a locus, a place
13 where a conversation takes place between the faith in
14 science, the faith in math, the faith in literature,
15 the faith in any other subject, and that conversation
16 is focused through the lens of what we believe as
17 Catholic educators.

18 And what we believe is that it is our
19 mission, it is our vocation, to do what we do. And
20 yes, we choose to do that, and we have chosen not to
21 be educators in the public school. But we are
22 professionals who practice our profession. We do it
23 as well as we possibly can.

24 But we are also here to tell you that a
25 religious school is not the same as a public school.

1 There are different goals. Of course we want the
2 education of the common good, but in a religious
3 school, there is that added dimension, and I think
4 when you interfere with that added dimension, when
5 you insert yourself into the life of a Catholic
6 school, as this legislation does, it is going to
7 cause potential problems. And certainly people who
8 are far more eloquent than I have explained that to
9 you.

10 But that is really why we are here today, to
11 tell you that our experiences in the Diocese of
12 Scranton are very different from what has been
13 depicted in the newspapers and so on. And we have
14 worked very hard to reorganize this, and in the
15 process, we have tried to build for the financial and
16 also for the security of our schools for the future.
17 That was always the goal, to provide for quality
18 Catholic education, and that is what we have been
19 trying to do.

20 VICE CHAIRMAN CASORIO: Thank you.

21 Mr. Burke, if my colleagues have a question,
22 and just briefly, I'm just trying to get a grasp on
23 numbers and then we can move on.

24 You talked about the consolidation, and I
25 heard you mention the 217 union employees that worked

1 out of the 700 teachers, as you have stated. That
2 aside, the consolidation in general, when you had
3 full complement of buildings, you were at, what
4 number of employees is I am looking for, versus when
5 the consolidation took effect, what number of
6 employees you went down to, roughly.

7 MR. BURKE: Yeah; I do not have that off the
8 top of my head. I can give you the number of
9 schools.

10 Prior to, in '06-07, as of June 30 of
11 '06-07, there was a total of 43 schools in the
12 Diocese of Scranton; now there is 28. So there were
13 15 schools that closed at that point in time.

14 I can always follow up with the exact
15 numbers. I would prefer to be exact with the
16 numbers, but 43 schools versus 28 at this point in
17 time.

18 VICE CHAIRMAN CASORIO: How about then maybe
19 we just kind of work backwards a little bit.

20 How many employees did you have when you had
21 the 43 schools?

22 MR. BURKE: I am expecting somewhere around
23 1,300 or 1,400.

24 VICE CHAIRMAN CASORIO: 1,300 or 1,400.

25 And you cut, what, 15 schools out, so -- I

1 mean, and I am not holding you to this, but I just
2 want to try to get some grasp of the numbers. You
3 have a thousand employees now, a little bit less
4 maybe?

5 MR. BURKE: Probably a little bit more than
6 that. And again, when I say employees, we are
7 talking cafeteria workers, teacher aides.

8 VICE CHAIRMAN CASORIO: Janitors, everybody.

9 MR. BURKE: Administrators, the whole lot.

10 VICE CHAIRMAN CASORIO: That was my question
11 as well. Okay. Very good. Thank you, sir.

12 Gentlemen?

13 Representative Pashinski.

14 REPRESENTATIVE PASHINSKI: Thank you,
15 Mr. Chairman.

16 And thanks again for staying out. I enjoyed
17 the testimony. I appreciate it very much.

18 You know, when we met before, I asked the
19 question and I ask it again, we would not have had to
20 go through any of this stuff if you felt as though,
21 you had 700 teachers and 500 did not want to belong
22 to this thing, it would have been over. We wouldn't
23 have even had this hearing.

24 I just don't understand, since you had a
25 system that was working and for 30 years you had a

1 union that was working, you know, why wouldn't you
2 allow them to decide whether or not they wanted to
3 continue on that way?

4 MR. BURKE: Well, I will let Joe talk about
5 it, because the systems are different now than what
6 they were before the reorganization.

7 REPRESENTATIVE PASHINSKI: I know that.

8 MR. BURKE: I will just throw out my
9 comment.

10 I think in a way, I think the teachers --
11 and we will talk about the teachers at this point in
12 time -- they have spoken over 30 years by the number
13 of people who never chose.

14 The second point of it is, the Bishop of
15 Scranton really believes and generally believes that
16 this new system is better, and I think it deserves
17 an opportunity to actually give it enough time --
18 30 years from their standpoint; we are talking
19 6 months in the new standpoint with these employee
20 councils. He truly believes, and we all truly
21 believe, that it is a better approach, because we are
22 representing all the employees.

23 The other concern I would have is your,
24 again, previous affiliation with a union and things
25 of that nature. It is a very sensitive, very

1 delicate time in the Diocese of Scranton. Those
2 organizational efforts become very combative, very
3 confrontational, and I don't know if the employees
4 would be able to stand up to that type of
5 organizational effort at this point in time. That is
6 just my personal opinion.

7 They are very strong. If you have seen or
8 participated in any type of organizational effort
9 like that, it is -- at this point in time, I do not
10 know if we can withstand that.

11 REPRESENTATIVE PASHINSKI: Are you talking
12 about the---

13 MR. BURKE: Going through an organizational
14 vote and that type of process. That is just my
15 opinion on it.

16 REPRESENTATIVE PASHINSKI: Okay. I just do
17 not think it is that hard. We have gone through
18 several of those, and it does not take that much
19 work. But this certainly is going to take a lot of
20 work.

21 Thank you.

22 MR. BURKE: It has gotten a lot of
23 notoriety, this particular effort.

24 VICE CHAIRMAN CASORIO: Thank you,
25 Representative Pashinski.

1 The gentlemen and the lady, thank you for
2 your testimony. We appreciate you being here.

3 MR. BURKE: Thank you.

4 VICE CHAIRMAN CASORIO: Two more to go, and
5 again I will remind you that we are down to the next
6 to the last here; two more.

7 Bruce E. Endy, Esq., Spear, Wilderman, PC.

8 Mr. Endy stuck around, and we know our last
9 testifier, Mr. George, has been here for awhile, so
10 he wouldn't miss this opportunity.

11 Mr. Endy.

12 MR. ENDY: Mr. Vice Chair, thank you.

13 Members of the committee, thank you.

14 I'm not even going to touch my written
15 remarks, as you have them.

16 I have represented the National Association
17 of Catholic School Teachers and represented labor
18 unions since 1974. It is all I have done.

