

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 3102 Session of
1994

INTRODUCED BY PLATTS, WAUGH, FARGO, CESSAR, TRUE, FAIRCHILD,
TIGUE, SAURMAN, E. Z. TAYLOR, HARLEY AND BUNT,
OCTOBER 3, 1994

REFERRED TO COMMITTEE ON EDUCATION, OCTOBER 3, 1994

AN ACT

1 Amending the act of March 10, 1949 (P.L.30, No.14), entitled "An
2 act relating to the public school system, including certain
3 provisions applicable as well to private and parochial
4 schools; amending, revising, consolidating and changing the
5 laws relating thereto," further providing for the definition
6 of "strike"; and further providing for collective bargaining.

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

9 Section 1. The definition of "strike" in section 1101-A of
10 the act of March 10, 1949 (P.L.30, No.14), known as the Public
11 School Code of 1949, added July 9, 1992 (P.L.403, No.88), is
12 amended to read:

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

15 * * *

16 "Strike" shall mean concerted action in failing to report for
17 duty, the wilful absence from one's position, the stoppage of
18 work, slowdown or the abstinence, in whole or in part, from the
19 full, faithful and proper performance of the duties of

1 employment for the purpose of inducing, influencing or coercing
2 a change in the conditions or compensation or the rights,
3 privileges or obligations of employment. The employe
4 organization having called a lawful strike once and unilaterally
5 returned to work may only call a lawful strike once more during
6 the school year. A written notice of the intent to strike shall
7 be delivered by the employe organization to the superintendent,
8 executive director or the director no later than forty-eight
9 (48) hours prior to the commencement of any strike, and no
10 strike may occur sooner than forty-eight (48) hours following
11 the last notification of intent to strike. Upon receipt of the
12 notification of intent to strike, the superintendent, executive
13 director or the director may cancel school for the effective
14 date of the strike. A decision to cancel school may, however, be
15 withdrawn by the superintendent, executive director or the
16 director. Any subsequent change of intents to strike shall not
17 affect the decision to cancel school on the day of the intended
18 strike. For the purposes of this article, the decision to cancel
19 school on the day of the intended strike shall not be considered
20 a lockout.

21 Section 2. Article XI-A of the act is amended by adding a
22 subdivision to read:

23 (c) Selection of Collective Bargaining Process.

24 Section 1121-A. Window of Decision.--(a) The school board
25 of each public school district must decide not earlier than two
26 hundred two (202) days prior to June 30 or December 31,
27 whichever is the end of the school entity's fiscal year, and in
28 no event later than one hundred eighty-eight (188) days prior to
29 June 30 or December 31, whichever is the end of the school
30 entity's fiscal year, which collective bargaining process it

1 wants to negotiate within in order to reach an employment
2 agreement with its school district's employe organization.

3 (b) The school board of each public school district shall
4 choose between the collective bargaining procedures set forth in
5 sections 1131-A through 1172-A inclusive or sections 1131-A,
6 1132-A and 1181-A through 1192-A inclusive taken as a whole.
7 Once a school board has made a decision under this section, said
8 school board cannot reverse its decision for the remainder of
9 the ongoing bargaining process.

10 Section 3. The heading of subdivision (c) of Article XI-A of
11 the act, added July 9, 1992 (P.L.403, No.88), is amended to
12 read:

13 [(c)] (d) Collective Bargaining Impasse.

14 Section 4. Sections 1121-A, 1122-A, 1123-A, 1124-A, 1125-A,
15 1126-A and 1127-A of the act, added July 9, 1992 (P.L.403,
16 No.88), are amended to read:

17 Section [1121-A] 1131-A. Submission to Mediation.--(a) If,
18 after a reasonable period of negotiation, a dispute or impasse
19 exists between the representatives of the employer and the
20 employe organization, the parties may voluntarily submit to
21 mediation, but, if no agreement is reached between the parties
22 within forty-five (45) days after negotiations have commenced,
23 but in no event later than [one hundred twenty-six (126)] one
24 hundred fifty-seven (157) days prior to June 30 or December 31,
25 whichever is the end of the school entity's fiscal year, and
26 mediation has not been utilized by the parties, both parties
27 shall immediately in writing call on the service of the
28 Pennsylvania Bureau of Mediation.

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

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

3 Section [1122-A] 1132-A. Fact-finding Panels.--(a) (1)

4 Once mediation has commenced, it shall continue for so long as
5 the parties have not reached an agreement. If, however, an
6 agreement has not been reached within [forty-five (45)] forty-
7 three (43) days after mediation has commenced or in no event
8 later than [eighty-one (81)] one hundred fourteen (114) days
9 prior to June 30 or December 31, whichever is the end of the
10 school entity's fiscal year, the Bureau of Mediation shall
11 notify the board of the parties' failure to reach an agreement
12 and of whether either party has requested the appointment of a
13 fact-finding panel.

