

PSBA Labor Relations Bill

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,” further providing for final best offer implementation, establishing public transparency of party offers, assessing financial penalties for strikes, and prohibiting of strikes in certain circumstances.

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

Section 1. Sections 1113-A, 1161-A, and 1172-A of the act of March 10, 1949 (P.L. 30, No. 1949 (P.L. 30, No. 14), known as the Public School Code of 1949 amended or added July 9, 1992 (P.L. 403, No.88), are amended and the sections are amended by adding subsections to read:

Section 1113-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 arbitrator’s determination becomes final and binding.
- (4) If not authorized by secret ballot vote cast by the majority of the members of the employee organization at a meeting held by the employee organization in which a majority of its membership is present. No proxies may be secured, solicited, obtained or voted to establish a majority of the members of the employee organization being present or a vote related to a strike by the employee organization. If less than a majority of the members of the employee organization is present at this meeting, no vote related to a strike shall be taken at such meeting. The meeting may not be conducted more than 72 hours prior to the effective date of the commencement of a strike set forth in the written notice of the intent to strike by the employee organization to the superintendent, executive director or the director.

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Section 1161-A. Injunctive Relief.—When an employee 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. The court of common pleas, or any other

court of record, may only act on the Secretary of Education's request for an injunction and shall have no authority to require an employer and employe organization to bargain or meet and discuss wages, hours and other terms and conditions of employment or policy matters affecting the same.

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[Section 11-1172-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 employees 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 employe 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 schedule school year.]

Section 11-1172-A. Conduct During a Strike.

An employer may hire employees for the duration of a strike by its employees.

Section 2. The act is amended by adding sections to read as follows:

Section 1128-A. Final Resolution.

If an agreement is not reached 365 days after impasse has occurred, the employer may unilaterally implement its most recent offer of settlement. A decision by the employer to implement its final offer shall not be considered an unfair labor practice or deemed a lockout.

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Section 1133. Modified compensation for strikes.

(a) Payroll Deduction.—Whenever an instructional or in-service day in accordance with the officially adopted original calendar approved by the board of directors is lost or rescheduled as the result of a strike, each employee who participates in the strike shall have his annual contracted pay reduced by a sum equal to twice his daily rate of pay for each day or part of a day the employee participated in a strike resulting in a lost or rescheduled instructional or in-service day. Such rate of pay shall be computed as of the time of such participation in a strike. The school business official of the school entity involved shall withhold or deduct from the compensation of such public employee the appropriate amount no earlier than fifteen nor later than sixty days following the date of such determination in paragraph (f) of this section. In computing the fifteen to sixty

day period of time following the determination of participation in a strike and where the employee's annual compensation is paid over a period of time which is less than fifty-two weeks, that period of time between the last day of the last payroll period of the employment term in which the strike participation occurred and the first day of the first payroll period of the next succeeding employment term shall be disregarded and not counted. Notwithstanding the failure to have received such notice in paragraph (f), no school administrator or school business official having knowledge that such employee has so engaged in such a strike shall deliver or cause to be delivered to such employee any cash, check or payment, which, in whole or in part, represents full compensation for the period of the strike.

(b) Nonwaiver.--Deductions required under this section shall not be waived, suspended, reduced, reimbursed or otherwise recovered by the employee in any manner after the signing of a collective bargaining agreement or as a condition for the agreement. The scheduling of days to make up instructional or in-service days lost because of a strike shall constitute a basis for the payment of compensation only for the make-up day to a striking employee under this section.

(c) Definition of strike.--As used in this section, the term "strike" shall mean a concerted action in failing to report for duty, the willful absence from one's position, the 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 term "strike" shall also mean a concerted action in failing to perform those duties customarily performed by employees in the district that are not specifically enumerated in either the collective bargaining agreement, district job description, or district policy, including but not limited to performing activities beyond the regular work day, attending field trips, engaging in supplemental activities and supplemental/extra duty contracts, or otherwise engaging in behaviors typically known as either working to the contract or working to rule.

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

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

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

(g) Objections and restoration. Any employee determined to have participated in a strike may object to the chief school administrator's determination by filing with him within five days of the date on which notice was given, a sworn affidavit and documentation containing a statement of the facts upon which he relies to show that such determination was incorrect. The affidavit shall be subject to the penalties of perjury. If the chief school administrator shall determine that the affidavit and supporting proof establishes that the employee did not participate in a strike, he shall sustain the objection. If the chief school administrator shall determine that the affidavit and supporting documents fail to establish that the employee did not participate in a strike, he shall dismiss the objection and so notify the employee. The chief school administrator must notify such employee within 10 days of receipt of the affidavit and proof of his decision. The chief school administrator shall forthwith notify the school business official of his determination of objections sustained or denied. If the objection is sustained, the chief school administrator shall immediately notify the school business official who shall cease all deductions and refund any deductions previously made pursuant to this section.

(h) Dues Check-off. An employee organization that strikes, incites a strike, participates in a strike or similar interruption of service to a school entity shall be prohibited from using a union dues check-off privilege for the remainder of that calendar year and the subsequent three calendar years. No school entity shall be permitted to collect, deduct or recover any union dues, including political action contributions, for an employee organization that strikes, participates in a strike, incites a strike or similar interruption of service during the aforesaid time period.

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Section 3. This act shall take effect immediately.