



House Labor Relations

HARRISBURG - (08/23/06, 1:00 p.m., Room 205, Ryan Office Building)

The **House Labor Relations Committee** conducted a public hearing on HB 2635.

N [HB 2635 Steil](#) - (PN 4234) Amends the Public School Code deleting provisions relating to collective bargaining and replacing it with new collective bargaining dispute resolution language.

Members in attendance included Chairman Bob Allen (R-Schuylkill), Minority Chairman Bob Belfanti (D-Northumberland) and Representatives Jacqueline Crahalla (R-Montgomery), Neal Goodman (D-Schuylkill), William Keller (D-Philadelphia), David Steil (R-Bucks), Michael McGeehan (D-Philadelphia), Daryl Metcalfe (R-Butler), Samuel Rohrer (R-Berks), Jim Wansacz (D-Lackawanna), Mario Scavello (R-Monroe), and Sean Ramaley (D-Allegheny).

Representative Steil, prime sponsor of the legislation, said he introduced the bill in response to a teacher strike last fall that angered a host of parents to the point that they decided to draft legislation to control the ability of teachers to strike. He added it is his understanding that the reason similar legislation has not moved in the past is because parents have not had a voice in Harrisburg until the recent formation of the Keep Parents First advocacy group, which helped to craft this legislation. He acknowledged that this legislation will meet with criticism and that he is willing to consider amendments.

[Charles Sweet, Esq.](#), Legal Counsel for the PA School Boards Association (PSBA) and [Tim Allwein](#), Executive Director of Government Relations for PSBA, testified first on the bill. Sweet began by immediately urging the committee not to pass the bill for two primary reasons: the bill is unconstitutional and it is inconsistent with Special Session Act 1 of 2006 which requires referendums for taxes raised above the prescribed annual index.

He added there are numerous other reasons why the Committee should not pass the bill including:

- after the passage of Act 1, good faith collective bargaining is no longer viable because multi-year agreements cannot be made
- the 15 month requirement for commencing negotiations for a new agreement under the bill conflicts with requirements under Act 1 because the district will not know until September 1 preceding the expiration of the agreement, what the index will be for the first year of the new agreement
- a 30 day limitation of fact finding is insufficient because proper fact finding takes 40 days or more
- an arbitration deadline of 30 days is not long enough
- every award issued under the bill would be vacated by the courts for being unconstitutional
- if a school's budget is insufficient to fund a binding award, the remedies for the various aggrieved parties would be in question
- enforcement would be by the Bureau of Mediation, which does not have any power to enforce such an act

Allwein commented that the PSBA sought to bring teacher strikes under control with the passage of Act 88 of 1992. He argued there is no reason to totally repeal Act 88 but merely to amend the Act. Allwein next speculated that because of Act 1 of this year's Special Session, House Bill 2635 could force Boards into backend referendums against their will. He further worried that if these referendums were voted down it could further force the Boards to impose budget cuts in order to have enough revenue to meet their mediation mandates.

Allwein did agree with provisions in the bill concerning keeping the public informed about the "last best offers" of both sides and agreed with the principle of imposing penalties for illegal strikes. Unlike other union members, Allwein

lamented, school employees are not subject to any economic loss during strikes.

Representative Metcalfe stated that the pay raise and unvouchered expenses previously enacted by the General Assembly were clearly unconstitutional and asked if the unconstitutionality of this bill's provisions are as clear. Sweet agreed this bill is clearly unconstitutional and would require a constitutional amendment to pass judicial muster. He added the case is the same with Senate Bill 910.

The Representative then countered that the Committee's Chief Counsel has argued that this bill is constitutional because arbitrators would not be strictly forcing a tax increase. Asked by the Representative to explain how this reconciles with his position, Sweet argued that if a school board is forced to set the salary amounts, this would constitute a delegation of legislative authority which is not allowed under the state constitution.

Representative Metcalfe next asked Allwein what percentage a district's budget goes towards salaries and benefits. Allwein replied that it averages 75%. He then agreed with the Representative that this amount would therefore not be subject to negotiation.

Asked what their position is on ending teacher strikes, Allwein offered the best way to curtail strikes is to offer disincentives to teachers who want to strike. He opined that any bill seeking to take away a teacher's ability to strike would never pass in the state. Allwein continued, stating that he fears even if such a bill could pass, teachers might resort to "work to the rule" meaning that they would only do what is required under their contract and wouldn't do things like meeting with parents or setting up bulletin boards. Representative Metcalfe interjected that in terms of Allwein's concerns about the bill passing, he believes the political climate in the state has changed and expressed his concern that PA leads the nation in the number of teacher strikes. He stressed his opinion that teachers should not be allowed to go on strike.

The Representative then asked if there is any way to draft the binding arbitration section of the bill to meet the requirements of the Constitution. Sweet argued that binding arbitration will not be ruled constitutional. Asked when the last time an amendment was offered to amend the Constitution to allow for such a change, Sweet replied House Bill 1127 was introduced in 1995, which could serve as a roadmap for today.

