

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

THE SCHOOL REFORM COMMISSION :

and :

THE SCHOOL DISTRICT OF :

PHILADELPHIA :

440 North Broad Street :

Philadelphia, Pennsylvania 19130, :

and :

COMMONWEALTH OF :

PENNSYLVANIA, :

DEPARTMENT OF EDUCATION :

333 Market Street :

Harrisburg, Pennsylvania 17126, :

Plaintiffs, :

v. :

PHILADELPHIA FEDERATION OF :

TEACHERS, :

LOCAL 3, AFT, AFL-CIO :

1816 Chestnut Street :

Philadelphia, Pennsylvania 19103, :

Defendant. :

No. ___ M.D. 2014

NOTICE TO DEFEND

You have been sued in court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this complaint and notice are served, by entering a written appearance personally or by attorney and filing in writing with the court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you by the court without further notice for any money claimed in the complaint or for any other claim or relief requested by the Plaintiff. You may lose money or property or other rights important to you.

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ACTION FOR DECLARATORY JUDGMENT

The School Reform Commission (the “SRC”) and the School District of Philadelphia (the “School District”), joined by the Commonwealth of Pennsylvania, Department of Education (the “Department”), hereby bring this Action for Declaratory Judgment. In support thereof, Plaintiffs aver as follows:

1. This is an action for a declaratory judgment seeking a declaration on one or both of two separate and independent questions:

- Do sections 693 and 696 of the Public School Code of 1949 grant the SRC the power to achieve needed economies in the operation of its schools by canceling an expired collective bargaining agreement and imposing altered fringe benefits and other economic changes, where the savings generated can be used (1) to promote fiscal stability by helping to balance the School District’s budget both this year and in future years, and (2) to permit the restoration in part of basic resources now in short supply, such as schoolbooks, paper and staff?
- Can the SRC and the School District implement the necessary changes in the terms and conditions of employment of employees represented by the teachers’ union, where the School District and the union have been negotiating for 21 months, held more than 110 bargaining sessions, and exchanged hundreds of proposals – but nonetheless remained at all

times tens of millions of dollars apart on the overriding issue of economic concessions?

STATEMENT OF JURISDICTION

2. This Court has original jurisdiction over this complaint for declaratory judgment pursuant to 42 Pa.C.S. § 761(a)(2) (“The Commonwealth Court shall have original jurisdiction of all civil actions or proceedings . . . [b]y the Commonwealth government . . .”).

THE PARTIES

3. Plaintiff School District of Philadelphia is a home rule school district of the first class and is, by far, the largest school district in the Commonwealth. It serves approximately 128,000 students in its own schools, and by law financially supports an additional 71,000 students in charter and other schools.

4. Plaintiff School Reform Commission is an instrumentality of the School District established by section 696(a) of the Public School Code (24 P.S. § 6-696(a)). The SRC came into being in 2002 after the Secretary of Education (the “Secretary”) determined under section 691(c) of the Public School Code (24 P.S. § 6-691(c)) that the School District was in financial distress and issued a declaration to that effect. The School District remains in a state of financial distress pursuant to the Secretary’s declaration. Under section 696 of the School Code, the SRC is the governing body for the School District.

5. Plaintiff Commonwealth of Pennsylvania, Department of Education, is a departmental administrative agency of the Commonwealth's Executive Department. *See* 71 P.S. § 61(a). The head of the Department is the Secretary of Education, *see* 71 P.S. § 66, who is appointed by the Governor in accordance with the Constitution and laws of Pennsylvania. *See* Pa. Const. art. IV, § 8(a); 71 P.S. § 67.1(d)(1). The Department is responsible, *inter alia*, “[t]o administer all of the laws of this Commonwealth with regard to the establishment, maintenance, and conduct of the public schools. . . .” 71 P.S. § 352(a).

6. Defendant, the Philadelphia Federation of Teachers, Local 3, AFT, AFL-CIO (the “PFT”), is an employee organization recognized by law as the collective bargaining agent for the School District’s teachers and various other categories of school personnel.

RELEVANT STATUTORY FRAMEWORK

A. The Department’s Role

7. Under the Constitution of Pennsylvania, the General Assembly has the overall duty to “provide for the maintenance and support of a thorough and efficient system of public education.” Pa. Const. art. III, § 14.

8. By statute, the General Assembly has assigned to the Department the responsibility, among other powers and duties, “[t]o administer all the laws of this Commonwealth with regard to the establishment, maintenance and conduct of the

public schools, and particularly the [Public School Code of 1949, 24 P.S. §§ 1-101 *et seq.*].” 71 P.S. § 352(a).

9. The Department has many specific responsibilities under the Public School Code to oversee the public education system within the Commonwealth. *See generally* 24 P.S. §§ 1-101 *et seq.* In particular, the Department by statute is assigned the responsibility to administer funding that the General Assembly appropriates to it for distribution to school districts throughout the Commonwealth, including the School District. *See generally* 24 P.S. §§ 25-2501 – 25-2599.5.

