



*Statement of the
Pennsylvania Catholic Conference
on House Bill 2626*

PRESENTED TO

THE HOUSE COMMITTEE ON LABOR RELATIONS

by

Dr. Robert J. O'Hara, Jr.

Pennsylvania Catholic Conference

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**STATEMENT OF THE PENNSYLVANIA CATHOLIC CONFERENCE
ON HOUSE BILL 2626 (P.N. 3926)**

**General Assembly of Pennsylvania
House Labor Relations Committee
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I am Dr. Robert J. O'Hara, Jr., Executive Director of the Pennsylvania Catholic Conference (PCC). PCC is the public affairs agency that speaks officially for the Catholic Dioceses of Pennsylvania on issues of public policy in this Commonwealth.

With me is Philip J. Murren of the law firm of Ball, Murren & Connell. Mr. Murren has served as legal counsel to PCC since 1975. He has been directly involved in each litigation in the State and Federal courts in this Commonwealth since 1976 that has related to the constitutionality of the exercise of jurisdiction over Catholic schools by governmental labor relations agencies.

House Bill 2626 would allow the State government to intrude on the religious liberty of the teaching ministry of the Catholic Church in ways that all of the Catholic dioceses in this Commonwealth must strenuously oppose.

The Catholic Church has established its schools as the principal means for transmitting the Catholic faith to new generations of Catholics. Their teaching mission distinguishes them from the Church's works of charity and makes them especially sensitive to governmental direction, control or interference.

This passage from *To Teach as Jesus Did* (a pastoral statement of the Bishops of the United States) highlights the importance which the Church places upon the role of its schools in propagating the Catholic faith:

“Catholic education is an expression of the mission entrusted by Jesus to the Church He founded. Through education, the Church seeks to prepare its members to proclaim the Good News and to translate this proclamation into action. Since the Christian vocation is a call to transform oneself and society with God's help, the educational efforts of the Church must encompass the twin purposes of personal sanctification and social reform in light of Christian values.”

To Teach as Jesus Did further states that the whole life of a Catholic school should be directed to religious ends, *i.e.*, the “development of personal sanctity” in all involved therewith, and “the building of community.”

“Only in such a school can [the students] experience learning and living fully integrated in the light of faith. The Catholic school ‘strives to relate all human culture eventually to the news of salvation so that the life of faith will illumine the knowledge which students gradually gain of the world, of life and of mankind.’ (*Christian Education*, 8). Here, therefore, students are instructed in human knowledge and skills, valued indeed for their own worth but seen simultaneously as deriving their most profound significance from God’s plan for His creation. Here, too, instruction in religious truth and values is an integral part of the school program. It is not one more subject along side of the rest, but instead it is perceived and functions as the underlying reality in which the student’s experience of learning and living achieve their coherence and their deepest meaning.”

Catholic schools do not segment their functions into religious and secular components. At all times, the Catholic school is engaged in the process of catechesis and the formation of the Christian personality, a process which is integrated within the curriculum and disciplines of the Catholic schools.

Civil courts have repeatedly recognized that Catholic schools, unlike public or nonsectarian schools, exist for a religious mission to which everything in the life and operation of the school is subordinate. Moreover, the U.S. Supreme Court has repeatedly defined Catholic schools, not as secular off-shoots of the Church, but in fact as the Church itself. *Lemon v. Kurtzman*, 403 U.S. 602, 91 S.Ct. 2105 (1971); *Meek v. Pittenger*, 421 U.S. 349, 95 S.Ct. 1753 (1975); *Tilton v. Richardson*, 403 U.S. 672, 91 S.Ct. 2091 (1971); *Aguilar v. Felton*, 473 U.S. 402, 105 S.Ct. 3232 (1985).

The characteristics of Catholic schools most frequently relied upon by the Supreme Court and other courts in discussing the religious nature of these entities all apply to the Catholic schools in the Commonwealth.

