



## BILL SUMMARY

<b><u>COMMITTEE:</u></b>	Education	<b><u>DATE:</u></b>	8/24/11
<b><u>PRIME SPONSOR:</u></b>	Rock	<b><u>BILL NO.:</u></b>	HB 1369
<b><u>PREPARED BY:</u></b>	Dustin Gingrich Jonathan Berger	<b><u>PRINTER'S NO.:</u></b>	2072
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### A. SYNOPSIS:

Amends the Public School Code to prohibit strikes by public school employees, and creates a new process to handle collective bargaining disputes between school districts and their employees.

### B. SUMMARY OF THE BILL:

HB 1369 will amend the Public School Code (Act 14 of 1949) by repealing Article XI-A ("Collective Bargaining"), and by adding a new Article XI-C entitled the "Strike Free Education Act." The act will create a process to handle collective bargaining disputes between public school entities and their employees. The act is summarized as follows:

**Jurisdiction:** The act will apply to public school entities, which are defined as public school districts, intermediate units, or area vocational-technical schools. The act will cover all employees of a public school entity, except managerial level employees.

**General Rules:** An employer will not have to bargain over matters of inherent managerial policy, which includes: 1) the functions and programs of employer; 2) standards of services; 3) overall budget; 4) utilization of technology; and 5) the organization structure and selection of personnel.

An employer will have to make publicly available at its administration offices, and on its Internet site, a report detailing a tentative collective bargaining agreement. The report will have to be posted at least five days prior to a vote on the tentative agreement.

Preliminary Bargaining: The parties will have to begin to bargain a new collective bargaining agreement no later than September 30th of the year before the current agreement expires. Within 30 days of negotiations commencing, each party will have to provide a written settlement proposal to the other party. Each party will have to respond, in writing, to the other party's proposal within 30 days. Both parties will have to submit to mediation by January 15<sup>th</sup>, if no agreement is reached.

Mediation: The Bureau of Mediation of the Department of Labor and Industry will be required to appoint a mediator within two business days of the request. Mediation will continue for as long as parties have not reached an agreement; however, if by February 15<sup>th</sup> no agreement is reached, the parties will be required to submit the dispute to fact-finding.

Fact-finding: Within three business days of initiating fact-finding, the PA Labor Relations Board will have to appoint one or three fact-finders. Within five additional business days, each party will be required to submit its latest proposal to the fact-finders and simultaneously to the other party. Both party's proposals will be made public by posting them at the school entity's offices and on the Internet site of the school entity. The fact-finding panel will be required to hold hearings, secure oral and written testimony, and it will have subpoena power. The panel will be required to solicit public input, but its hearings will not be open to the public.

If the parties fail to reach an independent agreement, the panel will make findings of fact and recommendations and will be required to send its findings by registered mail to the Board not more than 40 days after the Board has notified the fact-finders of their appointment. The findings of fact will be made publicly available at the offices of the school entity and the Internet site of the school entity. The parties will have until April 15<sup>th</sup> to accept the recommendations. If the recommendations are not accepted, the dispute will be submitted to nonbinding arbitration.

Nonbinding Arbitration: The parties may submit their dispute to a mutually agreeable arbitrator or a panel of three arbitrators. The three member panel will be set up by each party selecting one member within two business days, and the third being selected by "alternative strike-off" from a list of seven arbitrators furnished by the American Arbitration Association. The list of seven arbitrators will have to be residents of the Commonwealth. The third member will be chairman of the panel. Each party will be responsible for the cost of the arbitrator they selected and the costs of the third arbitrator will be shared.

The parties will be required to submit their last best-offer to the panel, and the other party, within two business days of the selection of the panel. The last best-offer will have to be posted publicly at the school entity offices and on its Internet site.

The panel will have access to all information from the fact-finding process. The employer will have to provide guidance to the arbitrator regarding fiscal constraints in accordance with any allowable tax increases. The public will have the right to submit comments to the panel. The arbitration panel will have to make a recommendation by May 15<sup>th</sup> and it will have to select one proposal in its entirety. The panel will have to consider the financial ability of the employer to

fund the costs of any proposed settlement, and it will have to consider the wages/benefits of similar employees.

The employer will have to make the panel's recommendation publicly available within two business days of its receipt at the school entity's offices or on its Internet site.

