

No. 195

AN ACT

SB 1333

Establishing rights in public employes to organize and bargain collectively through selected representatives; defining public employes to include employes of nonprofit organizations and institutions; providing compulsory mediation and fact-finding, for collective bargaining impasses; providing arbitration for certain public employes for collective bargaining impasses; defining the scope of collective bargaining; establishing unfair employe and employer practices; prohibiting strikes for certain public employes; permitting strikes under limited conditions; providing penalties for violations; and establishing procedures for implementation.

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

ARTICLE I
Public Policy

Section 101. The General Assembly of the Commonwealth of

Pennsylvania declares that it is the public policy of this Commonwealth and the purpose of this act to promote orderly and constructive relationships between all public employers and their employes subject, however, to the paramount right of the citizens of this Commonwealth to keep inviolate the guarantees for their health, safety and welfare. Unresolved disputes between the public employer and its employes are injurious to the public and the General Assembly is therefore aware that adequate means must be established for minimizing them and providing for their resolution. Within the limitations imposed upon the governmental processes by these rights of the public at large and recognizing that harmonious relationships are required between the public employer and its employes, the General Assembly has determined that the overall policy may best be accomplished by (1) granting to public employes the right to organize and choose freely their representatives; (2) requiring public employers to negotiate and bargain with employe organizations representing public employes and to enter into written agreements evidencing the result of such bargaining; and (3) establishing procedures to provide for the protection of the rights of the public employe, the public employer and the public at large.

ARTICLE II Short Title

Section 201. This act shall be known and may be cited as the "Public Employe Relations Act."

ARTICLE III Definitions

Section 301. As used in this act:

(1) "Public employer" means the Commonwealth of Pennsylvania, its political subdivisions including school districts and any officer, board, commission, agency, authority, or other instrumentality thereof and any nonprofit organization or institution and any charitable, religious, scientific, literary, recreational, health, educational or welfare institution receiving grants or appropriations from local, State or Federal governments but shall not include employers covered or presently subject to coverage under the act of June 1, 1937 (P.L.1168), as amended, known as the "Pennsylvania Labor Relations Act," the act of July 5, 1935, Public Law 198, 74th Congress, as amended, known as the "National Labor Relations Act."

(2) "Public employe" or "employe" means any individual employed by a public employer but shall not include elected officials, appointees of the Governor with the advice and consent of the Senate as required by law, management level employes, confidential employes, clergymen or other persons in a religious profession, employes or personnel at church

offices or facilities when utilized primarily for religious purposes and those employes covered under the act of June 24, 1968 (Act No. 111), entitled "An act specifically authorizing collective bargaining between policemen and firemen and their public employers; providing for arbitration in order to settle disputes, and requiring compliance with collective bargaining agreements and findings of arbitrators."

(3) "Employe organization" means an organization of any kind, or any agency or employe representation committee or plan in which membership includes public employes, and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, employe-employer disputes, wages, rates of pay, hours of employment, or conditions of work but shall not include any organization which practices discrimination in membership because of race, color, creed, national origin or political affiliation.

(4) "Representative" means any individuals acting for public employers or employes and shall include employe organizations.

(5) "Board" means the Pennsylvania Labor Relations Board.

(6) "Supervisor" means any individual having authority in the interests of the employer to hire, transfer, suspend, layoff, recall, promote, discharge, assign, reward or discipline other employes or responsibly to direct them or adjust their grievances; or to a substantial degree effectively recommend such action, if in connection with the foregoing, the exercise of such authority is not merely routine or clerical in nature but calls for the use of independent judgment.

(7) "Professional employe" means any employe whose work: (i) is predominantly intellectual and varied in character; (ii) requires consistent exercise of discretion and judgment; (iii) requires knowledge of an advanced nature in the field of science or learning customarily acquired by specialized study in an institution of higher learning or its equivalent; and (iv) is of such character that the output or result accomplished cannot be standardized in relation to a given period of time.

(8) "Unfair practice" means any practice prohibited by Article XII of this act.

(9) "Strike" means concerted action in failing to report for duty, the wilful 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.

(10) "Person" includes an individual, public employer, public employe, authority, commission, legal representative, labor organization, employe organization, profit or nonprofit corporation, trustee, board or association.

(11) "Membership dues deduction" means the practice of a public employer to deduct from the wages of a public employe, with his written

consent, an amount for the payment of his membership dues in an employe organization, which deduction is transmitted by the public employer to the employe organization.

(12) "Budget submission date" means the date by which under the law or practice a public employer's proposed budget, or budget containing proposed expenditures applicable to such public employer is submitted to the Legislature or other similar body for final action. For the purposes of this act, the budget submission date for the Commonwealth shall be February 1 of each year and for a nonprofit organization or institution, the last day of its fiscal year.

(13) "Confidential employe" shall mean any employe who works: (i) in the personnel offices of a public employer and has access to information subject to use by the public employer in collective bargaining; or (ii) in a close continuing relationship with public officers or representatives associated with collective bargaining on behalf of the employer.

(14) "Wages" means hourly rates of pay, salaries or other forms of compensation for services rendered.

(15) "Commonwealth employe" means a public employe employed by the Commonwealth or any board, commission, agency, authority, or any other instrumentality thereof.

(16) "Management level employe" means any individual who is involved directly in the determination of policy or who responsibly directs the implementation thereof and shall include all employes above the first level of supervision.

