

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1369 Session of 2011

INTRODUCED BY ROCK, METCALFE, BARRAR, AUMENT, BEAR, BLOOM, BOYD, CLYMER, COX, CUTLER, DENLINGER, EVANKOVICH, FARRY, GODSHALL, GROVE, HENNESSEY, HICKERNELL, KILLION, MALONEY, MOUL, MUSTIO, PERRY, QUIGLEY, RAPP, SCHRODER, SIMMONS, STERN, SWANGER, TALLMAN, TRUITT, WATSON, SACCONI AND EVERETT, JUNE 10, 2011

REFERRED TO COMMITTEE ON EDUCATION, JUNE 10, 2011

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," deleting and replacing provisions  
 6 relating to collective bargaining between public school  
 7 employees and their public employers; setting forth public  
 8 policy relating to public school employee strikes; providing  
 9 for assessments and for duties of the Pennsylvania Bureau of  
 10 Mediation and the Pennsylvania Labor Relations Board; and  
 11 imposing penalties.

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

14 Section 1. Article XI-A heading, subdivision (a) heading,  
 15 section 1101-A, subdivision (b) heading, sections 1111-A and  
 16 1112-A, subdivision (c) heading, sections 1121-A, 1122-A,  
 17 1123-A, 1124-A, 1125-A, 1126-A and 1127-A, subdivision (d)  
 18 heading, sections 1131-A and 1132-A, subdivision (e) heading,  
 19 sections 1151-A and 1152-A, subdivision (f) heading, section  
 20 1161-A, subdivision (g) heading and sections 1171-A and 1172-A  
 21 of the act of March 10, 1949 (P.L.30, No.14), known as the

1 Public School Code of 1949, added July 9, 1992 (P.L.403, No.88),  
2 are repealed:

3 [ARTICLE XI-A.

4 COLLECTIVE BARGAINING

5 (a) General Provisions.

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

8 "Board" shall mean the Pennsylvania Labor Relations Board.

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

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

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

1 "Impasse" shall mean the failure of an employer and an  
2 employe organization to reach an agreement in the course of  
3 negotiations.

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

9 "Representative" shall mean an individual acting for  
10 employers or employes and shall include employe organizations.

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

13 "Strike" shall mean concerted action in failing to report for  
14 duty, the wilful absence from one's position, the stoppage of  
15 work, slowdown or the abstinence, in whole or in part, from the  
16 full, faithful and proper performance of the duties of  
17 employment for the purpose of inducing, influencing or coercing  
18 a change in the conditions or compensation or the rights,  
19 privileges or obligations of employment. The employe  
20 organization having called a strike once and unilaterally  
21 returned to work may only call a lawful strike once more during  
22 the school year. A written notice of the intent to strike shall  
23 be delivered by the employe organization to the superintendent,  
24 executive director or the director no later than forty-eight  
25 (48) hours prior to the commencement of any strike, and no  
26 strike may occur sooner than forty-eight (48) hours following  
27 the last notification of intent to strike. Upon receipt of the  
28 notification of intent to strike, the superintendent, executive  
29 director or the director may cancel school for the effective  
30 date of the strike. A decision to cancel school may, however, be

1 withdrawn by the superintendent, executive director or the  
2 director. Any subsequent change of intents to strike shall not  
3 affect the decision to cancel school on the day of the intended  
4 strike. For the purposes of this article, the decision to cancel  
5 school on the day of the intended strike shall not be considered  
6 a lockout.

7 (b) Scope of Bargaining.

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

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

29 (c) Collective Bargaining Impasse.

30 Section 1121-A. Submission to Mediation.--(a) If, after a

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

11 (b) The Pennsylvania Bureau of Mediation shall employ a  
12 complement of not less than twenty-five (25) mediators which  
13 shall be available to mediate according to the provisions of  
14 subsection (a).

