

PUBLIC SCHOOL CODE OF 1949 - OMNIBUS AMENDMENTS

Act of Jul. 9, 1992, P.L. 403, No. 88

Cl. 24

Session of 1992

No. 1992-88

SB 727

AN ACT

Amending the act of March 10, 1949 (P.L.30, No.14), entitled "An act relating to the public school system, including certain provisions applicable as well to private and parochial schools; amending, revising, consolidating and changing the laws relating thereto," providing for collective bargaining; further providing for payments on account of transportation of nonpublic school pupils and for reimbursement on leases and debt; granting pupils the right to refuse to dissect, vivisect or otherwise harm or destroy animals; and making a repeal.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. The act of March 10, 1949 (P.L.30, No.14) , known as the Public School Code of 1949, is amended by adding an article to read:

ARTICLE XI-A.

COLLECTIVE BARGAINING.

(a) General Provisions.

Section 1101-A. Definitions.--When used in this article, the following words and phrases shall have the following meanings:

"Board" shall mean the Pennsylvania Labor Relations Board.

"Employee" shall mean a public school employee who bargains collectively with a public school entity, but shall not include employees covered or presently subject to coverage under the act of June 1, 1937 (P.L.1168, No.294), known as the "Pennsylvania Labor Relations Act," or the National Labor Relations Act (61 Stat. 152, 29 U.S.C. Ch. 7 Subch. 11). The term does not include any management-level employee of any other school district.

"Employee organization" shall mean a public school employee organization of any kind, or any agency or employee representation committee or plan in which membership is limited to public school employees, and which exists for the purpose, in whole or in part, of dealing with public school employers concerning grievances, public school employee-public school employer disputes, wages, rates of pay, hours of employment or conditions of work, but shall not include any organization which practices discrimination in membership because of race, color, creed, national origin or political affiliation.

"Employer" shall mean a public school entity, but shall not include employers covered or presently subject to coverage under the act of June 1, 1937 (P.L.1168, No.294), known as the "Pennsylvania Labor Relations Act," or the National Labor Relations Act (61 Stat. 152, 29 U.S.C. Ch. 7 Subch. 11).

"Impasse" shall mean the failure of an employer and an employee organization to reach an agreement in the course of negotiations.

"Lockout" shall mean the cessation of furnishing of work to employees or withholding work from employees for the purpose of inducing, influencing or coercing a change in the conditions or compensation or the rights, privileges or obligations of employment.

"Representative" shall mean an individual acting for employers or employees and shall include employee organizations.

"School entity" shall mean a public school district, intermediate unit or area vocational-technical school.

"Strike" shall mean concerted action in failing to report for duty, the wilful absence from one's position, the stoppage of 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 employe organization having called a strike once and unilaterally returned to work may only call a lawful strike once more during the school year. A written notice of the intent to strike shall be delivered by the employe organization to the superintendent, executive director or the director no later than forty-eight (48) hours prior to the commencement of any strike, and no strike may occur sooner than forty-eight (48) hours following the last notification of intent to strike. Upon receipt of the notification of intent to strike, the superintendent, executive director or the director may cancel school for the effective date of the strike. A decision to cancel school may, however, be withdrawn by the superintendent, executive director or the director. Any subsequent change of intents to strike shall not affect the decision to cancel school on the day of the intended strike. For the purposes of this article, the decision to cancel school on the day of the intended strike shall not be considered a lockout.

(b) Scope of Bargaining.

Section 1111-A. Mutual Obligation.--Collective bargaining is the performance of the mutual obligation of the employer or his representative and the representative of the employes to meet at reasonable times and confer in good faith with respect to wages, hours and other terms and conditions of employment or the negotiation of an agreement or any question arising thereunder and the execution of a written contract incorporating any agreement reached, but such obligation does not compel either party to agree to a proposal or require the making of a concession.

Section 1112-A. Matters of Inherent Managerial Policy.--Employers shall not be required to bargain over matters of inherent managerial policy. Those matters shall include, but shall not be limited to, such areas of discretion or policy as the functions and programs of the employer, standards of services, its overall budget, utilization of technology, the organizational structure and selection and direction of personnel. Employers, however, shall be required to meet and discuss on policy matters affecting wages, hours and terms and conditions of employment as well as the impact thereon upon request by employe representatives.