(17) "Meet and discuss" means the obligation of a public employer upon request to meet at reasonable times and discuss recommendations submitted by representatives of public employes: Provided, That any decisions or determinations on matters so discussed shall remain with the public employer and be deemed final on any issue or issues raised.

(18) "Maintenance of membership" means that all employes who have joined an employe organization or who join the employe organization in the future must remain members for the duration of a collective bargaining agreement so providing with the proviso that any such employe or employes may resign from such employe organization during a period of fifteen days prior to the expiration of any such agreement.

(19) "First level of supervision" and "first level supervisor" means the lowest level at which an employe functions as a supervisor.

ARTICLE IV Employe Rights

Section 401. It shall be lawful for public employes to organize, form, join or assist in employe organizations or to engage in lawful concerted activities for the purpose of collective bargaining or other mutual aid and protection or to bargain collectively through representatives of their own

free choice and such employes shall also have the right to refrain from any or all such activities, except as may be required pursuant to a maintenance of membership provision in a collective bargaining agreement.

ARTICLE V

Pennsylvania Labor Relations Board

Section 501. The board shall exercise those powers and perform those duties which are specifically provided for in this act. These powers and duties shall be in addition to and exercised completely independent of any powers and duties specifically granted to it by other statutory enactments.

Section 502. The board shall have authority from time to time to make, amend and rescind such rules and regulations as may be necessary to carry out the provisions of this act. Such rules and regulations shall be effective upon publication in the manner which the board shall prescribe.

Section 503. The board shall establish after consulting representatives of employe organizations and of public employers, panels of qualified persons broadly representative of the public to be available to serve as members of fact-finding boards.

ARTICLE VI

Representation

Section 601. Public employers may select representatives to act in their interest in any collective bargaining with representatives of public employes.

Section 602. (a) A public employer may recognize employe representatives for collective bargaining purposes, provided the parties jointly request certification by the board which shall issue such certification if it finds the unit appropriate.

(b) Any employe representatives in existence on January 1, 1970, shall so continue without the requirement of an election and certification until such time as a question concerning representation is appropriately raised under this act; or until the board would find the unit not to be appropriate after challenge by the public employer, a member of the unit or an employe organization. The appropriateness of the unit shall not be challenged until the expiration of any collective bargaining agreement in effect on the date of the passage of this act.

Section 603. (a) A public employe, a group of public employes or an employe organization may notify the public employer that thirty per cent or more of the public employes in an appropriate unit desire to be exclusively represented for collective bargaining purposes by a designated representative and request the public employer to consent to an election.

(b) If the public employer consents, the public employe, group of public employes or employe organization whichever applicable may

submit in a form and manner established by the board an election request. Such request shall include a description of the unit deemed to be appropriate, the basis upon which it was determined that thirty per cent or more of the employes desired to be represented and a joinder by the public employer. The board may on the basis of the submissions order an election to be held or it may at its discretion investigate or conduct hearings to determine the validity of the matters contained in such submissions before determining whether or not an order should issue.

(c) If a public employer refuses to consent to an election, the party making the request may file a petition with the board alleging that thirty per cent or more of the public employes in an appropriate unit wish to be exclusively represented for collective bargaining purposes by a designated representative. The board shall send a copy of the petition to the public employer and provide for an appropriate hearing upon due notice. If it deems the allegations in the petition to be valid and the unit to be appropriate it shall order an election. If it finds to the contrary it may dismiss the petition or permit its amendment in accordance with procedures established by the board.

(d) If a public employer receives notification that thirty per cent or more of the public employes desire to be exclusively represented for collective bargaining purposes by a designated representative and the party giving notice does not thereafter seek an election the public employer may file a petition for the same with the board. The board shall then follow the procedures as established for petitions filed under subsection (c) of this section.

Section 604. The board shall determine the appropriateness of a unit which shall be the public employer unit or a subdivision thereof. In determining the appropriateness of the unit, the board shall:

(1) Take into consideration but shall not be limited to the following:
(i) public employes must have an identifiable community of interest, and
(ii) the effects of over-fragmentization.

(2) Not decide that any unit is appropriate if such unit includes both professional and nonprofessional employes, unless a majority of such professional employes vote for inclusion in such unit.

(3) Not permit guards at prisons and mental hospitals, employes directly involved with and necessary to the functioning of the courts of this Commonwealth, or any individual employed as a guard to enforce against employes and other persons, rules to protect property of the employer or to protect the safety of persons on the employer's premises to be included in any unit with other public employes, each may form separate homogenous employe organizations with the proviso that organizations of the latter designated employe group may not be affiliated with any other organization representing or including as members, persons outside of the organization's classification.

(4) Take into consideration that when the Commonwealth is the

employer, it will be bargaining on a Statewide basis unless issues involve working conditions peculiar to a given governmental employment locale. This section, however, shall not be deemed to prohibit multi-unit bargaining.

(5) Not permit employes at the first level of supervision to be included with any other units of public employes but shall permit them to form their own separate homogenous units. In determining supervisory status the board may take into consideration the extent to which supervisory and nonsupervisory functions are performed.

Section 605. Representation elections shall be conducted by secret ballot at such times and places selected by the board subject to the following:

(1) The board shall give no less than ten days notice of the time and place of such election.

(2) The board shall establish rules and regulations concerning the conduct of any election including but not limited to regulations which would guarantee the secrecy of the ballot.

