Testimony on House Bill No. 2626
House Labor Relations Committee
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Mr. Chairman and members of the House Labor Relations Committee,

I am very appreciative and honored to speak here today to urge the passage of House Bill 2626. I come before you as the Executive Vice President of the National Association of Catholic School Teachers which has affiliated locals in five of Pennsylvania's eight Roman Catholic dioceses, including the Diocese of Scranton where I also serve as the president of my local, the Scranton Diocese Association of Catholic Teachers. I come before you as a Catholic, proud of my faith, my heritage, and my church's long tradition of support for worker's rights and social justice. Finally, I appear before you as a former teacher. Until last year, when I was fired for my union activity, I had been a thirty-three year veteran teacher in Catholic schools.

It is as a spokesperson for the thousands of elementary and secondary lay teachers across the Commonwealth that I here and now petition you for relief. For unless the Pennsylvania Labor Relations Act is amended, by the passage of HB 2626, our devoted teachers as well as those teachers and other employees in other religiously-affiliated schools, will continue to suffer from a lack of protection of what we see as the basic rights due to us as workers and as citizens of the Nation and this Commonwealth.

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

I am sure that before these hearings end, you will hear from opponents of HB 2626 who will tell you that if you pass this legislation, it could create a conflict with the United States Constitution's First Amendment. Specifically, that it might create an

unwelcome extension of government control over the affairs of a religious group. Soon, you will hear from legal experts who support the Bill who will tell you that such fears are unwarranted and unfounded, the language of the Bill being carefully crafted to specifically avoid any such violation of rights.

However, I ask that as the discussion of First Amendment rights goes forward, you never lose sight of the fact of what is currently taking place across the Commonwealth. Other First Amendment rights belonging to my colleagues and I are being denied us by our religious employers – our right to freedom of assembly and association, as well as our right to freedom of speech. Unless HB 2626 becomes law, we will continue to lack these basic rights which belong to all Americans except us.

When the National Labor Relations Act was written in 1935 and the Pennsylvania Labor Relations Act two years later, both laws had taken their cue from the prevailing evidence presented by their times. For more than a century before the passage of those pieces of legislation, exploited American workers had been rightfully complaining that their First Amendment rights of free speech and freedom of assembly and association were rights experienced only in the breach. For nowhere existed laws that protected those rights - the right to free speech in advancing unionism, the right to freely elect a representative union, the right to protest unfair labor practices and to seek redress of grievances.

Then, prompted by growing labor militancy, and a corresponding upsurge in the violent and unfair tactics used by employers, the United States Congress and the Pennsylvania General Assembly finally acted in what both believed to be the best interest of the entire community.

Here is the language of Section 1. of the National Labor Relations Act:

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

Both the National Labor Relations Act and the Pennsylvania Labor Relations Act gave workers the right to organize. They legally permitted workers to form "unions of their own choosing," and put forth five rights as the basis of legal legislation concerning unions:

1. Employers must not interfere with, restrain or coerce employees in their exercise of the right of self organization, to bargain collectively through representatives of their own choosing.
2. Employers must not dominate or interfere with the formation or administration of any labor organization or contribute to the financial support of it.
3. Employers must not discriminate in hiring, discharge, or any condition of employment to encourage or discourage membership in unions selected by majority vote.
4. Employers must not discharge or otherwise discriminate against employees who file charges or give testimony under the labor acts.
5. Employers must not refuse to bargain collectively with representatives of the employees designated in accordance with the acts.

With the passage of the NLRA and the corresponding state labor laws such as the PLRA, historians Frank W. McCulloch and Tim Bornstein said:

> "American history turned a corner – perhaps one of the most significant since the Emancipation Proclamation. For millions of wage earners in every state in the Nation, Congress had established an industrial bill of rights, acknowledging that in an industrial society, democracy in the workplace is as important as democracy in politics."