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

25 (2) No later than eighty-one (81) days prior to June 30 or  
26 December 31, whichever is the end of the school entity's fiscal  
27 year, either party may request the board to appoint a fact-  
28 finding panel. Upon receiving such request, the board shall  
29 appoint a fact-finding panel which may consist of either one (1)  
30 or three (3) members. The panel so designated or selected shall

1 hold hearings and take oral or written testimony and shall have  
2 subpoena power. If, during this time, the parties have not  
3 reached an independent agreement, the panel shall make findings  
4 of fact and recommendations. The panel shall not find or  
5 recommend that the parties accept or adopt an impasse procedure.

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

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

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

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

29 (d) Not less than five (5) days nor more than ten (10) days  
30 after the publication of the findings of fact and

1 recommendations, the parties shall again inform the board and  
2 each other whether or not they will accept the recommendations  
3 of the fact-finding panel.

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

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

17 Section 1123-A. Negotiated Final Best-Offer Arbitration.--

18 (a) The parties to a collective bargaining agreement involving  
19 public school employes shall be required to bargain upon the  
20 issue of acceptance and adoption of one of the following  
21 approved impasse procedures, with the proviso that such an  
22 obligation does not compel either party to agree to a proposal  
23 or require making a concession:

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

26 (i) the last offer of the representative of the employer;  
27 (ii) the last offer of the representative of the employes;  
28 or

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

1 (2) Arbitration under which the award is confined to a  
2 choice among one of the following on an issue-by-issue basis:  
3 (i) the last offer of the representative of the employer;  
4 (ii) the last offer of the representative of the employes;  
5 or  
6 (iii) the fact-finder's recommendations, should there be a  
7 fact-finder's report.

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

11 (i) the last offer of the representative of the employer;  
12 (ii) the last offer of the representative of the employes;  
13 or  
14 (iii) the fact-finder's recommendations, should there be a  
15 fact-finder's report.

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

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

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

28 (2) The third arbitrator shall be selected from a list of  
29 seven (7) arbitrators furnished by the American Arbitration  
30 Association within five (5) days of the publication of the list.



1 Each of the seven (7) arbitrators shall be a resident of this  
2 Commonwealth and knowledgeable in the areas necessary to  
3 effectively make a determination. Each party shall alternately  
4 strike one name until one shall remain. The employer shall  
5 strike the first name. The person so remaining shall be the  
6 third member and chairman.

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

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

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

15 Section 1125-A. Final Best-Offer Arbitration.--(a) At any  
16 time prior to mandated final best-offer arbitration, either the  
17 employer or the employe organization may request final best-  
18 offer arbitration unless fact-finding has been initiated as  
19 provided in section 1122-A. If fact-finding has been initiated,  
20 the parties shall complete fact-finding before requesting final  
21 best-offer arbitration. If either party requests final best-  
22 offer arbitration, the requesting party shall notify the Bureau  
23 of Mediation, the board and the opposing party in writing. The  
24 opposing party shall, within ten (10) days of the notification  
25 by the requesting party, notify the requesting party in writing  
26 of its agreement or refusal to submit to final best-offer  
27 arbitration. No strikes or lockouts shall occur during this ten  
28 (10) day period or until the requesting party is notified by the  
29 opposing party that they refuse to submit to final best-offer  
30 arbitration. Arbitration provided for in this subsection shall

1 only occur if both parties agree to submit to final best-offer  
2 arbitration.

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

6 (1) June 15; or

7 (2) the last day of the school entity's scheduled school  
8 year;

9 the parties shall submit to mandated final best-offer  
10 arbitration consistent with the arbitration option negotiated. A  
11 return to work for the purpose of submitting to final best-offer  
12 arbitration shall not be considered a unilateral return to work.

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

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

23 (1) The public interest.

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

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

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

28 (5) Changes in the cost of living.

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

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

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

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

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

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

23 (i) Within ten (10) days of the selection of the third  
24 arbitrator of the arbitration panel, the arbitrators shall begin  
25 hearings at which they will hear arguments from representatives  
26 of the employer and of the employes in support of their  
27 respective last best contract offers under subsection (a) or  
28 (b). At least five (5) days prior to the hearing, a written  
29 notice of the date, time and place of such hearing shall be sent  
30 to the representatives of both the employer and employes which

1 are parties to the dispute. This written notice shall also be  
2 sent to the fiscal authority having budgetary responsibility or  
3 charged with making appropriations for the employer, and a  
4 representative designated by such body shall be heard at the  
5 hearing upon request of such body or of the employer as part of  
6 the presentation of the employer.

