

**HOUSE OF REPRESENTATIVES
DEMOCRATIC COMMITTEE**

BILL ANALYSIS

BILL NO: **HB26**
COMMITTEE: Labor Relations

SPONSOR: Rep. Pashinski

PROPOSAL/EXECUTIVE SUMMARY: House Bill 26 would amend the Pennsylvania Labor Relations Act to allow lay teachers and other lay employees of religiously-affiliated schools to collectively bargain, as well as provide for the oversight of the Pennsylvania Labor Relations Board. The bill would also provide protections for such employers' religious doctrines, employment decisions based on religious doctrines, and organizational structures.

EXISTING LAW: The Act of June 1, 1937 (P.L. 1168, No. 294), known as the **Pennsylvania Labor Relations Act (PLRA)**, created the Pennsylvania Labor Relations Board (PLRB) to administer and enforce Commonwealth laws dealing with private-sector collective bargaining and disputes. Most private sector employers and their employees are covered under the federal **National Labor Relations Act of 1935** (29 U.S.C. §§ 151-169), regarding collective bargaining activities; however, the Pennsylvania Labor Relations Act captures those that do not fall under the federal law (which, according to the PLRB, is mostly small businesses).

The Act of July 23, 1970 (P.L. 563, No. 195), known as the **Public Employe Relations Act (PERA)**, provided collective bargaining rights and obligations to many public-sector employees and employers (including public teachers and other public school employees) and vested the PLRB with administrative authority over its provisions.

The courts have interpreted the above laws to not include lay teachers and other lay employees of religiously-affiliated schools. As such, these employees do not maintain the protections granted by the National Labor Relations Act, PLRA, or PERA, and therefore do not maintain rights to elect recognized union representation or collectively bargain. Pennsylvania cases include:

- *Local*
1776 v. Pennsylvania Labor Relations Board – the Pennsylvania Supreme Court found that in the absence of a clear intention on the part of the General Assembly to include lay teachers as employees covered by PERA, lay teachers were not to be considered employees under the statute.
- *Wester*
n Pennsylvania Hospital v. Lichliter – the Pennsylvania Supreme Court ruled that nonprofit corporations were not covered by PLRA because non-profit corporations, such as hospitals, were not engaged in industry, commerce, trade, business or production within the meaning of the act and that to cover nonprofit institutions the act would have to be amended by the General Assembly.

In other states, however, courts have determined that collective bargaining rights must apply to employees of religiously-affiliated schools. Those states include New York, New Jersey, and Minnesota.

Additionally, Pennsylvania maintains the Act of Dec. 9, 2002 (P.L. 1701, No. 214), known as the **Religious Freedom Protection Act**, which establishes as a general rule of law that no state or local agency shall substantially burden a person's free exercise of religion, including any burden that results from a rule of general applicability, unless the agency can show that the burden (1) furthers a compelling interest of the agency, and (2) is the least restrictive means of furthering the compelling interest. The act also provides for a right of action for individuals who believe that their free exercise of religion has been or will be burdened and provides for declaratory or injunctive relief. The act is applicable to many existing and future state and local laws, regulations, ordinances, and statutes, but provides exemptions for certain laws (such as criminal offenses, licensing and operation of motor vehicles, and certain laws affecting health and safety).

ANALYSIS: House Bill 26 amends the PLRA to extend its coverage for collective bargaining to lay employees of religiously-affiliated schools.

Specifically, the bill amends the definition of "employee" to include lay teachers and other lay employees. The bill also adds the term "religious employer" to the PLRA to include a religiously-affiliated profit or nonprofit schools that employ individuals.

The bill also provides that in mediating in disputes involving a religious employer:

- PLRB would be prohibited from defining or interpreting the employer's religious doctrine. The
- PLRB must recognize employment decisions that are based on an established religious doctrine--unless the employee can show that the employer is using the doctrine as an excuse to engage in unfair labor practices (such as preventing employees from exercising rights granted by the act). The
- PLRB would not be permitted to change the school's organizational structure, nor would they be permitted to appoint an individual to resolve disputes relating to the structure of the employer. The

Lastly, the legislation would apply despite the requirements of the Religious Freedom Protection Act (Act 214 of 2002).

EFFECTIVE DATE: This act would take effect in 60 days.

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