10. Most important to this matter, the Department specifically is required to monitor the fiscal health of school districts throughout the Commonwealth. *See* 24 P.S. §§ 6-691, 6-693, 6-696 (financial distress statutes relating to school districts of the first class); *id.* §§ 6-601-A – 6-693-A (financial recovery provisions applicable to all other classes of school districts). The Department does so in part by gathering information about school districts and evaluating their financial health. *See, e.g.,* 22 Pa. Code §§ 731.1, 731.2. Each year, for example, the School District submits an Annual Financial Report to the Department for its review. *See* 24 P.S. § 2-218.

11. In the last few years, the General Assembly has granted the Department additional oversight responsibilities with regard to the School District. For example, the Commonwealth’s 2013-2014 Budget provided \$45 million to be

paid to the City of Philadelphia (the “City”) to provide a grant to the School District. However, that grant could not take effect until “the Secretary of Education ... issued a written certification that the School District ha[d], in the judgment of the Secretary of Education, begun implementation of reforms that will provide for the district’s fiscal stability, educational improvement and operational control.” 72 P.S. § 1722-H(9)(ii). The Secretary issued such a certification in October 2013 based upon reforms already then underway at the School District. (A copy of the Certification is attached hereto as Exhibit A.)

12. The Secretary is similarly responsible for the oversight and certification role with respect to the School District’s receipt of sales and use tax revenue from the City. *See* 72 P.S. § 7201-B(e). Specifically, section 201-B(e) of the Tax Reform Code of 1971 (added by Act 52 of 2013, § 6.1) provides that a city of the first class may impose a one percent sales and use tax that may be used by a school district of the first class in an amount up to \$120 million annually. 72 P.S. § 7201-B(e).

13. However, the City may pay the sales and use tax money to the School District only if the Secretary, in her judgment, has issued an annual certification prior to December 31 of each year that the School District is implementing reforms that provide for the School District’s “fiscal stability, educational improvement and operational control.” *Id.* § 7201-B(e)(1).

14. The Secretary's certification is a crucial condition precedent to the School District's receipt and use of the money from the City's Local Sales and Use Tax Fund. In the event the Secretary did not issue an annual certification, then all money contained in the Local Sales and Use Tax Fund would be paid to the City. *Id.* § 7201-B(e)(2)(iii).

15. In accordance with these assigned duties, the Secretary of Education, through the Department, has closely monitored the reform efforts of the School District and the SRC. In particular, the Department has focused on the efforts of the School District and the SRC to achieve operational efficiency through revised work rules, including changes regarding staff assignments and transfers, the order of recalls from lay-off, and the role of seniority in reduction-in-force decisions.

16. The Secretary and the Department also have monitored the efforts of the School District and SRC to achieve fiscal stability, including through the implementation of spending controls, the negotiation of over \$100 million in savings through concessionary contracts with two of the District's labor unions, and its efforts to achieve savings through modification of its fringe benefits and other changes in the terms and conditions of employment with others of its unions.

17. The Secretary and the Department are required to monitor and analyze these efforts, and annually weigh them in considering whether to approve the release of hundreds of millions of dollars in funds for the School District.

18. On August 6, 2014, the Secretary issued the required certification regarding the sales and use tax, finding that the School District had implemented reforms promoting “fiscal stability” and other goals. (A copy of the Certification is attached hereto as Exhibit B.)

19. Also further to the Department’s oversight responsibilities, the Department and the School District in 2013 entered into a Memorandum of Agreement regarding the School District’s handling of federal grant funds. Pursuant to the Memorandum, the Department monitors the School District’s compliance with various federal management requirements regarding the uses of federal funds.

20. In addition to its direct role in overseeing certain aspects of school districts’ financial health, the Department has an important interest in seeing that public school students generally are provided with appropriate educational opportunities. For instance, under both state and federal law, the Department is responsible to ensure that each school district provides students with disabilities an appropriate individualized educational program. *See* 24 P.S. § 13-1372; 20 U.S.C. § 1412(a)(11). The Department also is responsible for educational matters concerning professional educator certification (*see* 24 P.S. §§ 12-1201 – 12-1217); programs involving student safety (*see* 24 P.S. §§ 13-1301-A – 13-1313-A); and

the administration of statewide assessments (*see* 24 P.S. § 1-121; 22 Pa. Code Ch. 4).

21. Accordingly, the Department and the Secretary have a substantial interest in ensuring that the SRC and the School District have the legal ability to implement reforms (such as those discussed below) that will provide for the School District's fiscal stability, educational improvement and operational control.

B. The Powers of the SRC and the School District

22. From 1970 until 1998, collective bargaining between the School District and its unions was governed predominantly by the Public Employee Relations Act ("PERA"), as modified by Act 88 of 1992. *See* 43 P.S. §§ 1101.101 *et seq.*

23. In 1998, however, following a financial crisis that raised the specter of a School District shutdown due to lack of funds, the General Assembly passed Act 46 of 1998 (P.L. 270). Act 46 set up a framework designed, among other things, to give the Commonwealth (including the Department) an expanded role in the management of the School District in the event that the School District should become financially distressed.