19 I will not hold myself out as a
20 constitutional scholar, but I have looked at the
21 cases in this particular area, and I only want to
22 touch on a few points that have been raised today,
23 hopefully for clarification purposes.

24 The Commonwealth of Pennsylvania already
25 regulates the labor relations of

1 religiously-affiliated schools. It does so in the
2 context of child labor laws. It does so in the
3 context of the Pennsylvania Human Relations Act,
4 making certain discriminations unlawful, while others
5 are in fact lawful under that act because there is an
6 accomodation in the act to certain religious
7 practices. And I believe the minimum wage
8 probably also applies to the teachers of
9 religiously-affiliated schools.

10 So in some respects, there is already
11 legislation that one might characterize, if you
12 choose to, as burdening religion, except that we know
13 that the Constitution, both the Pennsylvania
14 Constitution and the First Amendment of the United
15 States Constitution permit those burdens if they are
16 limited burdens.

17 I want to touch first on what the
18 Pennsylvania Labor Relations Act does and what it
19 does not do, because I think there are some
20 misconceptions about that.

21 First of all, the decisions of the
22 Pennsylvania Labor Relations Board are not
23 self-enforcing. In order to have an unfair labor
24 practice decision enforced, the board, or one of the
25 parties if they object to the decision, has to go to

1 the courts of this Commonwealth. It is the courts
2 who are ultimately the overseers of our religious
3 liberty as well as the rights of workers in this
4 Commonwealth.

5 So it is a misnomer to sit up here and say
6 that the board will decide this and the board will
7 decide that. They make an investigation; they may
8 find facts, but ultimately the court will look into
9 those facts to determine whether anyone's religious
10 liberties have been offended.

11 Representative Pashinski said it at least as
12 well as I can say it, and I will say it again: What
13 does the board do? Is lets workers freely choose
14 whether they want to be represented or not.

15 The employer does not get a choice. He does
16 not vote in that election. It is the workers who
17 choose yea or nay. The employer is free to express
18 his opinion. The First Amendment guarantees that
19 right, and employers spend hundreds and hundreds of
20 dollars, thousands, millions of dollars, expressing
21 that opinion all over the country and in this
22 Commonwealth as well.

23 But ultimately it is the workers who choose,
24 do I want to join this union or do I not want to join
25 that union? And under the act and this proposal,

1 they are free to choose yea or nay, and if they
2 choose nay, so be it. As Mr. Fahey said, the nays,
3 if they win, everybody walks away and says, that is
4 the way the system works.

5 The next thing that the statute says is,
6 parties, now that there is a representative, go
7 bargain, and bargain in good faith, and it leaves
8 them there. It leaves the parties to their own
9 devices.

10 There is absolutely nothing in the statute
11 that compels either party to make an agreement about
12 anything. And if the employer -- in this case, a
13 religiously-affiliated school -- does not want to
14 agree to something, the law will not make him.

15 There are mandatory subjects of bargaining,
16 and there are the usual ones. There are wages,
17 pensions, health care, and religion isn't one of
18 them, and religious beliefs are not one of them. So
19 we submit that.

20 And as to whether the court is competent to
21 measure the good faith of an assertion of a religious
22 belief, as far back as a Supreme Court case called
23 the United States v. Seeger, the courts have been
24 competent to test whether someone is using religion
25 as a pretext or whether religion, the asserted

1 religious belief is really truly held. And that is
2 what courts do, and the Supreme Court has said time
3 and time again, it is appropriate for the courts to
4 make those determinations in our society.

5 Now, there has been some mention of
6 constitutional law here today. All of the cases that
7 you have heard about so far, ending with *Bishop of*
8 *Chicago*, happened before 1979, when *Catholic Bishop*
9 *of Chicago* was decided.

10 And we all know that the Supreme Court
11 didn't reach the constitutional issue there. They
12 said that because of concerns over the Constitution,
13 we are going to reach the statutory issue that
14 Congress -- there is no clear intent that Congress
15 ever intended the NLRA to cover these schools, so
16 without that clear intent, we are not going to cover
17 them.

18 And the Pennsylvania Supreme Court said the
19 exact same thing as far as the Pennsylvania Public
20 Employe Relations Act: Without that clear intent, we
21 are not going to cover them. And so we are here
22 today asking for that clear intent that was absent.

23 Now, after *Catholic Bishop of Chicago* was
24 decided, the Second Circuit Court of Appeals in
25 New York was faced squarely with the issue, because

1 the New York Legislature, which had a mini-NLRA, it
2 is like our--- In fact, the New York State law is
3 very much like the Pennsylvania State law.

4 Like several other States, after 1935, since
5 the National Labor Relations Act did not cover
6 certain employers, States adopted these little NLRAs,
7 like we did here in Pennsylvania, and New York did,
8 Connecticut did, several other States did, but not
9 all States.

10 So the New York Legislature, which had an
11 exception in it for nonprofits, took out that
12 exception. That is all they did. They removed from
13 their statute this exception for nonprofits and said,
14 we want this statute to cover religiously-affiliated
15 schools.

16 The case came squarely to the Second
17 Circuit. They said, we have to decide the
18 constitutional issues; we are going to look at both
19 the Free Exercise Clause and the Establishment
20 Clause, and we find this constitutional and we find
21 that the actions of the State Labor Relations Board
22 to be relatively minimal.

23 The boards do not oversee and look over the
24 shoulder of what employers and unions do on a daily
25 basis. They do not regulate them. And frankly, it

1 is rare when these controversies come about.

2 Several years later, when there was a strike
3 in New York and one of the schools fired all the
4 teachers who struck, the matter came again before us,
5 but this time it came before the New York Supreme
6 Court.

7 So now we are, from early 1980s, now we are
8 up to about 1997. The New York Supreme Court looked
9 at it, reexamined both the issues -- Free Exercise
10 and Establishment -- and they said, there is no
11 violation here. The New York State labor law is
12 perfectly constitutional.

13 Then the matter came before the Minnesota
14 Supreme Court. Same analysis. Interestingly, the
15 Minnesota court said, you know what? How anybody can
16 really say that this law supports religion, we
17 question. The question is really, does it burden
18 religion under the Free Exercise Clause? But in
19 either event, we find that it is perfectly lawful.

