

PENNSYLVANIA LABOR RELATIONS ACT

(Act of June 1, 1937, P.L. 1168, No. 294, as amended) (43 P.S., Sections 211.1 to 211.13 inclusive)

An Act to protect the right of employes to organize and bargain collectively; creating the Pennsylvania Labor Relations Board; conferring powers and imposing duties upon the Pennsylvania Labor Relations Board, officers of the State government, and courts; providing for the right of employes to organize and bargain collectively; declaring certain labor practices by employers to be unfair; further providing that representatives of a majority of the employes be the exclusive representatives of all employes; authorizing the board to conduct hearings and elections and certify as to representatives of employes for purposes of collective bargaining; empowering the board to prevent any person from engaging in any unfair labor practice, and providing a procedure for such cases, including the issuance of a complaint, the conducting of a hearing, and the making of an order; empowering the board to petition a court of common pleas for the enforcement of its order, and providing a procedure for such cases; providing for the review of an order of the board by a court of common pleas on petition of any person aggrieved by such order, and establishing a procedure for such cases; providing for an appeal from the common pleas court to the Supreme Court; providing the board with investigatory powers, including the power to issue subpoenas and the compelling of obedience to them through application to the proper court; providing for service of papers and process of the board; prescribing certain penalties.

Section 1. Short Title. - Be it enacted, That this act shall be known, and may be cited, as the "Pennsylvania Labor Relations Act."

Section 2. Findings and Policy.

(a) Under prevailing economic conditions, individual employes do not possess full freedom of association or actual liberty of contract. Employers in many instances, organized in corporate or other forms of ownership associations with the aid of government authority, have superior economic power in bargaining with employes. This growing inequality of bargaining power substantially and adversely affects the general welfare of the State by creating variations and instability in competitive wage rates and working conditions within and between industries, and by depressing the purchasing power of wage earners, thus - (1) creating sweat-shops with their attendant dangers to the health, peace, and morals of the people; (2) increasing the disparity between production and consumption; and (3) tending to produce and aggravate recurrent business depressions. The denial by some employers of the right of employes to organize and the refusal by employers to accept the procedure of collective bargaining tend to lead to strikes, lock-outs, and other forms of industrial strife and unrest, which are inimical to the public safety and welfare, and frequently endanger the public health.

(b) Experience has proved that protection by law of the right of employes to organize and bargain collectively removes certain recognized sources of industrial strife and unrest, encourages practices fundamental to the friendly adjustment of industrial disputes arising out of differences as to wages, hours or other working conditions, and tends to restore equality of bargaining power between employers and employes.

(c) In the interpretation and application of this act and otherwise, it is hereby declared to be the public policy of the State to encourage the practice and procedure of collective bargaining and to protect the exercise by workers of full freedom of association, self-organization, and designation of representatives of their own choosing, for the purpose of negotiating the terms and conditions of their employment or other mutual aid or protection, free from the interference, restraint or coercion of their employers.

(d) All the provisions of this act shall be liberally construed for the accomplishment of this purpose.

(e) This act shall be deemed an exercise of the police power of the Commonwealth of Pennsylvania for the protection of the public welfare, prosperity, health, and peace of the people of the Commonwealth.

Section 3. Definitions. When used in this act –

(a) The term "department" shall mean the Department of Labor and Industry.

(b) The term "person" includes an individual, partnership, association, corporation, legal representative, trustee, trustee in bankruptcy, receiver, or labor organization.

(c) The term "employer" includes any person acting, directly or indirectly, in the interest of an employer, but shall not include the United States or the Commonwealth, or any political subdivision thereof, or any municipal authority, or any person subject to the Federal Railway Labor Act or any labor organization (other than when acting as an employer), or anyone acting in the capacity of officer or agent of such labor organization.

(d) The term "employee" shall include any employee, and shall not be limited to the employees of a particular employer, unless the act explicitly states otherwise, and shall include any individual whose work has ceased as a consequence of, or in connection with, any current labor dispute, or because of any unfair labor practice, and who has not obtained any other regular and substantially equivalent employment, but shall not include any individual employed as an agricultural laborer, or in the domestic service of any person in the home of such person, or any individual employed by his parent or spouse.