(c) Collective Bargaining Impasse.

Section 1121-A. Submission to Mediation.--(a) If, after a reasonable period of negotiation, a dispute or impasse exists between the representatives of the employer and the employe organization, the parties may voluntarily submit to mediation, but, if no agreement is reached between the parties within forty-five (45) days after negotiations have commenced, but in no event later than one hundred twenty-six (126) days prior to June 30 or December 31, whichever is the end of the school entity's fiscal year, and mediation has not been utilized by the parties, both parties shall immediately in writing call on the service of the Pennsylvania Bureau of Mediation.

(b) The Pennsylvania Bureau of Mediation shall employ a complement of not less than twenty-five (25) mediators which shall

be available to mediate according to the provisions of subsection (a).

Section 1122-A. Fact-finding Panels.--(a) (1) Once mediation has commenced, it shall continue for so long as the parties have not reached an agreement. If, however, an agreement has not been reached within forty-five (45) days after mediation has commenced or in no event later than eighty-one (81) days prior to June 30 or December 31, whichever is the end of the school entity's fiscal year, the Bureau of Mediation shall notify the board of the parties' failure to reach an agreement and of whether either party has requested the appointment of a fact-finding panel.

(2) No later than eighty-one (81) days prior to June 30 or December 31, whichever is the end of the school entity's fiscal year, either party may request the board to appoint a fact-finding panel. Upon receiving such request, the board shall appoint a fact-finding panel which may consist of either one (1) or three (3) members. The panel so designated or selected shall hold hearings and take oral or written testimony and shall have subpoena power. If, during this time, the parties have not reached an independent agreement, the panel shall make findings of fact and recommendations. The panel shall not find or recommend that the parties accept or adopt an impasse procedure.

(3) The parties may mutually agree to fact-finding, and the board shall appoint a fact-finding panel as provided for in clause (2) at any time except that the parties may not mutually agree to fact-finding during mandated final best-offer arbitration.

(4) The board may implement fact-finding and appoint a panel as provided for in clause (2) at a time other than that mandated in this section, except that fact-finding may not be implemented between the period of notice to strike and the conclusion of a strike or during final best-offer arbitration. If the board chooses not to implement fact-finding prior to a strike, the board shall issue a report to the parties listing the reasons for not implementing fact-finding if either party requests one.

(b) The findings of fact and recommendations shall be sent by registered mail to the board and to both parties not more than forty (40) days after the Bureau of Mediation has notified the board as provided in subsection (a).

(c) Not more than ten (10) days after the findings and recommendations shall have been sent, the parties shall notify the board and each other whether or not they accept the recommendations of the fact-finding panel, and, if they do not, the panel shall publicize its findings of fact and recommendations.

(d) Not less than five (5) days nor more than ten (10) days after the publication of the findings of fact and recommendations, the parties shall again inform the board and each other whether or not they will accept the recommendations of the fact-finding panel.

(e) The board shall establish, after consulting representatives of employe organizations and of employers, panels of qualified persons broadly representative of the public to serve as members of fact-finding panels. The board shall, within sixty (60) days of the effective date of this act, increase the number of available panels of qualified persons to serve as members of fact-finding panels to meet the expanded role of fact-finding as provided for in this act.

(f) The Commonwealth shall pay one-half of the cost of the fact-finding panel; the remaining one-half of the cost shall be divided equally between the parties. The board shall establish rules and regulations under which panels shall operate, including, but not limited to, compensation for panel members.

Section 1123-A. Negotiated Final Best-Offer Arbitration.--(a)

The parties to a collective bargaining agreement involving public school employes shall be required to bargain upon the issue of

acceptance and adoption of one of the following approved impasse procedures, with the proviso that such an obligation does not compel either party to agree to a proposal or require making a concession:

(1) Arbitration under which the award is confined to a choice among one of the following single packages:

- (i) the last offer of the representative of the employer;
- (ii) the last offer of the representative of the employees; or
- (iii) the fact-finder's recommendations, should there be a fact-finder's report.

