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POSITION PAPER ON NOVEMBER 15, 2021 PUBLIC HEARING OF THE PENNSYLVANIA HOUSE LABOR AND INDUSTRY COMMITTEE REGARDING HB 844, HB 845, HB 2042, HB 2036, HB 2037, AND HB 2048

PRESENTED TO
THE HOUSE LABOR AND INDUSTRY COMMITTEE

NOVEMBER 15, 2021 – 10:00 AM – 12:00 PM

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THE GENERAL ASSEMBLY OF THE
PENNSYLVANIA HOUSE, LABOR AND INDUSTRY
COMMITTEE

Public Hearing on HB 844, HB 845, HB 2042, HB 2036, HB 2037, HB 2048

November 15, 2021 – 10:00 a.m.

POSITION STATEMENT OF
JEFFREY T. SULTANIK, ESQUIRE, CHAIR
EDUCATION LAW GROUP
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HOUSE LABOR AND INDUSTRY COMMITTEE OPENING STATEMENT AND INFORMATION ON PENDING BILLS

I. INTRODUCTION

Good afternoon. I am Jeffrey T. Sultanik, Esquire, Chair of the Education Law Group of Fox Rothschild LLP, which is the largest law firm in the Commonwealth of Pennsylvania regularly representing school entities. For the past 43 years, I have been practicing education law in the Commonwealth of Pennsylvania and have negotiated hundreds of teachers' and support staff contracts. I have been involved in nearlyevery aspect of management and public sector labor union interactions including, but not limited to, grievances, labor arbitrations, meet and discuss sessions, labor contract negotiations, and impasse resolution ranging from mediation, fact finding, non-binding arbitration and even binding arbitration.

While I appreciate the efforts of the legislature to address public employee personal information, collective bargaining transparency, employee rights notification, the repeal of maintenance of membership, the requirements for union recertification and the PAC-Only paycheck protection legislation, I do not believe any of these forms of legislation will substantively improve the position of public employers in interacting with its labor unions and its employees. This is particularly true in a labor short economy that we are currently facing.

In this document, I will specifically comment on each one of the proposed bills, but I

believe that they are missing the point in dealing with the fundamental balance between management labor authority and union employee rights. The bulleted suggestions that I have for statutory modifications follow.

II. BULLETED SUGGESTED STATUTORY MODIFICATIONS

- **Authority to Implement the Last, Best, and Final Best Offer Consistent With the National Labor Relations Act and dealing with status quo obligations.** As the result of the Philadelphia Housing Authority v. PLRB, 620 A.2d 594 (Pa. Cmwlth. 1992) court decision and decisions that followed it, public entities cannot likely implement their last best offer even if they bargain to impasse under Pennsylvania Law. On the other hand, the federal National Labor Relations Act does permit this to occur if a genuine impasse results.
- In the event of a contract impasse, teachers could operate in "status quo" in perpetuity under Pennsylvania law.
- In order to understand the need for this change, there needs to be a review of the "status quo" obligations of a public school entity following contract expiration and the liabilities based by a school entity in the event there is a breach of the status quo. That discussion follows:

(1) Status Quo Obligations Under PERA.

Under Pennsylvania Employee Relations Act (PERA), there is "a duty to maintain the status quo when a collective bargaining agreement expires and no successor agreement is in place." *Philadelphia Fed'n of Teachers v. Sch. Dist. of Philadelphia*, 109 A.3d 298, 309 (Pa. Cmwlth. Ct. 2015); *Coatesville Area Sch. Dist. v. Coatesville Area Teachers' Ass'n/Pennsylvania State Educ. Ass'n*, 978 A.2d 413, 418 (Pa. Cmwlth. Ct. 2009) ("[T]here can be no change in the status quo during the interim between bargaining agreements."). "The status quo comes into effect

when a CBA expires and no successor agreement is in place." *Luzerne Intermediate Unit No. 18 v. Luzerne Intermediate Unit Educ. Ass'n, PSEA/NEA*, 89 A.3d 319, 328 (Pa. Cmwlth. Ct. 2014). "Good faith collective bargaining would be impossible if the status quo as to the terms and conditions of employment were not maintained while the employees continue to work." *PLRB v. Williamsport Area School District*, 406 A.2d 329, 332 (Pa. 1979).