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

9 (1) examine each item of dispute;

10 (2) make a determination in writing consistent with the  
11 arbitration option agreed to by the parties; and

12 (3) forward a copy of the written determination to both  
13 parties involved in the dispute and to the board.

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

27 (l) No appeal challenging the determination reached as  
28 provided under subsection (a) or (b) shall be allowed to any  
29 court unless the award resulted from fraud, corruption or wilful  
30 misconduct of the arbitrators. If a court determines that this

1 has occurred, it shall declare the award null and void. An  
2 appeal of the award shall be made to the court of common pleas  
3 of the judicial district encompassing the respective school  
4 district.

5 (m) If the employer or the employe organization rejects the  
6 determination of the majority of the arbitrators:

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

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

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

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

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

26 (d) Strikes and Lockouts.

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

1 prohibited:

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

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

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

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

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

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

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

23 (e) Collective Bargaining Agreement.

24 Section 1151-A. Agreement and Enforcement.--Any  
25 determination of the arbitrators to be implemented under this  
26 article shall be memorialized as a written agreement by and  
27 between the school entity and the employe organization to be  
28 signed and sealed by their duly appointed officers and agents as  
29 provided by law. The executed agreement shall be enforceable by  
30 each party in the manner as provided by law, including without

1 limitation and in derogation to the mandatory arbitration of  
2 disputes or grievances under the act of July 23, 1970 (P.L.563,  
3 No.195), known as the "Public Employe Relations Act." In the  
4 event that a school entity or an employe organization refuses to  
5 execute a written agreement under this section, the employe  
6 organization or the school entity may institute a cause of  
7 action in the court of common pleas to compel compliance with  
8 the provision of this section requiring a written agreement and,  
9 in the appropriate case, specific performance of the  
10 determination.

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

20 (f) Secretary of Education.

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

28 (g) Prohibitions.

29 Section 1171-A. Selective Strikes.--The work stoppage  
30 practice known as "selective strikes" shall be considered an

1 illegal strike. Any strike which does not comply with the  
2 definition of "strike" contained in this article shall be  
3 considered a selective strike.

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

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

13 (1) when the employe organization or employer rejects the  
14 determination of the majority of the arbitrators; and

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

17 (i) June 15; or

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

20 Section 2. The act is amended by adding an article to read:

21 ARTICLE XI-C

22 STRIKE-FREE EDUCATION ACT

23 Section 1101-C. Short title.

24 This article shall be known and may be cited as the Strike-  
25 Free Education Act.

26 Section 1102-C. Public policy relating to strikes.

27 The Constitution of Pennsylvania mandates the General  
28 Assembly to provide for the maintenance and support of a  
29 thorough and efficient system of public education to serve the  
30 needs of this Commonwealth. Existing law requires 180 days of



1 instruction each year as established by the school calendar, and  
2 permits strikes to occur multiple times in the school year and  
3 multiple-year strikes. Days lost or rescheduled are made up as  
4 much as possible by canceling scheduled vacation days and  
5 holidays and extending the school year, resulting in severe  
6 disruption of the educational process and family life.  
7 Guarantees for the protection of public health, safety and  
8 welfare are not kept inviolate when days are lost or  
9 rescheduled. Therefore, it is the intent of the General Assembly  
10 that public school employee strikes shall be prohibited.

11 Section 1103-C. Definitions.

12 The following words and phrases when used in this article  
13 shall have the meanings given to them in this section unless the  
14 context clearly indicates otherwise:

15 "Board." The Pennsylvania Labor Relations Board.

16 "Bureau." The Bureau of Mediation within the Department of  
17 Labor and Industry of the Commonwealth.