24. As amended, Act 46 authorizes the Secretary of Education to make a declaration that the School District is distressed if the Secretary determines that any of the circumstances of distress listed in section 691(c) of the Public School

Code exist. In particular, the Secretary is empowered to declare the School District in distress upon a finding that “the school district ... has failed or will fail to provide for an educational program in compliance with the provisions of this act, regulations of the State Board of Education or standards of the Secretary of Education.” 24 P.S. § 6-691(c)(4).

25. Following a declaration by the Secretary, Act 46 provides that the existing school board would be suspended, and a new governing body (the SRC) created in its stead. Under current law, three of the SRC’s five members are selected by the Governor, while two are appointed by the Mayor of Philadelphia.

26. Act 46 gives the SRC and the School District broad and exceptional powers to cope with the challenges posed by fiscally distressed circumstances. For example, Act 46: (a) authorizes the SRC to suspend most provisions of the Public School Code and accompanying regulations, 24 P.S. § 6-696(i)(3); (b) empowers the SRC to lay off professional employees without regard to seniority, 24 P.S. § 6-696(i)(7); (c) provides the SRC with the ability to reallocate resources, 24 P.S. § 6-696(i)(9); and (d) frees the School District from the duty to bargain collectively over a wide array of topics, including subcontracting, decisions related to reductions in force, staffing patterns and assignments, and teacher preparation time (among others). 24 P.S. § 6-696(k)(2). At the same time, Act 46 imposes restrictions upon the School District’s labor unions, prohibiting them from striking

during any period in which the SRC is in control of the School District's affairs.
24 P.S. § 6-696(l).

27. Most relevant to the matter before this Court, Act 46 made two key changes in the law.

28. First, Act 46 empowers the SRC to cancel contracts, if doing so would effect needed economies in the operation of the School District's schools. *See* 24 P.S. § 6-696(i) (granting SRC the powers afforded by 24 P.S. § 6-693). The power of cancellation in section 693(a)(1) of the Public School Code is accorded to a financially distressed school district to relieve it of contractual burdens that it can no longer afford. *See also* 24 P.S. § 6-696(k) (incorporating 24 P.S. § 6-693).

29. Second, the statute repealed PERA "insofar as it is inconsistent with the provisions of" Act 46. Act 46, § 28(a).

30. As noted above, several years after Act 46 was enacted into law, the Secretary acted under section 691(c) of the Public School Code, 24 P.S. § 6-691(c), to declare the School District to be in financial distress. The SRC was thereafter constituted under section 696(a) of the School Code. The declaration of distress remains in effect today.

31. The Secretary continues to be responsible to monitor the fiscal health of the School District while the declaration of distress is in effect. Among her responsibilities, the Secretary is granted the power under section 696(n) of the

Public School Code to declare the end of the period of financial distress once long-term financial stability has been achieved. 24 P.S. § 6-696(n). In fact, as the Supreme Court of Pennsylvania has observed, “the Legislature gave the Secretary nearly sole discretion and control over the financial distress process.” *Pa. Dept. of Educ. v. Empowerment Bd. of Control*, 595 Pa. 426, 443, 938 A.2d 1000, 1010 (2007).

32. In short, by adopting Act 46, the General Assembly conferred extraordinary powers upon the SRC and the School District, with the intent of giving them a much freer hand than other public employers when it comes to collective bargaining during a period of financial distress.

33. Specifically, Act 46 grants the SRC and the School District the powers to take the very actions that have become necessary here – (a) the power to cancel a collective bargaining agreement to achieve needed economies in the operations of the schools; (b) the concomitant power to impose changes in fringe benefits and other mandatory subjects of bargaining after cancellation; and (c) relief from the strictures of PERA to the extent they are inconsistent with the powers granted by section 696 of the Public School Code.

FACTUAL BACKGROUND

A. The School District's Financial Crisis¹

34. The School District is the only district in the Commonwealth that has no power to impose taxes. Its ability to operate is dependent almost completely upon the monies it receives from (or on the authority granted to it by) the City of Philadelphia, the Commonwealth, and the federal government. Deficit spending is prohibited by law.

35. Due to a lack of funds, the School District has been operating at a bare-bones level for some time. A lack of funding for the 2013-2014 fiscal year caused the School District to make drastic cuts to its staff for the second time in three years. As a result, during the 2013-2014 school year, the number of guidance counselors, school nurses, teachers and school police were at rock-bottom levels; the ranks of assistant principals had been thinned to levels that are not sustainable; cutbacks to cleaning and facilities maintenance negatively affected school environments; budgets for books and school supplies also suffered; and advanced placement courses, career and technical education programs, as well as art classes all had to be curtailed.

¹ Factual averments relating to current fiscal conditions and bargaining with various labor unions are made by the SRC and the School District. Based substantially on good faith reliance upon information provided to it by the SRC and the School District, the Department joins in those averments.