(2) Arbitration under which the award is confined to a choice among one of the following on an issue-by-issue basis:

- (i) the last offer of the representative of the employer;
- (ii) the last offer of the representative of the employees; or
- (iii) the fact-finder's recommendations, should there be a fact-finder's report.

(3) Arbitration under which the award is confined to a choice among one of the following on the basis of economic and noneconomic issues as separate units:

- (i) the last offer of the representative of the employer;
- (ii) the last offer of the representative of the employees; or
- (iii) the fact-finder's recommendations, should there be a fact-finder's report.

(b) As used in this section, "economic issues" shall mean wages, hours, salary, fringe benefits or any form of monetary compensation for services rendered.

Section 1124-A. Method of Selection of Arbitrators.--The board of arbitration shall be composed of three (3) members. Arbitrators as referred to in this article shall be selected in the following manner:

(1) Each party shall select one (1) member of the panel within five (5) days of the parties' submission to final best-offer arbitration. Each arbitrator shall be knowledgeable in the school-related fields of budget, finance, educational programs and taxation.

(2) The third arbitrator shall be selected from a list of seven (7) arbitrators furnished by the American Arbitration Association within five (5) days of the publication of the list. Each of the seven (7) arbitrators shall be a resident of this Commonwealth and knowledgeable in the areas necessary to effectively make a determination. Each party shall alternately strike one name until one shall remain. The employer shall strike the first name. The person so remaining shall be the third member and chairman.

(3) Payment of arbitrators shall be as follows:

- (i) For voluntary arbitration, each party shall pay the cost of the arbitrator selected by it under clause (1) of this section. The cost of the third arbitrator shall be divided equally between the parties.

- (ii) For mandatory arbitration, the Commonwealth shall pay one-half of the cost of the arbitrators; the remaining one-half of the cost shall be divided equally between the parties.

Section 1125-A. Final Best-Offer Arbitration.--(a) At any time prior to mandated final best-offer arbitration, either the employer or the employee organization may request final best-offer arbitration unless fact-finding has been initiated as provided in section 1122-A. If fact-finding has been initiated, the parties shall complete fact-finding before requesting final best-offer arbitration. If either party requests final best-offer arbitration, the requesting party shall notify the Bureau of Mediation, the board and the opposing party in writing. The opposing party shall, within ten (10) days of the notification by the requesting party, notify the requesting party in writing of its agreement or refusal to submit to final best-offer arbitration. No strikes or lockouts shall occur during this ten (10) day period or until the requesting

party is notified by the opposing party that they refuse to submit to final best-offer arbitration. Arbitration provided for in this subsection shall only occur if both parties agree to submit to final best-offer arbitration.

(b) If a strike by employees or a lockout by an employer will prevent the school entity from providing the period of instruction required by section 1501 by the later of:

(1) June 15; or

(2) the last day of the school entity's scheduled school year; the parties shall submit to mandated final best-offer arbitration consistent with the arbitration option negotiated. A return to work for the purpose of submitting to final best-offer arbitration shall not be considered a unilateral return to work.

(c) If the parties are unable to agree on the adoption of one of the approved impasse procedures under section 1123-A, the mediator appointed pursuant to section 1121-A shall select the procedure.

(d) Within ten (10) days of submission to final best-offer arbitration, the parties shall submit to the arbitrators their final best contract offer with certification that the offer was delivered to the opposing party, together with documentation supporting the reasonableness of their offer. This documentation shall include, but not be limited to, the following:

(1) The public interest.

(2) The interest and welfare of the employe organization.

(3) The financial capability of the school entity.

(4) The results of negotiations between the parties prior to submission of last best contract offers.

(5) Changes in the cost of living.

(6) The existing terms and conditions of employment of the employe organization members and those of similar groups.

(7) Such other documentation as the arbitration panel shall deem relevant.

(e) Arbitration shall be limited to unresolved issues. Unresolved issues shall mean those issues not agreed to in writing prior to the start of arbitration.

(f) The parties may mutually agree to submit to final best-offer arbitration at any time except during fact-finding or during mandated final best-offer arbitration.

