



EDUCATION

# ALERT

## THE ANTIDOTE TO OUR FUNDING CRISIS FOR PUBLIC SCHOOLS

It is now obvious to all in the Commonwealth of Pennsylvania that what was the norm just a few months ago will no longer be the norm in the foreseeable future. The Commonwealth of Pennsylvania is facing a \$4-\$5 billion deficit; the Act 1 index is at a historical low and will likely slip further particularly because of the employment cost index for secondary schools hovering in the 0 percent territory; the real estate market continues to be in stagnation; turmoil in the Middle East could throw the entire world economy into a second recession; and the pension crisis in Pennsylvania has yet to be solved. For all of the above reasons, it is expected for the next 3-5 years that public schools in the Commonwealth of Pennsylvania will be cash-starved, and there appears to be no willingness on the part of the executive or legislative branches to increase taxes to fund this economic shortfall.

Based upon the foregoing, the “antidote” for this unprecedented crisis will have to take into account, in part, the following:

- Establish a Floor and a Cap for the Act 1 Index – Because 50 percent of the Act 1 index is based upon the employment cost index for secondary schools, which has the possibility of going into the negative numbers, a floor needs to be developed for minimal State funding. This is similar to what exists in New Jersey and many other states. A minimum of a 2 percent funding level should be considered. A “cap” should also be considered as part of the equation.
- Allowing Economic Furloughs – On the one hand, you cannot expect a school district to substantively cut its expenses if you do not give the school district the tools to cut expenses when it involves the largest expenditure of those school districts (i.e., employee costs). Sections 11-

1124(1) and (2) of the School Code need to be modified to allow economic furloughs and not limit it to a substantial decline in enrollment, class or course enrollment, or reorganizations approved by the Department of Education. Most states do allow economic furloughs of staff members.

- Modify the Public Employe Relations Act to Allow for Implementation of a District’s Final Best Offer Following Impasse – Unlike the National Labor Relations Act, the Public Employe Relations Act appears to prohibit a school board from implementing its final best offer following impasse. This has been the law in the public sector for many years, but is not technically permitted under the Public Employe Relations Act, nor is it contemplated under Act 88 of 1992. Instead of focusing on more dramatic revisions to the public bargaining law (such as taking the right to strike away, which will obviously create a firestorm of controversy similar that in Wisconsin and other states), a more immediate and perhaps more effective fix is to allow a school district following an impasse to implement its final best offer. This will end the leverage currently being held by teachers’ unions of simply sticking with their status quo collective bargaining agreement and forcing districts to fund geometrically increasing healthcare benefits on expired teachers’ contracts. Though this blogger is not opposed to the concept of further limiting the right to strike of public school teachers, simply eliminating the strike option will not necessarily deal with the bigger financial issue currently faced by school districts, namely, upon the expiration of the collective bargaining agreement, the district is obligated to maintain the “status quo.” This simply needs to change in light of ever-increasing labor and benefit costs. There needs to be legislation that will permit districts to implement a

final best offer even if it occurs following contract expiration without fear that a lockout (and unemployment compensation) would result. The State Legislature needs to address this immediately.

- **Relaxing the Bargaining Laws to Promote Subcontracting of Bargaining Unit Services** – Under both Pennsylvania and federal labor law, districts are required to bargain the impact of subcontracting with its labor unions. However, the National Labor Relations Act has a far more “relaxed standard” than the decisions emanating from the Pennsylvania Labor Relations Board. The State Legislature should address legislation that would facilitate a school district to unilaterally subcontract Bargaining Unit services when efficiency can be demonstrated and substantive tax savings can be demonstrated.
- **Using Technology to Save Costs** – Tied very closely to the “subcontracting” restrictions under Pennsylvania law, districts need to have much more flexibility to allow the delivery of educational curriculum “online” without fear of a subcontracting challenge by a teachers’ union.
- **Exploration of Self-Insured Trust to Deliver Health Benefits** – School districts are one of the largest purchasers of insured health benefits in the Commonwealth of Pennsylvania. Cooperative purchasing of insurance can result in savings for school districts. At the same time, labor unions should not be in a position to block the imposition of a self-insured trust simply because there is Pennsylvania Labor Relations Board precedent that requires the implementation of a self-insured program must be bargained with a labor union. The Commonwealth of Pennsylvania

should give funding incentives to school districts that participate in self-insured trusts with high deductible plan provisions, which will be the only effective way of controlling health benefit costs in the future and keep health benefit costs marginally within the Act 1 index.

- **Reform our Pension System** – A defined benefit pension system will not be able to exist in the future. Long ago, employees in the private sector have shifted to 401(k) types of plans. Though there needs to be recognition that certain teachers having longer years of service are “expecting” their retirement, taking away retirement benefits for some existing PSERS participants needs to happen, and Pennsylvania law will need to be tested with respect to that issue. Moving to a 401(k) system is absolutely essential for the financial viability of the Commonwealth of Pennsylvania.
- **Elimination of Other Mandates** – It would be too long of a blog entry to consider all of the mandates that impact public school entities. To the extent legally possible, as many of the State and federal mandates should be limited for public school entities so that they can operate with the same degree of flexibility as that for charter schools and certain independent schools. If public school districts are meant to “compete” with these alternate educational delivery systems, they need to have the tools to do so and be able to compete on the same playing field.

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