36. In August 2014, facing once again the prospect of a lack of sufficient funding, the School District went through yet another round of cost-cutting, yielding another \$32 million in savings. This meant that, upon the opening of the current school year in September, the deplorable conditions that prevailed during the prior school year continued in place; and the School District, by its calculations, still needed additional funding for the 2014-2015 fiscal year of as much as \$49 million just to be able to operate at that same insufficient and unsustainable level of services.

37. On September 23, 2014, however, the General Assembly passed a bill authorizing a cigarette tax of \$2 per pack for cigarettes bought in Philadelphia, and the Governor signed the bill into law the next day as Act 131. Specifically, Act 131 added to Title 53 of the Pa. Consolidated Statutes a new section 8722, which provides for a local option cigarette tax in school districts of the first class. The proceeds of the local option cigarette tax, previously enacted by the City Council of Philadelphia, are to be paid solely to the School District. *See* 53 Pa.C.S. § 8722(*i*) (added by Act 131, § 3).

38. The cigarette tax revenues received during this fiscal year, which ends on June 30, 2015, will not be enough to cover the School District's expenses in

full. The Commonwealth² has estimated that the tax will yield only \$41 million this year, leaving the School District with a funding shortfall of \$8 million.

39. Even if the cigarette tax were to yield enough to close the funding shortfall this year, that level of funding would do nothing this year to enable the School District to remedy the unsatisfactory conditions that have prevailed since the cutbacks that it had to make last year.

40. Prudence also requires the SRC and the School District to plan for the future and to anticipate fiscal issues on the horizon. The School District's revenues this year included one-time funding of \$45 million. As a result of this, and ever rising costs, the School District is looking at a projected funding shortfall for the next fiscal year (2015-2016) of \$71 million, even after taking account of funds expected from a full year of cigarette tax revenues. Two of the major cost-drivers of the deficit are state-mandated contributions to employee pensions and employee health care costs.

41. Given its annual funding problems, the School District for several years has been forced to try to wrest savings from its largest expense category – personnel costs. Between the 2010-11 school year and the beginning of the 2013-14 school year, the School District reduced its full-time staff by a full one-third.

² The Commonwealth's Department of Revenue is responsible under Act 131 to collect the local option cigarette tax for deposit into the Local Cigarette Tax Fund, which is administered by the Commonwealth's Treasury Department for the sole benefit of the School District. *See* 53 Pa.C.S. § 8722(c)(1), (h).

Although additional funding received after the schools opened last year allowed the School District to ameliorate the staffing crisis to a limited degree, the staffing levels last year were, and at the present time still are, woefully inadequate. No further savings can be generated in this fashion; on the contrary, at this point the lack of staff is one of the main School District problems that needs fixing.

42. In an effort to save further monies, the School District has imposed benefit changes and medical plan contributions on its non-unionized employees and also has been seeking economic concessions from its unionized labor force through collective bargaining.

43. The SRC and the School District have been successful in obtaining economic concessions from certain employee organizations, but they have hit a brick wall in their talks with the PFT over the last 21 months, as described below. It was this inability to reach a reasonable compromise with the PFT that gave the SRC and the School District no choice but to cancel the collective bargaining agreement pursuant to sections 693 and 696 of the Public School Code and to impose new economic terms.

B. The School District's Efforts to Negotiate Union Economic Concessions

44. In July 2012, SEIU Local 32BJ, which represents approximately 2,700 maintenance workers, building engineers, school cleaners and bus drivers, entered into a four-year agreement estimated to provide \$100 million in savings

over the contract's life. Concessions included wage reductions averaging 10% of salary, a wage freeze for the life of the contract, a reduction in the School District's contributions to the union-run medical fund, and other changes.

45. In March 2014, the Commonwealth Association of School Administrators, which represents 400 principals, assistant principals and other administrators, agreed to a three-year agreement that is estimated to save \$20 million over the life of the contract. The contract eliminated any across-the-board salary increases, reduced the compensation and work year for principals and assistant principals, provided a less costly medical plan, required employees to begin making contributions to the cost of their health care benefits, imposed a charge for insuring spouses who are eligible for other health plans, and implemented other concessions.³

46. Negotiations between the School District and the PFT, which represents 11,600 School District employees (and is by far the largest School District union), began in January 2013 – seven months before the August 31, 2013, expiration of the collective bargaining agreement then in effect.

47. From the outset of the talks, the School District sought significant economic concessions from the PFT.

³ Several other School District unions remain without contracts.

48. During the last 21 months, the parties met more than 110 times and exchanged hundreds of proposals.

49. Throughout 2013, a mediator from the Pennsylvania Bureau of Mediation participated in the negotiations. In January 2014, the parties requested that William Gross, the Director of the Bureau, become personally involved; and Mr. Gross has participated in the negotiations from that point forward.

50. Notwithstanding these strenuous efforts, the negotiations are now at impasse. The parties have never even come close to agreeing on economic concessions; at all times, the gap separating the parties' bargaining positions on economic issues measured tens of millions of dollars per year.