"Maintenance of the status quo is merely another way of stating that the parties must continue the existing relationship in effect at the expiration of the old contract." *Fairview Sch. Dist. v. Com., Unemployment Comp. Bd. of Review*, 454 A.2d 517, 521 (Pa. 1982). "The underlying rationale for the status quo requirement is that during the interim period between contracts, the employer may continue operations and the employee may continue working, while the parties are free to negotiate on an equal basis in good faith." *Id.* "Only once the parties have reached an impasse is the burden to maintain the status quo eliminated." *Sch. Dist. of Philadelphia v. Philadelphia Fed'n of Teachers*, 164 A.3d 546, 551 (Pa. Cmwlth. Ct. 2017).

(2) Status Quo Obligations Under the UCL.

"Section § 402(d) of the Unemployment Compensation Law provides that employees who are unemployed because of a labor dispute are entitled to unemployment compensation benefits only if the work stoppage is due to a lock-out." *New Castle Area Sch. Dist. v. Unemployment Comp. Bd. of Review*, 633 A.2d 1339, 1343-44 (Pa. Cmwlth. Ct. 1993). "[W]hen a contract has, in fact, expired and a new agreement has not yet been negotiated, the question of whether the work stoppage is the result of a lockout or a voluntary strike must be decided by determining which party first refused to maintain the status quo during the course of negotiations." *Portec, Inc., RMC Div. v. Com., Unemployment Comp. Bd. of Review*, 522 A.2d 1180, 1181 (Pa. Cmwlth. Ct. 1987).

Under the UCL, the "key . . . is to determine which side refused to continue

operations under the status quo after the contract had technically expired, but while negotiations were continuing." *Zappono v. Unemployment Comp. Bd. of Review,* 756 A.2d 1195, 1198 (Pa. Cmwlth. Ct. 2000). The relevant question is "has the employer agreed to permit work to continue for a reasonable time under the pre-existing terms and conditions of employment pending further negotiations? If the employer refuses to so extend the expiring contract and maintain the status quo, then the resulting work stoppage constitutes a lockout." *Vrotney Unemployment Compensation Case*, 163 A.2d 91, 93-94 (Pa. 1960). "Any change in the status quo by the employer constitutes a lock-out." *Schulmerich Carillons, Inc. v. Unemployment Comp. Bd. of Review*, 623 A.2d 921, 923 (Pa. Cmwlth. Ct. 1993).

Additionally, the Commonwealth Court has held that there is no "de minimis rule of deviation" from the status quo whereby the employer may agree to permit work to continue for a reasonable time under "substantially the same preexisting terms and conditions of employment pending further negotiations." *Chichester Sch. Dist. v. Unemployment Compensation Bd. Of Review,* 415 A.2d 997, 999-1000 (Pa. Cmwlth. 1980); *New Castle Area Sch. Dist.*, 633 A.2d at 1344 ("[T]he fact that the actions taken by the School District in the present matter could be deemed *de minimis* in nature does not vitiate the resultant change they made to the status quo.").

"A public employer under PERA commits an unfair practice when it alters the status quo as represented by existing terms and conditions of employment following contract expiration." *Palmyra Area School District*, 26 PPER ¶ 26087. The Commonwealth Court and Supreme Court have adopted restrictive interpretations of an employer's "status quo" obligations under the PERA.

According to the Supreme Court, "the parties must continue the existing relationship ***in effect at the expiration of the old contract***." *Fairview*, 454 A.2d at 521 (emphasis added). "[T]here can be ***no change in the status quo*** during the interim between bargaining