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

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

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

9 (b) The findings of fact and recommendations shall be sent
10 by registered mail to the board and to both parties not more
11 than [forty (40)] forty-one (41) days after the Bureau of
12 Mediation has notified the board as provided in subsection (a).

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

19 (d) Not less than five (5) days nor more than [ten (10)]
20 seven (7) days after the publication of the findings of fact and
21 recommendations, the parties shall again inform the board and
22 each other whether or not they will accept the recommendations
23 of the fact-finding panel.

24 (e) The board shall establish, after consulting
25 representatives of employee organizations and of employers,
26 panels of qualified persons broadly representative of the public
27 to serve as members of fact-finding panels. The board shall,
28 within sixty (60) days of the effective date of this act,
29 increase the number of available panels of qualified persons to
30 serve as members of fact-finding panels to meet the expanded

1 role of fact-finding as provided for in this act.

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

7 Section [1123-A] 1133-A. Negotiated Final Best-Offer

8 Arbitration.--(a) The parties to a collective bargaining
9 agreement involving public school employees shall be required to
10 bargain upon the issue of acceptance and adoption of one of the
11 following approved impasse procedures, with the proviso that
12 such an obligation does not compel either party to agree to a
13 proposal or require making a concession:

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

16 (i) the last offer of the representative of the employer;
17 (ii) the last offer of the representative of the employees;
18 or

19 (iii) the fact-finder's recommendations, should there be a
20 fact-finder's report.

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

23 (i) the last offer of the representative of the employer;
24 (ii) the last offer of the representative of the employees;
25 or

26 (iii) the fact-finder's recommendations, should there be a
27 fact-finder's report.

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

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

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

9 Section [1124-A] 1134-A. Method of Selection of
10 Arbitrators.--The board of arbitration shall be composed of
11 three (3) members. Arbitrators as referred to in this article
12 shall be selected in the following manner:

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

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

27 (3) Payment of arbitrators shall be as follows:

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

1 equally between the parties.

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

5 Section [1125-A] 1135-A. Final Best-Offer Arbitration.--(a)
6 At any time prior to mandated final best-offer arbitration,
7 either the employer or the employe organization may request
8 final best-offer arbitration unless fact-finding has been
9 initiated as provided in section [1122-A] 1132-A. If fact-
10 finding has been initiated, the parties shall complete fact-
11 finding before requesting final best-offer arbitration. If
12 either party requests final best-offer arbitration, the
13 requesting party shall notify the Bureau of Mediation, the board
14 and the opposing party in writing. The opposing party shall,
15 within ten (10) days of the notification by the requesting
16 party, notify the requesting party in writing of its agreement
17 or refusal to submit to final best-offer arbitration. No strikes
18 or lockouts shall occur during this ten (10) day period or until
19 the requesting party is notified by the opposing party that they
20 refuse to submit to final best-offer arbitration. Arbitration
21 provided for in this subsection shall only occur if both parties
22 agree to submit to final best-offer arbitration.

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

26 (1) June 15; or

27 (2) the last day of the school entity's scheduled school
28 year;

29 the parties shall submit to mandated final best-offer
30 arbitration consistent with the arbitration option negotiated. A

1 return to work for the purpose of submitting to final best-offer
2 arbitration shall not be considered a unilateral return to work.

3 (c) If the parties are unable to agree on the adoption of
4 one of the approved impasse procedures under section [1123-A]
5 1133-A, the mediator appointed pursuant to section [1121-A]
6 1131-A shall select the procedure.

7 (d) Within [ten (10)] seven (7) days of submission to final
8 best-offer arbitration, the parties shall submit to the
9 arbitrators their final best contract offer with certification
10 that the offer was delivered to the opposing party, together
11 with documentation supporting the reasonableness of their offer.
12 This documentation shall include, but not be limited to, the
13 following:

14 (1) The public interest.

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

16 (3) The financial capability of the school entity.

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

19 (5) Changes in the cost of living.

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

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

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

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

30 (g) Upon submission to the arbitrator of both parties' final

1 best offers under subsection (a) or (b), the employer shall
2 post, within the time limits described in subsection (d), the
3 final best contract offers in the school entity's main office
4 for the purpose of soliciting public comments thereon. Copies of
5 both parties' final best offers shall be available from the
6 school entity's main office. The cost of copies shall be
7 established by the school entity and shall be paid by the
8 requestor.