(3) A representative may not be certified unless it receives a majority of the valid ballots cast.

(4) The board shall include on the ballot a choice of "no representative."

(5) In an election where none of the choices on the ballot receives a majority, a run-off election shall be conducted, the ballot providing for a selection between the two choices or parties receiving the highest and the second highest number of ballots cast in the election.

(6) The board shall certify the results of said election within five working days after the final tally of votes if no charge is filed by any person alleging that an "unfair practice" existed in connection with said election. If the board has reason to believe that such allegations are valid, it shall set a time for hearing on the matter after due notice. Any such hearing shall be conducted within two weeks of the date of receipt of such charge. If the board determines that the outcome of the election was affected by the "unfair practice" charged or for any other "unfair practice" it may deem existed, it shall require corrective action and order a new election. If the board determines that no unfair practice existed or if it existed, did not affect the outcome of the election, it shall immediately certify the election results.

(7) (i) No election shall be conducted pursuant to this section in any appropriate bargaining unit within which in the preceding twelve-month period an election shall have been held nor during the term of any lawful collective bargaining agreement between a public employer and an employe representative. This restriction shall not apply to that period of time covered by any collective bargaining agreement which exceeds three years. For the purposes of this section, extensions of agreements shall not affect the expiration date of the original agreement.

(ii) Petitions for elections may be filed with the board not sooner than ninety days nor later than sixty days before the expiration date of any collective bargaining agreement or after the expiration date until such time as a new written agreement has been entered into. For the purposes of this section, extensions of agreements shall not affect the expiration date of the original agreement.

Section 606. Representatives selected by public employes in a unit appropriate for collective bargaining purposes shall be the exclusive representative of all the employes in such unit to bargain on wages, hours, terms and conditions of employment: Provided, That any individual employe or a group of employes shall have the right at any time to present grievances to their employer and to have them adjusted without the intervention of the bargaining representative as long as the adjustment is not inconsistent with the terms of a collective bargaining contract then in effect: And, provided further, That the bargaining representative has been given an opportunity to be present at such adjustment.

Section 607. If there is a duly certified representative: (i) a public employe or a group of public employes may file a petition for decertification provided it is supported by a thirty per cent showing of interest, or (ii) a public employer alleging a good faith doubt of the majority status of said representative may file a petition in accordance with the rules and regulations established by the board, subject to the provisions of clause (7) of section 605.

ARTICLE VII Scope of Bargaining

Section 701. Collective bargaining is the performance of the mutual obligation of the public employer and the representative of the public employes to meet at reasonable times and confer in good faith with respect to wages, hours and other terms and conditions of employment, or the negotiation of an agreement or any question arising thereunder and the execution of a written contract incorporating any agreement reached but such obligation does not compel either party to agree to a proposal or require the making of a concession.

Section 702. Public employers shall not be required to bargain over matters of inherent managerial policy, which shall include but shall not be limited to such areas of discretion or policy as the functions and programs of the public employer, standards of services, its overall budget, utilization of technology, the organizational structure and selection and direction of personnel. Public employers, however, shall be required to meet and discuss on policy matters affecting wages, hours and terms and conditions of employment as well as the impact thereon upon request by public employe representatives.

Section 703. The parties to the collective bargaining process shall not

effect or implement a provision in a collective bargaining agreement if the implementation of that provision would be in violation of, or inconsistent with, or in conflict with any statute or statutes enacted by the General Assembly of the Commonwealth of Pennsylvania or the provisions of municipal home rule charters.

Section 704. Public employers shall not be required to bargain with units of first level supervisors or their representatives but shall be required to meet and discuss with first level supervisors or their representatives, on matters deemed to be bargainable for other public employes covered by this act.

Section 705. Membership dues deductions and maintenance of membership are proper subjects of bargaining with the proviso that as to the latter, the payment of dues and assessments while members, may be the only requisite employment condition.

Section 706. Nothing contained in this act shall impair the employer's right to hire employes or to discharge employes for just cause consistent with existing legislation.

ARTICLE VIII Collective Bargaining Impasse

Section 801. If after a reasonable period of negotiation, a dispute or impasse exists between the representatives of the public employer and the public employes, the parties may voluntarily submit to mediation but if no agreement is reached between the parties within twenty-one days after negotiations have commenced, but in no event later than one hundred fifty days prior to the "budget submission date," and mediation has not been utilized by the parties, both parties shall immediately, in writing, call in the service of the Pennsylvania Bureau of Mediation.

Section 802. Once mediation has commenced, it shall continue for so long as the parties have not reached an agreement. If, however, an agreement has not been reached within twenty days after mediation has commenced or in no event later than one hundred thirty days prior to the "budget submission date," the Bureau of Mediation shall notify the board of this fact. Upon receiving such notice the board may in its discretion appoint a fact-finding panel which panel may consist of either one or three members. If a panel is so designated or selected it shall hold hearings and take oral or written testimony and shall have subpoena power. If during this time the parties have not reached an agreement, the panel shall make findings of fact and recommendations:

(1) The findings of fact and recommendations shall be sent by registered mail to the board and to both parties not more than forty days after the Bureau of Mediation has notified the board as provided in the preceding paragraph.

(2) Not more than ten days after the findings and recommendations

shall have been sent, the parties shall notify the board and each other whether or not they accept the recommendations of the fact-finding panel and if they do not, the panel shall publicize its findings of fact and recommendations.