20 And what is more, the constitutional
21 framework over the years since the *Catholic Bishop*
22 case has changed.

23 In a series of cases beginning in 1981
24 called *Widmar v. Vincent* -- and I can give you the
25 citations -- the court in a series of cases

1 reexamined the Establishment Clause issues and found
2 that government does not violate the Establishment
3 Clause when it distributes public benefits according
4 to religiously-neutral criteria.

5 So if the State is going to provide busing
6 for all students and religion is not an issue,
7 parochial school students can get the busing, and
8 schoolbooks, and nurses, and other things which back
9 in the seventies when *Catholic Bishop* was decided
10 were real issues for the court have suddenly become
11 nonissues for the court.

12 In 1990, looking at the Free Exercise
13 Clause, the Supreme Court decided a case called
14 *Employment Division v. Smith* and radically changed
15 the analysis under *Smith*.

16 Where before under *Sherbert v. Verner* you
17 had had this balancing test where the State should
18 show a compelling State interest before burdening a
19 religious organization, a court now says a neutral,
20 generally applicable, and otherwise valid regulatory
21 law that only incidentally burdens religious practice
22 does not violate the Free Exercise Clause.

23 Now, that was a very big change in
24 constitutional law. In response to that change,
25 Congress passed the Religious Freedom Restoration

1 Act, saying we want to go back to the *Sherbert v.*
2 *Verner* test. They tried to change what the Supreme
3 Court had done. And the Supreme Court said, you can
4 do that with Federal programs, but it is
5 unconstitutional as it applied to the States.

6 So what did the Commonwealth of Pennsylvania
7 do? We passed our own Religious Freedom Protection
8 Act trying to do the same thing. Trying to avoid the
9 result of *Employment Division v. Smith*, we said,
10 let's try and go back to the balancing test approach.

11 However, what the Legislature did when they
12 wrote that law, they said, however, we can accept on
13 a case-by-case basis laws from this act, and that is
14 why, in Section 2 of the bill, we actually have a
15 provision that says in accordance with the Religious
16 Freedom Protection Act, which allowed us to do it, we
17 are going to accept this law. Why? Because we
18 believe that the Supreme Court's interpretation of
19 the religion clauses is the correct interpretation.
20 And we believe that, like the Minnesota Supreme
21 Court, the New York Supreme Court, and the Second
22 Circuit Court of Appeals, this law will be held to be
23 perfectly constitutional.

24 It is a workers' rights law; it is not a
25 religious law. We have gone overboard trying to say

1 let's accommodate religious principles where we can
2 accommodate them. But workers' rights have a place
3 in the pantheon of laws in this Commonwealth that
4 regulate workers' rights. We think this is one more.

5 Don't forget, until 1979,
6 religiously-affiliated employees, lay teachers, were
7 covered by the National Labor Relations Act.
8 Throughout the country, there were decisions by the
9 NLRA, elections held, contracts negotiated, maybe not
10 here in Pennsylvania but elsewhere we had those
11 protections.

12 In 1979, they basically got taken away. Now
13 it is a minority of the States that have actually
14 looked at these issues, but I cannot find any
15 decision which has held the other way. And the only
16 cases cited to you today that held the other way
17 precede *Catholic Bishop of Chicago* and precede these
18 changes in constitutional law that ended with
19 *Employment Division v. Smith*.

20 Last remark. Do I think these private
21 schools are engaged in commerce? I do. They buy
22 fuel oil, and God knows that costs a lot of money.
23 They have new roofs put on, and that costs money.
24 They buy supplies. All of these things pass in
25 interstate commerce. They are all purchased from

1 other countries. They go through pipelines. Oil is
2 refined in New Jersey and sent to Pennsylvania. They
3 buy supplies and toilet paper and good knows what,
4 which pass through interstate commerce.

5 So do I believe -- and they pay their
6 teachers who in turn pay taxes. So I do believe that
7 commerce is affected, and I do believe we should
8 change the statute.

9 VICE CHAIRMAN CASORIO: Thank you,
10 Attorney Endy.

11 Gentlemen? No?

12 Representative Pashinski.

13 REPRESENTATIVE PASHINSKI: I just want to
14 thank you for your testimony. I wish we had had it a
15 little bit earlier. That would have helped create
16 the kinds of questions we needed on the other side
17 there.

18 I do appreciate, though, your efforts here
19 in helping to craft this, and again, our intentions
20 are good. Thank you.

21 MR. ENDY: Thank you.

22 VICE CHAIRMAN CASORIO: Thanks for your
23 testimony.

24 And our last testifier in this approaching
25 5-hour hearing would be William M. George, President,

1 Pennsylvania AFL-CIO.

2 MR. STEFAN: Good afternoon, or more like
3 good evening now.

4 My name is Mike Stefan. I am a staff
5 representative. As I said, good evening, Vice
6 Chairman Casorio, Representative Pashinski,
7 Representative Staback, and Representative Mantz.

8 The testimony we have submitted, and
9 President George will be summarizing it briefly for
10 you and with some additional points.

11 MR. GEORGE: I am not going to take a lot of
12 time. I have been here when the minority has been
13 chair and cut me off according to time.

14 I can tell you, Mr. Belfanti has got a call
15 in that says you will never, ever chair another
16 meeting again.

17 VICE CHAIRMAN CASORIO: Well, yeah. It is
18 too late in the afternoon to make a comment on that,
19 President George. Thank you.

20 REPRESENTATIVE PASHINSKI: I was going to
21 compliment him. I think he did a good job.

22 VICE CHAIRMAN CASORIO: Thank you; thank
23 you.

24 MR. GEORGE: He did; yeah. He had tough
25 ground. Man, we have been everywhere from the

1 Spanish Inquisition to the Holocaust. Everything,
2 man; I got to tell you. What an afternoon this has
3 been.

4 VICE CHAIRMAN CASORIO: We have learned a
5 lot, Mr. George.

6 MR. GEORGE: Talk about extremists. God
7 bless you teachers. I tell you, now I know what you
8 have to go through. Geez.

9 VICE CHAIRMAN CASORIO: We have learned a
10 lot. The floor is yours.

11 MR. GEORGE: I was going to spend a little
12 bit of time, but I think counsel right before me, the
13 representative for Spears, Wilderman pretty much
14 cleared this up in the technical stuff in reference
15 to the legal standing you have in the recent
16 decisions.

