THE SCOPE OF TEACHER-BOARD BARGAINING UNDER PENNSYLVANIA’S ACT 195: WHICH MATTERS ARE AND ARE NOT SUBJECT TO BARGAINING?

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ABSTRACT

This article provides a tabular synthesis of the various labor board and court rulings regarding which topics fit in each of the categories for scope of bargaining under the Pennsylvania statute that governs teacher-board collective negotiations. Thus, it not only provides guidance for practitioners and others interested in teacher-board bargaining in Pennsylvania but also a model for providing similar guidance in the other states that have broad language and various rulings concerning scope of negotiations. Using coded designations and a visual-organizer format, the chart that is the focal feature of this article synthesizes multiple primary legal sources into one page that serves as a starting point—not an ending point, for authoritative guidance.

Teacher-board collective bargaining is primarily a matter of state legislation. In states that authorize such bargaining, the statute is either exclusive to teachers or covers public employees more generally, and it addresses—either with broad language or a specific laundry list—which subjects must, may, and may not be collectively bargained. The majority of the states use broad language, typically a variation of the basic balancing standard in the National Labor Relations Act [1].

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This article provides a practical chart-type model for showing the scope of teacher-board bargaining in states that are within this predominant pattern. Inasmuch as Pennsylvania is one of the leading such states in terms of legal activity, including labor board and court rulings regarding scope of, it serves here as the demonstration of this synthesizing model.

In Pennsylvania, the applicable statute is the Public Employee Relations Act (PERA), also known as Act 195 [2]. This act, which applies to public employees generally, contains three sections that, taken together, broadly demarcate the scope of bargaining. Section 701 provides the standard for mandatory subjects, i.e., those that both sides must bargain upon the request of either party—“wages, hours, and other terms and conditions of employment” [2, § 1101.701; 3]. Section 702 provides, as interpreted by the courts [4], a balancing boundary for this mandatory zone—“matters of inherent managerial policy” [2, § 1101.702; 5]. It also establishes a separate “meet and discuss” mechanism, which is akin to consultation rather than negotiation, for subjects that are not mandatory or illegal, i.e., for “policy matters affecting wages, hours, and terms and conditions of employment as well as the impact thereon upon request by public employee representative” [2, § 1101.702]. Finally, Section 703 addresses illegal subjects, i.e., those that, if included in the collective bargaining agreement, are not enforceable [2, § 1101.703].

For resolution of disputed subjects, the PERA provides a multilevel system that starts with a hearing examiner of the administering agency, the Pennsylvania Labor Relations Board (PLRB) and proceeds on appeal to the PLRB itself. If either party disputes the PLRB resolution that party appeals to the Pennsylvania Court of Common Pleas, and, if further appealed, to the Pennsylvania Commonwealth Court. Finally, the Pennsylvania Supreme Court is the highest applicable authority, if the losing side seeks and the court exercises its discretion to decide the matter.

Although teacher-board bargaining more generally under the PERA has been the subject of scholarly analysis [6] and state partisan organizations have produced internal analyses of the scope of bargaining for teachers under the PERA [7], the participants and interested observers lack a handy, readily available, and nonpartisan synthesis of the topics that, according to pertinent legislation and rulings to date, fit in the three respective zones of sections 701-703.

The attached table provides such a practical synthesis. It lists the subjects relevant to teacher-board bargaining that the courts, the PLRB, or PLRB hearing examiners have determined to be within Sections 701 (matters subject to bargaining), 702 (matters subject to meet and discuss), or 703 (matters illegal to bargain).

The table’s accompanying notes list the applicable ruling(s) for each entry in the table [8, 9]. If the decision is based on an analogous statute, such as Pennsylvania’s Act 111, which governs collective bargaining for police and fire departments [10], “cf.” precedes the citation to show that the authority is only by analogy.
entries are listed alphabetically for each of these categories of collective bargaining. To show the particular level of cited authority, each entry is visually presented as follows:

- **ALL CAPITAL LETTERS IN BOLDFACE AND ITALICS** = Pennsylvania Supreme Court decision or statutory provision.
- **ALL CAPITAL LETTERS IN BOLDFACE** = Pennsylvania Commonwealth Court decision
- **ALL CAPITAL LETTERS** = Pennsylvania Court of Common Pleas decision
- **noncapital letters in boldface and in italics** = PLRB decision
- **noncapital letters in italics** = PLRB hearing examiner decision
- * (i.e., one asterisk) = the cited authority is not directly within the context of education
- ** (i.e., two asterisks) = the cited authority includes one or more exceptions
- The entry is listed with two different fonts = the first font represents rulings within the context of education, whereas the second font represents rulings that are only indirectly applicable.