18 "Economic issues." Wages, hours, salary, fringe benefits or  
19 any form of monetary compensation for services rendered.

20 "Employee." A public school employee who bargains  
21 collectively with a public school entity. The term does not  
22 include:

23 (1) An employee who is covered or presently subject to  
24 coverage under the act of June 1, 1937 (P.L.1168, No.294),  
25 known as the Pennsylvania Labor Relations Act, or the  
26 National Labor Relations Act (49 Stat. 449, 29 U.S.C. § 151  
27 et seq.).

28 (2) A management-level employee of any other school  
29 district.

30 "Employee organization." A public school employee

1 organization of any kind, or an agency or employee  
2 representative committee or plan in which membership is limited  
3 to, or includes, public school employees, and which exists for  
4 the purpose, in whole or in part, of dealing with public school  
5 employers concerning grievances, public school employee-public  
6 school employer disputes, wages, rates of pay, hours of  
7 employment or conditions of work. The term does not include an  
8 organization that practices discrimination in membership because  
9 of race, color, creed, national origin or political affiliation.

10 "Employer." A public school entity. The term does not  
11 include an employer that is covered or presently subject to  
12 coverage under the act of June 1, 1937 (P.L.1168, No.294), known  
13 as the Pennsylvania Labor Relations Act, or the National Labor  
14 Relations Act (49 Stat. 449, 29 U.S.C. § 151 et seq.).

15 "Good faith." Acting with openness, fairness, mutuality of  
16 conduct and cooperation with the intent of identifying a  
17 mutually agreeable solution.

18 "Lockout." The cessation of furnishing of work to employees  
19 or withholding work from employees for the purpose of inducing,  
20 influencing or coercing a change in the conditions or  
21 compensation or the rights, privileges or obligations of  
22 employment.

23 "Mediator." A person employed or appointed by the Bureau of  
24 Mediation to mediate an impasse.

25 "Parties." An employer and the employee organization that  
26 represents the employee of the employer.

27 "Public transparency meeting." Special session at which the  
28 parties shall make their respective negotiating teams available  
29 to the public to take comments and answer questions. The session  
30 shall be separate from regular school board meetings.

1 "Representative." An individual acting for employers or  
2 employees. The term includes an employee organization.

3 "School entity." A public school district, intermediate unit  
4 or area vocational-technical school.

5 "Strike." Concerted effort in failing to report for duty,  
6 the willful absence from one's position, the stoppage of work,  
7 slowdown or the abstinence, in whole or in part, from the full,  
8 faithful and proper performance of the duties of employment for  
9 the purpose of inducing, influencing or coercing a change in the  
10 conditions or compensation or the rights, privileges or  
11 obligations of employment.

12 "Work stoppage." A strike or lockout.

13 Section 1104-C. Mutual obligation.

14 Collective bargaining is the performance of the mutual  
15 obligation of an employer, or its representative, and the  
16 representative of its employees to meet at reasonable times and  
17 confer in good faith with respect to wages, hours and other  
18 terms and conditions of employment or the negotiation of an  
19 agreement or any question arising under the agreement and the  
20 execution of a written contract incorporating any agreement  
21 reached. The obligation does not compel either party to agree to  
22 a proposal or require the making of a concession.

23 Section 1105-C. Matters of inherent managerial policy.

24 (a) General rule.--An employer shall not be required to  
25 bargain over matters of inherent managerial policy. Those  
26 matters shall include, but shall not be limited to, such areas  
27 of discretion or policy as:

28 (1) The functions and programs of the employer.

29 (2) Standards of services.

30 (3) Overall budget of the employer.

1           (4) Utilization of technology.

2           (5) The organizational structure and selection and  
3           direction of personnel.

4           (b) Exception.--An employer shall meet and discuss policy  
5           matters affecting economic issues as well as their impact on  
6           employees upon request by an employee representative.

7           Section 1106-C. Obligation of employer to public.

8           The employer shall make publicly available a report, for copy  
9           and inspection, detailing the tentative agreement reached  
10           between the parties, at the school administration offices and on  
11           the Internet website of the employer at least five business days  
12           prior to voting on a collective bargaining agreement.