17 And, you know, we got a big campaign across
18 this country now known as the Free Choice Act, and
19 Congress last year passed a law that gave employees
20 the right, with a card check, to be recognized and
21 get a contract, and if you cannot get a contract, it
22 goes to arbitration.

23 Now, people could, artists and scientists
24 and PR people from law schools can argue all they
25 want about this, and I cannot thank Eddie enough,

1 because this was really a simple, simple
2 process.

3 And there is a group of people -- by the
4 way, I take offense for the inference that was made,
5 from my opinion, that these teachers are not faithful
6 in reference to their religion or not faithful to
7 what their beliefs are in the Catholic religion. I
8 think that was an insult to dedicated workers, that
9 inference that was made here today, that if you speak
10 out, you are no longer, you know, considered. I
11 mean, that is the type of employment that has brought
12 us to where we are at in this country.

13 And I come to you because in my hometown
14 in 1933-1934, likewise there was a company called
15 Jones & Laughlin Steel Corporation that told
16 Franklin Delano Roosevelt and the Congress of the
17 United States, we don't believe in your Wagner Act;
18 we don't believe in your National Labor Relations
19 Act; we are going to fire these 145 people for union
20 activity and we are going to win it at the Supreme
21 Court. Well, they got a surprise, and that be the
22 law of the land today.

23 And do you want to know something? Contrary
24 to some difference of opinion on Pope Leo's *Rerum*
25 *novarum*, I have to tell you, that was done for a

1 reason. It was creating a culture and doing
2 something in our society that people get along.

3 This is not an economic issue here of what
4 the bishop did or not did. It is not the issue here,
5 does he have a right to close schools?

6 In labor relations, corporations, and we
7 have seen it throughout this State to the tune of a
8 million people in the last 8 years that have lost
9 their jobs to manufacturing and et cetera, but when
10 there is a collective bargaining agreement, well,
11 there is a little bit of compassion for the dedicated
12 people who have been loyal to you as an employer.
13 You create a process to try and make people
14 comfortable.

15 And to sit here and say there is no law of
16 the land, that in the private sector they would have
17 just told them, I got news for some people. We have
18 a law in this country; it is called the WARN Act.
19 You got over 100 employees, you are required to give
20 a 60-day notice before you shut down; you are
21 required to give 160 days for a long-term layoff in
22 this land, and you get fined and there are penalties
23 that do that when you don't sit down with the people
24 and talk to them in reference to a collective
25 bargaining agreement.

1 It is not a negotiable item; it's the law.
2 The right to have collective bargaining in this
3 country is the law.

4 And our religious freedom here that we have
5 is about the faith. There is nobody here that
6 violated teaching the faith in math.

7 And to bring that remark up about the
8 schools, hey, these teachers understand that more
9 than anything. They have seen departments come in
10 and change geographical language to have a more
11 faithful meaning, and the order today is to teach it.
12 They teach it. That is not what this is about. And
13 to sit here all day to make some religious argument
14 under the First Amendment of the Constitution is just
15 ludicrous.

16 Counsel right before me laid it right on the
17 line: Do we have a right or don't we have a right?
18 The Legislature has got to make its mind up. Are
19 they going to give these people a right under the law
20 in the State of Pennsylvania to have a collective
21 bargaining agreement?

22 In fact, if they had a collective bargaining
23 agreement, they would have probably found out that
24 the process in reference to the economic disaster
25 there, because they have a collective bargaining

1 agreement, would have been easier to handle. It
2 would have been easier to handle.

3 In your district, Representative Casorio,
4 you watched plant after plant come down. You watched
5 workers take concession in order to save a plant,
6 because they had a collective bargaining agreement.

7 The loyalty from workers comes to the
8 employer because there is a recognition of man-hour
9 productivity; in this case, quality of education.
10 That tells me that this diocese has no respect for
11 workers.

12 The home of the Molly Maguires, the home of
13 the Lattimer Massacre inside this diocese is an
14 insult to every American, to have this kind of
15 reputation going to workers that have dedicated their
16 lives to their communities. I watched these teachers
17 at a rally have tears in their eyes being torn by
18 their neighbors.

19 It is not about your nickels and dimes. You
20 know what you can do with your nickels and dimes. It
21 is an insult to the American public. It is an insult
22 to any religious institution to forget about human
23 feelings and beliefs in this country. And then to
24 give an insult like there is something else is just a
25 shame.

1 In a time of war and what we are involved in
2 in the Middle East, to have that kind of testimony
3 today is everything that -- we should show that over
4 and over and over again to every worker what was said
5 here, of what you expect from that particular diocese
6 in the future: The bishop is going to rule; this is
7 the new plan; you don't like it, get out. Well, I
8 got news; that is sad.

9 Now, thank God, because we have strong,
10 strong, strong legislative leaders who also are
11 faithful people. We probably have more religious
12 people, union people, Americans that go to church,
13 than some of these people that testified today.

14 That is why I am upset. It is not the long
15 time today. That was a simple process that this
16 could have been avoided.

17 And you said it time and time and time
18 again: You had a group of people there that were
19 trying for many, many years to work within the
20 economic problems and success of that particular
21 geographical area that stepped up to the plate time
22 and time and time again. Time and time again. At
23 this most crisis time, these teachers hung in there
24 tight.

25 Do not tell me about teachers. My mother

1 was a teacher. I didn't get dinner on the table many
2 times because my mom was back at the school taking
3 care of some kids that missed the bus or didn't get
4 -- you know, they are the most compassionate people.

5 Thank this great country for teachers and
6 this country for what they do with our children to
7 teach them civility, to teach them decency, to teach
8 them not to be discriminated against, to understand
9 equity. And also in your case, to have a faith and a
10 special faith and religion in it, to tear it back,
11 that's the bad part about this. And to have a long
12 litany of so-called experts come in here on their law
13 I think is just wrong.

14 We have too many wars on religion, and that
15 is where we are heading here today. People want to
16 sit down and look at a process and do it.

17 By the way, there are many collective
18 bargaining agreements across this country down in
19 different religious sectors that work perfectly, that
20 both sides understand the value, the quality, whether
21 it be a service, whether it be education, or the
22 product. That is what makes America so great. That
23 is what that flag is about. That is what makes this
24 country different. And I think this Legislature
25 needs to stand up and let them come back to us.