9 (h) The public comment period shall close within [ten (10)]
10 seven (7) days of the first day of posting. All public comments
11 shall be directed to the arbitrators for consideration who shall
12 provide them on request to the employer and to the employees'
13 organization.

14 (i) Within ten (10) days of the selection of the third
15 arbitrator of the arbitration panel, the arbitrators shall begin
16 hearings at which they will hear arguments from representatives
17 of the employer and of the employees in support of their
18 respective last best contract offers under subsection (a) or
19 (b). At least five (5) days prior to the hearing, a written
20 notice of the date, time and place of such hearing shall be sent
21 to the representatives of both the employer and employees which
22 are parties to the dispute. This written notice shall also be
23 sent to the fiscal authority having budgetary responsibility or
24 charged with making appropriations for the employer, and a
25 representative designated by such body shall be heard at the
26 hearing upon request of such body or of the employer as part of
27 the presentation of the employer.

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

30 (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] 1136-A. Time Frame.--The time periods set forth in this article are mandatory and shall not be construed to be directory.

Section [1127-A] 1137-A. Exception.--Any school district of the first class with an appointed school board and the public employes 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] 1133-A, 1134-A or 1135-A.

Section 5. The heading of subdivision (d) of Article XI-A, added July 9, 1992 (P.L.403, No.88), is amended to read:

[(d)] (e) Strikes and Lockouts.

Section 6. Sections 1131-A and 1132-A of the act, added July 9, 1992 (P.L.403, No.88), are amended to read:

Section [1131-A] 1141-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)] 1135-A(a).

(2) During final best-offer arbitration, including the period of up to ten (10) days after receipt of the determination

1 of the arbitrators during which the governing body of the school
2 entity may consider the determination.

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

5 Section [1132-A] 1142-A. Lockouts Prohibited in Certain
6 Circumstances.--A lockout must cease where the parties request
7 fact-finding for the duration of the fact-finding. A lockout
8 must end where the parties agree to arbitration. Lockouts are
9 prohibited:

10 (1) During the period of up to ten (10) days provided for
11 under section [1125-A(a)] 1135-A(a).

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

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

18 Section 7. The headings of subdivisions (e), (f) and (g) of
19 Article XI-A of the act, added July 9, 1992 (P.L.403, No.88),
20 are amended to read:

21 [(e)] (f) Collective Bargaining Agreement.

22 [(f)] (g) Secretary of Education.

23 [(g)] (h) Prohibitions.

24 Section 8. Article XI-A of the act is amended by adding
25 subdivisions to read:

26 (i) Final Best-Offer Binding Arbitration.

27 Section 1181-A. Voluntary Final Best-Offer Binding
28 Arbitration.--(a) The parties to a collective bargaining
29 agreement involving public school employees can mutually choose
30 to submit to final best-offer binding arbitration at any time

1 prior to the initiation of fact-finding under section 1132-A, or
2 after a fact-finding report has been issued pursuant to section
3 1132-A, but in no event more than two hundred two (202) days
4 prior to June 30 or December 31, whichever is the end of the
5 school entity's fiscal year.

6 (b) If final best-offer binding arbitration is mutually
7 submitted to after a fact-finding report has been issued
8 pursuant to section 1132-A, then publication of the fact-finding
9 report is not required.

10 Section 1182-A. Mandatory Final Best-Offer Binding
11 Arbitration.--If the parties to a collective bargaining
12 agreement involving public school employees have not reached an
13 agreement within seven (7) days after publication of a fact-
14 finding report pursuant to section 1132-A, but in no event later
15 than fifty-six (56) days prior to June 30 or December 31,
16 whichever is the end of the school entity's fiscal year, the
17 parties shall submit to final best-offer binding arbitration.

18 Section 1183-A. Selection of Arbitrators.--(a) The
19 arbitration panel shall be the president judge of the court of
20 common pleas of the judicial district having jurisdiction over
21 the school district for those judicial districts with four or
22 fewer judges.

23 (b) The arbitration panel shall be the president judge of
24 the court of common pleas, who shall serve as chairman of the
25 panel, and two additional judges of the court of common pleas of
26 the judicial district having jurisdiction over the school
27 district for those judicial districts with five or more judges.
28 The additional two judges shall be selected from a list of all
29 the judges in the judicial district, with each party to the
30 collective bargaining agreement striking one name from the list

1 until two shall remain. The employer shall strike the first
2 name. The two (2) judges remaining shall be the two (2)
3 additional members.

