TESTIMONY OF MARTIN W. MILZ, ESQUIRE
BEFORE HOUSE LABOR RELATIONS COMMITTEE
REGARDING HOUSE BILL 2626

Mister/Madame Chairperson and Members of the Committee:

My name is Martin W. Milz. I am an attorney in the Philadelphia law firm of Spear Wilderman, P.C. and counsel to the National Association of Catholic School Teachers and its affiliates, as well as dozens of other local unions who represent employees across the full spectrum of organized labor. I am here to support passage of H.B. 2626.

My testimony is limited to a very narrow issue raised by the Bill's opponents on the first day of Hearings in Harrisburg. Specifically, I'd like to address the observable practical experience of the State of New York's inclusion of lay employees of religious organizations under the protections of an Act and administrative structure analogous to that proposed by Amendment before this Committee.

The New York State Employee Relations Board or "SERB" oversees employee-employer relationships in much the same manner as the PLRB. Prior to 1991, the SERB was two separate agencies, the New York State Labor Relations Board (SLRB) and the State Mediation Board. The current incarnation of the SERB and earlier, the SLRB, have for decades included within their jurisdiction lay employees of religious organizations. The New York experience, therefore, is uniquely instructive as to how H.B. 2626 will function if passed into law.

Prior testimony offered by attorneys Mark E. Chopko and Phillip J. Murren raised the specter that an administrative agency overseeing collective bargaining between religious organizations and their employees would be called upon to weigh and decide tenets of religious doctrine or dogma. Despite declarations of such a possible entanglement, no specific illustration

of how this situation might arise has been offered. Furthermore, the argument of hypothetical administrative intrusion is by no means novel and has been thrice rejected by both Federal and State courts in New York. *NYSERB v Christ The King Regional High School*, 90 NY 2, 244, 682 NE 2d 960 (1997); *NYSERB v. Christian Brothers Academy*, 668 NYS2d 407 (NY App. Div. 1998); *Catholic High School Associates v. Culvert,* 753 F.2d 1161 (2d Cir. 1985). In *Culvert*, the Second Circuit, in upholding the constitutionality of the New York Act, stated:

> The State Board's relationship with the religious schools over mandatory subjects of bargaining does not involve the degree of "surveillance" necessary to find excessive administrative entanglement... and the State Board's supervision over the collective bargaining process is neither comprehensive nor continuing.

Culvert, 753 F.2d at 1166. This statement, which was quoted with approval by the New York Court of Appeal in *Christ The King* and the state Appellate Division in *Christian Brothers Academy*, is borne out by facts of the Acts' daily application.

I have endeavored to research whether and to what extent the SERB has been asked to resolve questions of religious doctrine or dogma. Research into this question required, to a large extent, the direct involvement of the SERB, as its opinions and decisions are not readily accessible to the public. Upon a review of its records by Board staff, it was ascertained that for the available period, January 2000 through the present, the SERB had exercised its jurisdiction over twenty-one (21) representation petitions and thirty-one (31) unfair labor practice charges filed by or against lay employee organizations at religious institutions throughout the State of New York. Most of the unfair practice charges processed to completion by the Board involved typical anti-union discrimination or refusal to bargain allegations. According to SERB, these cases were adjudicated just as any other unfair labor practice case would have been, without regard to the religious nature of the employer. When issues of "religion" did arise in these cases,

they arose as routine preliminary objections to the SERB's jurisdiction over standard bargaining issues. To be clear, there is no indication that these were in any way objections to SERB sitting as the arbiter of a religious position, they were objections to its statutory authority to compel good faith bargaining over basic, mandatory issues. Such jurisdictional objections were rejected by SERB by relying on the holding of the Court of Appeal in *Christ the King*.

The lone, distinguishable instance in which the Board was confronted with an even arguably "doctrinal" defense was a school's attempt to unilaterally implement a criminal background check policy. It might be self-evident that background checks are standard employment terms of a decidedly non-religious nature. The employer, however, asserted that the policy was instituted pursuant to the "Charter for Protection of Children and Young People," a statement adopted by the US Conference of Catholic Bishops. The SERB rejected this defense and found, as it likely would have for any subsidiary organization operating under a corporate policy directive, that the unilateral implementation was an unfair labor practice. As in Pennsylvania, the decisions of the SERB are not self-enforcing, which means they must be either enforced or challenged in a court. This particular decision of the SERB was not challenged in any New York state or federal court.

To supplement my reliance upon the Board's research of its internal files, our office endeavored to directly contact some of the organizations which operate under the New York administrative structure. Contacted were the Lay Facility Association of New York, the Diocesan Elementary Teachers Association, and the Federation of Catholic Teachers. Over the course of their respective existences, these Associations have participated in numerous filings with the SERB. Upon a cursory review of their files, none could identify an instance in which the Board was called upon to decide questions of religious doctrine.

A review of all available information, therefore, indicates that the slippery slope of entanglement trumpeted by Messrs. Chopko and Murren has never come to pass in practical application. The most instructive indication that the generalized fears prophesied by the opponents of Bill 2626 is evidenced by the complete absence of litigation against the SERB, particularly since the confirmation of the Constitutionality of its oversight in *Christ the King*. Exhaustive research could not identify a single alleged instance in which it was claimed that SERB had exercised its jurisdiction in a manner that interfered with religious principles. If the parade of horribles offered by the Bill's opponents truly did exist, one would expect to see cases in which the Board had been called to account for overreaching beyond its appropriate oversight of "meat and potatoes" mandatory bargaining subjects into an inappropriate religious sphere. Any amount of research will disclose that such instances simply don't exist.

Again, it is worth noting that it is the courts who are charged with protecting our religious freedoms. Even though a specific instance of religious interference has never been identified by the Bill's detractors, despite their hypothetical predictions, any action taken by the PLRB or SERB that arguably steps over the line cannot be enforced against a party without court approval. The proponents of H.B. 2626 submit that the courts are competent to perform the task of defending our freedoms should they ever be called upon to do so.

In conclusion, not a single concrete instance can be identified in support of the opponents' predictions of the dangers of PLRB oversight. The New York State experience has proven itself to be practically workable and Constitutionally sound.