1 Now, one question was asked, by the way, did
2 any of these teachers violate Catholicism in any way?

3 Not one question was asked, did they violate
4 any order of the bishop in a religious way?

5 Not one question was asked, did they ever
6 guide a child in the wrong way? Because they have
7 been loyal to you as teachers and citizens of that
8 community, and all they wanted was a voice in
9 reference to the quality of life that you should be
10 teaching the rights of students and having a right in
11 this free society that we have instead of hiding it
12 under the closet.

13 I wanted to puke when I heard the term "at
14 will," Pennsylvania is "at will." Wasn't that an
15 insult. Do you know where the term "at will" came
16 from? Go back to the King and Queen in England; you
17 go back to the King and Queen in Spain. That is the
18 word "at will." Owners own everything. You do what
19 the owner says, like it or not. It is an old, old
20 word.

21 American workers is about what we believe
22 in. We believe and people believe in their faith,
23 but they also believe in a good education, they
24 believe in decency, and most of all, they definitely,
25 definitely believe, in today's world, respect and

1 dignity.

2 And it is obvious that this parish, this
3 whole diocese, has given up on that word. How do you
4 teach children in school to have respect for one
5 another, live in a nation of mixed religions and
6 mixed ethnic and racial, without at least giving them
7 an opportunity?

8 That is why the kids walked out. That is
9 when their superintendent-principal held his hand up,
10 don't leave, don't leave, because they felt in their
11 heart what was right and wrong and they followed
12 those teachers out those doors. Until this day, we
13 are still sitting here. We don't care.

14 And they threatened those kids -- in
15 America. You are going to be expelled -- in America.
16 You are going to be suspended -- in America. You are
17 going to be kicked off the football team -- in
18 America. Boy, aren't you proud?

19 This is a sad day, this testimony today.
20 And one little word has to be changed in that
21 employment law to give them the opportunity to have a
22 representative organization.

23 And American unions are not about strikes.
24 We are not about civil disobedience. That is not
25 what our code is. Do you want to compare the

1 criminal charges to union people and some religious
2 people in the last 10 years? Let's do that.

3 You know, it is a sad state of affairs to
4 come to this point what I am talking about today.
5 But you are right; this thing, this could have been
6 avoided. So what it would have been 5 meetings, and
7 so what it would have been 10 meetings, and so what
8 it would have been 20 meetings. You would have still
9 had your education process, and you would have
10 eventually worked this out. That is what this is
11 about.

12 That is why some people have mandatory
13 arbitration. That is why some people have years of
14 extension in collective bargaining agreements. We
15 got collective bargaining agreements here and they
16 have been on a 3-year extension trying to get a
17 collective bargaining agreement, but it is about
18 people meeting and discussing the problems.

19 I mean, I could sit here and take you
20 through when the Catholics in this nation broke away
21 from their right to be where they are at. They are
22 the ones that said, we don't necessarily have to have
23 any more priests or monks or nuns or et cetera
24 teaching our kids. We are going to go and take
25 people from the public. We are going to take people

1 that are not part of our religion, as long as they
2 believe in our curriculum.

3 How many teachers are not Catholic in the
4 Diocese in Scranton, but they agreed to the contract
5 to teach the curriculum, which includes some of the
6 things in the faith. It is part of the contract.
7 That could have been negotiated, and it is negotiated
8 in some places.

9 You know, of all the problems we got in this
10 Commonwealth, here we are sitting after 6 hours of
11 testimony because of a little bit of ego by a couple
12 of people in the diocese. That is what this boils
13 down to.

14 By the way, it was not a smart public
15 relations move neither. Talk about hurting the
16 diocese and public relations, you know. That is sad.

17 So with that, I am going to close. I'll
18 stand for any questions. If the other side wants to
19 beat me up, they can do that, too, whatever. You
20 know, that is what makes this country great.

21 Thank you for having this democratic process
22 take place today. Thank you.

23 VICE CHAIRMAN CASORIO: President George,
24 thank you. I certainly didn't put you last on the
25 list. We would have loved to have had you here

1 earlier when we had some of our colleagues here to
2 hear this, but hopefully they will see this oratory
3 on PCN.

4 MR. GEORGE: I challenge you, let us throw
5 all this fight out. Let's bring the teachers back in
6 and, in the next month, have a 30-day discussion and
7 see if we can work this out.

8 No; somebody stand up from the diocese and
9 say, you are right; let's do that. Let's do it for
10 the community. Let's do it for our congregation.
11 Let's do it for the diocese.

12 VICE CHAIRMAN CASORIO: In the interim,
13 President George, Representative Pashinski has a
14 question.

15 REPRESENTATIVE PASHINSKI: So, are you for
16 this?

17 MR. GEORGE: I am adamantly for this. I
18 think it is overdue. I think the time has come for
19 us to work hand in hand with religious communities of
20 faith and the education process to enhance it.

21 And by the way, do you know what this is
22 about? And everybody missed this today. Maybe I
23 will even be the first one to say this: It is about
24 the children.

25 REPRESENTATIVE PASHINSKI: Absolutely right.

1 MR. GEORGE: It is about the children.

2 REPRESENTATIVE PASHINSKI: You are
3 absolutely right.

4 MR. GEORGE: We heard everything about
5 economics and this and that, but I didn't hear
6 anything about, geez, what is good for the children,
7 you know.

8 REPRESENTATIVE PASHINSKI: Well, we both
9 know that when you have a good rapport with your
10 faculty, with your employees, they are far more
11 productive, and that is where the children really
12 profit by all that.

13 But it is my sincere desire, and I have
14 talked to both sides here, and again, I say it
15 publicly and it is part of the testimony, I like the
16 idea of still sitting down and trying to work this
17 thing out.

18 I am not going to rest until we find some
19 fair settlement here. We heard both sides, and I
20 appreciate it, and once again, that is the
21 magnificence of this great country, to be able to
22 speak out and say what you really feel from your
23 heart.

24 And I think both sides have enough
25 information now to go back and rereview and be

1 prepared for the next hearing, and that is what the
2 process is.

3 Nothing good comes easy. I know it is going
4 to be tough. I knew it was going to be tough from
5 the get-go, but I am not satisfied with just letting
6 it be.