So, one would think that with the passage of these laws in the 1930's, the era of the employer as unregulated exploiter of the worker had come to an end. Unfortunately, I am here as living proof to inform you that this is not the case. The exploiter of the worker has returned, this time under the guise of seemingly paternalistic church-run schools.

The very same basic rights once denied to all workers prior to the passage of the labor laws of the 1930's are at this minute being denied to the employees of religiously-affiliated schools. Although this abuse of rights takes place across the Commonwealth, no better example currently exists than the current situation affecting teachers and their religiously-affiliated employer, the Roman Catholic Diocese of Scranton.

The Diocese of Scranton covers an eleven-county area of northeast and central Pennsylvania and in its many schools employs approximately 700 people, most of them lay teachers.

In order to understand the current situation in Scranton, a bit of the labor history of the parties must be recounted. For the thirty years prior to restructuring its school system in 2007, harmonious labor relations prevailed between Scranton's unionized lay teachers and their religiously-affiliated school employers. Under the old structure, 43 independent schools employed lay teachers – each was a separate employer and contracted separately with those they hired. In 1978, teachers in three schools sought and

obtained recognition from their employers for collective bargaining units (unions) in each of those schools. Neither the union nor the employer asked for the assistance of the federal or state labor boards, which bodies in 1978 would still claim jurisdiction over such matters if petitioned to do so.

In 1979, the United States Supreme Court in *NLRB v. Catholic Bishop of Chicago* held that the NLRB lacked jurisdiction over religiously-affiliated schools. In 1996, the Pennsylvania Supreme Court in *Association of Catholic Teachers, Local 1776 v. Norwood-Fontbonne Academy* came to the same conclusion. Nonetheless, even without protection from the labor boards, union organizing and collective bargaining went forward in the Scranton Diocese.

As you will hear from others who will testify, the Roman Catholic Church has a long and proud history of being pro-union and pro-workers' rights. Numerous official teachings, such as papal encyclicals, proclaim these rights to the nation and the world. That being the case, and in line with those teachings, the official Scranton Diocesan school policy manual contained a specific policy (Policy # 417) on how those teachers desiring union representation could achieve it using a secret ballot election and a program overseen by a mutually-chosen neutral third party who would supervise the election and rule on any unfair labor practice charges.

Between 1978 and 2007, additional bargaining units were formed and roughly 350 teachers were covered under the contracts negotiated by the Scranton Diocese Association of Catholic Teachers, the umbrella group to which those various collective bargaining units belonged.

During the thirty years that this relationship flourished, hundreds of contracts were successfully bargained. Contracts which, all parties would attest, were for mutual gain.

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

The school restructuring process took more than a year to complete. Throughout the process, Diocesan school officials promised the union that once the process was completed, the union could seek recognition from the newly-formed school units through a secret ballot election supervised by a neutral party provided by the American Arbitration Association.

Then, on January 24, 2008, without consulting the union, the Diocese unilaterally announced that it would no longer consider recognizing or bargaining with a union chosen by its own employees. At the same time, it announced that it would put in place an "Employee Relations Program" and invited employees from all work categories – teachers, administrators, janitors, and other support staff to participate. Repeated attempts by the union to open dialogue on the issue of union representation have been repeatedly rejected by Diocesan officials.

The Diocesan announcement to break with the established teachings of the Catholic Church and its own stated policies has drawn a firestorm of criticism from inside and outside the community served by the Diocese. It has caused turmoil that has affected the entire community.

An editorial in the Wilkes-Barre *Citizens' Voice* newspaper said:

> "At this profound time of change in Northeast Pennsylvania, we need unity in our institutions. We need governments, the business community, labor councils, social organizations, non-profits, and yes even faith communities to promote oneness of purpose: Cope with change and emerge from it positioned to secure for our region a higher quality of life for today and generations to come. **An unnecessary and divisive wedge has been driven into the fabric of our community by Bishop Joseph Martino of the Roman Catholic Diocese of Scranton.** The bishop, in refusing to speak to Catholic school teachers through their union, appears to be following bad advice. His letter of the past weekend divided people further, pitting parents against teachers."

