

ACT 88: THE CHANGING FACE OF IMPASSE RESOLUTION FOR PENNSYLVANIA'S TEACHERS

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ABSTRACT

Public school teachers, among other public employees, were granted the right to bargain with their employers regarding wages, hours, terms and conditions of employment with the passage of Act 195 in 1970. As a final step in the impasse resolution procedure, teachers were given an unlimited right to strike with the caveat that it could not prevent the state-required 180 days of instruction from being completed by June 30. In the face of public outcry against teachers' strikes, the Pennsylvania General Assembly enacted an amendment to the Public School Code of 1949 by adding Article XI-A, commonly known as Act 88. Act 88, inter alia, replaced the impasse resolution procedures of Act 195 with a structured timetable for mediation, fact finding, and nonbinding final best offer arbitration. To understand the effects of Act 88, its structural differences from Act 195 are presented along with statistical data on the outcomes of teachers' collective bargaining during recent years.

HISTORICAL DEVELOPMENT: "THE PUBLIC EMPLOYE RELATIONS ACT"

The right of public school teachers to bargain with their employers over wages, hours, terms and conditions of employment was established when the Pennsylvania General Assembly enacted the "Public Employe Relations Act" (Act 195) in 1970 [1]. Prior to that time, public school teachers, and all public employees falling outside the scope of the strike-prohibitive Act 111 [2], had no right to bargain for the provisions of their employment contracts. Under Article I of Act 195, the General Assembly states that the purpose of the act is to "promote orderly and constructive relationships between all public employers and their employes," while maintaining the health, safety, and welfare of Pennsylvania's citizens [1, at

564]. The language of Article I also observes the harm of unresolved disputes on the general public and the necessity for a procedure that minimizes such disputes and provides for their timely resolution [1, at 564]. The General Assembly asserts that a constructive relationship between public employers and employees can be effectively created by:

(1) granting to public employes the right to organize and choose freely their representatives; (2) requiring public employers to negotiate and bargain with employe organizations representing public employes and to enter into written agreements evidencing the result of such bargaining; and (3) establishing procedures to provide for the protection of the rights of the public employee, the public employer and the public at large [1, p. 564].

Under this language, public employees, and more specifically teachers (for purposes of this discussion), now had the right to bargain for the wages, hours, terms and conditions of their employment. Each of the remaining twenty-two articles of Act 195 played an important role in providing the specific means by which a workable school board/teacher relationship could be obtained. Article VIII, however, which set forth the impasse resolution procedures for collective bargaining, quickly rose to the forefront as the most important part of Act 195 [1, at 571]. Its provisions had a significant impact on Pennsylvania society.

For the purposes of this analysis, the scope of which is limited to school board and teacher "impasse procedures," Act 195 will be discussed in the past tense. The impasse resolution procedures of Act 195 continue to apply to public employees other than teachers, the latter of whom are now covered by Act 88.

Although Article VIII of Act 195 provided mediation, fact finding, and arbitration procedures for the resolution of collective bargaining impasses, Article X provided public school teachers with an unlimited right to strike [1, at 573-74]. In addition to regular strikes, the teachers' unions began engaging in selective strikes where the union would go on strike for several days and then return to the classroom for a short period of time before going out on strike again [3]. It would appear that selective strikes began to focus the public's outcry against teacher strikes. Striking under Act 195, for either sustained periods or selectively, was curtailed only by a 1972 commonwealth court decision that allowed teacher strikes to be enjoined if they made it unlikely that the requisite 180 days of instruction would not be made up by June 30 of the school year in which the strike occurred [4]. Unfortunately for the public, the commonwealth court's decision was rarely enforced [3]. As the political strength of teachers' unions increased, and the threat of continued striking hovered over the public, the unions were able to force courts to supermediate strike issues [3]. The result was that Act 195's impasse resolution procedures became largely inefficient, and the tense gap between the teachers on one side and the school boards and public on the other grew to intolerable distances. Pennsylvania's General Assembly attempted to close this gap when it enacted Act 88 in 1992 [5].