7 Thank you.

8 VICE CHAIRMAN CASORIO: Thank you,
9 Representative Pashinski.

10 Thank you, Chairman Staback.

11 Representative Mantz has a question. Sir.

12 REPRESENTATIVE MANTZ: Yes; yes, I do.

13 Thank you, Mr. Chairman.

14 While I have been sitting here listening to
15 this lengthy testimony by various presenters, one
16 question that continued to rise in my mind was, how
17 could discussion of the terms and conditions of
18 employment, which are the two subjects, the proper
19 and appropriate subjects of collective bargaining,
20 possibly impact adversely upon the theological and
21 ethical teachings of the Catholic faith, and I do not
22 understand how that could possibly happen.

23 And I guess, surprisingly enough, I just
24 agree with Mr. George in that analysis.

25 MR. GEORGE: Thank you.

1 VICE CHAIRMAN CASORIO: Thank you,
2 Representative Mantz.

3 All the testifiers, thank you for being here
4 today, and I am sure we echo the sentiments of
5 Representative Pashinski, that we have learned a lot
6 today.

7 This 5-hour hearing of the Labor Relations
8 Committee is now adjourned.

9
10 (The hearing concluded at 5:59 p.m.)

11
12 SUBMITTED WRITTEN TESTIMONY

13 * * *

14 FATHER SINCLAIR OUBRE, J.C.L., Canon Lawyer
15 and Priest of the Diocese of Beaumont, Port Arthur,
16 Texas, submitted the following written testimony:

17 I am Fr. Sinclair Oubre, J.C.L., a diocesan
18 priest of the Diocese of Beaumont in Texas. I am a
19 canon lawyer, and have acted as a canonical
20 consultant on issues dealing with labor and Church
21 institutions.

22 I am tremendously committed to my Catholic
23 tradition. Whether the concern revolves around life
24 issues like abortion or capital punishment, or
25 whether the concerns have to do with social justice

1 questions, I truly believe that the Catholic Church's
2 teachings can assist all of us to work for the common
3 good, and the betterment of all.

4 The concern for the common good, and the
5 betterment of all compels me to submit this paper. I
6 believe that much of the discussion on the
7 appropriateness of including religious school
8 teachers into Pennsylvania labor law, as outlined in
9 House Bill 2626, is more reflective of America's
10 anti-union, or union avoidance attitude, than a
11 reflection of the teaching and tradition of the
12 Catholic Church.

13 The primary law that governs the Catholic
14 Church is not civil law, but Canon Law. Church life
15 is governed by the 1752 canons found in the Code of
16 Canon law, and the hundreds of other norms, like
17 those found in the document *Pastor bonus* and
18 *Stella Maris*, that regulate specific areas of
19 ecclesial life. Canon 1286 is at the heart of our
20 discussion today. Canon 1286 states:

21 "Administrators of Goods:

22 1° in the employment of workers are to
23 observe meticulously also the civil
24 laws concerning labor and social
25 policy, according to the principles

1 handed on by the Church;"

2 Rev. Robert T. Kennedy, JD, JUD comments on
3 this canon in *New Commentary on the Code of Canon*
4 *Law*:

5 "The uniquely valuable contribution of
6 canon 1286, 1° is to remind church
7 administrators that there are in the Church
8 two sources of authentic guidance for
9 appropriate behavior, the law and the
10 magisterium. Neither is to be neglected.
11 Administrators are called to look beyond the
12 law, not only civil but canonical as well, to
13 the teaching of the Church and conform their
14 actions to its dictates and not just those
15 embodied in law."

16 The question which I wish to address in my
17 submission is not whether the Catholic Church
18 supports the rights of employees to organize unions
19 and participate in collective bargaining. For
20 more than 100 years, Catholic social teaching has
21 repeated these rights, and they are absolutely
22 incontrovertible. However, the question raised by
23 House Bill 2626 is whether protecting the rights of
24 teachers in religious schools to organize unions, and
25 participate in collective bargaining is somehow

1 contrary to the magisterium of the Church, or its
2 law. My firm opinion is that such a law would in
3 fact codify what the Church already teaches, and
4 which is already the practice in a number of dioceses
5 in the United States, and even at Vatican City.

6

7 **What Does the Church Say About Organizing Unions in**
8 **Church Institutions?**

9 Nowhere in Church teaching or canon law are
10 the faithful barred from labor unions in ecclesial
11 institutions.

12 "Moreover, by neither code and at no
13 point in the official statements of the
14 magisterium since Leo XIII have the faithful
15 been barred from labor unions or associations
16 formed for the purpose of collective
17 bargaining. The Church's law and teaching
18 have not excluded the activities of these
19 associations within church institutions
20 themselves. Neither the Church's law nor its
21 teaching require prior permission for members
22 of the faithful to join such associations."

23 The fundamental principle for organizing
24 unions in Catholic institutions is based on the
25 Church's recognition of the laity's right to form

1 associations. This was firmly articulated in
2 *Apostolicam actuositatem* 19 & 24 (*The Decree on the*
3 *Apostolate of the Laity*) at Vatican II in 1965.

4 There, the council fathers stressed:

5 "Maintaining the proper relationship to
6 Church authorities, the laity have the right
7 to found and control such associations and to
8 join those already existing...."

9 The general right of the laity to form
10 associations is then extended specifically to "unions
11 for working people" in *Guadium et spes* (*The Church in*
12 *the Modern World*) n. 68:

13 "Among the basic rights of the human
14 person is to be numbered the right of freely
15 founding unions for working people. These
16 should be able to truly represent them and to
17 contribute to the organizing of economic life
18 in the right way. Included is the right of
19 freely taking part in the activity of these
20 unions without risk of reprisal. Through this
21 orderly participation joined to progressive
22 economic and social formation, all will grow
23 day by day in the awareness of their own
24 function and responsibility, and thus they
25 will be brought to feel that they are comrades

1 in the whole task of economic development and
2 in the attainment of the universal common good
3 according to their capacities and aptitudes."

4 This principle of free association is
5 enshrined in the canon 215.

6 c.215 -- "The Christian faithful are at
7 liberty freely to found and direct
8 associations for the purposes of charity or
9 piety or for the promotion of the Christian
10 vocation in the world and to hold meetings for
11 the common pursuit of these purposes."