agreements." *Coatesville Area Sch. Dist.*, 978 A.2d at 417 (rejecting District's contention that "contract provisions involving inherent managerial policy can be changed once the contract in which those provisions are contained has expired") (emphasis added); *Sch. Dist. of Philadelphia*, 164 A.3d at 551 ("[W]e reiterate [] that an employer must maintain the status quo of an expired contract until a new contract has been negotiated."). This precedent suggests that any schedule modifications, irrespective of whether they were permitted prior to the CBA's expiration, are potentially unlawful, since such changes would alter the status quo. *See Northampton County Deputy Sheriff's Association v. Northampton County*, 47 PPER ¶ 56 ("[T]he Commonwealth Court..has rejected the idea that the terms of an expired contract could create a dynamic status quo").A few cases illustrate the restrictive nature of the status quo obligation. First, in *Palmyra Area School District*, the PLRB held that, even assuming there were no changes in benefitlevels, a school district's change from an established health insurance company to employer self-insurance "disrupted the status quo" and thus was unlawful. *See Palmyra Area School District*, 26 PPER ¶ 26087 ("The change from an insurance company . . . to employer self-insurance . . . warrants more than a mere reminder to the Employer that it should not engage in such conduct during contract hiatus."); *cf. Scott Township*, 26 PPER ¶ 26189 (ordering return to status quo where township unilaterally went from using insurance provider to becoming self-insured for workers' compensation benefits, notwithstanding that the employees' benefit levels and manner of receiving benefits remained unchanged). This is arguably analogous the schedule modifications the District proposes—the District would not be increasing the math teachers' total hours worked (as those would remain unchanged), but there would be a modification to their existing schedule (just as there was a modification to the types of insurance carriers in the health benefits cases)

Two additional PLRB "status quo" decisions are also instructive, although the cases arose in the post-certification, pre-contract context. First, in *Moshannon Valley Education Support Professionals*, 41 PPER ¶ 58, the PLRB determined that, although a 3-year compensation and evaluation plan, which predated the union's election and granted the District the ability to "increase

[] wages and contribution rate[s] for healthcare premiums and [to] allocate[e]sick days on a monthly basis," implementation of those contractually permitted modifications after the union's certification "changed the status quo." Similarly, in *Bucks County*, 38 PPER ¶ 99, *aff'd on other grounds sub nom. County of Bucks v. PLRB*, 39 PPER ¶ 105 (C.C.P. Bucks County 2008), the PLRB held that although an employee handbook in existence before employees became represented reserved to the employer the right to unilaterally change employees' healthcare coverage, implementation of those modifications during the "status quo" period was unlawful. These cases stand for the proposition that, even if an employer has a contractual right to modify certain mandatory subjects of bargaining, such changes are probably unlawful, irrespective of the point at which they occur in the collective bargaining relationship, if they are implemented during a "status quo" period.

(3) <u>The Status Quo Analysis is Identical Under the PERA and UCL</u>.

According to the Commonwealth Court, an employer's "status quo" obligations are identical in the labor and unemployment contexts:

"[T]he status quo is always the 'last actual, peaceable and lawful non-contested status which preceded [a] controversy.' (citation omitted). It is a theoretical level playing field on which the parties begin negotiations for a successor agreement. ***It matters not whether the underlying controversy involves a labor dispute or eligibility for unemployment benefits.*** In our view, it would only lead to confusion to define the status quo differently from one situation to the next."

Pa. State Park Officers Ass'n v. Pa. Labor Relations Bd., 854 A.2d 674, 682–83 (Pa. Cmwlth. Ct. 2004) (emphasis added).

The impact of all of this legal authority is that a teachers' union can go on strike and if there are any substantive changes in the status quo a lockout will occur, which will cause an

average size school district to pay millions of dollars of unemployment compensation during the course of a lawful work stoppage.

(4) *New Castle* Confirms that Lawful Modifications to Working Conditions Under the PERA Can Be Impermissible Modifications Under the UCL When Implemented During the Status Quo Period.

The *New Castle* case is relevant in the unemployment context because the Commonwealth Court held that contractually permitted scheduling changes, even if lawful under the PERA during the status quo period, still can render a work stoppage a "lockout" and thus make employees eligible for unemployment compensation benefits. *See New Castle Area School District*, 633 A.2d at 1341 (rejecting school district's arguments that it did not violate the status quo because (i) "changing the number of class periods at one of its nine school sites . . . was solely administrative in nature and was not a topic covered by the Agreement" and (ii) "establishing the number of class periods per day is part of its managerial prerogative and does not fall within the ambit of collective bargaining").