ACT 88's STRUCTURAL DIFFERENCES

Mediation

In mediation, a neutral third party (mediator) is brought in to aid negotiations by reconciling the disputed issues that have caused the impasse [6]. The mediator's power to effectuate a resolution is limited solely to a position of influence, as he or she has no binding authority to end the dispute by issuing a final contractual decree. Acts 195 and 88 both require that negotiations begin no later than January 10, and that if negotiations fail to result in an agreement, mediation must begin by February 25 [7]. They also provide for voluntary and mandatory mediation when negotiations between the school board and teachers' union reach an impasse. Voluntary mediation is the same under both acts. Following a mutual request for mediation, the parties simply need to request a mediator from the Bureau of Mediation [5, at 405]. Differences arise, however, regarding the length of time that negotiations may continue before mandatory mediation occurs.

Under Section 1121-A, subsections (a) and (b) of Act 88, the parties *must* request mediation if they have not reached an agreement within forty-five days after negotiations commenced, but in no event later than 126 days prior to the end of the school's fiscal year (either June 30 or December 31) [5, at 405]. This mandatory mediation provision requires the parties to submit an immediate written request to the Bureau of Mediation, which is then required to make a minimum complement of twenty-five mediators available to mediate the dispute [5, at 405]. The forty-five and 126-day requirements set forth in Act 88 are changes from Act 195's previous twenty-one and 150-day requirements [1, at 571]. By changing the "negotiation" period by a lengthier twenty-four days and allowing it to exist up to a point another twenty-four days closer to the end of a school district's fiscal year, Act 88 created a more extensive timetable for the parties to resolve their differences on their own. These changes reflect the legislature's intent to force "bipartisan" resolutions of impasses, a goal that will be examined later in this text [8, p. 3].

Fact Finding

Both Acts 195 and 88 contain the general requirement that fact finding take place when mediation fails to produce an agreement between the parties. Additionally, they define the functions, power, and makeup of fact-finding panels identically. Both acts provide in pertinent part: a fact-finding panel may consist of either one or three members, such panel shall hold hearings and take oral or written testimony and shall have subpoena power, and if the parties fail to reach an agreement during fact finding, the panel shall make findings of fact and recommendations regarding the impasse [5, at 405]. The findings and recommendations of the panel serve simply as a report, not as a binding contractual agreement. The essential differences between the fact-finding procedures of Acts 195

and 88 lie in their distinct timetables and the methods by which fact finding may occur.

Section 1122-A (a) (1) of Act 88 provides that if no agreement is reached within forty-five days of beginning mediation, or no longer than eighty-one days prior to the end of the school's fiscal year, the Bureau of Mediation is required to notify the Pennsylvania Labor Relations Board (PLRB) of the continuing impasses [5, p. 405]. These forty-five and eighty-one day requirements are changes from Act 195's previous twenty and 130-day requirements [1, at 571]. These timelines lengthened the mediation period, which is analogous to the new act's extended negotiation period. By extending mediation, the act once again reveals the legislature's intent to encourage bipartisan settlements.

Another significant change is that under Act 195, once the PLRB had been notified of the failure of mediation, it then had the discretion to appoint a fact-finding panel [1, at 571]. Although Act 88 gives the PLRB this same discretion, it also permits the parties to make mutual and unilateral requests for fact finding [5, at 405]. These requests must be made no later than eighty-one days prior to the end of the school's fiscal year [5, at 405]. Act 88 provides that the PLRB shall appoint a fact-finding panel where a mutual request is made; however, such requests are impermissible during mandated final best offer arbitration [5, at 405]. Similarly, the PLRB may choose to implement fact finding absent a request by one or both of the parties, but it may not do so during the period between a notice to strike and the conclusion of a strike, or during final best offer arbitration [5, at 405]. Act 88 also states that if the PLRB fails to implement fact finding prior to a strike, it must issue a report giving the reasons for its refusal, if either party requests one [5, at 405].