(e) The term "representative" includes any individual or labor organization.

(f) The term "labor organization" means any organization of any kind, or any agency or employee representation committee or plan in which employees participate, and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work, but shall not include any labor organization which, by ritualistic practice, constitutional or by-law proscription, by tacit agreement among its members, or otherwise, denies a person or persons membership in its organization on account of race, creed, color, or political affiliation.

(g) The term "unfair labor practice" means only these unfair labor practices listed in section six of this act.

(h) The term "labor dispute" includes any controversy concerning

(1) terms, tenure or conditions of employment; or concerning

(2) the association or representation of persons in negotiating, fixing, maintaining, changing or seeking to arrange terms or conditions of employment, regardless of whether the disputants stand in the proximate relation of employer and employee.

(i) The term "Board" means the Pennsylvania Labor Relations Board created by section four of this act.

(j) The singular shall include the plural, and the masculine shall include the feminine and neuter.

Section 4. Pennsylvania Labor Relations Board Created.

(a) There is hereby created a departmental administrative board in the department, to be known as the "Pennsylvania Labor Relations Board" (hereinafter referred to as the "Board"), which shall be composed of three members who shall be appointed by the Governor, but with the advice and consent of two-thirds of all the members of the Senate. Each member of the board at the time of his appointment shall be a citizen of the United States and a resident of the Commonwealth of Pennsylvania, and shall have been a qualified elector in the Commonwealth for a period of at least one year next preceding his appointment. No member of the board during his period of service as such shall hold any other office under the law of this Commonwealth or of the United States. One of the original members shall be appointed for a term of two years, one for a term of four years, and one for a term of six years, but their successors shall be appointed for terms of six years each, except that any individual chosen to fill a vacancy shall be appointed only for the unexpired term of the member whom he is to succeed. The Governor shall designate one member to serve as chairman of the board.

(b) A vacancy in the board shall not impair the right of the remaining members to exercise all the powers of the board, and two members of the board shall at all times constitute a quorum. The board shall have an official seal, of which courts shall take judicial notice.

(c) The board shall at the end of every year make a report, in writing, to the Governor, stating in detail the work it has done in hearing and deciding cases, and otherwise, and it shall sign and report in full an opinion in every case decided by it.

(d) The chairman and members of the board shall receive such salaries as the Executive Board shall determine. The members of the board shall be eligible for reappointment. The employees of the board shall be appointed by the Secretary of Labor and Industry, with the approval of the Governor. The board may establish or use such voluntary and uncompensated services as may, from time to time, be needed.

(e) The principal office of the board shall be in the city of Harrisburg, but it may meet and exercise any or all of its powers at any place. The board may, by one or more of its members, or by such agents as it may designate, prosecute in any part of this Commonwealth any inquiry necessary to performance of its functions. A member who participates in such an inquiry shall not be disqualified from subsequently participating in a decision of the board in the same case. Nothing in this act shall be construed to authorize the board to appoint individuals for the purpose of conciliation, mediation or arbitration (or for statistical work), where such service may be obtained from the Department of Labor and Industry.

(f) The board, by and with the approval of the Secretary of Labor and Industry, shall have authority, from time to time, to make, amend, and rescind such rules and regulations as may be necessary to carry out the provisions of this act.

(g) The board, by and with the approval of the Secretary of Labor and Industry, shall have authority to cooperate with other agencies, including any agency of the United States or of another state, in all matters concerning the powers and duties of the board under this act and particularly in relation to agreements providing for the ceding to the board by the National Labor Relations Board of jurisdiction over any cases in any industry (other than mining, manufacturing, communications and transportation, except where predominantly local in character).

Section 5. Rights of Employes. - Employes shall have the right to self-organization, to form, join or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection.

Section 6. Unfair Labor Practices.