13           Section 1107-C. Negotiation between parties.

14           The parties shall negotiate a collective bargaining agreement  
15           as follows:

16           (1) The parties shall commence bargaining a successor  
17           agreement no later than September 30 of the year preceding  
18           when the collective bargaining agreement shall by its terms  
19           expire.

20           (2) The employer shall confirm to the public through  
21           regularly scheduled board meetings that the negotiations  
22           commenced as required.

23           (3) The parties shall negotiate independently and shall,  
24           at all times, negotiate in good faith.

25           (4) Within 30 days of negotiations commencing, each  
26           party shall provide a written settlement proposal to the  
27           other party. Each party shall respond to the other party's  
28           proposal, in writing, within 30 days of receipt of the  
29           proposal.

30           (5) Both parties shall submit to mediation by the bureau

1 by January 15 if no agreement is reached.

2 Section 1108-C. Mediation.

3 If the assistance of a mediator is required under section  
4 1107-C, the following procedure shall apply:

5 (1) The parties shall immediately call on the service of  
6 the bureau. The bureau shall appoint a mediator within two  
7 business days.

8 (2) The parties shall continue to negotiate in good  
9 faith throughout the mediation process. The proceedings with  
10 the mediator shall not be open to the public.

11 (3) The parties may agree to meet independently at any  
12 time during the mediation process.

13 (4) Mediation shall continue for so long as the parties  
14 have not reached an agreement.

15 (5) If no agreement is reached by February 15, the  
16 parties shall submit to fact-finding under section 1109-C.

17 Section 1109-C. Fact-finding.

18 Fact-finding shall proceed as follows:

19 (1) Within three business days, the board shall appoint  
20 one or three fact-finders.

21 (2) Within five additional business days, each party  
22 shall submit its latest proposal to the fact-finders and  
23 simultaneously to the other party. Both parties' proposals  
24 shall be made public through posting at school entity offices  
25 and on the Internet website of the school entity.

26 (3) The appointed fact-finders shall hold hearings,  
27 secure oral or written testimony and shall have subpoena  
28 power. The panel shall solicit public input, but the hearings  
29 shall not be open to the public. If, during this phase, the  
30 parties fail to reach an independent agreement, the panel

1 shall make findings of fact and recommendations.

2 (4) The findings of fact and recommendations shall be  
3 sent by registered mail to the board and to both parties not  
4 more than 40 days after the board has notified the fact-  
5 finders of their appointment, and shall be made publicly  
6 available at the offices of the school entity, and the  
7 Internet website of the school entity, until such time as a  
8 new agreement is reached.

9 (5) The parties shall decide by April 15 whether to  
10 accept the recommendation of the fact-finders or to submit to  
11 nonbinding arbitration under section 1110-C.

12 (6) The costs of fact-finding shall be shared equally by  
13 the parties or in such proportion as the fact-finders  
14 determine.

15 Section 1110-C. Nonbinding arbitration.

16 If either party rejects the recommendation of the fact-  
17 finders, the parties shall proceed immediately to nonbinding  
18 arbitration. The parties may either submit their dispute to a  
19 mutually agreeable single arbitrator or an arbitration panel  
20 composed of three persons. A three-person arbitration panel  
21 shall be selected in the following manner:

22 (1) Each party shall select one member of the panel  
23 within two business days. Each arbitrator must be  
24 knowledgeable in the school-related fields of budget,  
25 finance, educational programs and taxation.

26 (2) The third arbitrator shall be selected from a list  
27 of seven arbitrators furnished by the American Arbitration  
28 Association within three business days of the publication of  
29 the list. Each of the seven arbitrators must be a resident of  
30 this Commonwealth and knowledgeable in the areas necessary to

1 effectively make a determination. Beginning with the  
2 employer, each party shall alternately strike one name until  
3 one shall remain. The person remaining shall be the third  
4 panel member and chairperson.