> Notably, the Commonwealth Court stated:
>
> "The fact that the actions taken by the School District in the present matter could be deemed *de minimis* in nature does not vitiate the resultant change they made to the status quo. (citations omitted) Considering the case *sub judice* in light of the foregoing precedent, the School District, in violation of its understanding with the Union, unequivocally and unilaterally effectuated multiple changes in the status quo by: altering class schedules at one of its nine schools; paying certain teachers' salary increments based on academic credits while not paying increments to others based on longevity; and authorizing Coca–Cola machines, when the selection of faculty lounge beverage machines was to be made by a designated faculty committee. We therefore concur with the Board's finding that the School District's actions caused the work stoppage which, therefore, can only be deemed a lockout."

Id. at 1344. Thus, even if the District's schedule changes are lawful under PERA precedent, the modifications, if undertaken during the status quo period, may transform a labor dispute into a

lockout and render teachers eligible for unemployment compensation under the UCL.

However, *New Castle* can potentially be distinguished, as the schedule changes at issue were not made by the school district until ***after*** the agreement expired and the union agreed to return to work under the same conditions as existed under the expired agreement. In the present case, if the scheduling changes are made prior to the CBA's expiration, the District can contend that *New Castle* is inapplicable and no status quo violation occurred, since the working conditions as existed at the time of the CBA's expiration included the modified schedules for math teachers. *See Persico v. Unemployment Comp. Bd. of Review*, 710 A.2d 134, 136 (Pa. Cmwlth. Ct. 1998) ("[T]the status quo has been defined as the terms and conditions in effect at the expiration of the agreement."). The risk is that because such schedule changes will affect the 2018-19 school year, and not the present school year, whether or not such changes are made while the CBA remains in place could be deemed irrelevant. *See Presbyterian SeniorCare v. Unemployment Comp. Bd. of Review*, 900 A.2d 967, 974 (Pa. Cmwlth. Ct. 2006) ("To preserve the status quo, the working relationship must continue as if the expired contract were still in effect, and even small changes may be considered a disruption of the status quo.").[1]

The following language is suggested for inclusion in the law:

Section 1128-A. Final Resolution

If an agreement has not reached 180 days after impasse has occurred, the employer may unilaterally implement its most recent offer of settlement. A decision by the employed implement its final offer should not be considered an unfair labor practice or deemed a lockout.

- **Hold Union Officials Personally Liable For Not Strictly Complying With the Requirements of Act 88 of 1992.** Establishing financial liability for illegally based strikes or engaging in work to rule will limit the leverage of teachers' unions. With respect to work to rule, this permits the union without the teachers going on an official strike to withhold services that are not specifically enumerated in job

descriptions or the collective bargaining agreement, such as not going on the fourth grade overnight trip, not posting grades, not decorating a classroom, not volunteering to direct the student play, and so on.

- **Loosening the Rules to Subcontract Bargaining Unit Services** – Instead of making it easier to subcontract bargaining unit work, the Pennsylvania legislature has required school districts to engage in public hearings and cost analysis prior to subcontracting work and also has imposed PSERS withdrawal liability in the event that a school entity were to subcontract bargaining unit work to a third party entity, dependent upon an interpretation of the withdrawal liability statute.

- **24 Pa.C.S. §8327.1, the Pennsylvania Withdrawal Liability Statute** Pursuant to 24 Pa. C.S. §8327.1 (the "Statute" or the "Pennsylvania Statute"), employers who contribute to the Public School Employees Retirement System ("PSERS" or the "System")) are liable for withdrawal liability if they become "nonparticipating employers." There are two significant problems: (1) although the Statute evinces an intention to impose liability for partial withdrawals, the language used to provide for a partial withdrawal does not adequately describe the circumstances in which such an event occurs, and (2) the Statute imposes the same amount of withdrawal liability for a partial withdrawal as for a complete withdrawal, regardless of the size of the partial withdrawal.

Background

PSERS sponsors a multiemployer, defined-benefit pension plan to which educational organizations contribute on behalf of their eligible employees. PSERS is not fully funded, and the Statute imposes withdrawal liability on an employer when its obligation to contribute ceases.

The concept of withdrawal liability was first embraced in 1980, when Congress amended the Employee Retirement Income Security Act of 1974 ("ERISA") to impose withdrawal liability on employers that withdraw or partially withdraw from private sector multiemployer pension plans. Unlike the Pennsylvania Statute, however, ERISA is highly detailed, enabling both plan sponsors and contributing employers to determine when complete and partial withdrawals occur.