(g) Upon submission to the arbitrator of both parties' final best offers under subsection (a) or (b), the employer shall post, within the time limits described in subsection (d), the final best contract offers in the school entity's main office for the purpose of soliciting public comments thereon. Copies of both parties' final best offers shall be available from the school entity's main office. The cost of copies shall be established by the school entity and shall be paid by the requestor.

(h) The public comment period shall close within ten (10) days of the first day of posting. All public comments shall be directed to the arbitrators for consideration who shall provide them on request to the employer and to the employees' organization.

(i) Within ten (10) days of the selection of the third arbitrator of the arbitration panel, the arbitrators shall begin hearings at which they will hear arguments from representatives of the employer and of the employees in support of their respective last best contract offers under subsection (a) or (b). At least five (5) days prior to the hearing, a written notice of the date, time and place of such hearing shall be sent to the representatives of both the employer and employees which are parties to the dispute. This written notice shall also be sent to the fiscal authority having budgetary responsibility or charged with making appropriations for the employer, and a representative designated

by such body shall be heard at the hearing upon request of such body or of the employer as part of the presentation of the employer.

(j) Not later than twenty (20) days after the hearing pursuant to subsection (i), the arbitrators shall:

- (1) examine each item of dispute;
- (2) make a determination in writing consistent with the arbitration option agreed to by the parties; and
- (3) forward a copy of the written determination to both parties involved in the dispute and to the board.

(k) The determination of the majority of the arbitrators reached as provided under either subsection (a) or (b) shall be final and binding upon the employer, employees and employee organization involved and constitutes a mandate to the school entity to take whatever action necessary to carry out the determination, provided that within ten (10) days of the receipt of the determination the employee organization or the employer does not consider and reject the determination at a properly convened special or regular meeting. This determination includes, but is not limited to, a determination which requires a legislative enactment by the employer prior to or as a condition for its implementation, including, without limitation, the levy and imposition of taxes.

(l) No appeal challenging the determination reached as provided under subsection (a) or (b) shall be allowed to any court unless the award resulted from fraud, corruption or wilful misconduct of the arbitrators. If a court determines that this has occurred, it shall declare the award null and void. An appeal of the award shall be made to the court of common pleas of the judicial district encompassing the respective school district.

(m) If the employer or the employee organization rejects the determination of the majority of the arbitrators:

(1) The employee organization may initiate a legal strike or resume a legal strike initiated prior to submission to final best-offer arbitration.

(2) The employer may hire substitutes as provided under subsection (b) of section 1172-A.

(3) The employer may initiate a legal lockout or resume a legal lockout initiated prior to submission to final best-offer arbitration.

Section 1126-A. Time Frame.--The time periods set forth in this article are mandatory and shall not be construed to be directory.

Section 1127-A. Exception.--Any school district of the first class with an appointed school board and the public employees of that school district as defined in the act of July 23, 1970 (P.L.563, No.195), known as the "Public Employee Relations Act," shall comply with and be subject to the binding arbitration provisions of the "Public Employee Relations Act" and shall not be subject to the provisions of section 1123-A, 1124-A or 1125-A.

(d) Strikes and Lockouts.

Section 1131-A. Strikes Prohibited in Certain Circumstances.--A strike must cease where the parties request fact-finding for the duration of the fact-finding. A strike must end where the parties agree to arbitration. Strikes are prohibited:

(1) During the period of up to ten (10) days provided for under section 1125-A(a).

(2) During final best-offer arbitration, including the period of up to ten (10) days after receipt of the determination of the arbitrators during which the governing body of the school entity may consider the determination.

(3) When the arbitrators' determination becomes final and binding.

Section 1132-A. Lockouts Prohibited in Certain Circumstances.--A lockout must cease where the parties request fact-finding for the duration of the fact-finding. A lockout must end where the parties agree to arbitration. Lockouts are prohibited:

(1) During the period of up to ten (10) days provided for under section 1125-A(a).

(2) During final best-offer arbitration, including the period of up to ten (10) days after receipt of the determination of the arbitrators during which the employer may consider the determination.

(3) When the arbitrators' determination becomes final and binding.

(e) Collective Bargaining Agreement.