51. After 21 months, it is clear that the PFT is deadset against consenting to economic concessions of the size that the School District needs.

C. The Changes to Fringe Benefits and Other Terms Implemented by the School District

52. For many years, the members of the PFT have enjoyed a health benefits package that today would be the envy of the great majority of Pennsylvanians. The basic health insurance plan for hospitals and medical providers was a top Personal Choice plan administered by Independence Blue Cross, the monthly costs of which (with some exceptions) were paid 100% by the School District; no extra charge was made for employees' spouses who could have obtained health insurance paid for in whole or in part by their own employers; and,

in addition, the School District contributed \$4,353 per employee (approximately \$1 million per week) to the PFT's own Health and Welfare Plan, which administered and provided dental, optical, and prescription drug benefits to the members of the PFT bargaining unit and others.

53. While generous health benefits like these were common a decade or so ago, in recent years most employers, beset by rising health care costs, have opted for less expensive plans, and also have shifted part of the burden of paying for them to their employees. In light of its perennial funding shortages, and ever rising costs, the School District has no choice but to follow suit.

54. The new terms and conditions imposed by the School District upon the PFT bargaining unit employees, and the savings that each will produce during the remainder of this fiscal year, are (in brief) as follows:

a. **Employee Medical Plan.** In the 2013-14 school year, the standard medical plan for most of the School District's employees, including those in the PFT bargaining units, was a customized Personal Choice 20/30/70 plan from Independence Blue Cross. Effective as of December 15, 2014, the School District's standard employee medical plan for most employees, including those in the PFT bargaining units, will be the less costly Personal Choice 320 plan (or a substantially equivalent plan). Employees will have the option of maintaining their enrollment in the current Personal Choice 20/30/70 plan by paying 100% of the

differential in the two plans' premiums. The 320 plan will provide the same medical coverage as the current Personal Choice 20/30/70 plan but will increase the participant's share of the cost through co-pays, deductibles and co-insurance, consistent with changes already agreed to by the administrators' union. [Estimated savings: \$5.584 million.]

b. **Employee Contribution to Medical Benefits.** Starting on December 15, 2014, all employees in the PFT bargaining unit will be required to contribute between 5% and 13% of their monthly costs, depending upon the size of their salaries. [Estimated savings: \$7.366 million.]

c. **Spousal Surcharge for Medical Coverage.** Starting on December 15, 2014, employees whose spouses have declined coverage offered by their own employers in order to receive free medical benefits through the School District will be charged a spousal surcharge of \$70 per pay period. [Estimated savings: \$4.087 million.]

d. **Opt-out Credit for Medical Coverage.** In the past, the School District paid an opt-out credit to employees who chose not to enroll in the medical benefits plan. Effective as of December 15, 2014, this credit has been eliminated. [Estimated savings: \$766,929.]

e. **Contributions to the PFT Health & Welfare Fund.** The new terms and conditions eliminate contributions to the Health and Welfare Fund run

by the PFT, which has built up a large surplus. In their place will be a School District-administered plan covering dental, optical, and prescription drug benefits. The School District will not terminate contributions to the PFT's Health and Welfare Fund until December 15, 2014. The District-administered plan will take effect on July 1, 2015. [Estimated savings: \$22.462 million.]

f. **Uniform Per Diem Rate for Substitute Teachers.** Last year, the per diem rate (which is the amount paid to substitute teachers) was higher if the substitute was a retiree. Starting on October 6, 2014, the per diem rate for certified teachers will apply to all substitute teachers, whether or not retired. [Estimated savings: \$2.04 million.]

g. **Contributions to PFT Legal Fund.** In the past, the School District made contributions to a PFT-administered fund that provided certain legal services free of charge to PFT bargaining unit employees. These contributions have been eliminated, effective as of October 6, 2014. [Estimated savings: \$1.369 million.]

h. **Wage Continuation Benefits.** The amount of wage continuation benefits, *i.e.*, sick leave and short-term disability leave, has been reduced as of December 15, 2014. [Estimated savings: \$23,346.]

i. **Termination Pay Benefits.** Starting on December 15, 2014, the amount of reimbursable accrued and unused vacation, sick and personal time

that is paid upon termination of employment will be reduced, but for new hires only. [Estimated savings: \$99,265.]

55. Implementing all of the changes listed above is estimated to reduce the School District's expenses for the remainder of the 2014-2015 fiscal year by \$43.798 million. For the following year (the 2015-2016 fiscal year), the changes are estimated to create savings of \$49.144 million.