Definition of Withdrawal

ERISA clearly defines the circumstances in which withdrawals occur. A complete withdrawal occurs when an employer permanently ceases to have an obligation to contribute under a multiemployer pension plan. 29 U.S.C. §1383(a)(1). ERISA also clearly describes three circumstances that give rise to a partial withdrawal: (1) a 70% decline in the level of an employer's contributions, (2) where the employer contributes pursuant to multiple collective bargaining agreements, the cessation of the obligation to contribute under one or more, but less than all, of those agreements while continuing to perform the work for which contributions were previously required, and (3) where the employer contributes with respect to work performed at multiple facilities, the cessation of the obligation to contribute with respect to work at one or more, but less than all, of those facilities while continuing to perform previously covered work at the facility. 29 U.S.C. §1385. ERISA describes each of these circumstances in detail. As a result, plan sponsors and employers can determine when complete or partial withdrawals will occur.

The Pennsylvania Statute embraces the concept of complete and partial withdrawals, though it does not use those terms. Instead, the Statute provides that a "nonparticipating employer" becomes liable for withdrawal liability and effectively creates three categories of "nonparticipating employers."

First, in subsection (a)(1), the Statute provides that employers that cease covered operations under the System (and therefore cease to have an obligation to contribute) become nonparticipating employers. 24 Pa. C.S. §8327.1(a). This definition, which is the equivalent of a complete withdrawal under ERISA, is easy to understand.

There is no such clarity in subsection (a)(2), however, where the Statute attempts to describe the circumstances in which an employer that continues covered operations becomes a "nonparticipating employer." Subsection (a)(2) states that an employer that continues covered operations but ceases to have an obligation to contribute under the System "for all or any" of its employees becomes a "nonparticipating employer." By referring to employers that cease to have an obligation to contribute "for all or any" of its employees, subsection (a)(2) creates two additional circumstances giving rise to withdrawal liability: (1) when an employer continues covered operations, but ceases to have an obligation to contribute for all of its employees, and (2) when an employer continues covered operations, but ceases to have an obligation to contribute for some, but not all, of its employees. Under ERISA, the former circumstance would constitute a complete withdrawal and the latter would be a partial withdrawal.

Partial Withdrawals

Unfortunately, unlike ERISA, the language in the Pennsylvania Statute describing what amounts to a partial withdrawal is too vague to enable a reader to determine when partial withdrawals occur. The Statute simply states that an employer becomes a "nonparticipating employer" if it ceases to have an obligation to contribute for *any* of its employees. To whom does the term "employees" refer? In the absence of language indicating a different intent, the term must refer to current employees because, by definition, a former employee is not an employee.

If construed as referring only to current employees, subsection (a)(2) would impose withdrawal liability on an employer that continues to have an obligation to contribute under the System only (i) if the employer continues to employ specific individuals for whom it no longer has an obligation to contribute or (ii) arguably, if the employer continues to employ persons in one or more job classifications for which it no longer has an obligation to contribute. Reductions in force, subcontracting and individual resignations would not result in withdrawal liability because the individuals affected would no longer be employees.

Conversely, if the term "employees" is interpreted as referring to both current and former employees, it must necessarily apply in *every* instance in which an employer ceases to have an obligation to contribute with respect to a former employee because there is no language in the Statute that limits partial withdrawals to particular circumstances. Interpreting the Statute in this manner, however, would produce results that surely were not intended. It would mean that an employer would become a "nonparticipating employer" every time it ceased to have an obligation to contribute for any specific individual for whom it previously contributed regardless of the reason. Thus, withdrawal liability would be triggered by reductions in force, subcontracting and even individual resignations.

In sum, if the term "employee" is limited to current employees, liability for a partial withdrawal will attach rarely, but if the term includes former employees, liability for partial withdrawal will attach frequently, including every time an individual employee resigns. The legislature could not have intended the latter result. Moreover, even if it did, the language adopted by the legislature is too vague and ambiguous to be interpreted in this manner.