(3) Not less than five days nor more than ten days after the publication of the findings of fact and recommendations, the parties shall again inform the board and each other whether or not they will accept the recommendations of the fact-finding panel.

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

Section 803. If the representatives of either or both the public employes and the public employer refuse to submit to the procedures set forth in sections 801 and 802 of this article, such refusal shall be deemed a refusal to bargain in good faith and unfair practice charges may be filed by the submitting party or the board may on its own, issue an unfair practice complaint and conduct such hearings and issue such orders as provided for in Article XIII.

Section 804. Nothing in this article shall prevent the parties from submitting impasses to voluntary binding arbitration with the proviso the decisions of the arbitrator which would require legislative enactment to be effective shall be considered advisory only.

Section 805. Notwithstanding any other provisions of this act where representatives of units of guards at prisons or mental hospitals or units of employes directly involved with and necessary to the functioning of the courts of this Commonwealth have reached an impasse in collective bargaining and mediation as required in section 801 of this article has not resolved the dispute, the impasse shall be submitted to a panel of arbitrators whose decision shall be final and binding upon both parties with the proviso that the decisions of the arbitrators which would require legislative enactment to be effective shall be considered advisory only.

Section 806. Panels of arbitrators for bargaining units referred to in section 805 of this article shall be selected in the following manner:

(1) Each party shall select one member of the panel, the two so selected shall choose the third member.

(2) If the members so selected are unable to agree upon the third member within ten days from the date of their selection, the board shall submit the names of seven persons, each party shall alternately strike one name until one shall remain. The public employer shall strike the first name. The person so remaining shall be the third member and chairman.

Section 807. The costs of the arbitrators selected under the provisions of section 806 shall be paid by the Commonwealth under rules and regulations established by the board.

ARTICLE IX
Collective Bargaining Agreement

Section 901. Once an agreement is reached between the representatives of the public employes and the public employer, the agreement shall be reduced to writing and signed by the parties. Any provisions of the contract requiring legislative action will only be effective if such legislation is enacted.

Section 902. If the provisions of the constitution or bylaws of an employe organization requires ratification of a collective bargaining agreement by its membership, only those members who belong to the bargaining unit involved shall be entitled to vote on such ratification notwithstanding such provisions.

Section 903. Arbitration of disputes or grievances arising out of the interpretation of the provisions of a collective bargaining agreement is mandatory. The procedure to be adopted is a proper subject of bargaining with the proviso that the final step shall provide for a binding decision by an arbitrator or a tri-partite board of arbitrators as the parties may agree. Any decisions of the arbitrator or arbitrators requiring legislation will only be effective if such legislation is enacted:

(1) If the parties cannot voluntarily agree upon the selection of an arbitrator, the parties shall notify the Bureau of Mediation of their inability to do so. The Bureau of Mediation shall then submit to the parties the names of seven arbitrators. Each party shall alternately strike a name until one name remains. The public employer shall strike the first name. The person remaining shall be the arbitrator.

(2) The costs of arbitration shall be shared equally by the parties. Fees paid to arbitrators shall be based on a schedule established by the Bureau of Mediation.

Section 904. Any provision of any collective bargaining agreement in existence on January 1, 1970 which is inconsistent with any provision of this act but not otherwise illegal shall continue valid until the expiration of such contract. The parties to such agreements may continue voluntarily to bargain on any such items after the expiration date of any such agreement and for so long as these items remain in any future agreement.

ARTICLE X
Strikes

Section 1001. Strikes by guards at prisons or mental hospitals, or employes directly involved with and necessary to the functioning of the courts of this Commonwealth are prohibited at any time. If a strike occurs the public employer shall forthwith initiate in the court of common pleas of the jurisdiction where the strike occurs, an action for appropriate equitable relief including but not limited to injunctions. If the strike

involves Commonwealth employes, the chief legal officer of the public employer or the Attorney General where required by law shall institute an action for equitable relief, either in the court of common pleas of the jurisdiction where the strike has occurred or the Commonwealth Court.

Section 1002. Strikes by public employes during the pendency of collective bargaining procedures set forth in sections 801 and 802 of Article VIII are prohibited. In the event of a strike during this period the public employer shall forthwith initiate an action for the same relief and utilizing the same procedures required for prohibited strikes under section 1001.

Section 1003. If a strike by public employes occurs after the collective bargaining processes set forth in sections 801 and 802 of Article VIII of this act have been completely utilized and exhausted, it shall not be prohibited unless or until such a strike creates a clear and present danger or threat to the health, safety or welfare of the public. In such cases the public employer shall initiate, in the court of common pleas of the jurisdiction where such strike occurs, an action for equitable relief including but not limited to appropriate injunctions and shall be entitled to such relief if the court finds that the strike creates a clear and present danger or threat to the health, safety or welfare of the public. If the strike involves Commonwealth employes, the chief legal officer of the public employer or the Attorney General where required by law shall institute an action for equitable relief in the court of common pleas of the jurisdiction where the strike has occurred or the Commonwealth Court. Prior to the filing of any complaint in equity under the provisions of this section the moving party shall serve upon the defendant a copy of said complaint as provided for in the Pennsylvania Rules of Civil Procedure applicable to such actions. Hearings shall be required before relief is granted under this section and notices of the same shall be served in the manner required for the original process with a duty imposed upon the court to hold such hearings forthwith.