Mandatory Vote on Arbitration Finding: The public school entity will be required to hold a public meeting prior to June 15<sup>th</sup> to solicit public input on the nonbinding arbitration panel's recommendation, and to vote on approval/disapproval of the recommendation. The employee organization will have to provide an opportunity by June 15<sup>th</sup> for its membership to vote on approval/disapproval of the recommendations.

Public Meeting: If no agreement is reached by June 16<sup>th</sup>, the parties will have to arrange a public transparency meeting to take place before June 30<sup>th</sup> at a time convenient to the public, and at a suitably-sized site. Both parties will have to present their proposal and reasons for lack of an agreement, and both sides will have to answer questions from the public.

Post School Year Negotiations: If no agreement is reached by June 30<sup>th</sup>, the parties will have to hold at least four separate negotiating sessions per month. A public transparency meeting will have to be held every six weeks, with at least five days notice to the public.

Continuation of Present Contract: If no agreement is reached by expiration of the contract, the contract will continue month-to-month under the same terms and conditions.

Strikes and Lockouts Prohibited: No employee or employee organization may incite a strike or participate in a strike. No employer may conduct a lockout or other similar interruption of service; however, an employer may hire substitute teachers for the duration of an unlawful strike. The use of substitutes during an unlawful lockout is prohibited.

Allegations and Violations: If an employer alleges that there was a strike by one or more employees, the employer will have to notify the Board within 60 days of the names of the persons and days they allegedly were striking. The same rule applies to allegations by employees/employee organizations of a lockout taking place.

Within 60 days of receipt of an allegation, three Board members will have to conduct a hearing to determine if a violation occurred. Those individuals alleged to have committed a violation will be required to attend the hearing and must be permitted to testify. Members of the public will be able to testify or submit evidence.

Penalties: If, after the hearing, the majority of the Board finds that an employee incited an unlawful strike, that person will be subject to a fine of \$5,000 per incident. If the Board finds that an employee participated in an illegal strike, then each employee found to be in violation will be fined a portion of that employee's salary equal to twice the daily rate of pay for each day of the strike. The fine will be collected from that employee's paycheck and an employer may not

waive the fine. If an employee organization is found to have violated the act, it will be prohibited from using a union dues checkoff for one year; this penalty may not be waived by an employer.

If an employer is found to have instituted an illegal lockout, the employer will have to pay a fine to the employee organization in an amount equal to the financial benefit derived from the lockout.

Enforcement: The Board, magisterial district courts and courts of common pleas will enforce the act. The time periods in the legislation are mandatory.

**Effective date:** in 60 days.

### **C. SUMMARY OF RELEVANT EXISTING LAW:**

Article XI-A ("Collective Bargaining") of the Public School Code of 1949 establishes current collective bargaining procedures for public school employees; this article was added to the Public School Code by Act 88 of 1992. These procedures are outlined as follows:

Submission to Mediation: If the negotiating parties have not reached an agreement within 45 days after negotiations have commenced, or no later than 126 days prior to end of school entity's fiscal year, both parties must immediately request the services of PA Bureau of Mediation. If no agreement is reached through mediation within 45 days after its commencement, or reached no later than 81 days prior to end of fiscal year, the Bureau of Mediation must notify the PA Labor Relations Board that no agreement was reached, and it must notify the Board as to whether or not either party has requested the appointment of a fact-finding panel.

Fact-Finding Panel: No later than 81 days prior to end of fiscal year, either party may request the Board to appoint a fact-finding panel; the Board then must appoint a panel consisting of one or three members. The panel must make findings of fact and make recommendations within 40 days after request for fact-finding. If both parties agree to fact-finding, a panel can be appointed at any time except during mandated final best-offer arbitration. The Board can appoint a fact-finding panel at other times except between period of notice of strike and end of strike, and mandated final best-offer arbitration.

The parties must notify the Board, and each other, of whether they accept the findings of fact not more than 10 days after fact-finding panel issues its determination; not less than 5 days nor more than 10 days after publication of findings of fact, the parties must again inform the Board and each other of whether or not they accept findings of fact.

The Commonwealth must pay one-half the cost of the fact-finding panel and the other half of the cost is shared between the two parties.

Final Best-Offer Arbitration-Types and Composition: The negotiating parties must bargain upon the issue of acceptance and adoption of one of the following arbitration procedures (although

they are not required to agree to any of them): 1) arbitration under which an award is limited to a choice of the last best-offer, in its entirety, of both parties and the recommendations of the fact-finding panel; 2) arbitration under which the award is based on an issue-by-issue consideration of the last best-offer of both parties and the recommendations of the fact-finding panel; and 3) arbitration under which an award is confined to consideration of economic and non-economic issues as separate units with respect to last best-offer of both parties, and the recommendations of the fact-finding panel.