Section 1151-A. Agreement and Enforcement.--Any determination of the arbitrators to be implemented under this article shall be memorialized as a written agreement by and between the school entity and the employe organization to be signed and sealed by their duly appointed officers and agents as provided by law. The executed agreement shall be enforceable by each party in the manner as provided by law, including without limitation and in derogation to the mandatory arbitration of disputes or grievances under the act of July 23, 1970 (P.L.563, No.195), known as the "Public Employe Relations Act." In the event that a school entity or an employe organization refuses to execute a written agreement under this section, the employe organization or the school entity may institute a cause of action in the court of common pleas to compel compliance with the provision of this section requiring a written agreement and, in the appropriate case, specific performance of the determination.

Section 1152-A. Existing Agreements; Provisions Inconsistent with Article.--Any provisions of any collective bargaining agreement in existence on the effective date of this article which are inconsistent with any provision of this article, but not otherwise illegal, shall continue valid until the expiration of such contract. The procedure for entering into any new collective bargaining agreement, however, shall be governed by this article, where applicable, upon the effective date of this article.

(f) Secretary of Education.

Section 1161-A. Injunctive Relief.--When an employe organization is on strike for an extended period that would not permit the school entity to provide the period of instruction required by section 1501 by June 30, the Secretary of Education may initiate, in the appropriate county court of common pleas, appropriate injunctive proceedings providing for the required period of instruction.

(g) Prohibitions.

Section 1171-A. Selective Strikes.--The work stoppage practice known as "selective strikes" shall be considered an illegal strike. Any strike which does not comply with the definition of "strike" contained in this article shall be considered a selective strike.

Section 1172-A. Utilization of Strike Breakers.--(a) Except as provided in subsection (b), during a legal strike, as defined by this article, the school entity, as defined by this article, shall not utilize persons other than those employes who have been actively employed by the school entity at any time during the previous twelve (12) months.

(b) A school entity may utilize persons other than those employees who have been actively employed by the school entity at any time during the previous twelve (12) months:

(1) when the employee organization or employer rejects the determination of the majority of the arbitrators; and

(2) when a legal strike will prevent the completion of the period of instruction required by section 1501 by the later of:

(i) June 15; or

(ii) the last day of the school district's scheduled school year.

Section 2. The act is amended by adding a section to read:

Section 1522. Pupil's Right of Refusal; Animal Dissection.--(a) Public or nonpublic school pupils from kindergarten through grade twelve may refuse to dissect, vivisect, incubate, capture or otherwise harm or destroy animals or any parts thereof as part of their course of instruction.

(b) Schools shall notify incoming pupils and their parents or guardians of the right to decline to participate in an education project involving harmful or destructive use of animals and authorize parents or guardians to assert the right of their children to refuse to participate in those projects. Notice shall be given not less than three (3) weeks prior to the scheduled course exercise which involves the use of animals.

(c) A pupil who chooses to refrain from participation in or observation of a portion of a course of instruction in accordance with this section shall be offered an alternative education project for the purpose of providing the pupil an avenue for obtaining the factual knowledge, information or experience required by the course of study. If tests require harmful or destructive use of animals, pupils shall be offered alternative tests. A pupil shall not be discriminated against based upon his or her decision to exercise the right afforded that pupil by this section, and lowering a grade because a pupil has chosen an alternative education project or test is strictly prohibited.

(d) As used in this section, the following words and phrases shall have the meanings given to them in this subsection:

(1) "Alternative education project" shall include, but is not limited to, the use of video tapes, models, films, books and computers which would provide an alternate avenue for obtaining the knowledge, information or experience required by the course of study in question. The term also includes "alternative test." A pupil has the right to refuse any alternative education project or test which may involve or necessitate any harmful use of an animal or animal parts.

(2) "Animal" shall mean any living organism of the kingdom animalia in the phylum chordata, organisms which have a notochord. The term also includes an animal's cadaver or severed parts of any animal's cadaver.

(3) "Pupil" shall mean a person twenty-one (21) years of age or under who is matriculated in a course of instruction in an educational institution from kindergarten through grade twelve. For the purpose of asserting the pupil's rights and receiving any notice or response pursuant to this section, the term also includes the parents or guardian of the matriculated minor.

