LABOR RELATIONS COMMITTEE

I have been requested to provide to this body a framework of federal and state laws in order to better understand Bill 2626. I personally will not express my own opinion relative to the passage of this bill, but will merely present some history and related laws and cases that place the bill into an historical and philosophical context. I will keep my remarks extremely brief, but am happy to entertain questions and comments, as permitted by the Committee.

At the federal level, in 1935, Congress passed the National Labor Relations Act (also called the Wagner Act) which gave employee two fundamental rights – the right to form, join, and assist labor organizations, or unions, and the right to bargain collectively through representatives of such employees' own choosing. The law also created a series of employer unfair labor practices – for example, discriminating against an employee who attempts to exercise his or her rights, dominating a labor union through financial or other means, and refusing to bargain in good faith.

The law has been amended several times. In 1947, the so-called Taft-Hartley Act (named the Labor Management Relations Act), added a third right – the right not to join a labor union. However, in the majority of states, including Pennsylvania, while this right is protected, the existence of so-called "union shops" requires that, where a union is present, all employees must sign a document referred to as the "checkoff", which grants employers the right and obligation to deduct union dues from employees' paychecks. It should be noted that there are 22 so-called "right to work" states (most located in the South and Midwest), in which this

practice is not allowed. Taft-Hartley also added several additional unfair labor practices, pertaining to illegal union activities to the original listing.

In 1959, another amendment, the so-called Landrum-Griffin Act (named the Labor Management Reporting and Disclosure Act), was passed which provided for fairness in union practices.

The National Labor Relations Act does not protect employees working for small businesses.

Over the years, the federal courts carved out various exclusions to the listing of employees who had access to the two rights granted under these federal statutes. The listing of excluded employees included such individuals as independent contractors (hence doctors were not allowed to unionize relative to HMOs), supervisors (hence university faculty generally may not unionize), agricultural workers, persons employed by a parent or spouse, persons in domestic service (e.g., nannies and domestic help), and, importantly, government workers at the federal, state, and local levels. Of course, these workers are subject to protection under state laws, if states opt to protect such employees.

In 1975, lay teachers at two Chicago seminaries run by the local diocese voted to unionize. The bishop refused to bargain with them, and the union filed a complaint with the National Labor Relations Board. The NLRB decided it had jurisdiction and ordered the bishop to accept the union. The diocese appealed. The Circuit Court of Appeals denied the NLRB's enforcement, citing protections under the First Amendment. The opinion noted: "The real difficulty is found in the

chilling aspect that the requirement of bargaining will impose on the exercise of the bishop's control of the religious mission of the schools."

By the time the case reached the Supreme Court of the United States in 1979, a similar situation had developed at five schools in the Diocese of Fort Wayne-South Bend, Indiana, and those cases were folded into the Chicago case. The Supreme Court upheld the Circuit Court's ruling, stating that the original National Labor Relations Act and the "legislative history" did not clearly grant jurisdiction to the NLRB, and that "the Court will not construe the Act in such a way as would call for the resolution of a difficult and sensitive First Amendment question." The Court explained that involvement in the religious schools would create burdens on religious liberty due to church-state entanglements. The entanglements, thus interference, would be unavoidable, and would be inconsistent with the First Amendment of the United States Constitution.

In effect, this case, Catholic Bishop of Chicago v. NLRB, 440 U.S. 490, added an additional exclusion to the listing of employees not protected by the two rights mentioned earlier, and not covered under federal law.

At the state level, the Pennsylvania Labor Relations Act created the Pennsylvania Labor Relations Board in 1937. This law mirrors the federal law and encourages the peaceful resolution of private sector industrial disputes through collective bargaining. The law protects employees, employers, and labor organizations engaged in legal activities associated with the collective bargaining process. The board's private sector jurisdiction has to date been limited to

employers and their employees not covered by the National Labor Relations Act, for the most part only small businesses.

As is the case with the federal law, the Pennsylvania Labor Relations Act grants employees the right to self-organization, to form, join or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection. The law also creates unfair labor practices similar to those enumerated under the federal statute.

To date, most of the board's work is in the public sector. For example, the Public Employee Relations Act, enacted in 1970, extended collective bargaining rights and obligations to most public employees and their employers at the state, county and local government levels. Another example, Act 111 of 1968, granted collective bargaining rights to police officers and firefighters. Finally, Act 88 of 1992 modified the board's role in public school bargaining disputes.

In the private sector, state Supreme Court rulings have held that lay teachers are not covered under the Pennsylvania Labor Relations Act. In 1996, in Association of Catholic Teachers, Local 1776 et. al. v. Pennsylvania Labor Relations Board, 547 Pa. 594, 692 A.2d 1039, a ruling by the Pennsylvania Supreme Court indicated that in the absence of a clear intention on the part of the lawmakers to include lay teachers as employees covered by the law, such teachers were not to be considered employees under the Pennsylvania Labor Relations Act.

If enacted, House Bill 2626 would change the definition of "employee" under current labor law to include lay teachers in religious schools. The change would

have the effect of requiring dioceses to recognize and bargain collectively with teachers unions. It also would allow unions in religious schools to bring grievances to the Pennsylvania Labor Relations Board.

In 2007, the Bureau of Labor Statistics published information on Union Membership for 2007. The report notes that union workers nationally now account for 12.1% of all wage earners – down from 20.1% in 1983. However, in Pennsylvania, overall union membership as a percentage of the workforce increased from 13.6% to 14.7%. The BLS report also notes some interesting trends on national data:

1. **Workers in the public section had a union membership rate nearly five times that of private sector employees.**
2. **Education, training, and library occupations had the highest unionization rate among all occupations, at 37.2 percent.**

This concludes my prepared remarks. I am happy to entertain questions and/or comments. I am also happy to respond to these privately if you wish.

Thank you for your attention.