Finally, this tabular synthesis is intended as a starting point, rather than an ending point for authoritative guidance. We advise readers to consult the cited authority with legal counsel to determine definitively the categorization of the particular teacher-board bargaining issue. We also welcome corrections and additions so that such mutual collective interaction proceeds in a mutually harmonious and productive manner.

**CHART NOTES**

1. 24 P.S. § 11-1123-A (“final best-offer arbitration”). “Interest” arbitration applies upon impasse at the expiration of the collective bargaining agreement (CBA); in contrast, grievance arbitration (infra) applies to matters arising in the administration and interpretation of the CBA.
13. Cf. Amalgamated Transit Union Div. 1279 v. Cambria County Transit Auth., 21 PPER ¶ 22056 (Cambria County C.P. 1991) (ruled that suspicion-less drug testing, i.e., either on a random basis or as part of an annual physical examination, is a mandatory subject of bargaining except where the employer can show that: 1) drug or alcohol abuse is a real problem in the workplace; and 2) an immediate and substantial public safety risk is present).
15. 43 P.S. § 1101.705.
17. Canon-McMillan Sch. Bd. v. Commonwealth, 316 A.2d 114 (Pa. 1974) (ruled that wages for extracurricular activities constitute a mandatory subject of bargaining when performed by a member of the professional bargaining unit).
19. 43 P.S. § 1102.3; cf. Int’l Ass’n of Firefighters Local No. 1749 v. City of Butler, 32 PPER ¶ 32066 (H. Ex. 2001).
21. 43 P.S. § 1101.903.
26. 43 P.S. § 1101.75 (with the proviso that “the payment of dues and assessments, while members, may be the only requisite employment condition”); see also Dauphin County Tech. Sch. Educ. Ass’n v. Dauphin County Area Vo-Tech Sch. Bd., 398 A.2d 168 (Pa. 1978).
30. Mifflin County Educ. Ass’n v. Mifflin County Sch. Dist., 21 PPER ¶ 21127 (PLRB 1990); PLRB v. Hazleton Area Sch. Dist, 15 PPER ¶ 15170 (PLRB 1984) (requires two
conditions prior to finding that there has been a refusal to bargain about a change in past practice: 1) an established past practice regarding 2) a term or condition of employment upon which the employer is obligated to bargain).


33. *Riverside Educ. Ass’n v. Riverside Sch. Dist.*, 27 PPER ¶ 27118 (Lackawanna County C.P. 1996) (ruled that district must bargain the step placement regarding prior years of service to current district)


36. *Chester County Intermediate Unit Educ. Ass’n v. Chester County Intermediate Unit No. #24*, 33 PPER ¶ 33189 (H. Ex. 2002) (held that district violates its duty to bargain in good faith upon refusing the union access to information that is either reasonably necessary to the presentation of a grievance or to the decision of whether to file a grievance); *UMWA, Dist. 2 v. Fayette County*, 36 PPER ¶ 72 (H. Ex. 2005).

37. 24 P.S. § 11-1106. Section 1106 of the School Code states “[e]xcept for school districts of the first class and first class A which may require residency requirements for other than professional employees, substitutes and temporary professional employees, no other school district shall require an employee reside within the school district as a condition for appointment or continued employment.”

38. 24 P.S. § 11-1161.1. Act 66, which was a 1996 amendment to the School Code, eliminated travel and terminal sabbaticals; replaced study sabbaticals with “leave of absence for professional development”; and authorized leaves of absence for “classroom occupational exchange.”


to bargain subcontracting when 1) the employer ceases to provide specific services; 2) the bargaining unit does not exclusively perform the job being subcontracted out, or 3) the union has knowledge of the contracting-out proposal, an opportunity to bargain prior to the proposal’s implementation, and a bargained agreement for severance pay for eliminated employees.

49. Cf. City of Harrisburg v. PLRB, 605 A.2d 440 (Pa. 1992); St. Clair Educ. Ass’n v. St. Clair Area Sch. Dist., 584 A.2d 1106 (Pa. Commw. Ct. 1990); Midland Educ. Ass’n v. Midland Borough Sch. Dist., 560 A.2d 303 (Pa Commw. Ct. 1989), appeal denied, 581 A.2d 576 (Pa. 1990). However, the employer is not required to bargain this subject if 1) the work assigned was not performed by bargaining unit members or 2) it was not the employer who took the affirmative act to transfer the work.