Representative Metcalfe then asked for clarification on comments Sweet had made that Act 1 has destroyed collective bargaining in PA. Sweet explained that since 1970, multi-year contracts have typically been negotiated. Now, a district cannot bargain in good faith because they do not know what their budget will be more than a year at a time because it is tied to a cost index, said Sweet.

Asked what the motive would be for a strike to occur under Act 1, Sweet said that a 6% increase in teacher salaries will never happen again because the index would never allow such an increase.

Representative Crahalla asked about statements in their testimony that teachers get paid while on strike. Allwein offered that teachers do not get paid while on strike but are required to make up the days they are on strike so in essence do not lose any money.

Representative Crahalla argued that if the rest of workers have to settle for no pay while they are on strike then it would make sense that teachers would be held to the same standard. She added that we are no longer in a situation where teacher pay is a concern.

Representative Steil commented that the Constitution prohibits the General Assembly from delegating their powers. Sweet agreed this is the case. The Representative then wondered if it would be unconstitutional to have arbitrators decide between two contract offers presented by both parties, if they did not require additional taxes. Sweet said it would be unconstitutional because even though it would not require the levying of taxes, it would still have the arbitrator performing a municipal function (the setting of teacher salaries).

Representative Steil said that this issue is where their legal opinions differ. Asked if there is anyway to have a third party settle a dispute, Sweet suggested that if the parties mutually agreed to binding arbitration then it would not be a case of the legislature mandating another body to solve the issue. Representative Steil stressed that this is the type of language that needs to be crafted into the bill because this addresses his intent. Sweet agreed to work with the Representative on adding this to the bill.

[Grace Bekaert](#), Treasurer for the PA State Education Association (PSEA), testified saying the number of strikes has steadily decreased over the last several decades due in large part to Act 88 of 1992. According to Bekaert, the proposed bill does not protect the rights of all parties involved but favors the school boards. She stressed her association's position on the issue by referencing portions of resolutions that they have adopted, which state:

- legislation is needed to provide for binding arbitration (Resolution B-14)
- a strike is a fundamental right of all education employees and an appropriate method to facilitate the resolution of an impasse (Resolution B -15)
- the Association believes that binding arbitration is the only acceptable alternative to the right to strike as a means of closure to the bargaining process (Resolution B-15).

She stressed PSEA believes that local associations and boards should be left to determine which type of arbitration is best suited to their situation and worried that this bill would establish an overly broad and vague scope of review. She closed by arguing that the implementation of binding arbitration would require an amendment to Article III Section 31 of the Constitution.

Representative Metcalfe asked if Bekaert believes the current bill is unconstitutional. Bekaert said this is her belief. He then asked if PSEA believes all education employees have the right to strike or just public education employees. Bekaert offered that while they do not represent nonpublic education employees, PSEA believes all education employees should have the right to strike.

The Representative then argued that most people in the state believe that public school teachers are public servants and that they should not be allowed to use children as pawns and to hold parents hostage by calling strikes. Bekaert stressed that calling a strike is the hardest decision for teachers to make and that they never want to use children as pawns.

Asked where PA ranks in the nation in terms of teacher compensation, Bekaert stated PA ranks ninth. Representative Metcalfe then wondered why PA has more teacher strikes than any other state in the nation if this is the case. Bekaert offered that after Act 88 of 1992, the number of strikes decreased but added that this same Act states that if the Board and union cannot agree to arbitration, unbinding arbitration cannot occur without a lockout or a strike. She stressed that any legislation attempting to address this issue must be fair to both sides.

Representative Metcalfe stressed that no one believes that teachers call a strike on a whim but argued that because they are public servants and should not be allowed to strike at all. He further stated that he would end all teacher unions and lamented that the real reason behind teacher strikes is for their own economic benefit at the expense of the welfare of their students.

Representative Rohrer asked Bekaert to reconcile PSEA statements of calling for binding arbitration with statements saying that binding arbitration is unconstitutional. Bekaert explained that binding arbitration is acceptable but would be unconstitutional as written in the current bill. Asked what variation of binding arbitration would pass constitutional muster, Bekaert stated it must protect the rights of all parties, allow for a reasonable period for negotiation, allow for parties to select a neutral arbitrator, allow for parties to select the method of arbitration, and include a constitutional amendment.

Asked to comment on prior statements by Sweet that binding arbitration would not be constitutional, Richard Burrige, an attorney for PSEA, replied that any binding arbitration that is mandated without the agreement of both sides would require a constitutional amendment.

Representative Rohrer next asked if Burrige believes that Act 1 does away with good faith collective bargaining. Burrige acknowledged that there is a good chance that Act 1 and binding arbitration are incompatible but stressed his belief that the district can still bargain in good faith.

In answer to Representative Rohrer's next question about why a public school teacher can strike but not a police officer or fire fighter, Burrige suggested it centers around the fact that police officers and fire fighters are involved in the immediate safety and protection of citizens while there is precedence for lapses in education such as summer vacation and winter break. Rohrer stated he tends to view these positions as similar because public education is just as important and educators are professional public servants just like police officers and firefighters.