Section 1004. An unfair practice by a public employer shall not be a defense to a prohibited strike. Unfair practices by the employer during the collective bargaining processes shall receive priority by the board as set forth in Article XIV.

Section 1005. If a public employe refuses to comply with a lawful order of a court of competent jurisdiction issued for a violation of any of the provisions of this article the public employer shall initiate an action for contempt and if the public employe is adjudged guilty of such contempt, he shall be subject to suspension, demotion or discharge at the discretion of the public employer, provided the public employer has not exercised that discretion in violation of clauses (1), (2), (3) and (4) of subsection (a) of section 1201, Article XII.

Section 1006. No public employe shall be entitled to pay or compensation from the public employer for the period engaged in any strike.

Section 1007. In the event any public employe refuses to obey an order issued by a court of competent jurisdiction for a violation of the provisions of this article, the punishment for such contempt may be by fine or by imprisonment in the prison of the county where the court is sitting or both in the discretion of the court.

Section 1008. Where an employe organization wilfully disobeys a lawful order of a court of competent jurisdiction issued for a violation of the provisions of this article, the punishment for each day that such contempt persists may be by a fine fixed in the discretion of the court.

Section 1009. In fixing the amount of the fine or imprisonment for contempt, the court shall consider all the facts and circumstances directly related to the contempt including but not limited to: (i) any unfair practices committed by the public employer during the collective bargaining processes; (ii) the extent of the wilful defiance or resistance to the court's order; (iii) the impact of the strike on the health, safety or welfare of the public, and (iv) the ability of the employe organization or the employe to pay the fine imposed.

Section 1010. Nothing in this article shall prevent the parties from voluntarily requesting the court for a diminution or suspension of any fines or penalties imposed. Any requests by employe representatives for such participation by the public employer shall be subject to the requirements of "meet and discuss."

ARTICLE XI

Picketing

Section 1101. Public employes, other than those engaged in a nonprohibited strike, who refuse to cross a picket line shall be deemed to be engaged in a prohibited strike and shall be subject to the terms and conditions of Article X pertaining to prohibited strikes.

ARTICLE XII

Unfair Practices

Section 1201. (a) Public employers, their agents or representatives are prohibited from:

(1) Interfering, restraining or coercing employes in the exercise of the rights guaranteed in Article IV of this act.

(2) Dominating or interfering with the formation, existence or administration of any employe organization.

(3) Discriminating in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any employe organization.

(4) Discharging or otherwise discriminating against an employe because he has signed or filed an affidavit, petition or complaint or given any information or testimony under this act.

(5) Refusing to bargain collectively in good faith with an employe representative which is the exclusive representative of employes in an appropriate unit, including but not limited to the discussing of grievances with the exclusive representative.

(6) Refusing to reduce a collective bargaining agreement to writing and sign such agreement.

(7) Violating any of the rules and regulations established by the board regulating the conduct of representation elections.

(8) Refusing to comply with the provisions of an arbitration award deemed binding under section 903 of Article IX.

(9) Refusing to comply with the requirements of "meet and discuss."

(b) Employe organizations, their agents, or representatives, or public employes are prohibited from:

(1) Restraining or coercing employes in the exercise of the rights guaranteed in Article IV of this act.

(2) Restraining or coercing a public employer in the selection of his representative for the purposes of collective bargaining or the adjustment of grievances.

(3) Refusing to bargain collectively in good faith with a public employer, if they have been designated in accordance with the provisions of this act as the exclusive representative of employes in an appropriate unit.

(4) Violating any of the rules and regulations established by the board regulating the conduct of representation elections.

(5) Refusing to reduce a collective bargaining agreement to writing and sign such agreement.

(6) Calling, instituting, maintaining or conducting a strike or boycott against any public employer or picketing any place of business of a public employer on account of any jurisdictional controversy.

(7) Engaging in, or inducing or encouraging any individual employed by any person to engage in a strike or refusal to handle goods or perform services; or threatening, coercing or restraining any person where an object thereof is to (i) force or require any public employer to cease dealing or doing business with any other person or (ii) force or require a public employer to recognize for representation purposes an employe organization not certified by the board.

(8) Refusing to comply with the provisions of an arbitration award deemed binding under section 903 of Article IX.

(9) Refusing to comply with the requirements of "meet and discuss."

ARTICLE XIII

Prevention of Unfair Practices

Section 1301. The board is empowered, as hereinafter provided, to

prevent any person from engaging in any unfair practice listed in Article XII of this act. This power shall be exclusive and shall not be affected by any other means of adjustment or prevention that have been or may be established by agreement, law, or otherwise.

Section 1302. Whenever it is charged by any interested party that any person has engaged in or is engaging in any such unfair practice, the board, or any member or designated agent thereof, shall have authority to issue and cause to be served upon such person a complaint, stating the charges in that respect, and containing a notice of hearing before the board, or any member or designated agent thereof, at a place therein fixed, not less than five days after the serving of said complaint. Any such complaint may be amended by the board, member or agent conducting the hearing at any time prior to the issuance of an order based thereon. The person so complained of shall have the right to file an answer to the original or amended complaint and to appear in person, or otherwise, to give testimony at the place and time set in the complaint. In the discretion of a member or agent conducting the hearing or of the board, any other person may be allowed to intervene in the said proceeding and to present testimony. In any such proceeding, the rules of evidence prevailing in courts of law or equity shall be followed but shall not be controlling.