As an integral part of the religious teaching ministry of the Catholic Church in its particular Diocese, each Catholic school:

- (1) Is a religious enterprise and is conducted as "an integral part of the religious mission" of the Catholic Church. *Lemon v. Kurtzman*, 403 U.S. 602, 618 (1971); *Meek v. Pittenger*, 421 U.S. 349, 366 (1975).
- (2) Is an institution whose substantial, if not dominant, purpose is to inculcate Catholic religious values. *Tilton v. Richardson*, 403 U.S. 672, 685 (1971).
- (3) Is an institution in which religion is so pervasive that a substantial portion of its function is subsumed in the religious mission of its sponsoring parish or diocese, which is the only reason for the School’s existence. *Meek*, *supra* at 366.

- (4) Is an institution whose affirmative, if not dominant, policy of instruction for school children is to assure future adherents to the Catholic faith by having control of their education at an early age. *Tilton*, supra at 685-686.
- (5) Carries on religious activities, including instruction and worship, prayer and Catholic Christian witness. *Lemon*, supra at 618.
- (6) Conducts and sponsors religiously oriented extracurricular activities for faculty and students. *Lemon*, supra at 615.
- (7) Is housed in a building whose exteriors contain identifying religious symbols, and whose interiors, such as classrooms and hallways, contain Catholic religious symbols, as well as inspirational quotations from Scripture and other religious doctrinal sources. *Lemon*, supra at 615.
- (8) Is an institution which has an atmosphere in which religious instruction and religious vocations are integrated into the total educational function. *Lemon*, supra at 615.
- (9) Is an institution which is a vehicle for transmitting the Catholic faith to the next generation. *Lemon*, supra at 616.
- (10) Conducts regular religious services and exercises. *Lemon*, supra at 615.
- (11) Employs teachers and other employees who are subject to the direction and discipline of religious authority which necessarily pervades the school and who are required to subscribe to the school's doctrinal statements, and conform themselves, both on and off campus, to high standards of Catholic Christian behavior. *Lemon*, supra at 617-618; *Meek*, supra at 371; and *Little v. Wuerl*, 929 F.2d 944, 948 n.6 (3d Cir. 1991).
- (12) Employs teachers and other employees who work in a school which is operated to inculcate the tenets of the Catholic religion and which is dedicated to rearing children in that faith. *Lemon*, supra at 618; *Meek*, supra 371.
- (13) Employs teachers and other employees who are responsible by their teaching and conduct to impart the Word of God, and the principles of the Catholic faith. *Caulfield v. Hirsch*, 1977 WL 15572 (p.8).
- (14) Does not divide instruction into "religious" and "secular" components, the entire ongoing life of the church-school community being religious. *Meek*, supra at 366.
- (15) Operates as a "faith community" with all persons therein being expected to provide Catholic Christian nurture and to encourage, by work and action, reverence for and adherence to Catholic religious principles. *McCormick v. Hirsch*, 460 F.Supp. 1337, 1352 (M.D. Pa. 1978).

As summarized by the Supreme Court of the United States, the "*raison d'etre*" of Diocesan Church schools "is the propagation of a religious faith." *NLRB v. Catholic Bishop of Chicago*, 440 U.S. 490, 503 (1979).

According to Church teachings, the integration of religious truth and values with the rest of life and learning is brought about in the Catholic school not only by its unique curriculum but, more importantly, by the presence of teachers who express an integrated approach to learning and living in their private and professional lives. These individuals are the lifeblood of the teaching ministry.

The Supreme Court of the United States, in its opinion in *NLRB v. Catholic Bishop of Chicago, supra.*, accorded special significance to the “critical and unique role of the teacher in fulfilling the mission of a church-operated school.” It was the intrachurch relationships and religious expectations animating that “critical and unique role” of the teacher that moved the Court in that case to identify the constitutional dangers that would result from governmental interference with the church-teacher relationship.

The religious integrity of the mission and ministry of each Catholic school depends on the freedom of the entire school to function as a faith community, with the interrelationships among its members being determined according to religious precepts and principles, rather than secular standards coercively imposed through the overlay of governmental influence and the imposition of the will of the secular government.

The U.S. Supreme Court also warned against entanglements between government and religion which produce "confrontations and conflicts" between government and churches. *Walz v. Tax Commission*, 397 U.S. 664, 90 S.Ct. 1409 (1970). Direct interference with the propagation of religious faith and direct entanglement by the government in deciding how a church propagates its religious faith and assures the religious integrity of its teaching ministries are prohibited under the Free Exercise and Establishment Clauses of the U.S. and Pennsylvania Constitutions. U.S. Const., Amendment I; Pa. Const. Art. I, § 3.