The Statute should be amended so that PSERS and employers that contribute under the System can determine the circumstances that result in a partial withdrawal. If the legislature wants to address this issue, ERISA provides a good model for identifying and defining the circumstances that result in a partial withdrawal.

Determining the Amount of an Employer's Withdrawal Liability

Separately, the Statute provides two formulas for determining a nonparticipating employer's withdrawal liability, one for an employer that becomes a nonparticipating employer by operation of subsection (a)(1)(*i.e.*, an employer that ceases covered operations), and another for an employer that becomes a nonparticipating employer by operation of subsection (a)(2) (*i.e.*, an employer that continues covered operations, but nonetheless becomes a nonparticipating employer either because of a complete withdrawal or because of a partial withdrawal).

Thus, *all* employers that become nonparticipating employers by operation of subsection (a)(2) have their withdrawal liability determined pursuant to the formula set forth in subsection (c)(2). The problem is that subsection (a)(2) includes employers that incur liability due to a complete withdrawal and those that incur liability due to a partial withdrawal. This means that employers in both categories incur the same amount of withdrawal liability even though an employer that incurs liability due to a partial withdrawal is still contributing for some, and possibly many, if not most, of its employees. It is highly unlikely that the legislature intended to impose the same amount of withdrawal liability for both complete and partial withdrawals, and the Statute should be amended to correct this unintended result. As with the problem of defining when a partial withdrawal occurs, ERISA is also a source of language to address this issue. Under ERISA, when an employer incurs liability as a result of a partial withdrawal, its withdrawal liability is prorated to reflect the fact that the employer is still contributing for some of its employees.

Conclusion

Correcting the problems described above will require amendments to the Statute. If requested, we can draft proposed language for the amendments.

- **Limiting the right of unions to engage in work to rule.** "Work to Rule" is that action or inaction of bargaining unit members that do not perform duties that are not specifically enumerated in the collective bargaining agreement. That would include services such as going on the fourth grade field trip, decorating the classrooms for elementary students, engaging or volunteering in extracurricular activities or any work project that is not compensated beyond the regular workday. Indeed, when to ask union officials as to whether or not a strike is a leverage tool for a community, they would say yes, but there is more consternation and often more leverage that results from engaging in work to rule versus engaging in a strike. The following language should address this issue and some of the status quo concerns set forth earlier.

As examples of work to rule, often unions instruct their teachers not to intend voluntarily or chaperone student events such as concerts, dances, fund nights, award nights, fundraisers, plays, athletic events, field trips, mentoring for senior projects and so on.

Section 1133 shall also be amended to contain the following:

(d) Definition of Strike - As used in this section, the term "Strike" shall mean a concerted action in failing to report for duty, the willful absence from one's position, the stoppageof work, slowdown or the abstinence in whole or in part from the full, faithful and proper performance of the duties of employment for the purpose of inducing, influencing or coercing a change in the conditions or compensation or the rights, privileges or obligations of employment. The term "Strike" shall also mean a concerted action in failing to perform those actions and responsibilities that through pass practice were customarily performed by employees in the district that are not specifically enumerated in either the collective bargaining agreement, district job description, or district policy, including but not limited to performing activities beyond the regular work day, attending field trips, engaging in supplemental activities and supplemental/extra duty contracts, volunteering to mentor students, issuing letter of recommendation, engaging in study groups. Guidance groups or extra help sessions for students, attending evening meetings, specialevents, attendance as school events such as concerts, dances, fund nights, award nights, fundraisers, plays, athletic events, graduation, mentoring for senior projects and the like.

(e) Presumption - For purposes of this section an employee who is absent from work without permission, or who abstains wholly or in part from the full performance of his duties or non-written obligations without permission in the employees normal manner on the date or dates when a Strike occurs, shall be presumed to have engaged in such strike on such date or dates.

(f) Prohibition against consent to Strike - No person exercising on behalf of any publicemployer any authority, supervision or direction over any public employee shall have the power to authorize, approve, condone or consent to a Strike or the engaging in a Strike, by one or more public employees, and such person shall not authorize, approve, condone or consent to such Strike or engagement.

