



**Written Comments from the Department of Labor and Industry
House Committee on Labor and Industry
Hearing on Public Sector Union Reform
November 15, 2021**

Chairman Cox, Chairman Mullery and members of the House Labor and Industry Committee, on behalf of the Department and the Pennsylvania Labor Relations Board, thank you for the opportunity to provide comments on the topic of Public Sector Union Reform. Most of the bills under consideration would amend Act 195, commonly known as the Public Employee Relations Act (PERA).

Since its establishment in 1937, the Pennsylvania Labor Relations Board (PLRB) has served as a neutral and independent entity tasked with adjudicating, resolving, and assisting in disputes between employee organizations and employers. The PLRB adjudicates allegations of unfair labor practices, resolves questions of representation of employee bargaining units, and assists in settling bargaining impasses through arbitration or fact finding.

The PLRB's top priority and mission is to always administer the law and provide fair and impartial outcomes. The PLRB avoids taking positions on proposed legislation unless they will have significant impact on the PLRB or when impacts on stakeholders or parties that come before the Board should be considered.

For that reason, we will limit our remarks to House Bill 2037 which, as proposed, has a significant impact on the Board's function and operation.

House Bill 2037

HB 2037 proposes amending Act 195 to require the PLRB to "recertify" public sector bargaining units every six to seven years, beginning two years after enactment. As written, this bill would cause major difficulties for the PLRB. Simply stated, absent extensive organizational changes and significant funding increases to cover labor, IT resources, and physical assets, the ongoing recertification of every bargaining unit of the Commonwealth and all its subdivisions is simply not feasible.

Initially, it's important to understand that PERA intended to limit the certification and decertification process to individual employees, groups of employees, and employee organizations. It intended for this process to be easily initiated by a small showing of interest of 30% of employees in the bargaining unit, which is not onerous.

PERA also only intended the PLRB to serve as a neutral organization that would confirm the outcomes of these cases by secret ballot. It did not envision the PLRB to serve as a monitor that would track the bargaining relationships (or lack thereof) between a certified employee organization and an employer.

Therefore, while the PLRB has individual records of the certifications and decertifications it issues, it does not possess a comprehensive list or database reflecting the total number of bargaining units active

since the inception of PERA over 50 years ago. To first obtain that information, the PLRB would need to undertake a massive research effort to identify, compile, and contact every bargaining unit ever certified.

It would take a new team of staff to perform this initial task of searching, uploading, and confirming all bargaining units into a central database that would need to be designed and implemented. The amount of time and money to develop and maintain such a system is unknown. We do not believe two years would be ample time to do this.

Moving forward, it's important to consider the potential number of public-sector bargaining units that exist throughout the Commonwealth. Pennsylvania has approximately 500 school districts with two bargaining units each; 67 counties with at least three units each; 37 Commonwealth bargaining units; and 30 public colleges, universities, and community colleges with approximately one unit each. In addition, Pennsylvania has 956 boroughs, 1546 townships, 56 cities, and 1756 public utility authorities. While obviously not every borough, township, city, or authority has a bargaining unit, most do. To assume half of these entities have only one bargaining unit each, which is an extremely conservative estimate, would total 2,157 additional bargaining units. Altogether, that would be approximately 3,425 public-sector bargaining units.

Therefore, this bill would require the PLRB to develop a database, research and compile all bargaining units, and conduct at least 3,425 elections within a two-year period. There are 238 working days during a two-year period and conducting one election requires a minimum of three staff for the work involved in preparation, administration of the election, and issuance of orders. This would require a new complement of PLRB administrative staff of at least 42, which doesn't take into account sick or vacation days. The PLRB would need an additional estimated \$3.024 million for staffing. Essentially, the PLRB would need to split into two divisions, one of which would focus solely on monitoring bargaining units and conducting recertification elections.

In addition to administrative staffing increases, there would be legal staffing increases needed to review, hear, and process potential challenges to the conduct of parties during elections and exceptions to orders issued. Between additional hearing examiners and attorneys, these increased staffing costs are estimated at \$2 million.

While the staffing required during the initial two-year period would not be the same as during the ensuing six-year periods, it would permanently require a much larger staff complement than currently exists at the PLRB.

The initial total estimated cost of added PLRB staff, administrative and legal, would be \$5.024 million per year, with a slightly lesser amount moving forward. This does not take into account any necessary equipment, IT, or facility costs, nor the cost to develop the database that would be needed.

Lastly, and perhaps most importantly, it is worth noting that PERA already provides a simple process for a public employer and individual employees to request a decertification election through the filing of a petition with the PLRB.



Pennsylvania Municipal League
President – Danene Sorace, Mayor, City of Lancaster



Pennsylvania State Association of Township Commissioners
President – Sam Valenza, Commissioner, Upper Merion Township

**PA Municipal League
And
PA State Association of Township Commissioners
Written Testimony Submitted to House Labor and Industry Committee
Regarding Public Sector Union Reform Legislation
November 15, 2021**

Thank you for the opportunity to provide written comments on the public sector union reform bills before the committee today. Please accept the following comments on behalf of the PA Municipal League (The League) and the PA State Association on Township Commissioners (PSATC).