4 (c) For those school districts which cross judicial district
5 lines, the judicial district having jurisdiction shall be the
6 district in which the majority of the school district's students
7 reside.

8 Section 1184-A. Scope of Arbitration.--Arbitration shall be
9 limited to unresolved issues. Unresolved issues shall mean those
10 issues not agreed to in writing prior to the start of the
11 arbitration.

12 Section 1185-A. Arbitration Determination.--The
13 determination of the arbitration panel with regard to the
14 arbitration of a collective bargaining agreement shall be
15 confined to a choice between the final contract offer of the
16 employer, taken as a whole, and the final contract offer of the
17 employe organization, taken as a whole.

18 Section 1186-A. Arbitration Procedure.--(a) Within seven
19 (7) days of submission to final best-offer binding arbitration,
20 whether under section 1181-A(a) or 1182-A, the parties to the
21 collective bargaining agreement shall submit to the arbitration
22 panel their final best contract offer with certification that
23 the offer was delivered to the opposing party, together with
24 documentation supporting the reasonableness of their offer. This
25 documentation shall include, but not be limited to, the
26 following:

27 (1) The public interest.

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

29 (3) The financial capability of the school entity.

30 (4) The results of the negotiations between the parties

1 prior to submission of final best contract offers.

2 (5) Changes in the cost of living.

3 (6) The existing terms and conditions of employment of the
4 employe organization members.

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

7 (b) Upon submission to the arbitration panel of both
8 parties' final best offers, under section 1181-A(a) or 1182-A,
9 the employer shall post, within seven (7) days, the final best
10 contract offers in the school entity's main office for the
11 purpose of soliciting public comments thereon. Copies of both
12 parties' final best offers shall be available from the school
13 entity's main office. The cost of copies shall be established by
14 the school entity and shall be paid by the requestor.

15 (c) The public comment period shall close within seven (7)
16 days of the first day of posting. All public comments shall be
17 directed to the arbitration panel for consideration who shall
18 provide them on request to the employer and to the employes'
19 organization.

20 Section 1187-A. Arbitration Hearing.--Within twenty-one (21)
21 days after receiving both parties' final best offers, but in no
22 event later than thirty-five (35) days prior to June 30 or
23 December 31, whichever is the end of the school entity's fiscal
24 year, the arbitration panel shall begin hearings at which the
25 panel will hear arguments from representatives of the employer
26 and of the employes in support of their respective final best
27 contract offers under section 1181-A(a) or 1182-A. At least five
28 (5) days prior to the hearing, a written notice of the date,
29 time and place of the hearing shall be sent to the
30 representatives of both the employer and employes which are

party 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 the request of such body or of the employer as part of the presentation of the employer.

Section 1188-A. Arbitration Decision.--(a) Not later than thirty (30) days after commencing a hearing pursuant to section 1187-A, but in no event later than fifteen (15) days prior to June 30 or December 31, whichever is the end of the school entity's fiscal year, the arbitration panel shall:

(1) conclude the arbitration hearing;

(2) examine each item of dispute;

(3) render a determination in writing choosing either the final best contract offer of the employer, taken as a whole, or the final best contract offer of the employe organization, taken as a whole; and

(4) forward a copy of the written determination to both parties involved in the dispute.

(b) The determination of the majority of the arbitrators shall be final and binding upon the employer, employes and employe organization involved and constitutes a mandate to the school entity to take whatever action necessary to carry out the determination.

(c) No appeal challenging the determination reached by the arbitration panel shall be allowed to any court unless the award resulted from fraud, corruption or wilful misconduct of the arbitration panel. 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 Commonwealth Court.

1 Section 1189-A. Time Frame.--The time periods set forth in
2 this article are mandatory and shall not be construed to be
3 directory.

4 (j) Prohibitions and Exception.

5 Section 1191-A. Strikes Prohibited.--It shall be unlawful
6 for an employe organization to call a strike. It shall be
7 unlawful for a public school teacher to strike or participate in
8 a strike or similar interruption of government service. Any
9 strike or interruption of government service prohibited by this
10 section shall constitute an actionable breach of duty to members
11 of the public affected thereby, who shall have a right to remedy
12 and redress in the courts.

13 Section 1192-A. Exception.--Any school district of the first
14 class with an appointed school board and the public employes of
15 that school district as defined in the act of July 23, 1970
16 (P.L.563, No.195), known as the "Public Employe Relations Act,"
17 shall comply with and be subject to the binding arbitration
18 provisions of the "Public Employe Relations Act" and shall not
19 be subject to the provisions of sections 1181-A through 1189-A
20 inclusive or 1191-A.

21 Section 9. This act shall take effect in 60 days.