5 (3) The parties shall submit their last best offer to  
6 the panel within two business days of panel selection. The  
7 last best offer shall also be submitted to the other party  
8 and be posted publicly at the school entity offices and on  
9 the Internet website of the school entity, where it shall  
10 remain until such time as a new agreement is reached.

11 (4) All information, data, analyses and recommendations  
12 from the fact-finding process shall be provided to the panel.  
13 The employer shall provide guidance to the arbitrator  
14 regarding fiscal constraints in accordance with any allowable  
15 tax increases. The public shall be given an opportunity to  
16 submit comments to the arbitration panel.

17 (5) The panel shall issue a recommendation by May 15.  
18 The recommendation shall be nonbinding on the parties.

19 (6) The recommendation shall be by selection of one  
20 proposal in its entirety.

21 (7) The panel shall consider the following criteria in  
22 making its recommendation:

23 (i) The interest and welfare of the public.

24 (ii) The financial ability of the employer to fund  
25 the costs associated with any proposed agreement.

26 (iii) Comparison of wages, hours and conditions of  
27 employment of the employees involved in the arbitration  
28 proceeding with the wages, hours and conditions of  
29 employment of other employees performing similar services  
30 or requiring similar skills under similar working

1 conditions and with other employees generally in public  
2 and private employment in comparable communities.

3 (8) Within two business days of receiving the  
4 arbitration recommendation, the employer shall make the  
5 recommendation publicly available at the school entity  
6 offices and on the Internet website of the school entity,  
7 where it shall remain until such time as a new agreement is  
8 reached.

9 (9) (i) Each party shall pay the cost of the arbitrator  
10 selected by it under paragraph (1). The cost of the third  
11 party arbitrator shall be divided equally among the  
12 parties or in such proportion as the chairperson  
13 determines.

14 (ii) The Commonwealth shall not be responsible for  
15 the cost of arbitration under this section.

16 Section 1111-C. Mandatory vote.

17 (a) Employer public meeting and vote.--The employer shall  
18 hold a public meeting and not later than June 15 following the  
19 public posting of the nonbinding recommendation made under  
20 section 1110-C(5), to solicit public input on the recommendation  
21 and to vote for the approval or disapproval of the  
22 recommendation of the panel.

23 (b) Employee vote.--The employee organization shall provide  
24 the employees with an opportunity to vote for approval or  
25 disapproval of the recommendation of the panel prior to June 15.

26 Section 1112-C. Public transparency meeting.

27 If no agreement has been reached by June 16, the following  
28 shall occur:

29 (1) The parties shall arrange a public transparency  
30 meeting to take place before June 30 at a time convenient to



1 the public if the meeting occurs on a business day.

2 (2) A suitably sized facility shall be chosen as the  
3 site of the public transparency meeting with accommodations  
4 made for media if necessary.

5 (3) Both parties shall be required to present their  
6 latest proposal and the reasons for the lack of an agreement,  
7 each being afforded equal time, and both parties shall be  
8 required to answer questions from the public.

9 Section 1113-C. Post school year negotiations.

10 If the parties have not reached a new agreement by June 30,  
11 the following shall apply:

12 (1) Until such time as a new agreement is reached, the  
13 parties shall conduct at least four separate negotiating  
14 sessions per month.

15 (2) Public transparency meetings shall be held every six  
16 weeks, whereby the employer shall provide a minimum of five  
17 days' notice to the public, and the stipulations of section  
18 1112-C shall apply.

19 (3) The parties shall conduct good faith negotiations at  
20 all times.

21 (4) If no agreement is reached by the expiration of the  
22 contract, it shall continue month-to-month under the same  
23 terms and conditions.

24 (5) Any new agreement may not contain any retroactivity  
25 provisions.

26 Section 1114-C. Strikes and lockouts prohibited.

27 (a) Prohibited conduct.--

28 (1) No public employee or employee organization may  
29 incite a strike or participate in a strike or similar  
30 interruption of government service.

1           (2) No employer may conduct a lockout or similar  
2 interruption of government service.

3           (3) Any strike, lockout or interruption of government  
4 service prohibited by this section shall constitute an  
5 actionable breach of duty to members of the public.