The League represents 120 urban and suburban full-service communities across Pennsylvania. Members include cities, boroughs and townships. The PSATC represents 64 of the Commonwealth's first class townships. The municipal membership of the two associations represents over 4.5 million Pennsylvanians. Together the associations advocate for tools to assist municipalities in meeting constituent needs as efficiently and effectively as possible.

Neither association has policy on reforming of Act 195, The Public Employee Relations Act. This is in contrast to our well-established policy concerning reform of Act 111's binding arbitration law for public safety unions. It is safe to say that Act 195 does not have the unpredictable and long-term financial impact that Act 111 has on full-service communities. For this reason, our comments focus on House Bill 845 and the transparency aspect of the proposal.

For the last 10 years, The League and PSATC have advocated for commonsense reform of Act 111. Please see our attached policy. One aspect of our policy calls for more transparency in the Act 111 binding arbitration process. It is our contention that transparency would allow the taxpaying public a view into the process and would ultimately result more realistic "asks" from both sides of the bargaining table. Specially, we call for the evidentiary hearing during Act 111 binding arbitration to

be open to the public. This hearing is the opportunity for both sides to present arguments and evidence supporting their contract proposals. Again, opening this hearing to the public allows those paying for the eventual binding contract to understand what each side is requesting and the rationale behind those requests.

With this transparency policy in place, we look at HB 845 and how it would apply to Act 111. The bill establishes the Public Employment Collective Bargaining Act requiring public employers to provide the public with notice of a proposed collective bargaining agreement. Notice includes a statement of the terms of the proposed agreement and an estimate of the associated costs. This information must be posted 14 days prior to acceptance and for 30 days following acceptance on the employer's publicly accessible website. Additionally, the proposed agreement and documents presented by the employer and to the employer in the course of bargaining are subject to the Right to Know Law.

Providing notice of an agreed to contract prior to final approval by the governing body allows interested taxpayers insight into what has been negotiated and how much it will cost. By its very nature this transparency will have a significant impact on the final proposed agreement. It is our belief this transparency will result in more affordable contracts which will help control future legacy costs. Furthermore, providing access to these agreements and documents under the Right to Know Law adds another layer of transparency and opportunity for public education.

We do recommend some clarification to HB 845 in terms of its applicability to binding arbitration awards, as opposed to collective bargaining agreements. The binding determination awards handed down by neutral arbitrators when collective bargaining agreements cannot be reached should also be posted for public information. Public notice in this case would be after the award is handed down, but it is still an important transparency measure, as is Right to Know access to the award and the documents submitted during the evidentiary hearing.

The League and PSATC believe HB 845 is an important measure for public knowledge of the agreements and awards that result from Act 111. We ask that you review our attached policy on Act 111 reform and direct any comments or questions to Amy Sturges, Director of Governmental Affairs at asturges@pml.org.

Thank you for the opportunity to provide comments.



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President – Sam Valenza, Commissioner, Upper Merion Township

Act 111: Binding Arbitration Reform With Over 50 Years of the Status Quo It's Time for a Change

The League and PSATC are strong advocates for public-safety binding arbitration reform. Act 111 of 1968 is the current state law that allows for binding arbitration when a collective bargaining agreement cannot be reached between a municipality and its police officers or fire fighters. Arbitration is offered in exchange for a prohibition against striking.

Act 111 binding arbitration should remain part of the municipal/labor toolkit. However, the significant fiscal impact of Act 111 on municipal budgets, as well as the fact that it has not been updated in over 50 years, warrants commonsense changes that make Act 111 a more balanced and fair process. In order to encourage sound fiscal stability, Act 111 needs to reflect today's realities.

The reforms outlined below keep binding arbitration intact and will lead to stronger, more fiscally secure municipalities which, in turn, protects current and future public safety jobs and benefits.

The League and PSATC support the following changes to Act 111:

- requiring the cost of the third (neutral) arbitrator to be shared equally by both sides, rather than being paid by the employer;
- requiring the evidentiary hearings to be open to the public;
- requiring the arbitrator to thoroughly justify the arbitration award based upon the facts and evidence presented;
- ensuring arbitrator accountability by codifying a less stringent appeal standard supported by findings of fact and conclusions of law;
- prohibiting future pension and post-retirement healthcare benefits from being subjects of collective bargaining;
- expanding the list of neutral arbitrators and providing an equal chance at being the first side to start the selection process; and
- starting the collective bargaining process earlier and requiring a request for arbitration earlier.

These changes keep binding arbitration intact for public safety personnel while making fiscally sound updates to an antiquated law. As the cost of public safety continues to make up more and more of the municipal budget, these modest changes will have a positive impact for the employer, taxpayer, and public safety worker.