As was mentioned above, the essential duties of the fact-finding panel have remained unchanged under the new act. The time limitations governing the panel's recommendations have also gone unchanged. Under both acts, the fact-finding panel has forty days, beginning with the date the Bureau of Mediation notified the PLRB that mediation has failed, in which to send their written findings and recommendations to the parties [5, at 405]. The commencement of the forty-day period is, of course, altered by Act 88's newly extended timelines for mediation. Both acts also state that following receipt of the panel's report, the parties have ten days to notify the PLRB, and each other, whether or not they will accept the recommendations [5, at 406]. If the parties reject, the panel is then required to publicize its recommendations and findings of fact [5, at 406]. Not less than five days, but not more than ten days following publication, the parties are required to once again notify the PLRB and each other of whether they will accept the panel's findings [15, at 406].

Act 88's attempt to foster bipartisan settlements through its fact-finding procedures becomes clear when the extended timeline for mediation is viewed in conjunction with the provisions allowing for fact finding upon mutual or unilateral

requests by the parties. The additional requirement that the PLRB issue a report when it elects not to implement fact finding seems to discourage such inaction. Although Act 88's prohibition on fact finding during strikes or final best offer arbitration appears on its face to be a limitation, it merely allows for the implementation of separate procedures to resolve the impasse once the extended periods for mediation and fact-finding have passed.

Arbitration

There are two forms of arbitration used in labor disputes: rights arbitration and interest arbitration. Rights arbitration is used to interpret the application of a negotiated labor contract. After conducting a hearing to gather facts, evidence, and testimony, the arbitrator issues a binding, nonappealable award. Interest arbitration is used to establish a collective bargaining agreement in the face of failed negotiations. Again the arbitrator conducts a series of hearings to collect information from which a binding award is drafted. In regular interest arbitration, after the hearings are conducted, a tripartite board of arbitrators, consisting of a neutral arbitrator, a union arbitrator, and an employer arbitrator, meet in a series of executive sessions. In the executive session, the neutral, using the power of a pending binding award, sorts out the throw-away issues and identifies the real reasons for the impasse. Again using the power of the binding award as a tool, the arbitrator begins to mediate settlements until only a few issues remain in dispute. At this point, the unresolved issues have been discussed and reviewed to the point that the arbitrator generally knows the employer's ability to pay and the real needs within the union's demands. Thus, when the binding awards is issued, it generally contains no surprises and avoids any unrealistic findings.

Another form of interest arbitration is final best offer, which is used in baseball arbitrations. Here, the parties submit to the arbitrator, during the course of a hearing, their final best offer on the package of items in dispute. The arbitrator then examines the evidence in the record and selects one of the parties' offers. The offer adopted becomes the final and binding award. The second form of final best offer arbitration is one that proceeds on an issue-by-issue basis. This form gives the arbitrator the option of selecting either the union's or employer's position on each issue. The final result, once again, is a final and binding award.

Act 195 contained a regular arbitration clause. Such arbitrations arose only by the mutual agreement of the parties, and in the case of teacher disputes, such agreements were seldom achieved [3]. In relation to teachers, the process was additionally complicated by language making any award that required legislative action advisory only. Inasmuch as school boards are defined as an arm or extension of the state legislature, it was unclear whether a tax increase that arose out of an arbitration award was in fact legislative action within the meaning of this

portion of the act [3]. As such, teachers unions were hesitant to enter into arbitration [3]. However, Act 195 does provide for mandatory binding arbitration in disputes involving prison and mental hospital guards, and certain court employees [1, at 572]. This language still contains the proviso that awards requiring legislative enactments will be considered advisory only [1, at 572]. These employees are denied the right to strike in order to maintain the safety and welfare of the public.