56. Mt. Lebanon Educ. Ass’n v. Mt. Lebanon Sch. Dist., 32 PPER ¶ 32047 (PLRB 2001). However, an employer must bargain the impact of the loss of parking spaces including alternative parking spaces. Id.


59. Joint Bargaining Comm. of the Pennsylvania Soc. Serv. Union v. PLRB, 469 A.2d 150 (Pa. 1983). However, the decision was specific to employees’ caseload in the special setting of the state’s social service agency, and the court warned that “[i]n some [other] factual settings caseload might indeed be a mandatory subject of bargaining.” Id. at 154.


75. 53 P.S. § 895.607. As of the passage of Act 205 in 1995, an employer’s decision to revise a pension plan is not subject to the employer’s obligation to bargain.


79. *SEIU Local 395 v. City of Allentown*, 26 PPER ¶ 26059 (H. Ex. 1995) (applicable to school district employees other than teachers where not prescribed by statute).


dismissed, 446 A.2d 603 (Pa. 1982).
86. Cf. Wilkes-Barre Police Benevolent Ass’n v. City of Wilkes-Barre, 29 PPER ¶ 29240
(PLRB 1998).
88. Cf. PSSU Local 668 v. Commonwealth, Dep’t of Corrections, 29 PPER ¶ 29022 (PLRB
1997).
89. Forest Area Sch. Serv. Personnel Ass’n v. Forest Area Sch. Dist., 19 PPER ¶ 19116
PLRB 1988).
90. Oil City Area Educ. Ass’n v. Oil City Area Sch. Dist., 34 PPER ¶ 31 (H. Ex. 2003).
91. Cf. AFSCME, Council 13 v Pennsylvania Office of the Budget, 18 PPER ¶ 18138
(PLRB 1987).
(PLRB 1998); Palmyra Area Educ. Ass’n v Palmyra Area Sch. Dist., 26 PPER ¶ 26087
(PLRB 1995); Minersville Area Sch. Serv. Personnel Ass’n v Minersville Area Sch.
Dist., 18 PPER ¶ 18025 (PLRB 1986).
94. Chester County Intermediate Unit Educ. Ass’n v. Chester County Intermediate Unit
No. 24, 33 PPER ¶ 33189 (H. Ex. 2002); Pennsylvania State Corrections Officers
Ass’n v. Commonwealth, 33 PPER ¶ 33157 (H. Ex. 2002); Greater Latrobe Educ.
95. 24 P.S. § 11-1166.1. In 1996, Act 66 eliminated travel and terminal sabbaticals;
replaced study sabbaticals with “leave of absence for professional development”; and
authorized leaves of absence for “classroom occupational exchange.”

ENDNOTES

2. 43 P.S. 1101 et. seq. The School Code contains more recent restrictions specific to
teacher strokes: 24 P.S. § 11-1101-A.
3. See also 24 P.S. § 11-1111-A (Act 88).
5. See also 24 P.S. § 11-1112-A (Act 88).
6. See, e.g., Charles Baird, Pennsylvania’s Act 195: Twenty Years of Folly, 10 Gov’t
Union Rev. 1 (1989); Kathleen Herbert, Balancing Teachers’ Collective Bargaining
Rights with the Interests of School Districts, Students and Taxpayers: Current
Legislation Strikes Out, 99 Dick L. Rev. 57 (1994); cf. Patricia Crawford, Pennsylvania’s
provisions limiting teacher strikes).
7. See, e.g., Pennsylvania State Education Association Legal Division, Act 195: Scope
of Bargaining Document (July 14, 2004).
8. The cited sources, such as “A.2d” are generally available in law libraries and on
Internet legal research sites with one exception: The rulings of the PLRB and its
hearing examiners, along with some of the court decisions, are published in the
specialized series entitled the Pennsylvania Public Employee Reporter (PER), which
is commercially available from LRP Publications.
9. The parenthetical for each citation designates the deciding forum, which in descending order is:
   • Pa. = Pennsylvania Supreme Court
   • Pa. Commw. Ct. = Pennsylvania Commonwealth Court (which is the intermediate, appellate level of the Pennsylvania judiciary)
   • C.P. = Pennsylvania Court of Common Pleas, designated by county (and which is the trial court level of the Pennsylvania judiciary)
   • PLRB = Pennsylvania Labor Relations Board
   • H. Ex. = PLRB hearing examiner


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