A board of arbitration must be composed of three members. Each party must select a member within 5 days of the party's submission to final best-offer arbitration. The third arbitrator is selected from a list of seven arbitrators furnished by the American Arbitration Association; the third arbitrator must be selected within five days of publication of the list. The third arbitrator is selected by a process of alternative "strike off" of names with the employer allotted the right to first "strike off" with the person remaining being the third member and chairman. If the arbitration was voluntarily opted for, then the costs of the arbitration panel are equally divided amongst the parties. If the arbitration is mandatory, the costs of the panel are paid for by having the Commonwealth pay half and the other half shared equally between the two parties.

Final Best-Offer Arbitration-Process: At any time prior to mandated final best-offer arbitration, either party may request final best-offer arbitration unless fact-finding has been initiated. If either party requests final best-offer arbitration, that party must notify the Bureau of Mediation, the Board, and the opposing party; the opposing party has 10 days to accept or refuse final best-offer arbitration.

If a strike or lockout will prevent the public school entity from providing the required days of instruction by the later of June 15<sup>th</sup>, or last day of school's scheduled school year, the parties must submit to mandated final best-offer arbitration consistent with the arbitration option negotiated (if the parties could not agree on one of the options, the mediator must select the procedure). Within 10 days of submission to final best-offer arbitration, the parties must submit their final contract offer. Upon submission of both party's offers, the employer must post the offers in the school's main office for purposes of soliciting public comment. The public has 10 days to comment and all comments must be forwarded to arbitrators.

Within 10 days of selection of third arbitrator, the arbitrators must begin hearings at which they are required to hear arguments from both parties. The arbitrators must make a determination no later than 20 days after the hearing. The determination made by the arbitrators is final and binding on all parties, unless either party, within 10 days, rejects the determination at a regularly scheduled meeting. The determination can include a directive requiring legislative enactment including the levy of taxes. No appeal of the determination is allowed to a court unless the award resulted from fraud, corruption, or willful misconduct of arbitrators.

Final Best Offer-Arbitration-Rejection of Award: If either party rejects the arbitrator's award, the employee organization can initiate a legal strike or resume a legal strike started prior to submission to final best-offer arbitration, and the employer may hire substitutes and initiate or continue a legal lockout.

Strikes and Lockouts: A strike must cease where parties request fact-finding for the duration of the fact-finding, and strikes are prohibited where parties agree to arbitration. Strikes and lockouts are prohibited; 1) during the 10 day period an opposing party has to respond to a request for final best-offer arbitration; 2) during final best-offer arbitration; and 3) when an arbitrator's award becomes final and binding.

Injunctions: The Secretary of Education can initiate an injunction in a county court of common pleas if an employee strike threatens to interfere with the required period of instruction for students.

Prohibitions: Selective strikes are prohibited and the utilization of strike breakers by a school entity are prohibited. The school entity can only utilize those employees who have actively been employed by the school district at any time during the previous year; however, in situations where the employee organization rejected the arbitrator's award and a strike threatens to prevent students from receiving required completion of instruction, the school entity is free to hire replacements who may not meet the 12 month "actively employed" criteria.

BH/jr

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**House Education Committee Meeting**  
**August 25, 2011**  
**Neshaminy High School Auditorium**  
**2001 Old Lincoln Highway**  
**Langhorne, PA**

10:00-10:15 **Introductions- Chairman Clymer and Chairman Roebuck**

10:15-10:45 **Representative Todd Rock- HB 1369**

10:45-11:15 **Brian Boland, Esq.**  
**PA School Boards Association**

**Ritchie Webb, President**  
**Neshaminy School Board**

**Mark B. Miller, School Board Director**  
**Centennial School District**

11:15-11:45 **Pearre Dean**  
**Deputy Director of Public Affairs**  
**Commonwealth Foundation**

**Larry Pastor**  
**Taxpayers for a Fair Neshaminy School Budget**

11:45-12:15 **Jerry Oleksiak, Vice-President Elect**  
**PA State Education Association**

12:15-12:45 **Parents of Neshaminy Students**

12:45-1:15 **Representative Frank Farry**