6           (b) Conduct during an unlawful work stoppage.--

7           (1) An employer may hire substitute teachers for the  
8 duration of an unlawful strike by its employees.

9           (2) The parties shall allow for safe and unhindered  
10 access to school facilities for all school employees not  
11 participating in an unlawful strike, including teachers and  
12 substitutes.

13           (3) The use of substitutes during an unlawful lockout is  
14 prohibited.

15 Section 1115-C. Determining violations and imposing penalties.

16           (a) Allegations by employer.--If an employer alleges, on the  
17 basis of any investigation and affidavits as he may deem  
18 appropriate, that there has been a strike by one or more  
19 employees in violation of section 1114-C(a)(1), the employer  
20 shall notify the board of the names of the employees allegedly  
21 engaged in a strike and the full or partial days of the alleged  
22 strike, within 60 days of the completion of the alleged strike.

23           (b) Allegations by employee or employee organization.--If an  
24 employee or employee organization alleges that there has been a  
25 lockout by an employer in violation of section 1114-C(a)(2), the  
26 employee or employee organization shall notify the board of the  
27 names of those individuals allegedly responsible for a lockout  
28 and the full or partial days of the alleged lockout within 60  
29 days of the completion of the alleged lockout.

30           (c) Hearing.--Within 60 days after receipt of a notice made

1 pursuant to subsection (a) or (b), the three board members shall  
2 conduct a hearing to determine if there has been a violation.  
3 Those individuals alleged to have committed a violation shall be  
4 required to attend the hearing and shall be permitted to testify  
5 and have legal representation. Members of the public shall be  
6 permitted to testify at this hearing or submit evidence, at the  
7 discretion of the board.

8 (d) Violation by employee inciting a strike.--If, after a  
9 hearing under subsection (c), a majority of the board finds that  
10 an employee incited an unlawful strike in violation of section  
11 1114-C(a)(1), that employee shall be subject to a \$5,000 fine  
12 per incident, payable to the employer. This finding shall  
13 constitute a mandate to the employer to withhold the fine from  
14 the paycheck of the employee in amounts of equal portion for the  
15 remainder of the school year.

16 (e) Violation by employee participating in a strike.--If,  
17 after a hearing under subsection (c), a majority of the board  
18 finds that an employee participated in an unlawful strike in  
19 violation of section 1114-C(a)(1), then each employee found to  
20 be in violation shall be fined a portion of the employee's  
21 salary equal to twice the employee's daily rate of pay for each  
22 day of strike, or part thereof. This finding shall constitute a  
23 mandate to the employer to withhold the fine from the paycheck  
24 of the employee in any such amount as to have collected the full  
25 amount of the fine by the end of the school year. This penalty  
26 may not be waived by the employer or otherwise recovered by the  
27 employee. In addition, the employee may be subject to removal or  
28 other disciplinary action provided by law for misconduct.

29 (f) Violation by employee organization.--If, after a hearing  
30 under subsection (c), a majority of the board finds that an

1 employee organization violated section 1114-C(a)(1), the  
2 employee organization shall be prohibited from using a union  
3 dues checkoff privilege for one year. This penalty may not be  
4 waived by the employer or otherwise recovered by the employee  
5 organization.

6 (g) Violations by employer.--If, after a hearing under  
7 subsection (c), a majority of the board finds that an employer  
8 instituted a lockout in violation of section 1114-C(a)(2), the  
9 employer shall pay a fine to the employee organization in an  
10 amount equal to the financial benefit derived from the lockout.

11 Section 1116-C. Time frame.

12 The time periods set forth in this article are mandatory and  
13 shall not be construed to be directory.

14 Section 1117-C. Existing agreements.

15 This article shall not apply to any existing contract  
16 negotiations that fall within the timelines established under  
17 this article.

18 Section 1118-C. Enforcement.

19 The board, magisterial district courts and courts of common  
20 pleas shall enforce the provisions of this article.

21 Section 3. This act shall take effect in 60 days.