(g) Determination of Strike - If the chief school administrator determines that an employee has participated in a Strike, he shall notify each employee that he has found to have participated in a Strike, the date or dates thereof, and the employee's right to object to such determination. The chief school administrator shall also notify the school entity's business officialof the names of such employees and of the total number of days, or part thereof, on which he/shehas determined the employee participated in a Strike so that compensation can be modified or, inthe event of an unlawful Strike, appropriate action can be taken.

- **Teachers' Unions Should Be Barred From Blocking Fact-Finding (an Impasse Resolution Procedure) By Advance Issuing a Notice to Strike**. Teachers' unions are avoiding the fact-finding impasse resolution procedure (they often don't want to know the facts of the economic circumstances of a district) by advance issuing a notice to strike. Teachers' unions are avoiding the fact-finding impasse resolution

procedure (they often do not want to know the true facts of the economic circumstances of a district under Act 1 of 2006) by issuing a notice to strike well in advance of any possible strike date. The PLRB interprets this as a blocking action that will prevent entry into the fact-finding process. Unions should be prohibited from stopping this impasse procedure, which is often helpful in resolving a contract dispute.

III. COMMENTS ON HOUSE BILLS SUBJECT TO THIS HEARING.

A. House Bill No. 2036 – This House Bill prohibits a maintenance of membership provision. While this provision will certainly attempt to weaken labor unions, as a practical matter, the Pennsylvania State Education Association in practice does not even honor these provisions anymore. It has had virtually no impact on PSEA membership or the power that PSEA yields at the bargaining table.

B. House Bill No. 2037 – This legislation will require periodic recertification elections using a secret ballot vote among the public employees in a collective bargaining unit to determine whether or not a majority of the employees desire to continue representation. In an interesting twist of events following the United States Supreme Court decision in Janus, actually union membership has remained stable or increased following Janus. I believe the past few years have resulted in greater situations of employees asserting their rights. I am not certain whether or not this legislation will have any substantive impact at the negotiations table or in employer/employee or labor/management negotiations.

C. House Bill No. 2042 – This legislation is designed to provide non-members of a bargaining unit notification that there is no legal obligation by nonmembers to make any payments to the employee organization that serves on their behalf. A plain

language notice would be required. It is understood that this legislation is intended to cause employees to think twice about securing union representation, but given the overall tenor of employer/employee relationships, I am not certain that this is going to make a substantive impact at all.

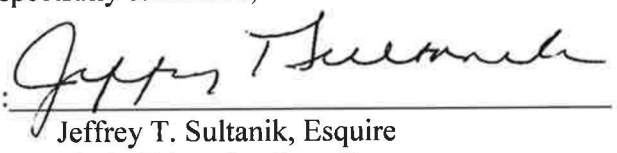
D. House Bill 2048 – This legislation indicates that a public employer may not deduct from the wages of employee money or funds to be used for a political contribution except as required by a collective bargaining agreement. Prospectively, no collective bargaining agreement would be allowed to have deductions for political contributions. Arguably, this could have an impact in the electoral governance of the Commonwealth. However, it will not immediately impact the imbalance that occurs in labor management relations currently in the Commonwealth of Pennsylvania.

E. House Bill 844 – This legislation indicates that the provision of public employee social security numbers, home addresses, home telephone numbers, personal mobile telephone numbers, and personal email addresses are not the proper subjects of collective bargaining moving forward. This does clarify certain issues and this is certainly something that many employers will not impose, but once again, in the current environment, I do not expect that this is going to substantively change Union representation of employees.

F. House Bill 845 – This is the public employment collective bargaining act. This requires that a notice must be posted on the public employer's public accessible internet website at least 14 days prior to acceptance of a collective bargaining agreement. While I recognize that this process will increase purported transparency and require a district to estimate the cost to the public employer associated with the proposed collective bargaining agreement publicly, I am not certain how this will

work effectively. In a representative democracy where a board of school directors represents the interests of its community as the result of the electoral process, giving the community, many of whom have no substantive understanding of public sector collective bargaining, the opportunity to comment on an agreement for 14 days will actually promote the potential for greater labor strife and increased tensions between labor and management. I do not believe that it is going to substantively change the balance of power at the bargaining table and most labor unions will still continue to garner support from its members even though members of the taxpayment public may not be very happy with the contract settlement. I just believe it is going to further attenuate an already difficult process.

Respectfully submitted,

By: 

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