Section 1125-A of Act 88 provides for nonbinding final best offer arbitration, which may arise by mutual agreement of the parties (voluntary), or is mandated where the required 180 day instructional period is threatened by strike or lockout [5, at 407]. Voluntary final best offer arbitration contains some restrictions. First, it can only occur prior to mandated final best offer arbitration [5, at 407]. Second, it cannot occur if fact-finding has been initiated and not completed [5, at 407]. And third, it can only be implemented by mutual agreement of the parties [5, at 407]. When the parties enter into arbitration, whether voluntary or mandatory, they must first negotiate the mode of final best offer they wish to use [9, at 2]. They may choose any of the three following modes: 1) arbitration under which the award is confined to a choice of the last offer of the school board, the union, or the recommendations in the fact finder's report; 2) arbitration on an issue-by-issue basis under which the award is confined to a choice of the last offer of the school board, the union, or the recommendations in the fact finder's report; 3) arbitration on the basis of separated economic (compensation for services) and noneconomic issues where the award is limited to a choice of the last offer of the school board, the union, or the recommendations in the fact finder's report [5, at 406-407]. If the parties are unable to choose an award procedure, the choice shall be made by the mediator who was appointed under Section 1121-A [5, at 408].

Arbitration under Act 88 occurs before a tripartite panel of arbitrators, similar to the one mentioned in the preceding discussion on interest arbitration. Under Act 88, each party selects one member of the panel who is required to be "knowledgeable in the school-related fields of budget, finance, educational programs and taxation" [5, at 407]. The third arbitrator, who is neutral, is selected by the parties from a list of seven arbitrators furnished by the American Arbitration Association [5, at 407]. The neutral arbitrator is required to be a resident of Pennsylvania and to be "knowledgeable in the areas necessary to effectively make a determination" [5, at 407]. Once an award procedure has been adopted and an arbitration panel selected, further requirements must be met by both the panel and the parties.

The parties must submit their awards to the arbitration panel within ten days of submitting the impasse to final best offer arbitration. The school board is then required to post both offers in the school entity's main office for public comment, and it must make copies of the offers available to the public [5, at 408]. This public comment period lasts for ten days [5, at 408]. Thereafter, the comments are given

to the arbitration panel for consideration [5, at 408]. This latter requirement allows the public, albeit in small part, to represent its own interests regarding the impasse. In addition to examining the parties' written offers and considering the public's comments, the panel is required to conduct hearings in which the parties present arguments supporting their respective offers [5, at 408]. No later than twenty days after the hearings have ended, the panel must make a written determination consistent with the award mode selected, and forward copies of the award to the parties and to the PLRB [5, at 409].

The arbitration panel's determination will only become final and binding if neither party rejects it within ten days of receipt of the award. Critically, the act states that the binding nature of the determination "includes . . . a determination which requires a legislative enactment by the employer prior to or as a condition for its implementation, including, without limitation, the levy and imposition of taxes" [5, at 409]. This language effectively resolves the union's previous concern under Act 195 that an award requiring a tax hike to pay for higher salaries would be disallowed by the courts. The binding award is also unappealable absent "fraud, corruption, or willful misconduct of the arbitrators" [5, at 409]. However, either the school board or union rejects the panel's decision, that decision becomes null and void. Given this option, the decision of the panel is completely nonbinding. Following a rejection, the union may initiate or resume a legal strike, and the school board may bring in substitutes, or it may initiate or resume a legal lockout [5, at 409].

Strikes

One of the key provisions in Act 88 is its prohibition on strikes and lockouts during specified periods. Under Sections 1131-A and 1132-A of Act 88, strikes and lockouts are strictly prohibited during fact finding and final best offer arbitration [5, at 409-410]. This is the same under Act 195 [1, at 574]. In addition, the new act limits the union to two lawful strikes in a school year [9, p. 3]. The mandated cessation of a strike in order to submit to fact finding or final best offer arbitration, however, is not considered the end of a strike; thus, a legal strike may be "resumed" after either fact finding or arbitration [9, p. 3]. Act 88 also requires the union to give management forty-eight hours' notice before any strike occurs, and it makes selective striking by teachers, a practice that severely interrupts a school's ability to function, illegal [8, p. 4]. This language completely removes one of the union's most effective weapons for tilting the bargaining process in its favor. The prohibition on selective strikes provides yet more evidence of the legislature's attempt to equalize bargaining between school boards and teacher unions in the hope that the agreements reached will benefit both parties as well as the general public [8, p. 4]. Act 88 also contains a final "safety net" in the event that the new bargaining procedures break down and the state-required 180 days of instruction is threatened by a strike. In such a case, Section 1161-A of the act gives

the secretary of education the power to enjoin the strike, sending the teachers back to work [5, at 410].