12 Presently, there are Catholic organizations
13 arguing for restrictions on the types of associations
14 that the laity can form and participate in, but there
15 is no such restriction in church law or teaching. In
16 fact, on a number of occasions, the Church challenges
17 itself to be the first to give witness to justice.

18 For instance, the 1971 *Synod of Bishops*
19 issued the document *Justice in the World*. Here, they
20 stressed that no one should be deprived of their
21 rights just because he or she is associated with the
22 Church.

23 "40. While the Church is bound to give
24 witness to justice, she recognizes that anyone
25 who ventures to speak to people about justice

1 must first be just in their eyes. Hence we
2 must undertake an examination of the modes of
3 acting and of the possessions and life style
4 found within the Church herself."

5 "41. Within the Church rights must be
6 preserved. No one should be deprived of his
7 ordinary rights because he is associated with
8 the Church in one way or another."

9 Pope John Paul II stressed that forming and
10 joining unions was not limited to just for profit or
11 industrial industries. In his 1981 encyclical
12 *Laborem exercens*, he insists every profession can use
13 unions.

14 "20. ...the experience of history
15 teaches that organizations of this type are an
16 indispensable element of social life,
17 especially in modern industrialized societies.
18 Obviously, this does not mean that only
19 industrial workers can set up associations of
20 this type. Representatives of every
21 profession can use them to ensure their own
22 rights. Thus there are unions of agricultural
23 workers and of white-collar workers; there are
24 also employers' associations. All, as has
25 been said above, are further divided into

1 groups or subgroups according to particular
2 professional specializations."

3 In 1986, the United States Conference of
4 Catholic Bishops, then known as the National
5 Conference of Catholic Bishops, specifically applied
6 the right of church workers to organize and bargain
7 collectively. In the pastoral letter *Economic*
8 *Justice for All*, the bishops stated:

9 "353. All church institutions must also
10 fully recognize the rights of employees to
11 organize and bargain collectively with the
12 institution through whatever association or
13 organization they freely choose. In the light
14 of new creative models of collaboration
15 between labor and management described earlier
16 in this letter, we challenge our church
17 institutions to adopt new fruitful modes of
18 cooperation."

19 Certainly one of the most important places
20 that Catholic ministry takes place is at Vatican
21 City. By 1982, the Association of Vatican Lay
22 Employees had been founded. Instead of being
23 suppressed by Pope John Paul II, or having special
24 legislation adopted to prevent a union at Vatican
25 City, the pope praised the new association for

1 promoting a spirit of concern and justice.

2 Two paragraphs are very relevant for the
3 issues before this committee. In the first
4 paragraph, Pope John Paul II stresses that the
5 Vatican offices and departments must conform
6 themselves to the principal truths of the "gospel of
7 labour" and the Catholic doctrine on human work.

8 "In the recent Encyclical *Laborem*
9 *exercens*, I recalled the principal truths of
10 the 'gospel of labour' and Catholic doctrine
11 on human work, a doctrine always alive in the
12 Church's tradition. There is need for the
13 life of that singular community which operates
14 *sub umbra Petri* -- in Peter's shadow -- in
15 such immediate contact with the Apostolic See,
16 to conform itself to these truths."

17 In the second paragraph, the Pope gives
18 explicit recognition to the Vatican union,
19 Association of Vatican Lay Employees.

20 "A valid collaborative function may be
21 performed by workers' associations such as the
22 Association of Vatican Lay Employees, which
23 recently came into existence, in promoting
24 that spirit of concern and justice, through
25 representing those working within the

1 Apostolic See. Such associations take on a
2 specific character within the Apostolic See.
3 They are an initiative in conformity with the
4 Church's social teaching, for the Church sees
5 them as one instrument for better assuring
6 social justice in relations between worker and
7 employer...."

8 "I express confidence that associations
9 such as that now existing and just mentioned
10 will perform a useful function in the work
11 community, operating in solid harmony with the
12 Apostolic See, by taking inspiration from the
13 principles of the Church's social teaching. I
14 am likewise certain that as they set forward
15 work problems and develop continuous and
16 constructive dialogue with the competent
17 organisms they will not fail to take account
18 in every case of the particular character of
19 the Apostolic See, as pointed out in the
20 initial part of this letter."

21 This letter was originally written to
22 Agostino Cardinal Casaroli, the Secretary of State
23 for the Holy See. It was later incorporated into
24 *Appendix II: The Collaborators of the Apostolic See*
25 *as a Work Community in the 1988 Apostolic*

1 *Constitution Pastor bonus* (Apostolic Constitution on
2 *the Roman Curia*). With the Code of Canon Law, *Pastor*
3 *bonus* is the law which governs the process of running
4 the central government of the Roman Catholic Church.
5 Therefore, the inclusion of Pope John Paul II's
6 November 20, 1982 letter to Cardinal Casaroli,
7 codifies the relationship between the Vatican offices
8 and the Association of Vatican Lay Employees.

9 The Canon Law Society of America summarized
10 the right of association in four points:

- 11 1. All persons have the natural right to
12 assemble freely and to form associations
13 for legitimate purposes. Church teaching
14 recognizes that these purposes include
15 those collective bargaining and other
16 activities proper to labor unions.
- 17 2. The Church's law recognizes the
18 fundamental rights to assemble and to
19 form associations, and affirms them
20 within the Church itself.
- 21 3. Associations formed by the Christian
22 faithful, while they are under the
23 vigilance of the church authorities, are
24 governed by the members themselves in
25 keeping with their statutes.

1 4. No types of work, no areas or segments
2 of the workplace, are excluded *a priori*
3 from the formation of labor unions or
4 associations for collective bargaining,
5 including diocesan offices and church
6 related institutions, agencies and
7 programs.

8 In the end, one should not ask whether the
9 right of church workers to have a union is determined
10 by that right being included or excluded in civil
11 law. Rather, church administrators should be
12 motivated by the teaching of the Church. As
13 Fr. Kennedy notes:

14 "Resistance to the exercise of these
15 rights cannot be justified on the ground that
16 relevant civil law does not extend its
17 jurisdiction to include employer-employee
18 relationships in church-related enterprises.
19 Church administrators should be motivated by
20 the teaching of the Church to transcend the
21 confines of civil law.