He then asked if there is still a need for teachers to strike today given the fact that their salaries are so much higher than they use to be. Bekaert argued that the need for teachers to be able to strike still exists because in some areas, a starting teacher salary is only \$18,000 per year.

Representative Keller interjected that he believes in a teacher's right to strike but asked for clarification on the issue of teachers not losing any money while they are striking, which stands in contrast to other union workers. Bekaert explained that teachers still have to make up the days they are on strike in contrast to other union members who are not forced to make up their days. Burrige added that support staff generally lose their salaries for the days they are on strike and that during a teacher strike, teachers do not get paid for the days while on strike (only when they make up those days) and lose a portion of their benefits during the strike.

Representative Steil commented that during a strike everybody suffers some impact but he believes that children suffer the most during a teacher strike, which is why something needs to be done. Bekaert agreed.

[Kieran Halpin](#), a member of the Keep Students First advocacy group, lamented that PA allows more teacher strikes than all other state combined, which impacted 44,000 students last year alone. Halpin stressed the reason his group chose to write this bill is to keep the needs of children addressed first. He lamented that currently several things are occurring in the school system that hurt students, including:

- teachers only doing what is required under their contract and not offering any extra help; otherwise known as "work to rule"
- the state does not make exceptions for PSSA testing and No Child Left Behind testing during strikes which results in students being told to just "do their best"
- students being forced to learn a great deal of information when strikes break at the end of the marking period because teachers are trying to "catch" up on lost time.

He stressed that the bill was carefully researched and vetted through numerous individuals; binding arbitration would only be used as a last resort and would be constitutionally sound under Article III.

Halpin closed by warning members that there are a number of districts that are working without contracts and many more are negotiating for new contract to start the 2006-2007 school year.

Representative Scavello asked if there are any other states that have 501 school districts besides PA. Halpin expressed his belief that New York and New Jersey have more districts. This prompted an immediate reaction from Representative Scavello who stated that those two states are not even close to having the number of school districts that PA has and that people have to look at the number of contracts being negotiated to assess how bad the number of the number of impasses leading to strikes really are compared to the nation as a whole. Halpin argued that the number of teacher strikes in PA is still appalling. Representative Scavello suggested that from a district percentage standpoint, PA is probably very low.

Representative Wansacz thanked the Committee for allowing him to attend this meeting since he is not a member of the House Labor Relations Committee. He stated he continues to hear from constituents that legislators need to do something to address the issue of teacher strikes and that he agrees with Representative Metcalfe that teacher strikes should not be allowed. Representative Wansacz added that he believes a fair settlement for both sides in a contract dispute should be reached. Halpin stressed that binding arbitration is needed and wanted by both sides. He added that this bill also takes into account the budget schedule of districts and stays away from the old teacher union contract schedules.

Asked by the Representative about how he feels about the prospect of having to wait five years for a constitutional amendment to pass, Halpin stated that if that is what is necessary, his organization is prepared to work for an amendment.

Questioned by Representative Metcalfe if Keep Students First had sought legal counsel on this bill, Halpin replied that two members of their policy committee are attorneys and have reviewed the bill.

Referring back to the discussion Halpin had with Representative Steil about PA's national ranking in the number of teacher strikes, Representative Metcalfe stated that only nine states allow teacher strikes and therefore PA would

still be in the top ten states in the nation in the number of teacher strikes. Halpin agreed.

Asked about the number of teacher contracts now under negotiation, Halpin replied 20 to 25 contracts.

Representative Metcalfe then asked Halpin if his group had looked at the impact to taxpayers of binding arbitration on police departments and fire departments. Halpin said they have not. Representative Metcalfe then expressed his concern about the cost such arbitration could have on the public school system. Halpin stressed they don't have an issue with the salaries that teachers are making; they only have an issue when they go on strike.

The Representative then referenced a concern raised by the PSBA that a "work to rule" could happen if this bill passed. Halpin stressed this is already occurring and that all legislators would have to do to verify this is to ask parents and students in their districts about what goes on in their classrooms, especially after an impasse is broken between a teacher union and a school board.

Representative Steil thanked Halpin and his organization for being so involved on this issue.

[Simon Campbell](#), President of Stop Teacher Strikes, argued that while the PSEA testified that strikes are a measure of last resort, most of the teachers who recently went on strike in his area make \$90,000 a year. He questioned about how the rights of the children to receive a free education are being protected.

Campbell then questioned why the hearing was still going on after the first testifiers stated the bill under consideration is unconstitutional and how allowing a teacher union to go on strike could pass constitutional muster since the Constitution calls for a "thorough and efficient" education system.

Responding to Representative Scavello's prior comments about the number of strikes in PA compared to the number of districts in the state, Campbell stressed that one strike is too many and strikes should not be allowed.

Campbell stated his group is against this bill because it is unconstitutional and because it would violate the civil rights of non-union teachers who would be forced into arbitration against their will.

Seeing that there were no questions, Representative Steil thanked all members and testifiers for being present.

Please click below for links to written testimony handed out at the Committee meeting:

- [Comments of Senator Mellow](#)
- [American Federation of Teachers](#)

Eric A. Failing