Section 1303. Testimony shall be taken at the hearing and filed with the board. The board upon notice may take further testimony or hear argument. If, upon all the testimony taken, the board shall determine that any person named in the complaint has engaged in or is engaging in any such unfair practice, the board shall state its findings of fact, and issue and cause to be served on such person an order requiring such person to cease and desist from such unfair practice, and to take such reasonable affirmative action, including reinstatement of employes, discharged in violation of Article XII of this act, with or without back pay, as will effectuate the policies of this act. Such order may further require such person to make reasonable reports, from time to time, showing the extent to which the order has been complied with. If, upon all the testimony, the board shall be of the opinion that the person or persons named in the complaint has not engaged in or is not engaging in any such unfair practice, then the board shall make its findings of fact and shall issue an order dismissing the complaint. A copy of such findings of fact, conclusions of law, and order shall be mailed to all parties to the proceedings.

Section 1304. Until a transcript of the record in a case shall have been filed in a court as hereinafter provided, the board may at any time, upon reasonable notice, and in such manner as it shall deem proper, modify or set aside, in whole or in part, any finding or order made or issued by it: Provided, That any agreement made between an employer and a bona fide employe organization, and all the provisions thereof, shall be entitled to full force and effect unless the board specifically finds that these

provisions involve the commission of an unfair practice within the meaning of Article XII of this act.

Section 1305. The proceedings before the board or before any of its examiners shall be conducted with speed and dispatch. No findings shall be made on the basis of evidence relating to acts which occurred prior to the original passage of this act.

Section 1306. All cases in which complaints are actually issued by the board, shall be prosecuted before the board or its examiner, or both, by the representatives of the employe organization or party filing the charge, and, in addition thereto or in lieu thereof if the Department of Justice sees fit, by a deputy attorney general especially assigned to this type of case. No examiner shall have any other position with the government of this State or of the United States or with the Pennsylvania Labor Relations Board while in the employ of the board.

ARTICLE XIV

Unfair Practices During Article VIII Procedures

Section 1401. Notwithstanding any of the provisions of Article XIII, the board upon the filing of a charge alleging the commission of an unfair labor practice committed during, or arising out of the collective bargaining procedures set forth in sections 801 and 802 of Article VIII of this act, shall be empowered to petition the court of competent jurisdiction for appropriate relief or restraining order.

Upon the filing of any such petition the board shall cause notice thereof to be served upon such person and thereupon the court shall have jurisdiction to grant to the board such temporary relief or restraining order as it deems just and proper.

ARTICLE XV

Judicial Review

Section 1501. The board shall except where an employe of the Commonwealth is involved have power to petition the court of common pleas of any county wherein the unfair practice in question occurred, or wherein any person charged with the commission of any unfair practice resides or transacts business, for the enforcement of such order and for appropriate temporary relief or restraining order, and shall certify and file in the court a transcript of the entire record in the proceeding, including the pleadings and testimony upon which such order was entered and the findings and order of the board. In the instance of the exception involving the said Commonwealth employes, the board shall file its petition in the Commonwealth Court. Upon such filing, the court shall cause notice thereof to be served upon such person, and thereupon shall have jurisdiction of the proceeding and of the question determined therein, and shall have power to grant such temporary relief, restraining or mandamus order as it deems just and proper or requisite to effectuate the policies of

this act and to make and enter upon the pleadings, testimony, and proceedings set forth in such transcript a decree enforcing, modifying and enforcing as so modified, or setting aside, in whole or in part, the order of the board. The parties before the court shall be the board, the person charged with the commission of any unfair labor practice, and may include the charging party. No objection that has not been urged before the board, its members or agents shall be considered by the court unless the failure or neglect to urge such objection shall be excused because of extraordinary circumstances. The findings of the board as to the facts, if supported by substantial and legally credible evidence, shall be conclusive. If either party shall apply to the court for leave to adduce additional evidence, and shall show to the satisfaction of the court, that such additional evidence is material, and that there were reasonable grounds for the failure to adduce such evidence at the hearing before the board, its members or agent, the court may order such additional evidence to be taken before the board, its members or agent, and to be made a part of the transcript. The board may modify its findings as to the facts or make new findings by reason of additional evidence so taken and filed, and it shall file such modified or new findings which, if supported by substantial and legally credible evidence, shall be conclusive, and shall file its recommendations, if any, for the modification or setting aside of its original order. The jurisdiction of the court of common pleas, or the Commonwealth Court, as the case may be, shall be exclusive within the limits of its jurisdiction, and its judgment and decree shall be final, except that the same shall be subject to review by the Supreme Court on appeal by the board or any party in interest, irrespective of the nature of the decree or judgment or the amount involved. Such appeal shall be taken within a period of thirty days from the date of court's order and otherwise prosecuted in the same manner and form and with the same effect as is provided in other cases of appeal to the Supreme Court, and the record so certified shall contain all that was before the court of common pleas or the Commonwealth Court, as the case may be.