COUNT ONE

DECLARATORY JUDGMENT– THE RIGHT OF THE SRC AND THE SCHOOL DISTRICT TO CANCEL THE EXPIRED COLLECTIVE BARGAINING AGREEMENT AND IMPOSE NEW ECONOMIC TERMS

56. The paragraphs above are incorporated as though fully set forth herein.

57. Plaintiffs respectfully request that this Honorable Court, pursuant to the Declaratory Judgments Act, 42 Pa.C.S. §§ 7531 *et seq.*, issue a declaratory judgment holding that the SRC has the power, under sections 693, 696(i), and 696(k) of the Public School Code (24 P.S. §§ 6-693, 6-696(i), (k)), to cancel the collective bargaining agreement with the PFT to the extent it still governs the parties' relationship, and to impose changes to various economic terms and conditions affecting fringe benefits (among other things) in order to effect needed economies in the operation of the School District's schools.

58. Pursuant to section 696(*i*) of the Public School Code (24 P.S. § 6-696(*i*)), the SRC has all the powers granted to a special board of control under section 693 of the School Code.

59. Section 696(k) of the Public School Code defines certain terms used in section 693 of the School Code “[f]or purposes of collective bargaining.” 24 P.S. § 6-696(k).

60. Section 696(k)(5) of the Public School Code further clarifies that the powers afforded the SRC by section 693 of the School Code are not subject to section 696(k)(5)’s statement that “nothing in this subsection shall eliminate, supersede or preempt any provision of an existing collective bargaining agreement until the expiration of the agreement unless otherwise authorized by law.” *Id.* This provision, like all of section 696(k), makes clear that the SRC’s powers under section 693 are specifically intended to apply to collective bargaining agreements between the School District and its unions.

61. Section 693(a)(1) of the Public School Code – as incorporated into section 696 by subsections (*i*) and (k) (including especially paragraph (5) thereof) – confers upon the SRC the power “[t]o cancel or renegotiate any contract other than teachers’ contracts to which the board or the school district is a party, if such cancellation or renegotiation of contract will effect needed economies in the operation of the district’s schools.” 24 P.S. § 6-693(a)(1).

62. Further proof of legislative intent to authorize the SRC to cancel collective bargaining agreements to save money came in 2012, when the General Assembly overhauled the financial distress provisions of the Public School Code. *See* Act of July 12, 2012 (P.L. 1142, No. 141). Through those amendments, the Legislature retained section 693, but limited its scope to school districts of the first class. Significantly, while the amendments accorded other financially ailing school districts the power to cancel or renegotiate contracts (using the same language as in section 693(a)(1) of the School Code), the amendments exempt altogether the collective bargaining agreements of those other school districts from the power of cancellation. *See* 24 P.S. § 6-642-A(a)(3). ***But, even though section 693 of the School Code also was amended, no such exemption for collective bargaining agreements was added to the SRC's power to cancel under section 693(a)(1).***

63. Where, as here, the Legislature adds an exception to a provision for all classes of school districts except districts of the first class, and preserves a parallel, identically worded provision for school districts of the first class but omits the exception, the difference obviously is a deliberate one. In other words, the Legislature had the opportunity to exempt from section 693(a)(1) of the Public School Code the SRC's power to cancel collective bargaining agreements, but it intentionally chose not to do so. *See Commonwealth v. Mazzetti*, 615 Pa. 555, 44

A.3d 58, 67 (2012) (when section of statute contains a given provision, omission of such provision from a similar section is significant to show a different legislative intent) (citing *Fonner v. Shandon*, 555 Pa. 370, 724 A.2d 903, 907 (1999)).⁴

64. On October 6, 2014, the SRC adopted a resolution canceling the collective bargaining agreement with the PFT (to the extent it continues to govern the parties' relationship) and authorizing the Superintendent of the School District to implement modified economic terms and conditions for PFT members in order to achieve needed economies in the operation of School District schools.

65. A collective bargaining agreement is unquestionably a contract in the eyes of the law. *Kozura v. Tulpehocken Area Sch. Dist.*, 568 Pa. 64, 71, 791 A.2d 1169, 1174 (2002); *Community Coll. of Beaver Cty. v. Community Coll. of Beaver Cty. Soc. of the Faculty*, 473 Pa. 576, 595, 375 A.2d 1267, 1276 (1977).

⁴ Wholly apart from the SRC's power to cancel the collective bargaining agreement with the PFT, the SRC and the School District had the power (once that agreement expired) to impose new terms and conditions regarding matters for which section 696(k)(2) of the Public School Code expressly eliminates any duty to bargain. Those matters include: (i) contracts with third parties for the provision of goods and services, including educational services or the potential impact of such contracts on employees; (ii) decisions related to reductions in force; (iii) staffing patterns and assignments, class schedules, academic calendar, places of instruction, pupil assessment and teacher preparation time; (iv) the use, continuation or expansion of programs designated by the SRC as pilot or experimental programs; (v) the approval or designation of a school as a charter or magnet school; and (vi) the use of technology to provide instructional or other services.

66. The exception in section 693(a)(1) of the Public School Code for “teachers’ contracts” does not apply since the term “teachers’ contracts” has a “peculiar and appropriate meaning” in Pennsylvania law that does not include a collective bargaining agreement between the School District and a union.⁵ Rather, the term refers to the uniform, written employment contracts that individual teachers have with their school districts – *i.e.*, contracts that are mandated by the Public School Code, cannot be varied, and are set out word-for-word in section 1121(c) of the School Code, 24 P.S. § 11-1121(c).