(1) It shall be an unfair labor practice for an employer

(a) To interfere with, restrain or coerce employes in the exercise of the rights guaranteed in this act.

(b) To dominate or interfere with the formation or administration of any labor organization or contribute financial or other material support to it: Provided, That subject to rules and regulations made and published by the board pursuant to this act, an employer shall not be prohibited from permitting employes to confer with him during working hours without loss of time or pay.

(c) By discrimination in regard to hire or tenure of employment, or any term or condition of employment to encourage or discourage membership in any labor organization: Provided, That nothing in this act, or in any agreement approved or prescribed thereunder, or in any other statute of this Commonwealth, shall preclude an employer from making an agreement with a labor organization (not established, maintained or assisted by any action defined in this act as an unfair labor practice) to require, as a condition of employment, membership therein, if such labor organization is the representative of the employes, as provided in section seven (a) of this act, in the appropriate collective bargaining unit covered by such agreement when made and if such labor organization does not deny membership in its organization to a person or persons who are employes of the employer at the time of the making of such agreement, provided such employe was not employed in violation of any previously existing agreement with said labor organization.

(d) To discharge or otherwise discriminate against an employe because he has filed charges or given testimony under this act.

(e) To refuse to bargain collectively with the representatives of his employes, subject to the provisions of section seven (a) of this act.

(f) To deduct, collect, or assist in collecting from the wages of employes any dues, fees, assessments, or other contributions payable to any labor organization, unless he is authorized so to do by a majority vote of all the employes in the appropriate collective bargaining unit taken by secret ballot, and unless he thereafter receives the written authorization from each employe whose wages are affected.

(2) It shall be an unfair labor practice for a labor organization, or any office or officers of a labor organization, or any agent or agents of a labor organization, or any one acting in the interest of a labor organization, or for an employe or for employes acting in concert-

(a) To intimidate, restrain, or coerce any employe for the purpose and with the intent of compelling such employe to join or to refrain from joining any labor organization, or for the purpose or with the intent of influencing or affecting his selection of representatives for the purposes of collective bargaining.

(b) During a labor dispute, to join or become a part of a sit-down strike, or, without the employer's authorization, to seize or hold or to damage or destroy the plant, equipment, machinery, or other property of the employer, with the intent of compelling the employer to accede to demands, conditions, and terms of employment including the demand for collective bargaining.

(c) To intimidate, restrain, or coerce any employer by threats of force or violence or harm to the person of said employer or the members of his family, with the intent of compelling the employer to accede to

demands, conditions, and terms of employment including the demand for collective bargaining.

(d) To picket or cause to be picketed a place of employment by a person or persons who is not or are not an employe or employes of the place of employment.

(d) To engage in a secondary boycott, or to hinder or prevent by threats, intimidation, force, coercion or sabotage the obtaining, use or disposition of materials, equipment or services, or to combine or conspire to hinder or prevent by any means whatsoever, the obtaining, use or disposition of materials, equipment or services.

(e) To call, institute, maintain or conduct a strike or boycott against any employer or industry or to picket any place of business of the employer or the industry on account of any jurisdictional controversy.

Section 7. Representatives and Elections.

(a) Representatives designated or selected for the purposes of collective bargaining by the majority of the employes in a unit appropriate for such purposes, shall be the exclusive representatives of all the employes in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment: Provided, That any individual employe or a group of employes shall have the right at any time to present grievances to their employer.

(b) The board shall decide in each case whether, in order to insure to employes the full benefit of their right to self-organization and to collective bargaining, and otherwise to effectuate the policies of this act, the unit appropriate for the purposes of collective bargaining shall be the employer unit, craft unit, plant unit, or subdivision thereof: Provided, That if the majority of the employes of a particular craft signify a wish for a craft unit, the board shall designate the craft unit as the unit appropriate for collective bargaining for the employes of that particular craft.

