

**PSBA Judicial Advocacy Report:**

**Status of court cases in which PSBA has brought suit on behalf of members or is participating as *Amicus Curiae***

Submitted by: Stuart L. Knade, Chief Counsel and Michael I. Levin, PSBA General Counsel

January 2008

*Note: Shaded text indicates changes from previous report*

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Case Name	Issues	Court SD Counsel (PSBA Counsel)	PSBA Position(s)	Case History/Status
<p>Home Education Statute Challenges (four consolidated cases): Combs v. Homer-Center SD; Previs v. Norwin SD; Hankin v. Bristol Twp SD; Newborn v. Franklin Regional SD</p>	<p>Whether PA's "Religious Freedom Protection Act" entitles certain homeschooling families to be exempted from compliance with various paperwork and progress review requirements under the School Code's home education statute?</p>	<p>U.S. Court of Appeals for the Third Circuit (on appeal from the U.S. District Court, Western District of PA)</p> <p>Paul Lalley Carl Beard Greg Melucci Christina Lane (Sean Fields)</p>	<p>The paperwork and student progress review requirements for home education programs do not constitute a substantial burden on religious freedoms so as to trigger any exemption under the RFPA. The state has a compelling interest in ensuring that all students are educated in some manner and to minimum standards, and to impose reasonable means of oversight.</p>	<p>Four home school families, represented and funded by the National Home School Legal Defense Association, each filed separate suits in courts of common pleas of different counties against 4 school districts. By agreement of the parties, the cases have been transferred and/or re-filed in federal court and consolidated before a single judge for disposition. Various motions to dismiss have been denied, answers are being filed, and discovery is in progress. On Dec. 8, 2005, in the first round of summary judgment motions, the court issued a ruling very favorable to the defense and consistent with the PSBA position, denying Plaintiffs' motion for summary judgment. The school districts' motion for summary judgment was filed March 1, 2006. On May 25, 2006, the court issued a similar ruling granting the defense motion. Plaintiffs have appealed to the Third Circuit Court of Appeals, and briefing is underway. Oral argument took place November 6, 2007. Awaiting decision.</p>

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<p>Vees v. Carbon County Board of Assessment Appeals and Palmerton Area S.D.</p>	<p>Whether school districts are prohibited from filing assessment appeals, otherwise permitted by statute, if criteria for filing are based on recent property sale information, i.e., is this “illegal” spot assessment or violation of uniformity clause?</p>	<p>Commonwealth Court  William G. Schwab (Sean Fields)</p>	<p>The Lower Court decision should be affirmed. The district’s approach is permissible.</p>	<p>Originally argued before a panel of the Commonwealth Court March 30, 2004. Before a decision was issued, the Court sua sponte listed the case for re-argument en banc, which took place December 8, 2004. On February 8, 2005, the Court rendered a decision consistent with the PSBA position, affirming that school districts have the same right to appeal tax assessments as individual taxpayers, and that because school districts have no assessment authority, reassessment limitations cannot be imputed to them. Petition for Allowance of Appeal filed March 10, 2005. By order issued September 2, 2005, the court placed disposition of the petition on hold pending issuance of the Supreme Court’s decision in Downingtown Area S.D. v. Chester Co. Board of Assessment Appeals. <b>On December 18, 2007, the Supreme Court issued an order denying the Petition for Allowance of Appeal. Case over.</b></p>

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<p>General Building Contractors Association, Inc. v. PDE</p>	<p>Whether the Separations Act applies to School Districts, preventing PDE from waiving, pursuant to the Education Empowerment Act, School Code multiple bidding requirements mandating that school construction projects be bid under separate prime contracts for plumbing, heating, ventilating and electrical work.. An unpublished Commonwealth Court ruling held that the Separations Act, a separate law requiring multiple prime bidding on “public buildings” applies to school districts, and could not be waived because it was not part of the School Code.</p>	<p>Pa. Supreme Court  Robert A. Prentice, Esq. (Emily Leader and Michael Levin)</p>	<p>The Separations Act does not apply to public schools.  NOTE: PSBA is a party in this case; thus it technically is not an amicus</p>	<p>Argument en banc before Commonwealth Court on September 8, 2004. Decision adverse to PSBA position issued October 20, 2004. Argued April 6, 2006 on appeal to the Supreme Court. The Pennsylvania Supreme Court issued a decision on November 21, 2007 ruling that, while the Separations Act does apply to Pennsylvania school construction, it is subject to the mandate waiver program provided for in the Education Empowerment Act. Waivers of the separations requirement under the Education Empowerment Act are authorized once again. Case over.</p>

