



EDUCATION

ALERT

THE 2012-2013 BARGAINING SEASON HAS JUST BEGUN — WHAT IS REALLY HAPPENING IN PENNSYLVANIA TEACHERS' CONTRACT NEGOTIATIONS?

According to Pennsylvania law, as of January 11, 2012, 160 out of the 500 school districts in the Commonwealth of Pennsylvania commenced negotiations. However, a very different phenomenon is emerging in teachers' contract negotiations.

According to statistics from the Pennsylvania School Boards Association as of January 29, 2012, of the 152 school districts that started negotiating in January 2010, 14 are still not settled. This represents approximately 9.2 percent of the school districts that were negotiating.

More dramatically, of the 129 school districts that started negotiating in January 2011, 50 are still negotiating or approximately 38.8 percent of those school districts.

At the same time, the number of strikes in the Commonwealth of Pennsylvania for teachers has plummeted. The only strike as of late was the strike of the Neshaminy Federation of Teachers, which commenced on January 9, 2012, and ended on January 19, 2012, after almost four years of negotiations, with no settlement in sight. Indeed, during the Neshaminy work stoppage, the school board directed its chief negotiator not to meet with the union during the course of a work stoppage, a situation that would be rarely tolerated by the community in most work stoppages.

Why is this happening? What is really going on? For those individuals who are in the "field," the reasons are fairly clear:

- Since the commencement of the Great Recession in 2008,

the financial viability of most school districts in the Commonwealth of Pennsylvania has been challenged. Dramatically increasing retirement costs (PSERS), shrinking tax bases because of assessment appeals, decreased earned income, little or no transfer tax, the essential stopping of development in most school districts, and an ever shrinking Act 1 index that caps the amount a school district can raise taxes has caused a situation of unprecedented concern on the part of school administrators and school board members.

- Even in school districts that have amassed significant unreserved fund balances, if you plot out the projections of new Act 1 money against expected school district costs in the near future, including the dramatic PSERS spike, the five year forecast for most school districts is bleak.
- The signs are all around us. The recent inability of the Chester Upland School District to pay its bills, including its wage obligations to its professional and non-professional staff, is a harbinger of things to come. School districts such as Reading, Allentown, York City, Harrisburg, and the like are not far behind. The State Legislature will need to grapple with the consequence that a number of school districts may become insolvent in the very near future.
- With little or no help expected from the Commonwealth of Pennsylvania, which is also dealing with its own financial crisis, school districts are left to attempt to control costs to the extent possible. Obviously, labor costs represent a majority of

the costs of a school entity in Pennsylvania and when school districts come to the bargaining table to address these issues, there is a desire to obviously “right” the situation that has taken four decades to create since the advent of Act 195. All of that is “well-motivated” but thwarted by unions that have continued expectations of its bargaining unit members and the protection of what is known as “status quo.”

- Unlike any other kind of contract, labor contracts do not terminate as of their expiration date. Employers covered by a collective bargaining agreement are required to maintain the “status quo” with respect to compensation and benefits until such time as a new contract is negotiated or until a work stoppage, whichever comes first. In case a school district violates its obligation to maintain the “status quo,” the school district faces not only an unfair labor practice being issued by the Pennsylvania Labor Relations Board, but also the Unemployment Compensation Board deeming the situation of being a “lockout” where striking teachers would be entitled to receive potentially millions of dollars in unemployment compensation as the result of what might be a minor change in compensation and benefits.
- Complicating this situation is the fact that school districts are facing escalating health benefit costs that far exceed the Act 1 index (the trend in the Commonwealth of Pennsylvania is ranging anywhere from 8-12 percent per year), which a school district needs to absorb during the status quo time period, as well as continuing tuition reimbursement claims made by bargaining unit members.
- Though it is true that a school district does not need to advance teachers for longevity increases on their salary schedule or grant them educational attainment dollars, still the additional costs do weigh upon a school district in this “status quo” time period.
- In addition, during the period of when a contract expires, teachers can engage in “work to rule” where they only provide services that are literal to the contract and/or other binding policies of a school district. In many school districts that have

expired contracts, teachers do not post things on bulletin boards, volunteer for extra duty contracts, participate in overnight field trips for elementary students, and the like. This has created a situation where no one seems to have an incentive to settle. On the one hand, the teachers do not want to settle a contract where they are contributing more toward healthcare when they are getting little or no wage increase. Making concessions in areas where they do not need to make concessions, since they are continued in status quo, does not make sense for most unions unless they are facing substantial pressure from their lower paid teachers to settle a contract because they are not getting step movement or educational attainment movement.

- On the other hand, it is often easier for school boards to tell their community that they are continuing to fight and negotiate a contract than to enter into a contract that gives certain benefits or compensation increases to its teachers in return for some other concessions.
- Over time, unless there is a substantive change in economic conditions or legislative change, the apparent trend that is now being created is that contracts are taking longer to negotiate.

What is the solution? The State Legislature needs to address this issue. The best way to address this issue is to grant school districts the same rights that a private employer has under the National Labor Relations Act, namely, the right to implement the school district’s last best offer and bring closure to the negotiations process once impasse is achieved. The current system where there is no incentive on either party to settle a contract, even in situations where the school district and/or the teachers’ union cannot necessarily live well under status quo, cannot continue for the foreseeable future.

If you have questions about this Alert, please contact Jeffrey T. Sultanic at 610.397.6515 or jsultanic@foxrothschild.com or any member of Fox Rothschild’s [Education Practice](#).



Fox Rothschild LLP
ATTORNEYS AT LAW

Attorney Advertisement

© 2012 Fox Rothschild LLP. All rights reserved. All content of this publication is the property and copyright of Fox Rothschild LLP and may not be reproduced in any format without prior express permission. Contact marketing@foxrothschild.com for more information or to seek permission to reproduce content. This publication is intended for general information purposes only. It does not constitute legal advice. The reader should consult with knowledgeable legal counsel to determine how applicable laws apply to specific facts and situations. This publication is based on the most current information at the time it was written. Since it is possible that the laws or other circumstances may have changed since publication, please call us to discuss any action you may be considering as a result of reading this publication.