STATISTICS

How Has Act 88 Affected Fact Finding

According to the statistics compiled by the PLRB, there were 118 fact-finding appointments in Pennsylvania from 1985 until Act 88's enactment in 1992 [10]. Seventy-six percent of those appointments were made before a teachers' strike, and twenty-four percent after a strike [10]. There were eighty-seven fact-finding appointments in 1992 and 1993, which fell under the provisions of Act 88 [10]. Of these eighty-seven, only one appointment occurred after a strike [10]. Although this statistic reveals a greater number of fact findings in the seven years prior to Act 88, a decrease in fact-finding appointments "after a strike" is clearly evident. This is perhaps a result of the increased periods for negotiation and mediation under the new act, which may have caused the parties to resolve a greater number of disputed issues, thus giving the union the belief that fact finding would result in a settlement without a strike being necessary. For the most part, however, it seems obvious that the decrease in teachers' strikes at any point during bargaining is due to Act 88's strike restrictions. In his paper on Act 88, Arbitrator Lewis R. Amis reported that "[i]n 1991-1992, the last year prior to the Act, there were thirty-six teacher strikes in Pennsylvania. In 1992-1993, the first year under Act 88, there were seventeen strikes. In 1993-1994, there have been fourteen strikes through February 9, 1994" [9, p. 4].

Of the total number of fact findings in the seven years preceding Act 88, eighteen percent were settled without a report [10]. Where reports were issued by the fact-finding panel, twenty-nine percent were accepted by both parties, eight percent were rejected by both parties, the school board rejected the report thirty-six percent of the time, and the union rejected the report nine percent of the time [10]. Of the eighty-seven total fact findings under Act 88, fifteen percent were settled without a report [10]. Where the panel issued a report, eighteen percent were accepted by both parties, twenty-six percent were rejected by both parties, the school board rejected the report thirty-six percent of the time, and the union rejected the report five percent of the time [10].

It must be noted that since the passage of Act 88, the percentage of fact-finding reports rejected by both parties has increased significantly, while mutual acceptance has decreased. Although unions may have been hopeful, after lengthier involvement in negotiations and mediation, that fact finding would result in a fair settlement, the higher rejection rate seems to indicate continuing distance between the parties' positions. The high rejection rate by school boards and the corresponding low rate by unions appears to reflect the increased bargaining power given to school boards under Act 88's strike restrictions. The reasoning here is that school

boards are no longer afraid that if a settlement is not reached, a series of selective strikes might follow. Furthermore, the creation of final best offer arbitration has eliminated the union's ability to force courts to supermediate disputes when 180 days is threatened. Unfortunately, this theory based upon greater school board bargaining power fails in light of the equally high employer rejection rate under Act 195. It seems almost sure that school boards facing the teachers' unlimited right to strike, and the unpleasant alternative of facing the political strength of teachers unions in court, would be more willing to accept the fact finder's report. Examination of these factors relative to the high employer rejection rate under both acts leads to the inescapable conclusion that fact finding is simply ineffective.

Is Final Best Offer Arbitration Working?

According to PLRB statistics, eleven cases have been concluded under Act 88's voluntary arbitration process [11]. Of the eleven, the school board rejected the panel's award on eight occasions, and the union rejected the award only once [11]. Two of the cases were settled by the parties [11]. The PLRB also reported sixteen cases completed under Act 88's mandatory arbitration process [11]. Of the sixteen, the school board rejected the panel's award ten times, the union rejected three times, both rejected once, and the issued award avoided rejection by either party on only two occasions [11].