67. The Pennsylvania Supreme Court several times has referred to section 1121(c) contracts as “teachers’ contracts.” *See, e.g., Teachers’ Tenure Act Cases*, 329 Pa. 213, 225, 197 A. 344, 353 (1938) (discussing effect of Tenure Act on existing teachers’ contracts); *Snyder v. Murphy*, 333 Pa. 305, 5 A.2d 226 (1939) (referring to individual Tenure Act contract as “teacher’s contract”); *Spigelmire v. Sch. Dist. of Borough of N. Braddock*, 352 Pa. 504, 507, 43 A.2d 229, 230 (1945)

⁵ The Statutory Construction Act of 1972 provides, in pertinent part:

Words and phrases shall be construed according to rules of grammar and according to their common and approved usage; *but technical words and phrases and such others as have acquired a peculiar and appropriate meaning or are defined in this part, shall be construed according to such peculiar and appropriate meaning.*

1 Pa.C.S. § 1903(a) (emphasis added).

(same); *Reichley v. North Penn Sch. Dist.*, 533 Pa. 519, 525, 626 A.2d 123, 127 (1993) (same).

68. There can be no question that canceling the collective bargaining agreement and imposing the fringe benefit and other changes described above will effect needed economies in the operation of the School District's schools. The changes are projected to reduce the School District's expenses by approximately \$43.798 million over the remainder of the 2014-2015 fiscal year ending June 30, 2015. In the year after that, the changes are estimated to produce \$49.144 million in savings, which will help to erase a projected deficit that measures \$71 million even after accounting for projected cigarette tax proceeds. The money will also be used to cover the funding shortfall expected this year despite the cigarette tax. And it can be used to restore essential resources such as books, paper supplies, and staffing that suffered from last year's cutbacks.

69. Plaintiffs expect the PFT to contest the right of the SRC and the School District to make changes to the employee benefits set forth in the cancelled collective bargaining agreement and to claim that the actions taken by the SRC and School District constituted a breach of the agreement, as well as an unfair labor practice under PERA.

70. Under PERA, a public employer in general has a duty to continue to comply with certain of the terms of a collective bargaining agreement, even after

that agreement expires, until such time as the union and the employer either achieve a new agreement or reach an impasse in their efforts to negotiate one. *See, e.g., Norwin v. Sch. Dist. of Belan*, 510 Pa. 255, 507 A.2d 373, 379 (1986); *In re Appeal of Cumberland Valley Sch. Dist.*, 483 Pa. 134, 394 A.2d 946, 950 (1978).

71. PERA, however, does not address an employer's duties following the *cancellation* of a collective bargaining agreement. Indeed, so far as Plaintiffs are aware, that question has never been considered by any Pennsylvania court.

72. The cancellation of a collective bargaining agreement pursuant to section 696 of the Public School Code (in conjunction with section 693(a)(1)) is inherently different than the expiration of a collective bargaining agreement.

73. Section 696 of the Public School Code was adopted to give special powers to the Department, the SRC and the School District during periods when (as now) the School District is in a state of financial distress.

74. After the Secretary has made a declaration of distress, and the SRC has been established, section 693(a)(1) of the Public School Code specifically authorizes cancellation when doing so would effect needed economies in the operation of the School District's schools.

75. It stands to reason that when the General Assembly conferred the power to cancel collective bargaining agreements upon the SRC and the School District for the purpose of achieving needed economies in the School District's

operations, it did not intend that the School District would be required by PERA to keep honoring the canceled agreement's terms for as long as a union could drag out the bargaining over a new contract. No court should construe sections 693 and 696 of the Public School Code as having intended that result since doing so would render the power to cancel completely meaningless. 1 Pa.C.S. § 1922(1) (In construing a statute, the presumption is “[t]hat the General Assembly does not intend a result that is absurd, impossible of execution or unreasonable.”).

76. In addition, section 28(a) of Act 46 of 1998 repealed PERA “insofar as it is inconsistent with” Act 46’s provisions. If PERA were construed to require the School District to refrain indefinitely from implementing less expensive economic terms despite having canceled the collective bargaining agreement, the result would be plainly inconsistent with section 693(a)(1)’s cancellation power and could not stand.

77. In short, cancellation pursuant to sections 693 and 696 of the Public School Code frees the School District from having to continue to bear the financial burden of economic terms of the canceled collective bargaining agreement while trying to negotiate a new one. Instead, as a fiscally distressed school district of the first class, the School District is empowered by statute to cancel the collective bargaining agreement and promptly to impose new, less onerous, economic terms and conditions.

78. In the fulfillment of its statutory responsibilities, the Department has a legally enforceable interest in seeing that the School District is able to utilize its statutory powers to work its way out of fiscal distress.

79. An actual controversy exists among the parties in which the parties hereto have a direct and substantial interest. The matter is ripe for judicial resolution in the form of a declaratory judgment.

