

No. 1988-84

AN ACT

SB 291

Amending the act of April 9, 1929 (P.L.177, No.175), entitled "An act providing for and reorganizing the conduct of the executive and administrative work of the Commonwealth by the Executive Department thereof and the administrative departments, boards, commissions, and officers thereof, including the boards of trustees of State Normal Schools, or Teachers Colleges; abolishing, creating, reorganizing or authorizing the reorganization of certain administrative departments, boards, and commissions; defining the powers and duties of the Governor and other executive and administrative officers, and of the several administrative departments, boards, commissions, and officers; fixing the salaries of the Governor, Lieutenant Governor, and certain other executive and administrative officers; providing for the appointment of certain administrative officers, and of all deputies and other assistants and employes in certain departments, boards, and commissions; and prescribing the manner in which the number and compensation of the deputies and all other assistants and employes of certain departments, boards and commissions shall be determined," further providing for the powers and duties of the State Board of Education; requiring certain State and public school employees to pay a fair share fee; and providing for objections to payment of a fair share fee.

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

Section 1. Section 1317 of the act of April 9, 1929 (P.L.177, No.175), known as The Administrative Code of 1929, amended October 18, 1972 (P.L.935, No.224) and October 21, 1972 (P.L.985, No.244), is amended to read:

Section 1317. The Powers and Duties of the State Board of Education.—

(a) The State Board of Education shall have the power, and its duty shall be, to review the policies, standards, rules and regulations formulated by the Council of Basic Education and the Council of Higher Education, and adopt broad policies and principles and establish standards governing the educational program of the Commonwealth.

(b) The State Board of Education shall have the authority and duty to:

(1) Hear appeals of school districts which consider themselves aggrieved by a decision of the Council of Basic Education approving a county plan of organization of administrative units, or approving or disapproving an application for the creation of a new school district, or change in the boundaries of an existing school district;

(2) Establish, whenever deemed advisable, committees of professional and technical advisors to assist the councils in performing research studies undertaken by them;

(3) Annually review the budget request of the Department of Education and of the educational institutions not part of the public school system and of institutions of higher education financed wholly or in part from State

appropriations recommending approval or disapproval of such budget requests and return such budget requests to the Secretary of Education with comments, if any, prior to their submission to the Budget Secretary, and submit these recommendations and findings to the General Assembly subsequent to the submission of the Governor's budget to the General Assembly;

(3.1) (i) Apply for, receive and administer, subject to any applicable regulations or laws of the Federal Government or any agency thereof, any Federal grants, appropriations, allocations, and programs for the development of academic facilities on behalf of the Commonwealth of Pennsylvania, any of its school districts or any institution of higher education, public or private, within the Commonwealth;

(ii) Subject to criteria developed by the Secretary of Education and subject to any applicable regulations or laws of the Federal Government or any agency thereof, to develop, alter, amend and submit to the Federal Government State plans for participation in Federal grants, appropriations, allocations, and programs for the development of academic facilities and to make regulations, criteria, methods, forms, procedures, and to do all other things which may be necessary to make possible the participation of the Commonwealth in such Federal grants, appropriations, allocations, and programs for the development of academic facilities;

(iii) Hold hearings, issue subpoenas, and render decisions as to the priority assigned to any project, or as to any other matter or determination affecting any applicant for Federal grants, appropriations, allocations, and programs for the development of academic facilities;

(iv) Adopt rules or procedure and prescribe regulations for the submission to it of all matters within its jurisdiction; and

(v) Submit, annually, to the Governor, on or before the first Monday of December, a report of its proceedings during that year, together with such recommendations as the board shall deem necessary; and

(4) Adopt policies under which the Secretary of Education shall approve or disapprove any action of **[a State-owned college or university,] *the State System of Higher Education***, a community college or State-related or State-aided college or university in establishing additional branches or campuses, or in discontinuing branches or campuses;

(5) Adopt policies under which the Secretary of Education shall approve or disapprove any action of **[a State-owned college or university,] *the State System of Higher Education***, a community college or State-related or State-aided college or university in establishing new professional schools, or upper division programs by two-year institutions;

(6) **[Adopt policies under which the Secretary of Education shall approve or disapprove applications by State-owned colleges for admission to university status, and approve] *Approve*** or disapprove applications by two-year institutions to become four-year institutions;

(7) Adopt policies under which the Secretary of Education shall approve or disapprove the request of any private institution of higher education for admission to State-related or State-aided status, or for eligibility for other State financial support;

(8) Require the submission of long-range plans from all public and private institutions of higher education at the times and in the form requested by the board.

[(c) With regard to State-owned institutions, approval or disapproval by the Secretary of Education under the provisions of clauses (4) through (6) of subsection (b) of this section 1317 of this act shall not be made until after recommendation by the Board of State College and University Directors, whenever such recommendation is deemed necessary or required by law.]

(d) No institution of higher education may proceed with any action unless it has been approved by the Secretary of Education under the provisions of clauses (4) through (7) of subsection (b) of this section 1317 of this act.

(e) With regard to approval by the Secretary of Education under the provisions of clauses (4) through (7) of subsection (b) of this section 1317, no action to be financed wholly or in part from State appropriations shall be taken by an institution of higher learning (i) prior to the next fiscal year or until the General Assembly approves the Governor's budget for the next fiscal year, and (ii) prior to **[each member of]** the General Assembly, the Governor and the Budget Secretary being provided with written notification of such approval, including projected five-year fiscal analysis and an explanation as to the necessity for the proposed action in relation to the master plan for higher education.