(c) Whenever a question arises concerning the representation of employes the board may, and, upon request of a labor organization, or an employer who has not committed an act herein defined as unfair labor practice, or any group of employes in an appropriate unit representing by petition thirty per centum or more of the employes of that unit, shall investigate such controversy and certify to the parties, in writing, the name or names of the representatives who have been designated or selected. In any such investigation, the board shall provide for an appropriate hearing upon due notice, either in conjunction with a proceeding under section eight, or otherwise, and may utilize any suitable method to ascertain such representatives, except that if either party to the controversy so requests, a secret ballot of employes shall be taken within twenty days after such request is filed. Any certification of representatives by the board shall be binding for a period of one year, or for a longer period if the contract so provides, even though the unit may have changed its labor organization membership.

(d) Whenever an order of the board, made pursuant to section eight, subsection (c), is based, in whole or in part, upon facts certified following an investigation pursuant to subsection (c) of this section, and there is a petition for the enforcement or review of such order, such certification and tile record of such investigation shall be included in the transcript of the entire record required to be filed under subsections (a) or (b) of section nine, and thereupon the decree of the court enforcing, modifying or setting aside, in whole or in part, the order of the board, shall be made and entered upon the pleadings, testimony, and proceedings set forth in such transcript.

Section 8. Prevention of Unfair Labor Practices.

(a) The board is empowered as hereinafter provided, to prevent any person from engaging in any unfair labor practice listed in section six of this act. This power shall be exclusive and shall not be affected by any other means of adjustment or prevention that have been or may be established by

agreement, law, or otherwise.

(b) Whenever it is charged that any person has engaged in or is engaging in any such unfair labor practice, the board, or any member or designated agent thereof, shall have authority to issue and cause to be served upon such person a complaint, stating the charges in that respect, and containing a notice of hearing before the board, or any member or designated agent thereof, at a place therein fixed, not less than five days after the serving of said complaint. Any such complaint may be amended by the board, member or agent conducting the hearing at any time prior to the issuance of an order based thereon. The person so complained of shall have the right to file an answer to the original or amended complaint and to appear in person, or otherwise, to give testimony at the place and time set in the complaint. In the discretion of a member or agent conducting the hearing or of the board, any other person may be allowed to intervene in the said proceeding and to present testimony. In any such proceeding, the rules of evidence prevailing in courts of law or equity shall be followed but shall not be controlling.

(c) The testimony taken at the hearing shall be reduced to writing and filed with the board. The board upon notice may take further testimony or hear argument. If, upon all the testimony taken, the board shall determine that any person named in the complaint has engaged in or is engaging in any such unfair labor practice, the board shall state its findings of fact, and issue and cause to be served on such person an order requiring such person to cease and desist from such unfair labor practice, and to take such reasonable affirmative action, including reinstatement of employees, discharged in violation of clause (c) of subsection (1) of section six of this act, with or without back pay, as will effectuate the policies of this act. Such order may further require such person to make reasonable reports, from time to time, showing the extent to which the order has been complied with. If, upon all the testimony, the board shall be of the opinion that the person or persons named in the complaint has not engaged in or is not engaging in any such unfair labor practice, then the board shall make its findings of fact and shall issue an order dismissing the complaint. No order shall award back pay from a period more than six weeks prior to the time of the filing of the complaint. A copy of such findings of fact, conclusions of law, and order shall be mailed to all parties to the proceedings.

(d) Until a transcript of the record in a case shall have been filed in a court as hereinafter provided, the board may at any time, upon reasonable notice, and in such manner as it shall deem proper, modify or set aside, in whole or in part, any finding or order made or issued by it: Provided, That any agreement made between an employer and a bona fide labor organization, and all the provisions thereof, shall be entitled to full force and effect unless the board specifically finds that these provisions involve the commission of an unfair labor practice within the meaning of clause (c) of subsection (1) of section six of this act.

(e) The proceedings before the board or before any of its examiners shall be conducted with speed and dispatch. No findings shall be made on the basis of evidence relating to acts which occurred prior to the original passage of this act. (f) All cases in which complaints are actually issued by the board, shall be prosecuted before the board or its examiner, or both, by the representatives of the labor organization or employe filing the charge, and, in addition thereto or in lieu thereof if the Department of the Attorney General sees fit, by a deputy attorney general especially assigned to this type of case. No examiner shall have any other position with the government of this State or of the United States or with the Pennsylvania Labor Relations Board while in the employ of the board.