The gross disparity between frequent school board rejections of the nonbinding arbitration award, and the rarity of union rejections, mutual settlements, and acceptances is a predictable result for several reasons. First, as was previously mentioned, Act 88's restrictions on teacher strikes has "leveled the bargaining table" in public school teacher negotiations" [8, p. 4]. Now that the threat of selective strikes has been removed, school boards no longer feel forced to protect the public by settling contracts at any cost [8, p. 4]. Second, school boards are permitted to use substitutes where a strike follows unsuccessful arbitration [5, at 411]. Thus, the schools stay open while teachers stay home. Third, the Pennsylvania School Boards Association (PSBA) reported that,

[d]espite the economic recession, average union demands have continued to rise . . . to more than \$3,000 per year. School boards, according to the PSEA [Pennsylvania State Education Association] figures, also modestly raised their own offers, but their proposals were nowhere close to the amounts demanded by the union or those recommended by the fact-finders and arbitrators. In fact, the proposals advanced by these neutrals have grown progressively closer to the ever-escalating salary demands of the teachers [8, p. 7].

Whether the rejecting party is the school board, the union, or both, the result is bargaining that carries over into the subsequent year. During that time, the teachers either remain on strike with substitutes in their place, which continues

until such time that mediation is again required to begin, or the teachers continue to work without a contract. The PSBA admits that “some collective bargaining agreements do remain unresolved for many months . . . in a few cases, years” and that “[i]t is possible that the transition to the new impasse procedures of Act 88 played a role in continuing impasses in some districts” [8, p. 6].

Positions and Responses of the Parties

In its 1994 progress report on Act 88, the PSBA hailed Act 88 as a truly positive step toward resolving impasses with teachers. It identified the “true hallmark of Act 88” as the guarantee that students will receive the state-required 180 instructional days each year [8, p. 4]. The PSBA asserted that the Pennsylvania State Education Association (PSEA) has criticized the new act unfairly. It alleged that the PSEA has emphasized the increase in unsettled contracts being carried over from year to year, and charged that the school boards’ “numerous rejections of proposed fact-finding and arbitration awards” evidences a failure to comply with the spirit and letter of the new law [8, pp. 5-6]. The PSBA responded by pointing to a settlement rate of teachers’ contracts that has increased from thirty-three percent under Act 195 to forty-five percent under Act 88 [8, p. 6]. It also argued that statistics reveal contracts are being settled more quickly. And carry-over bargaining, according to the PSBA, is likely to be reduced as the parties become familiar with Act 88’s requirements [8, p. 6]. In reference to charges that school boards’ rejection of “neutral” proposals constitutes an abuse of the new law, the PSBA maintains that unreasonable union offers have caused the rejections [8, p. 7]. It submitted that this “high rate of disapproval should not be interpreted as a complete failure of the fact-finding and nonbinding arbitration processes to help resolve impasses” [8, p. 8]. The PSBA averred that many proposals are rejected because of one or two issues and those proposals often provide the basis for later settlements [8, p. 8].

The PSBA also responded to criticisms that Act 88’s nonbinding arbitration procedure fails to provide the closure necessary to end impasses [8, p. 8]. The PSBA stated that such criticism from teachers’ unions, especially the PSEA, is hypocritical because such groups “expressed little concern about the lack of closure during the twenty-two years that Act 195 was in effect” [8, p. 8]. The PSBA rebutted the call for binding arbitration on five grounds. First, it emphasized that enactment of binding arbitration for teachers’ contracts is unconstitutional [8, p. 9]. “Article III, Section 31 of the Pennsylvania Constitution bars the General Assembly from delegating the power to ‘make, supervise or interfere with’ governmental obligations including those relating to ‘money, property or effects . . . or to levy taxes[.]’ ” [8, p. 9]. The only exception to this language is Act 111, mentioned *supra*, which allows for binding arbitration to be used in contracts involving police and firefighters [8, p. 9]. Thus, any attempt to enact binding arbitration in teacher contracts would require a constitutional amendment

similar to Act 111, and it would also require “passage of a statute establishing the procedures to be followed” [8, p. 9]. The argument, then, appears to be one questioning the effort and time constraints necessary to amend Pennsylvania’s constitution.