The PLRB was given the legal authority to compel nonprofit employers and public school districts to bargain with unions in 1970.¹ The PLRB customarily oversees collective bargaining and employee discipline between employers and employees concerning *all* of the terms and conditions of employment. However, in a religious school, many of those terms and conditions of employment are religiously sensitive and/or involve important elements of religious self-determination and autonomy.

In a Catholic school, the terms and conditions of employment not only result from the “interpretation” of religious doctrine, but also from the *application* of religious doctrine to specific aspects of the relationship between ministry and minister. They relate not only to what doctrines and values are taught, but also to how and by whom such doctrines and values are to be taught, and by what means individual witness is to be given to the truth of those teachings.

Even in those dioceses that have recognized teachers’ unions, there is no negotiating over those “terms and conditions of employment” that impact on the religious integrity of the school, the Catholic identity of the school, or the authority of religious officials to interpret and apply Church customs and laws and to determine the means best suited to accomplish the school’s religious mission.

¹ House Bill 2626’s Legislative Findings regarding the circumstances present at the time of the passage of the Pa. Labor Relations Act in 1937 are thus misleading. The 1937 Act never applied to nonprofit entities of any kind. The General Assembly had every opportunity to include the very substantial numbers of lay teachers in Catholic schools within the jurisdiction of the PLRB in 1970 when it adopted the Public Employee Relations Act. It did not do so.

To give but one example, all of the dioceses in Pennsylvania include a “Cardinal’s Clause” in their lay teachers’ contracts. Under such clauses, each diocese reserves the right to immediately dismiss a teacher for immorality, for conduct that is incompatible with the role of the teacher as witness to the Gospel of Jesus Christ, or for words or conduct (whether on or off the premises of the school) that result in the giving of scandal to the school’s faith community, or that constitute a public rejection of the doctrines, teachings, religious principles or laws of the Catholic Church. These clauses cannot be bargained over, since they are a key means of ensuring fidelity to Catholic teachings and discipline. Nor should they be set aside by a government agency that believes that they are a “pretext” for some illicit motive.

The Roman Catholic Church is governed by its Code of Canon Law, and by statutes adopted by its individual dioceses. Those laws have been developed and refined over the course of two thousand years. They are interpreted and administered by Church authorities and by Church tribunals. Internal disputes over Church doctrine and discipline are adjudicated within those tribunals.

Because its teaching ministries operate best in an atmosphere of governmental respect for religious liberty and self-determination, the Church has consistently objected to the presence of governmental agencies, acting as referees over relationships within a religious faith community such as a Catholic school.

For many decades, teachers’ unions have sought to invoke the jurisdiction of the National Labor Relations Board and the Pennsylvania Labor Relations Board over collective bargaining matters in Catholic schools in Pennsylvania. Each attempt by these unions at establishing the jurisdiction of those governmental agencies over employment relations within the Catholic schools through labor board petitions and litigation has been vigorously opposed by PCC and the affected arch/dioceses. Thus far, each such attempt in Pennsylvania been rebuffed by the civil courts.

In 1977, a Federal District Court issued an injunction preventing the National Labor Relations Board from certifying a union to represent teachers in the elementary schools in the Archdiocese of Philadelphia. See, *Caulfield v. Hirsch*, 1977 WL 15572, 95 LRRM 3162 (E.D.Pa. 1977). In that case, the Court found that governmental labor relations agency supervision over the lay teachers in a Catholic school would unconstitutionally burden the religious liberties of the Archdiocese and its parishes.

Similarly, in 1978 another Federal District Court reached the same conclusion with respect to a claim of jurisdiction by the National Labor Relations Board over a representation petition filed by a teachers union at Bishop Hoban High School in the Diocese of Scranton. See, *McCormick v. Hirsch*, 460 F.Supp. 1337 (M.D.Pa. 1978).