Section 1502. Any person aggrieved by a final order of the board granting or denying, in whole or in part, the relief sought in any unfair practice case, or by an order certifying or refusing to certify a collective bargaining agent of employes in any representation case, may obtain a review of such order in the court of common pleas of any county where the unfair practice in question was alleged to have been engaged in, or wherein such person or employer in a representation case resides or transacts business, or in the instance of Commonwealth employes in the Commonwealth Court, as the case may be, by filing in such court, within thirty days after the final order has been issued by the board, a written petition praying that the order of the board be modified or set aside. A copy of such petition shall be forthwith served upon the board, and the board shall file in the court a transcript of the entire record in the

proceeding certified by the board, including the pleadings and testimony and order of the board. Upon such filing, the court shall proceed in the same manner as in the case of an application by the board under section 1501, and shall have the same exclusive jurisdiction to grant to the board such temporary relief, restraining or mandamus order as it deems just and proper or requisite to effectuate the policies of this act, and in like manner to make and enter a decree enforcing, modifying, and enforcing as so modified, or setting aside, in whole or in part, the order of the board, and findings of the board as to the facts, if supported by substantial and legally credible evidence, shall in like manner be conclusive. The parties before the court shall be any person aggrieved by an order of the board, as aforesaid, and the board and any other party to the board proceeding. The jurisdiction of the court of common pleas, or the Commonwealth Court, as the case may be, shall be exclusive within the limits of its jurisdiction, and its judgment and decree shall be final, except that the same shall be subject to review of the Supreme Court on appeal by the person aggrieved, or the board, irrespective of the nature of the decree or judgment or the amount involved. Such appeal shall be taken within thirty days of the date of the court's order and otherwise prosecuted in the same manner and form, and with same effect, as is provided in other cases of appeal to the Supreme Court, and the record so certified shall contain all that was before the court of common pleas or the Commonwealth Court, as the case may be.

Section 1503. The commencement of proceedings under sections 1501 or 1502 of this article shall not, unless specifically ordered by the court, operate as a stay of the board's order.

Section 1504. When granting appropriate temporary relief, a restraining or mandamus order or making and entering a decree enforcing, modifying, or enforcing as so modified, or setting aside, in whole or in part, an order of the board, as provided in this section, the jurisdiction of courts sitting in equity shall not be limited by acts pertaining to equity jurisdiction of courts. The act of June 2, 1937 (P.L.1198), known as the "Labor Anti-Injunction Act," shall not be applicable to orders of the board, or to court orders enforcing orders of the board, or any provision of this act, or to violations of any order of the board, or of court orders enforcing orders of the board, or any provisions of this act.

Section 1505. Petitions filed under this act shall be heard expeditiously and, if possible, within ten days after they have been docketed. No petitions or charges involving questions arising under clause (2) of subsection (a) of section 1201 of Article XII shall relieve the board of determining any questions arising under sections 603, 604 and 605 of Article VI immediately, and in their regular and normal order, and the making of a certification thereon if such is warranted. No petition or charge shall be entertained which relates to acts which occurred or statements which were made more than four months prior to the filing of the petition or charge.

ARTICLE XVI
Investigatory Powers

Section 1601. For the purpose of all hearings and investigations which, in the opinion of the board, are necessary and proper for the exercise of the powers vested in it by Article VI and Article XIII, and for the purpose of investigating and considering disputes, other than a question concerning the representation of employes, which it shall be the duty of the board to undertake whenever petitioned so to do by either an employe organization, an employer, or the representative of any unit of employes, the board shall have the investigatory powers granted in this article.

Section 1602. The board or its duly authorized agents shall at all reasonable times have access to, for the purpose of examination and the right to copy, any evidence of any person being investigated or proceeded against that relates to any matter under investigation or in question. Any member of the board shall have the power to issue subpoenas requiring the attendance and testimony of witnesses and the production of any evidence that relates to any matter under investigation or in question before the board, its members or agent conducting the hearing or investigation. Such subpoenas shall be issued as a matter of right upon the request of either party at any time during the pendency of a proceeding. Any member of the board, or any agent designated by the board for such purposes, may administer oaths and affirmations, examine witnesses, and receive evidence.

Section 1603. If any witness resides outside of the Commonwealth or through illness or other cause is unable to testify before the board or its members or agent conducting the hearing or investigation, his or her testimony or deposition may be taken within or without this Commonwealth, in such manner and in such forms as the board or its members or agent conducting the hearing, may by special or general rule prescribe.

Section 1604. In case of contumacy or refusal to obey a subpoena issued to any person except to any person representing the Commonwealth as an employer, when jurisdiction will be in the Commonwealth Court, the court of common pleas of any county within the jurisdiction of which the inquiry is carried on or within the jurisdiction of which said person guilty of contumacy or refusal to obey is found or resides or transacts business, upon application by the board, shall have jurisdiction to issue to such person an order requiring such person to appear before the board, its members or agent, there to produce evidence if so ordered, or there to give testimony touching the matter under investigation or in question, and any failure to obey such order of the courts may be punished by said court as a contempt thereof.

Section 1605. No person shall be excused from attending and testifying or from producing books, records, correspondence, documents or other evidence in obedience to the subpoena of the board on the ground that the testimony or evidence required of him may tend to incriminate him or subject him to a penalty or forfeiture, but no individual shall be prosecuted or subjected to any penalty or forfeiture for, or on account of, any transaction, matter or thing concerning which he is compelled, after having claimed his privilege against self-incrimination, to testify or produce evidence, except that such individual so testifying shall not be exempt from prosecution and punishment for perjury committed in so testifying.