22

23 **Ministry vs. Work: A False Distinction**

24 In an effort to maintain control, or to
25 maintain a union-free environment in Catholic

1 institutions, theories are put forth that try to make
2 the false distinction that what is done in a church
3 institution is ministry, and that which is done in
4 the secular world is work. As elaborated above, that
5 distinction has no basis in Catholic social teaching,
6 or in the many actual instances where workers in
7 Catholic schools, hospitals and even Vatican
8 departments are represented by unions, and
9 participate in collective bargaining.

10 When both the law and the teaching of the
11 Church are examined, ministry and work are never
12 divided. The idea that what is done in the Church is
13 ministry, and what is done in the secular world is
14 work is just false.

15 Since ministry is the means by which many in
16 the Catholic Church make their living, church
17 documents and canon law both recognize that care must
18 be taken to see that proper remuneration and social
19 security is extended to those who carry out ministry,
20 and especially those in the laity.

21 Canon 1287 2° directs administrators of
22 goods to:

23 "Pay a just and decent wage to employees
24 so that they are able to provide fittingly
25 for their own needs and those of their

1 dependents."

2 In the United States bishops' pastoral
3 letter *Economic Justice for All*, the responsibility
4 of providing an adequate living is laid out.

5 "351. We-bishops commit ourselves to the
6 principle that those who serve the
7 church-laity, clergy, and religious-should
8 receive a sufficient livelihood and the social
9 benefits provided by responsible employers in
10 our nation."

11 This commitment to meet a minimum level of
12 dignity for church employees manifests itself by the
13 Church allowing itself to be included into a number
14 of federal and state laws. These would include the
15 federal minimum wage, FICA, American With Disability
16 Act, federal wage and hour laws and many state and
17 local building codes.

18 The theory that some Catholic teachings
19 should be enshrined in civil law, while others should
20 not, seems to lack any logic. Since those who
21 minister in the Church, work for the Church, and
22 those who work in the Church do ministry, any civil
23 law that enshrines the Catholic Church's teaching,
24 and is not contrary to that teaching, is an
25 assistance to the Church in carrying out its

1 carrying out the educational ministry of Church.

2 Based on biblical principles the Seventh-day
3 Adventist Church has taught that its members, and
4 church institutions, must remain free and independent
5 from organizations -- such as labor unions -- which
6 might violate a member's conscience or interfere with
7 the fulfillment of the mission of the Church.

8 Indeed, church members have been encouraged not to
9 join or financially support labor unions. And,
10 importantly, Seventh-day Adventist institutions --
11 such as parochial schools -- are following the
12 historic teachings of the Church when they refuse to
13 recognize labor unions as bargaining units; or, to
14 enter into contractual negotiations with them or
15 similar organizations. The Church's teachings are
16 set forth in the North American Division of the
17 General Conference of Seventh-day Adventists' Working
18 Policy, Sections HB 30.05 et. seq.

19 In the event that HB 2626 becomes law, the
20 Pennsylvania Conference of Seventh-day Adventists
21 would face the distinct possibility that its
22 employees might violate historical Church teachings
23 by joining a labor organization. In turn, the Church
24 itself would be obligated to refuse to enter into
25 contractual negotiations with the union representing

1 such employees. Ultimately the Church would be
2 forced to make a cruel choice of closing an
3 educational institution rather than to violate its
4 teachings.

5 The Pennsylvania Conference of Seventh-day
6 Adventists believes that HB 2626 violates the
7 Religion Clauses of the First Amendment to the
8 U.S. Constitution by imposing a burden on the
9 Church's Free Exercise of Religion. In this regard,
10 the Pennsylvania Conference has read and endorses the
11 position articulated in the testimony of Attorney
12 Mark Chopko. The proposed legislation should be
13 defeated.

14 Thank you for considering this statement. I
15 reserve the right to supplement this statement; and
16 to present oral testimony before your Committee
17 during the consideration of this matter. Finally I
18 remain available to answer your questions concerning
19 the Adventist Church's position.

20 Very truly yours,

21 Walter E. Carson

22 Vice President & General Counsel

23 * * *

24 RICHARD W. GARNETT, Professor of Law,
25 University of Notre Dame, submitted the following

1 written testimony:

2 Dear Chairman Belfanti:

3 I teach, research, and write about
4 Constitutional Law and other matters at the
5 University of Notre Dame, focusing in a particular
6 way on First Amendment and church-state questions.
7 I was also a member of the University's Task Force on
8 Catholic Education, which produced in late 2006 a
9 comprehensive study of the importance of, and
10 challenges facing, Catholic schools. I have, for
11 your convenience, attached a copy of my *curriculum*
12 *vitae*, which lists a number of relevant scholarly
13 works and presentations.

14 I am writing to urge the rejection of
15 HB 2626, which would -- among other things -- expand
16 the jurisdiction of the Labor Relations Board over
17 lay teachers in Catholic schools. I should emphasize
18 that my strong reservations about this expansion
19 should not, in any way, be understood as reflecting
20 hostility toward the rights of workers and the
21 importance of labor unions. Instead, my concerns are
22 grounded entirely on a commitment -- one that I am
23 confident you and your colleagues share -- to
24 religious freedom.

25 It is often observed that religious liberty

1 is Americans' "first freedom." It is easy to forget,
2 though, that religious liberty involves and
3 implicates not just the relationships between
4 governments and individuals; it also involves,
5 fundamentally, the freedom, independence, and
6 autonomy of religious *institutions*, including
7 schools. It is, therefore, essential to the
8 protection and maintenance of religious freedom that
9 such institutions' right to form their identities,
10 express their messages, and choose their own
11 spokespersons not be burdened by even well-meaning
12 regulations.

13 Catholic schools are essential to the
14 flourishing and exercise of the Catholic faith. The
15 selection of Catholic school teachers, like the
16 formation of students, is at the heart of the free
17 exercise of religion. And, it is my considered
18 judgment that the expansion of jurisdiction
19 envisioned in HB 2626 would not only burden the
20 exercise of religious freedom, it would also entangle
21 government decisionmakers in religious questions and
22 doctrines to an extent not permitted by our
23 Constitution's no-establishment command.

24 If it would be helpful, I would be happy to
25 provide you and your colleagues a more detailed

1 I hereby certify that the proceedings and
2 evidence are contained fully and accurately in the
3 notes taken by me on the within proceedings and that
4 this is a correct transcript of the same.

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Debra B. Miller, Reporter

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