At about that same time, the United States Court of Appeals for the 7th Circuit held that the Religion Clauses of the First Amendment would be violated by the assertion of NLRB jurisdiction over Catholic school teachers. See, *Catholic Bishop of Chicago v.*

NLRB, 559 F.2d 1112 (7th Cir. 1977). In that decision, particular stress was placed on the unconstitutional effects of allowing the NLRB to determine whether proffered religious reasons for employment decisions were “pretextual.” 559 F.2d at 1125. The court cited a specific example of those illicit consequences:

“If, for example, a teacher should give a strong pro-union speech at a meeting one week and the next week would advocate the cause of birth control to his or her students or favor the availability to poor people of abortion, the bishop would be confronted with a choice of foregoing his right to discharge the heretical employee or do so at the risk of a protracted and expensive unfair labor practice proceeding before the Board which would certainly in part involve the Church's religious policies and beliefs.”

Id. at 1124.

Ultimately, the Supreme Court of the United States definitively ruled that the National Labor Relations Board (NLRB) lacked jurisdiction over labor relations between lay teachers and the Catholic schools that employed them. See, *National Labor Relations Board v. Catholic Bishop of Chicago*, 99 S.Ct. 1313 (1979). The Court in that case held that, in light of the significant constitutional issues that would be raised by the assertion of NLRB jurisdiction, it would not construe the NLRB's enabling statute to apply to Catholic schools.

In its *Catholic Bishop* opinion, the Court clearly warned of the consequences that would result from allowing a governmental labor relations agency to involve itself in employment relationships within a school faith community:

“The Board argues that it can avoid excessive entanglement since it will resolve only factual issues such as whether an anti-union animus motivated an employer's action. But at this stage of our consideration we are not compelled to determine whether the entanglement is excessive as we would were we considering the constitutional issue. Rather, we make a narrow inquiry whether the exercise of the Board's jurisdiction presents a significant risk that the First Amendment will be infringed.

“Moreover, it is already clear that the Board's actions will go beyond resolving factual issues. The Court of Appeals' opinion refers to charges of unfair labor practices filed against religious schools. 559 F.2d, at 1125, 1126. The court observed that in those cases the schools had responded that their challenged actions were mandated by their religious creeds. The resolution of such charges by the Board, in many instances, will necessarily involve inquiry into the **good faith** of the position asserted by the clergy-administrators and its relationship to the school's religious mission. **It is not only the conclusions that may be reached by the Board which may impinge on rights guaranteed by the Religion**

Clauses, but also the very process of inquiry leading to findings and conclusions.

“The Board's exercise of jurisdiction will have at least one other impact on church-operated schools. The Board will be called upon to decide what are "terms and conditions of employment" and therefore mandatory subjects of bargaining. See 29 U.S.C. § 158(d). Although the Board has not interpreted that phrase as it relates to educational institutions, similar state provisions provide insight into the effect of mandatory bargaining. The Oregon Court of Appeals noted that “nearly everything that goes on in the schools affects teachers and is therefore arguably a 'condition of employment.’” (Citation omitted.)

“The Pennsylvania Supreme Court aptly summarized the effect of mandatory bargaining when it observed that the "introduction of a concept of mandatory collective bargaining, regardless of how narrowly the scope of negotiation is defined, necessarily represents an encroachment upon the former autonomous position of management." *Pennsylvania Labor Relations Board v. State College Area School Dist.*, 461 Pa. 494, 504, 337 A.2d 262, 267 (1975).”²

99 S.Ct. at 1319-1320. (Emphasis supplied.)

After the option of seeking Federal labor relations agency jurisdiction over Catholic schools was foreclosed, a teachers union in the Archdiocese of Philadelphia sought to invoke the Pennsylvania Labor Relations Board's jurisdiction. That attempt was turned aside by a decision of the Supreme Court of Pennsylvania, holding that Pennsylvania's 1970 Public Employee Relations Act did not apply to Catholic schools. See, *Association of Catholic Teachers v. Pennsylvania Labor Relations Board*, 692 A.2d 1039 (Pa. 1997).