Second, the PSBA stated that “binding arbitration undermines collective bargaining” and collective bargaining relationships because the parties come to rely solely on arbitration [8, p. 9]. Third, the appointed arbitrators’ award is limited to the evidence and arguments on the record. This “undermines public accountability” where higher taxes are needed to pay for unrealistic teachers’ contracts [8, p. 9]. Fourth, the PSBA argued that binding arbitration generally results in expensive settlements because “[c]ost frequently is of little concern to arbitrators” [8, p. 10]. In defense of this position, it cited a Cornell University study, which found that arbitrators gave little weight to the public welfare in fashioning their awards [8, p. 10]. Fifth, the PSBA stated that binding arbitration provides no guarantees that striking and general “labor unrest” by teachers will be avoided [8, p. 10]. It pointed to the illegal strikes that occurred under Act 195 as evidence that labor unrest will continue until balanced collective bargaining is created [8, p. 10]. Based on these arguments, it is at once evident that the PSBA sees Act 88 as the steppingstone to balanced collective bargaining.

CONCLUSIONS AND SUGGESTED ANSWERS

Act 88’s increase in the time periods for negotiations and mediation is an excellent start in the attempt to end impasses quickly and to strengthen relations between school boards and teachers’ unions. Who could reasonably argue that a mutual agreement resolving a dispute in its early stages is not a good thing? It is almost certain that such resolutions will benefit the parties and the general public. The extended timelines in the mediation and fact-finding provisions of Act 88 increase the chances for mutual agreement. And, although fact finders’ reports are seldom adopted, the new fact-finding procedure should not be abandoned. As was mentioned, it provides longer periods for mediation, clearly a plus. If it leads to settlement, with or without a report, that is also good. Ultimately, fact finding prevents strikes while keeping bargaining lines open, which is the fastest way to achieve a settlement. Perhaps these new timetables have resulted in the higher settlement rate under Act 88. It seems more likely, however, that the strike limitations in the new act (unions limited to two per year) have been the cause. The downfall of Act 88, however, is its provision for nonbinding final best offer arbitration.

In the scant two years of its existence, nonbinding final best offer arbitration has proven to be ineffective. To date, twenty-seven disputes have gone to arbitration, voluntarily and by mandate, and only four have resulted in contractual agreements. The PSBA argues that a party’s rejection of an arbitration award is often due to a dispute over one or two issues, and that with these issues defined through

the arbitration process, continuing negotiations will bring about their settlement. How much time and money must be wasted until the dispute is finally closed? The PSBA states that binding arbitration of teachers contracts is not a viable alternative because it would require a constitutional amendment. It seems illogical, however, to wallow in a system that fails to produce results and that is inherently circular. An amendment similar to Act 111, which contains binding arbitration, would prevent these impasses from being carried over from year to year, where strikes are likely to persist.

The PSBA also claims that arbitrators with binding authority do not give due attention to the public's concerns about tax increases. This argument is subjective and devoid of any tangible evidence to make it even the least bit appealing. Perhaps the Cornell University study that the PSBA relies on in making this argument failed to consider employers' unfettered use of actuaries who contest the employer's ability to pay for wage increases. Arbitrators are legally bound to consider all evidence on the record, which includes actuarial studies. The suggestion that such studies are ignored by neutral arbitrators fails to give them any professional credit whatsoever. The question has also been posed as to whether binding interest arbitration undermines the collective bargaining process that precedes it. It must be observed as significant that this type of arbitration is not cost-free. The parties must employ their own arbitrators, a neutral arbitrator, and a full complement of attorneys, field representatives, secretaries, and the like, when entering binding interest arbitration. In the face of these impending costs, if the parties are close to settlement, they will do it. In the event the parties are far from a settlement, these costs are still more likely to be less than the overall costs of an impasse that is carried into the next year. Where settlement during bargaining is unlikely, the chances of one of the parties rejecting a nonbinding award are great.

Although there are negative aspects to binding interest arbitration, they are few. The alternative form of nonbinding final best offer arbitration is clearly ineffective. In lieu of ending impasses between school boards and teachers' unions, it propels the impasse into an unending circle. The best way to deal with these disputes is to add binding interest arbitration to the existing language on mediation, fact finding, and strikes. Then, collective bargaining of teachers' contracts will have greater possibilities for mutual agreement, and it will be saved by closure. This system will best represent the parties and the public.

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