Section 9. Judicial Review.

(a) The board shall have power to petition the court of common pleas of any county wherein the unfair labor practice in question occurred, or wherein any person charged with the commission of any unfair labor practice resides or transacts business, for the enforcement of such order and for appropriate temporary relief or restraining order, and shall certify and file in the court a transcript of the entire record

in the proceeding, including the pleadings and testimony upon which such order was entered and the findings and order of the board. Upon such filing, the court shall cause notice thereof to be served upon such person, and thereupon shall have jurisdiction of the proceeding and of the question determined therein, and shall have power to grant such temporary relief or restraining order as it deems just and proper and to make and enter upon the pleadings, testimony, and proceedings set forth in such transcript a decree enforcing, modifying and enforcing as so modified, or setting aside, in whole or in part, the order of the board. The parties before the court shall be the board and the person charged with the commission of any unfair labor practice. No objection that has not been urged before the board, its members or agents shall be considered by the court unless the failure or neglect to urge such objection shall be excused because of extraordinary circumstances. The findings of the board as to the facts, if supported by evidence, shall be conclusive. If either party shall apply to the court for leave to adduce additional evidence, and shall show to the satisfaction of the court, that such additional evidence is material, and that there were reasonable grounds for the failure to adduce such evidence at the hearing before the board, its members or agent, the court may order such additional evidence to be taken before the board, its members or agent, and to be made a part of the transcript. The board may modify its findings as to the facts or make new findings by reason of additional evidence so taken and filed, and it shall file such modified or new findings which, if supported by evidence, shall be conclusive, and shall file its recommendations, if any, for the modification or setting aside of its original order.

(b), (c) Repealed. Act of April 28, 1978, P.L. 202, No. 53. (For disposition of repealed subject matter, relating to review in court of common pleas and Supreme Court, see Disposition Table preceding Title 42, Judiciary and Judicial Procedures, of the Pennsylvania Consolidated Statutes Annotated.)

(d) When granting appropriate temporary relief or a restraining order or making and entering a decree enforcing, modifying, or enforcing as so modified, or setting aside, in whole or in part, an order of the board, as provided in this section, the jurisdiction of courts sitting in equity shall not be limited by acts pertaining to equity jurisdiction of courts. The act of June second, one thousand nine hundred and thirty-seven (Pamphlet Laws, one thousand one hundred ninety-eight), entitled "An act relating to employes and organizations thereof; defining labor disputes; prescribing the procedure by which and the conditions under which injunction may be granted in such disputes, and the scope thereof; declaring certain undertakings and promises between employers and employes contrary to public policy and void; prescribing the nature of proof necessary in actions arising out of labor disputes against persons or associations; prescribing the terms and conditions for bonds to be furnished prior to the issuance of injunctions; prescribing the procedure in case of appeal from granting injunctions; limiting the duration of temporary and permanent injunctions in case of labor disputes; and providing for the payment of costs; and repealing all acts or parts of acts inconsistent herewith," shall not be applicable to orders of the board, or to court orders enforcing orders of the board, or any provision of this act, or to violations of any order of the board, or of court orders enforcing orders of the board, or any provision of this act.

(e) No petitions or charges involving questions arising under clause (b) of subsection (1) of section six shall relieve the board of determining any questions arising under subsection (c) of section seven of this act immediately, and in their regular and normal order, and the making of a certification thereon if such is warranted. No petition or charge shall be entertained which relates to acts which occurred or statements which were made more than six weeks prior to the filing of the petition or charge.

Section 10. Investigatory Powers.