By subjecting Catholic schools to the jurisdiction of the PLRB, House Bill 2626 would compel those schools to bargain “in good faith” with whatever union representative their teachers may choose, whether or not that union itself propagates views that are antithetical to Church teaching. The Church would also be compelled to bargain with teachers unions over every term and condition of the teachers' employment, with only limited exclusions relating to the definition of religious doctrine and perhaps to the organizational structure of the school. However, each limited exclusion is actually illusory, since the bill would allow the PLRB to set aside religious doctrine or ecclesiastical structure so long as the PLRB, in its own discretion, should find the doctrine or church principle to be “pretextual.”

² It is significant that the United States Supreme Court made reference to the recognition by the Pa. Supreme Court of the pervasive impacts of mandatory collective bargaining on the operation of a school entity -- in that case a public school district that already was subject to full public direction and control.

Here is what the PLRB could do under House Bill 2626:

- Examine whether the espousal of religious doctrine is a “pretext” for an action that is challenged as an unfair labor practice.
- Set aside religious disciplinary decisions that are based on what would be Church “laws,” or Church “policies,” or Church “practices,” as opposed to Church “doctrine.”
- Examine whether the asserted religious grounds for an employment action is a “pretext” for an unfair labor practice.
- Substantially burden the religious liberties of the religious employer without having to establish a “compelling state interest” under the Religious Freedom Protection Act.³

Inasmuch as House Bill 2626 would allow the PLRB to override religious doctrine when, in the judgment of the PLRB, religious doctrine was utilized as a “pretext” for a refusal to bargain or for some other form of “unfair labor practice,” the “pretext” inquiry will necessarily require the PLRB to choose whether to believe Church officials about doctrinal matters or not, and will invite dissenting teachers and their representatives to question the good faith, integrity and authority of those Church officials. Moreover, it will entangle a governmental agency in disputes over whether a diocese’s view of doctrine is authoritative or is in error.

The limited exclusions granted in the Bill are much too narrow to protect the full range of religiously sensitive matters within a school faith community. The “pretext” inquiry itself is an outright invitation for a State agency to second-guess religious authorities on religious issues and to substitute its judgment for that of the Church authorities on those religious issues.

As was observed by the courts in the *Catholic Bishop of Chicago* cases, the very act of certifying a union brings a level of governmental oversight that inhibits the former authority of the Bishop to administer the schools solely in keeping with ecclesiastical concerns. As a consequence of governmental certification, the Bishop must accord the union a seat at the table in deciding a vast array of matters of policy and discipline.

If the Bishop concludes that the union itself is an obstacle to the proper functioning of the community of faith, he would have no recourse other than to bargain with it. That situation could occur as a result of the local union’s own disruptive activities (e.g., it organizes student protests, or directs unchristian comments at church officials, or disputes the religious authority of the Bishop), or as a result of the religiously offensive conduct of the parent union entities with which the local union is associated (e.g., supporting abortion on demand, opposing aid to nonpublic school students and their families, etc.).

³ The Bill’s exclusion of the applicability of the Religious Freedom Protection Act is itself an acknowledgment of the substantial burdens on religious liberty the Bill would impose and authorize.

As was also observed by the courts in the *Catholic Bishop of Chicago* cases, a labor board cannot avoid excessive entanglement in religious matters in the context of an unfair labor practices proceeding by limiting itself solely to determining whether the Church's actions were based on "anti-union animus." In resolving such questions, a labor board must necessarily inquire into the "good faith" of the religious school officials. It must also test the nature of the relationship between the school's action and the school's religious mission. When a labor board engages in those activities, "It is not only the conclusions that may be reached by the Board which may impinge on rights guaranteed by the Religion Clauses, but also the very process of inquiry leading to findings and conclusions."

It is precisely because of the uniquely religious role of teachers in the teaching ministry that is the Catholic school that the U.S. Supreme Court saw "no escape from conflicts flowing from the Board's exercise of jurisdiction over teachers in church-operated schools and the consequent serious First Amendment questions that would follow." 99 S.Ct. at 1320.

In short, the adoption of House Bill 2626 will inevitably trigger yet another wasteful and unnecessary constitutional confrontation between Church and State of the same type which fomented litigation from 1977 through 1997. That confrontation will involve all of the Catholic dioceses in this Commonwealth because all of them are resolute in their opposition to House Bill 2626 and to the consequences that will inevitably flow from its adoption.