Since January, the union has vigorously protested against the position of the Diocese to deny union representation. These actions include work stoppages, informational picketing on daily basis, etc. Moreover, students have left their schools during instructional time and conducted their own demonstrations to indicate their ire with the Diocese's public rejection of the very same social justice teachings they learn in their social studies and theology classes. Support for the union's position in the community has been incredibly strong. Numerous public opinion polls favor the restoration of the teachers' right to bargain.

Yet the Diocese of Scranton remains unmoved. Despite criticism from the community and the harm their actions have caused to the public welfare, the Diocese continues to deny its workers the same rights now enjoyed by all other workers in the Commonwealth.

Earlier I referenced the five basic rights that had been incorporated into the federal and state labor laws. Let's look at three of them in relation to what is going on in the Scranton Diocese (the other two speak to unions that have gained recognition, and thus are not applicable):

1. Employers must not interfere with, restrain or coerce employees in their exercise of the right of self organization, to bargain collectively through representatives of their own choosing.

The Diocese of Scranton has denied its employees the right of self organization and refuses to allow the teachers to choose the representatives they wish to represent them.

In the July 31, 2008, edition of the official Diocesan newspaper, *The Catholic Light*, an article mentioned the ongoing position taken by the Diocese:

> "The Employee Relations Program is the format for regular dialogue between the Diocese and all school employees. Its implementation is part of the final decision that the Scranton Diocese Association of Catholic Teachers (SDACT) will not be recognized as a bargaining agent for teachers."

2. Employers must not dominate or interfere with the formation or administration of any labor organization or contribute to the financial support of it.

The Diocese of Scranton has created an "Employee Relations Program" and completely directs its actions, as well as completely funding its operation.

In the years leading up to the passage of the Wagner Act, employers sought to disarm nascent labor organizations by forming company unions. In the coal fields and the steel mills, employers used every unscrupulous means at their disposal to fight the labor unions that sought fair wages and working conditions for their members. In 1934 Senator Robert Wagner stood on the floor of the United States Senate to introduce the National Labor Relations Act. He stated:

> "The greatest obstacles to collective bargaining are employer-dominated unions. Such a union makes a sham of equal bargaining power . . . it deprives workers of the wider cooperation which is necessary to . . . cope with the ... the exploiter and to exercise their proper voice in economic affairs. Under the employer-

> dominated union, the worker who cannot select an outside representative to bargain for him suffers. . . {for}only representatives who are not subservient to the employer with whom they deal can act freely in the interest of employees.

3. *Employers must not discriminate in hiring, discharge, or any condition of employment to encourage or discourage membership in unions selected by majority vote.*

In June, 2008, after thirty-three years as a teacher with an exemplary record, I was fired for my union activity. Although the Diocese of Scranton alleges that my employment was terminated due to a lack of seniority and a need to reduce staff, the subsequent revelations of a Diocesan school administrator, who was privy to the discussions that led to my termination, has shown otherwise. This "whistle-blower" is prepared to state under oath that I was fired for my union activity. Learning the truth of this matter caused me to file charges with the PLRB, which in accordance with the current labor laws had to deny jurisdiction to hear the charges. The fact is, though a legal injury has been done to me (as recognized in the PLRA), there is nowhere I can now go for relief. This is contrary to the Pennsylvania Constitution which pre-dates the federal constitution and states:

> "All courts shall be open; and every man for an injury done him in his lands, goods person or reputation shall have remedy by due course of law; and right and justice administered without sale, denial or delay."

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

The relative inequality in the bargaining power between lay employees and their employers adversely affects the general welfare of the Commonwealth in the same manner as originally described in the findings and policy of the Act when it was first adopted, and therefore the Commonwealth has a compelling state interest in affording such protections to such employees. We ask for the same rights as all workers, nothing more and nothing less. We ask you for relief. We ask you for justice.