For the purpose of all hearings and investigations which, in the opinion of the board, are necessary and proper for the exercise of the powers vested in it by sections seven and eight, and for the purpose of investigating and considering labor disputes, other than a question concerning the representation of employes, which it shall be the duty of the board to undertake whenever petitioned so to do by either a labor organization, an employer, or the representative of any unit of employes-

(a) The board or its duly authorized agents shall at all reasonable times have access to, for the purpose of examination and the right to copy, any evidence of any person being investigated or proceeded against that relates to any matter under investigation or in question. Any member of the board shall have the power to issue subpoenas requiring the attendance and testimony of witnesses and the production of any evidence that relates to any matter under investigation or in question before the board, its members or agent conducting the hearing or investigation. Such subpoenas shall be issued as a matter of right upon the request of either party at any time during the pendency of a proceeding. Any member of the board, or any agent designated by the board for such purposes, may administer oaths and affirmations, examine witnesses, and receive evidence.

(b) If any witness resides outside of the Commonwealth or through illness or other cause is unable to testify before the board or its members or agent conducting the hearing or investigation, his or her testimony or deposition may be taken within or without this Commonwealth, in such manner and in such form as the board or its members or agent conducting the hearing, may by special or general rule prescribe.

(c) In case of contumacy or refusal to obey a subpoena issued to any person, the court, upon application by the board, shall issue to such person an order requiring such person to appear before the board, its members or agent, there to produce evidence if so ordered, or there to give testimony touching the matter under investigation or in question, and any failure to obey such order of the court may be punished by said court as a contempt thereof.

(d) No person shall be excused from attending and testifying or from producing books, records, correspondence, documents or other evidence in obedience to the subpoena of the board on the ground that the testimony or evidence required of him may tend to incriminate him or subject him to a penalty or forfeiture, but no individual shall be prosecuted or subjected to any penalty or forfeiture for, or on account of, any transaction, matter or thing concerning which he is compelled, after having claimed his privilege against self-incrimination, to testify or produce evidence, except that such individual so testifying shall not be exempt from prosecution and punishment for perjury committed in so testifying.

(e) Complaints, orders, and other process and papers of the board, its members or agent may be served, either personally or by registered mail or by telegraph or by leaving a copy thereof at the principal office or place of business of the person required to be served. The verified return by the individual so serving the same, setting forth the manner of such service, shall be proof of the same and the return post office receipt or telegraph receipt therefor when registered and mailed or, telegraphed as aforesaid, shall be proof of service of the same. Witnesses summoned before the board, its members or agent shall be paid the same fees and mileage that are paid witnesses in the courts of this Commonwealth, and witnesses whose depositions are taken and the person taking the same shall severally be entitled to the same fees as are paid for like services in the courts of this Commonwealth.

(f) Repealed. Act of April 28, 1978, P.L. 202, No. 53. (For disposition of repealed subject matter, relating to place of service, see Disposition Table preceding Title 42, Judiciary and Judicial Procedures, of the Pennsylvania Consolidated Statutes Annotated.)

(g) The several departments, commissions, divisions, authorities, boards, bureaus, agencies and offices of the Commonwealth, or any political subdivision or agency thereof, shall furnish the board, upon its request, all records, papers, and information in their possession relating to any matter before the board.

Section 10.1. Forfeiture of Rights.

Whenever the board shall find, as part of its findings of fact in any proceeding before it, that the party or parties filing charges of unfair labor practices upon which the complaint was based have engaged in an unfair labor practice (as defined in section six) in connection with or as part of the actions forming the basis of the complaint, such findings shall constitute a complete defense to the complaint, and no order shall issue thereon against the person charged.

Section 11. Penalties.

Any person who shall wilfully resist, prevent, impede or interfere with any member of the board, or any of its agents, in the performance of duties pursuant to this act, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine of not more than five thousand dollars (\$5,000), or by imprisonment for not more than one year, or both.

Section 12. Repealer.

All acts or parts of acts, whether special or local, inconsistent herewith, are hereby repealed.

Section 13. Limitations.

Nothing in this act shall be construed so as to interfere with, impede or diminish in any way the right of employes to strike.

Section 14. Separability.

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 15. Effective Date.

This act shall take effect immediately upon its final enactment.