(f) The State Board of Education shall adopt and periodically review and revise a master plan for higher education which shall be for the guidance of the Governor, the General Assembly, and all institutions of higher education financed wholly or in part from State appropriations. Such master plan shall (i) define the role of each type of institution **[(State-owned colleges and universities)]** *(State System of Higher Education, State-related universities, community colleges, private colleges and universities and off-campus centers of any of these and other institutions authorized to grant degrees)* in the Commonwealth System of Higher Education, (ii) recommend enrollment levels for each such institution, (iii) recommend a method for governance of the system, (iv) provide formulas for the distribution of State funds among the institutions, and (v) otherwise provide for an orderly development of the system.

(g) The State Board of Education shall make all reasonable rules and regulations necessary to carry out the purposes of this act.

Section 2. The act is amended by adding a section to read:

Section 2215. Fair Share Fee; Payroll Deduction.—(a) *As used in this section, the following words and phrases shall have the meanings given to them in this subsection:*

“Bona fide religious objection” shall mean an objection to the payment of a fair share fee based upon the tenets or teachings of a bona fide church or religious body of which the employe is a member.

“Commonwealth” shall mean the Commonwealth of Pennsylvania, including any board, commission, department, agency or instrumentality of the Commonwealth.

“Employe organization” shall mean 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, gender, color, creed, national origin or political affiliation.

“Exclusive representative” shall mean the employe organization selected by the employes of a public employer to represent them for purposes of collective bargaining pursuant to the act of July 23, 1970 (P.L.563, No.195), known as the “Public Employe Relations Act.”

“Fair share fee” shall mean the regular membership dues required of members of the exclusive representative less the cost for the previous fiscal year of its activities or undertakings which were not reasonably employed to implement or effectuate the duties of the employe organization as exclusive representative.

“Nonmember” shall mean an employe of a public employer, who is not a member of the exclusive representative, but who is represented in a collective bargaining unit by the exclusive representative for purposes of collective bargaining.

“Public employer” shall mean the Commonwealth of Pennsylvania or a school entity.

“School entity” shall mean any school district, intermediate unit or vocational-technical school.

“Statewide employe organization” shall mean the Statewide affiliated parent organization of an exclusive representative, or an exclusive representative representing employes Statewide, and which is receiving nonmember fair share payments.

(b) If the provisions of a collective bargaining agreement so provide, each nonmember of a collective bargaining unit shall be required to pay to the exclusive representative a fair share fee.

(c) To implement fair share agreements in accordance with subsection (b), the exclusive representative shall provide the public employer with the name of each nonmember who is obligated to pay a fair share fee, the amount of the fee that he or she is obligated to pay and a reasonable schedule for deducting said amount from the salary or wages of such nonmember. The public employer shall deduct the fee in accordance with said schedule and promptly transmit the amount deducted to the exclusive representative.

(d) As a precondition to the collection of fair share fees, the exclusive representative shall establish and maintain a full and fair procedure, consistent with constitutional requirements, that provides nonmembers, by way of annual notice, with sufficient information to gauge the propriety of the fee and that responds to challenges by nonmembers to the amount of the fee. The procedure shall provide for an impartial hearing before an arbitrator to resolve disputes regarding the amount of the chargeable fee. A public employer shall not refuse to carry out its obligations under subsection (c) on

the grounds that the exclusive representative has not satisfied its obligation under this subsection.

(e) Within forty (40) days of transmission of notice under subsection (d), any nonmember may challenge as follows:

(1) to the propriety of the fair share fee; or

(2) to the payment of fair share fees for bona fide religious grounds.

(f) Any objection under subsection (e) shall be made in writing to the exclusive representative and shall state whether the objection is made on the grounds set forth in subsection (e)(1) or (2).

(g) When a challenge is made under subsection (e)(1), such challenge shall be resolved along with all similar challenges by an impartial arbitrator, paid for by the exclusive representative, and selected by the American Arbitration Association, or the Federal Mediation and Conciliation Service, pursuant to the Rules for Impartial Determination of Union Fees promulgated by the American Arbitration Association. The decision of the impartial arbitrator shall be final and binding.

(h) When a challenge is made under subsection (e)(2), the objector shall provide the exclusive representative with verification that the challenge is based on bona fide religious grounds. If the exclusive representative accepts the verification, the challenging nonmember shall pay the equivalent of the fair share fee to a nonreligious charity agreed upon by the nonmember and the exclusive representative. If the exclusive representative rejects the verification because it is not based on bona fide religious grounds, the challenging nonmember may challenge that determination within forty (40) days from receipt of notification.

(i) When a challenge is made under subsection (e)(1), the exclusive representative shall place fifty per centum (50%) of each challenged fair share fee into an interest-bearing escrow account until such time as the challenge is resolved by an arbitrator. When a challenge is made under subsection (e)(2), the exclusive representative shall place one hundred per centum (100%) of each challenged fair share fee into an interest-bearing escrow account until such time as the challenge is resolved by an arbitrator.

(j) Every Statewide employe organization required to submit a report under Title II of the Labor-Management Reporting and Disclosure Act of 1959 (Public Law 86-257, 29 U.S.C. § 401 et seq.) shall make available a copy of such report to the Secretary of Labor and Industry.

(k) All materials and reports filed pursuant to this section shall be deemed to be public records and shall be available for public inspection at the Office of the Secretary of Labor and Industry during the usual business hours of the Department of Labor and Industry.

(l) 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).

(m) 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

undergo imprisonment for not more than thirty (30) 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.

Section 3. 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.

Section 4. Sections 401 and 705 of the act of July 23, 1970 (P.L.563, No.195), known as the Public Employe Relations Act, are repealed insofar as they are inconsistent with this act.

Section 5. This act shall take effect immediately.

APPROVED—The 13th day of July, A. D. 1988.

ROBERT P. CASEY