80. The Declaratory Judgments Act is a remedial statute that has as its purpose “to settle and to afford relief from uncertainty and insecurity with respect to rights, status, and other legal relations.” 42 Pa.C.S. § 7541.

WHEREFORE, Plaintiffs, the School Reform Commission, the School District of Philadelphia, and the Pennsylvania Department of Education, respectfully request this Honorable Court to grant a declaratory judgment in their favor and to declare as follows:

a. The SRC has the right under sections 693 and 696 of the Public School Code to cancel the expired collective bargaining agreement with the PFT, to the extent the agreement continues to govern the parties’ relations;

b. The cancellation of the collective bargaining agreement authorized the SRC and the School District unilaterally to impose changes to employee welfare, health and other benefits, including changing the standard medical plan provided to employees in the PFT bargaining units; requiring all such

employees to contribute to medical insurance costs; imposing a spousal surcharge for medical coverage in certain circumstances; eliminating opt-out credits for medical coverage; eliminating contributions to the PFT Health & Welfare Fund and implementing in its stead a District-administered dental, optical and prescription drug benefits plan; reducing wage continuation benefits, termination pay benefits, and the uniform per diem rate for substitute teachers; and eliminating contributions to the PFT Legal Fund;

c. The cancellation and imposition of these new terms of employment effected needed economies in the operation of the School District's schools; and

d. The power of the SRC and the School District to cancel a collective bargaining agreement exists despite the general duty under PERA to refrain from making changes on matters involving wages, hours and other mandatory terms of employment after the expiration of a collective bargaining agreement (absent certain conditions).

Plaintiffs also seek such other and further relief as this Court may deem just and proper under the circumstances.

COUNT TWO

DECLARATORY JUDGMENT– THE RIGHT OF THE SRC AND THE SCHOOL DISTRICT TO IMPOSE NEW TERMS BECAUSE THE NEGOTIATIONS HAD REACHED AN IMPASSE

81. The foregoing paragraphs are incorporated as though fully set forth herein.

82. The SRC, the School District and the Department further request the Court to issue a declaratory judgment, pursuant to the Declaratory Judgments Act, 42 Pa.C.S. §§ 7531 *et seq.*, on an alternative ground: that the SRC and the School District had the right to impose new fringe benefit and other terms because the existing collective bargaining agreement had expired and, before the new terms and conditions were imposed, the parties' negotiations over a new collective bargaining agreement had reached a bargaining impasse.

83. As noted above, under PERA, as interpreted by the Pennsylvania Supreme Court's precedents, when negotiations toward a new collective bargaining agreement reach an impasse, a public employer need not continue to observe the mandatory terms and conditions of the expired agreement and instead may make unilateral changes in those terms and conditions of employment that are consistent with its pre-impasse proposals. *Norwin v. Sch. Dist. of Belan*, 507 A.2d at 380 n.9; *Williamsport Area Sch. Dist.*, 406 A.2d at 331.

84. The definition of an impasse is set forth in *Norwin*:

The definition of an “impasse” is that point at which the parties have exhausted the prospects of concluding an agreement and further discussions would be fruitless . . . [;] a state of facts in which the parties, despite the best of faith, are simply deadlocked.

Norwin, 507 A.2d at 380 n.9 (quoting R.A. Gorman, *Basic Text in Labor Law, Unionization and Collective Bargaining*, at 445-47 (1976)).

85. Although a finding of impasse is often a fact-intensive matter, in the present case, there can be no question that impasse has been reached.

86. The School District began negotiations with the PFT 21 months ago, beginning in January 2013. Throughout that time, the parties had the benefit of the assistance of state-appointed mediators. Hundreds of proposals were exchanged by the parties, who held more than 110 bargaining sessions. At all times, the School District sought tens of millions of dollars per year in necessary economic concessions – and, at all times, the parties remained tens of millions of dollars apart.

87. The School District tried mightily to reach an agreement with the PFT that would finally come to grips with the dismal fiscal reality that the School District is facing, but these efforts met with failure. If ever there was a clear case of exhausting the possibility of reaching agreement to the point of “deadlock[],” *Norwin*, *supra*, this is it.

88. The Department has a direct and substantial interest in ensuring that the SRC and the School District can take the actions necessary to establish the School District's long-term fiscal stability, while maximizing the educational opportunities for the School District's students.

89. An actual controversy exists among the parties in which the parties all have a direct and substantial interest. The matter is ripe for judicial resolution in the form of a declaratory judgment pursuant to 42 Pa.C.S. § 7541.

WHEREFORE, Plaintiffs, the School Reform Commission, the School District of Philadelphia, and the Pennsylvania Department of Education, respectfully request this Honorable Court to grant a declaratory judgment in their favor, holding that the parties' negotiations toward a new agreement had reached an impasse, and the SRC and the School District were therefore free to impose new economic terms and conditions under the law governing impasse.

Plaintiffs also seek such other and further relief as this Court may deem just and proper under the circumstances.

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