Section 3. Section 2509.3 of the act, amended August 5, 1991 (P.L.219, No.25), is amended to read:

Section 2509.3. Payments on Account of Transportation of Nonpublic School Pupils.--Each school district, regardless of classification, shall be paid by the Commonwealth the sum of thirty-five dollars (\$35) for each nonpublic school pupil transported in the school year 1978-1979 through the school year 1983-1984[, for]. **For** the school year 1984-1985 through the school year [1990-1991] **1989-1990**, each school district shall be paid the

sum of seventy dollars (\$70) for each nonpublic school pupil transported[, and for the school year 1991-1992]. **For the school years 1990-1991 and 1991-1992**, each school district shall be paid the sum of one hundred twenty-four dollars (\$124) for each nonpublic school pupil transported [and for]. **For** the school year 1992-1993 and each school year thereafter, each school district shall be paid the sum of one hundred fifty-nine dollars (\$159) for each nonpublic school pupil transported.

Section 4. Section 2574(f) of the act, added June 1, 1972 (P.L.325, No.89), is amended to read:

Section 2574. Approved Reimbursable Rental for Leases Hereafter Approved and Approved Reimbursable Sinking Fund Charges on Indebtedness.--* * *

(f) For the purchase of any building, reimbursement shall be computed in the same manner as for constructed school buildings. [and approved building cost shall be the lesser of

(1) The cost of purchasing the site and structure and the cost of approved renovations including appropriate fixtures and equipment, or

(2) For the purchase of any building (I) the product of the rated pupil capacity as determined by the Department of Education at the time the purchase is approved and (i) one thousand one hundred dollars (\$1,100) in the case of elementary schools, (ii) one thousand seven hundred dollars (\$1,700) in the case of secondary schools, and (iii) an amount in the case of combined elementary-secondary schools obtained by multiplying the rated elementary pupil capacity by one thousand one hundred dollars (\$1,100) and the rated secondary pupil capacity by one thousand seven hundred dollars (\$1,700) and dividing the sum by the total rated pupil capacity; and (II) in the case of renovation of any building including appropriate fixtures and equipment, reimbursement shall be (i) one thousand two hundred dollars (\$1,200) for elementary schools, (ii) one thousand three hundred dollars (\$1,300) for secondary schools, and (iii) for combined elementary-secondary schools an amount obtained by multiplying the rated elementary capacity by one thousand two hundred dollars (\$1,200) and the rated secondary pupil capacity by one thousand three hundred dollars (\$1,300).]

Section 5. In the event that any provisions of this act or its application to any person or circumstance is held invalid, such provision shall be void and inoperative; however, all other provisions of this act shall continue in full effect and force.

Section 6. The act of July 23, 1970 (P.L.563, No.195), known as the Public Employee Relations Act, is to be read in pari materia with the addition of Article XI-A of the act, but is repealed insofar as it is clearly inconsistent with the addition of Article XI-A of the act.

Section 7. Nothing in this act or in any other law shall be construed to permit, authorize or require collective bargaining, mediation or binding arbitration to create, alter or modify pension or retirement benefits set forth in 24 Pa.C.S. Pt. IV (relating to retirement of school employees) or administered by the Public School Employees' Retirement Board. Further, nothing in this act or in any other law shall be construed to permit, authorize or require an employer, through collective bargaining, mediation, binding arbitration or otherwise, to establish, create, alter or modify a pension or retirement plan or pay pension or retirement benefits or other compensation that modifies or supplements in any way the benefits set forth in 24 Pa.C.S. Pt. IV or administered by the Public School Employees' Retirement Board. Notwithstanding the above, the parties may negotiate and agree to early retirement incentive or severance pay provisions so long as they do not affect the retirement benefits identified above and would not result in

the Public School Employees' Retirement System not being a qualified plan under the Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 1 et seq.).

Section 8. The amendment of section 2574(f) of the act shall apply retroactively to January 1, 1991.

Section 9. This act shall take effect immediately.

APPROVED--The 9th day of July, A. D. 1992.

ROBERT P. CASEY