Section 1606. Complaints, orders and other process and papers of the board, its members or agent may be served, either personally or by registered mail or by telegraph or by leaving a copy thereof at the principal office or place of business of the person required to be served. The verified return by the individual so serving the same, setting forth the manner of such service, shall be proof of the same and the return post office receipt or telegraph receipt therefor when registered and mailed or telegraphed as aforesaid, shall be proof of service of the same. Witnesses summoned before the board, its members or agent shall be paid the same fees and mileage that are paid witnesses in the courts of this Commonwealth, and witnesses whose depositions are taken and the person taking the same shall severally be entitled to the same fees as are paid for like services in the courts of this Commonwealth.

Section 1607. All process of any court to which application may be made under this act may be served in the county wherein the defendant or other person required to be served resides or may be found.

ARTICLE XVII

Employe Organizations

Section 1701. No employe organization shall make any contribution out of the funds of the employe organization either directly or indirectly to any political party or organization or in support of any political candidate for public office.

The board shall establish such rules and regulations as it may find necessary to prevent the circumvention or evasion of the provisions of this section.

If an employe organization has made contributions in violation of this section it shall file with the board a report or affidavit evidencing such contributions within ninety days of the end of its fiscal year. Such report or affidavit shall be signed by its president and treasurer or corresponding principals.

Any employe organization which violates the provisions of this section or fails to file any required report or affidavit or files a false report or

affidavit shall be subject to a fine of not more than two thousand dollars (\$2,000).

Any person who wilfully violates this section, or who makes a false statement knowing it to be false, or who knowingly fails to disclose a material fact shall be fined not more than one thousand dollars (\$1,000) or imprisoned for not more than thirty days or both. Each individual required to sign affidavits or reports under this section shall be personally responsible for filing such report or affidavit and for any statement contained therein he knows to be false.

Nothing herein shall be deemed to prohibit voluntary contributions by individuals to political parties or candidates.

ARTICLE XVIII Conflict of Interest

Section 1801. (a) No person who is a member of the same local, State, national or international organization as the employe organization with which the public employer is bargaining or who has an interest in the outcome of such bargaining which interest is in conflict with the interest of the public employer, shall participate on behalf of the public employer in the collective bargaining processes with the proviso that such person may, where entitled, vote on the ratification of an agreement.

(b) Any person who violates subsection (a) of this section shall be immediately removed by the public employer from his role, if any, in the collective bargaining negotiations or in any matter in connection with such negotiations.

ARTICLE XIX Penalties

Section 1901. Any person who shall wilfully resist, prevent, impede or interfere with any member of the board, or any of its agents, in the performance of duties pursuant to this act, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be sentenced to pay a fine of not more than five thousand dollars (\$5,000), or by imprisonment for not more than one year, or both.

ARTICLE XX Savings Provisions

Section 2001. The rights granted to certain public employes by the following acts or parts thereof shall not be repealed or diminished by this act:

(1) Section 24 of the act of August 14, 1963 (P.L.984), known as the "Metropolitan Transportation Authorities Act of 1963."

(2) The act of November 27, 1967 (P.L.628), entitled "An act

protecting the rights of employes of existing transportation systems which are acquired by cities of the third class or any authority thereof or certain joint authorities; requiring cities of the third class or any authority thereof or any such joint authority to enter into contracts with labor organizations acting for such employes, and providing for arbitration in case of disputes.”

(3) Section 13.2 of the act of April 6, 1956 (P.L.1414), known as the “Second Class County Port Authority Act.”

Section 2002. This act shall not be construed to repeal the act of June 24, 1968 (Act No. 111), entitled “An act specifically authorizing collective bargaining between policemen and firemen and their public employers; providing for arbitration in order to settle disputes, and requiring compliance with collective bargaining agreements and findings of arbitrators.”

Section 2003. Present provisions of an ordinance of the City of Philadelphia approved April 4, 1961, entitled “An Ordinance to authorize the Mayor to enter into an agreement with District Council 33, American Federation of State, County and Municipal Employes, A.F.L.-C.I.O., Philadelphia and vicinity regarding its representation of certain City Employes,” which are inconsistent with the provisions of this act shall remain in full force and effect so long as the present provisions of that ordinance are valid and operative.

ARTICLE XXI

Separability

Section 2101. If any clause, sentence, paragraph or part of this act, or the application thereof to any person or circumstances, shall, for any reason, be adjudged by a court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder of this act and the application of such provision to other persons or circumstances, but shall be confined in its operation to the clause, sentence, paragraph, or part thereof, directly involved in the controversy in which such judgment shall have been rendered and to the person or circumstances involved. It is hereby declared to be the legislative intent that this act would have been adopted had such invalid provisions not been included.

ARTICLE XXII

Repeals

Section 2201. The act of June 30, 1947 (P.L.1183), entitled “An act relating to strikes by public employes; prohibiting such strikes; providing that such employes by striking terminate their employment; providing for reinstatement under certain conditions; providing for a grievance procedure; and providing for hearings before civil service and tenure

authorities, and in certain cases before the Pennsylvania Labor Relations Board," is hereby repealed as to those public employes covered by the provisions of this act, and any penalties or other limitations currently in force or presently pending against any public employes, shall be deemed null and void.

ARTICLE XXIII

Effective Date

Section 2301. This act shall take effect in ninety days, except that the provisions of Article V and the amnesty provisions of the repealer shall take effect immediately.

APPROVED—The 23rd day of July, A. D. 1970.

RAYMOND P. SHAFER

The foregoing is a true and correct copy of Act of the General Assembly No. 195.



Secretary of the Commonwealth.