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Westmoreland I.U. 7 Classroom Assistants Education support Personnel Assn v. Westmoreland I.U.7	Whether an arbitrator had authority under a collective bargaining agreement to reinstate a classroom aide who was terminated for illegally using a prescription morphine patch in school resulting in her passing out in a restroom.	Pa. Supreme Court  John M. Ranker, Esq.  (Emily Leader)	Government employers cannot negotiate away their power to terminate employees for misconduct that strikes at a core function of the agency, and therefore in such cases a collective bargaining agreement cannot be construed to empower an arbitrator to reinstate an employee found guilty of such misconduct. Accordingly, an arbitration award doing so cannot be drawn from the essence of the agreement.	In an unpublished opinion, the Commonwealth Court upheld the Common Pleas Court’s decision vacating the arbitrator’s award reinstating the employee without back pay, on grounds consistent with the PSBA position. Pa. Supreme Court granted the union’s petition for allowance of appeal. Briefs filed. Oral argument occurred Sept. 11, 2006. On December 27, 2007, the Supreme Court reversed the Commonwealth Court, ruling that the “core function” exception was too broad to be an appropriate check on arbitrators authority, and should be replaced by a public policy exception of unclear contours in Pa. The court ordered the case remanded to the trial court for further briefing on what the parameters of a public policy exception should be, and how it might apply to this case, after which further appeals are likely.

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Board of Control of the Harrisburg School District vs. Wilson, et al.	When a board of control has been installed pursuant to the financial distress or academic distress provisions of the School Code, does the elected board continue to exercise any discretion or independent judgment regarding tax levies or other financial transactions reserved to the elected board, and must the elected board authorize whatever tax or other financial transactions the board of control directs them to approve, without discretion to refuse or question the appropriateness of the proposed actions? Even where the requested action is taken by a majority of the elected board, are individual members who did not vote in favor of the	Lenora Smith  (Stuart Knade)	1. Though district takeover by an appointed board of control unfortunately may sometimes become necessary for financial or academic reasons, the legislature expressly required the elected board to continue in office, to exclusively wield the power to levy taxes, and to fulfill other roles to extent desired by the board of control. 2. The Pennsylvania Constitution prohibits the delegation of the power to levy taxes or perform other municipal functions to a non-elected body. The continued exercise of discretion and independent judgment by the elected board despite the imposition of a board of control is essential to the constitutionality of this statutory scheme. If the elected board is nothing more than a rubber stamp, the constitutionality of the takeover provisions are cast in doubt.	On petition of the board of control, the Dauphin County Court of Common Pleas removed four members of the elected board from office for neglect of duty under Section 318 of the School Code, for having failed to vote to approve various borrowing transactions after being directed to do so by the board of control. The court also ordered the ousted members to pay attorney fees to the board of control. The ousted members appealed to Commonwealth Court. Briefing on the merits was suspended pending disposition of a motion to quash the appeal because of failure to file post-trial motions in the trial court, and the case was remanded to the trial court to determine whether the ousted board members should be allowed to file post-trial motions <i>nunc pro tunc</i> . After hearings on remand, the trial court declined to allow filing <i>nunc pro tunc</i> . Argued September 5, 2007. <b>On November 9, 2007, the</b>

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	action subject to removal from office for disobeying the directive of the board of control?		3. A board of control cannot direct, as a ministerial function of the elected board, something it constitutionally cannot be given power to do.	Commonwealth Court issued a decision reversing the Court of Common Pleas in all respects, in strongly worded opinion adopting reasoning consistent with the PSBA position. The Board of Control's application for reargument en banc was denied on December 28, 2007. Appeal to the Pa. Supreme Court appears likely.
Busch v. Marple Newtown School District	Whether a school district violated either the parent's or student's First Amendment or Equal Protection rights under the U.S. Constitution or their Pennsylvania constitutional counterparts when it refused to permit the parent to read Bible verses to a kindergarten class during a classroom social studies presentation, in light of the restrictions of the Establishment Clause in elementary classroom settings.	U.S. Court of Appeals for the Third Circuit (on appeal from the U.S. District Court, Eastern District of PA)  Gregory Gerson (Emily Leader)	Because of the restrictions of the Establishment Clause in the elementary classroom setting, it was appropriate and necessary for school officials to refuse to allow the bible reading to a captive audience of kindergartners, and did not violate either the parent's or her child's First Amendment or Equal Protection rights under the U.S. Constitution.	The District Court entered summary judgment on behalf of the school district. The parents have appealed this to the Third Circuit Court of Appeals. Briefs have been filed.

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Layschock v. Hermitage School District	Whether the school district violated a student's First Amendment rights by suspending him for creating, outside school, a defamatory MySpace profile purporting to be that of his school principal, which led to in-school disruption when other students attempted to view the profile from school and circulated information about it.	U.S. Court of Appeals for the Third Circuit (on appeal from the U.S. District Court for the Western District of PA)  Tony Sanchez (Sean Fields)	The First Amendment does not prevent school discipline of a student for engaging in conduct intended to promote disrespect for school officials and thereby undermine those officials' ability to carry out their duties. The reaction of school officials to such conduct is a foreseeable aspect of resulting disruption of the learning environment, for which the student may be held responsible and which may be considered in the First Amendment analysis.	After initially denying a preliminary injunction sought by the student with the assistance of the ACLU, the District Court granted summary judgment in favor of the student and against the school district on the central issue. <b>After the parties agreed to a stipulation on damages, the District Court issued a final order clearing the way for immediate appeal to the Third Circuit. Awaiting briefing schedule on appeal.</b>