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Enjoining a Teachers’ Strike: The Difficulties in Defining the Clear and Present Danger Standard

INTRODUCTION

Pennsylvania’s public school teachers gained the right to collectively organize and bargain with their employers over eighteen years ago. The teachers also obtained the ability to go out on strike in support of their negotiating positions. If a strike commences, the school districts in Pennsylvania have the choice of either signing a new labor agreement or seeking a court injunction ordering the teachers back to work.¹ This comment explores the statutory standard that a school district must satisfy before a Pennsylvania court will issue an injunction, beginning with a review of the applicable statutory provisions creating the school teachers’ right to collectively bargain and strike. Next, this comment traces the development of case law in Pennsylvania interpreting and defining the statutory language which authorizes the courts to enjoin a teachers’ strike. Finally, this paper comments on the current state of the law, what impact it has on the various parties affected by a teachers’ strike, and how the courts may interpret the injunction standard in the future. Additionally, this work speculates on whether the Pennsylvania legislature should consider revising the statute which provides school teachers with the right to strike and the courts with the power to limit those strikes.

STATUTORY BACKGROUND

In 1970, the Pennsylvania General Assembly enacted, and the Governor signed, Act 195,² which provided public school teachers in Pennsylvania with the right to collectively organize and bargain with their public employers.³ The state legislature clarified that its public policy was to promote “orderly and constructive relationships” between school boards and teachers, subject to the “paramount right” of Pennsylvania’s citizens to maintain “their health,

³ Id. at § 1101.401.
safety, and welfare." In conjunction with the privilege to negotiate a labor contract, school teachers also obtained the right to strike. The only qualification on a union's right to strike was if the labor dispute presented a "clear and present danger or threat to the health, safety or welfare of the public." If a school board could satisfy this standard, the district could obtain a court ordered injunction forcing the teachers back to work.

The details of Act 195 require that both the public employer and the employee union negotiate in good faith and bargain "with respect to wages, hours, and other terms and conditions of employment." Conversely, the school district possesses no obligation to negotiate in areas that would be considered exclusively within the domain of managerial policy.

After negotiations for a new labor agreement have commenced, both parties are required to request aid from the Pennsylvania Bureau of Mediation at the earlier of twenty-one days after contract talks have commenced, or one hundred and fifty days before the school district's budget submission date. If the influence of a mediator does not result in a settlement within the next twenty days, the mediation bureau must inform the Pennsylvania Labor Relations Board, which, in turn, may appoint a fact-finding panel to further aid negotiations.

4. Id. at § 1101.101 (emphasis added). The General Assembly stated that its public policy could best be achieved by:

(1) granting to public employees the right to organize and choose freely their representatives; (2) requiring public employers to negotiate and bargain with employee organizations representing public employees 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.

5. Id. at § 1101.1003. Pennsylvania public employees are not entitled to receive either wages or other forms of compensation for any period that they are on strike. Id. at 1101.1006.

6. Id. at § 1101.1003.

7. Id. "In such cases the public employer shall initiate . . . an action for equitable relief including but not limited to appropriate injunctions. . . ." Id.

8. Id. at § 1101.701.

9. Id. at § 1101.702. The policy areas inherently controlled by the public employer "shall include but shall not be limited to such areas of discretion or policy as the functions and programs of the public employer, standards of services, its overall budget, utilization of technology, the organizational structure and selection and direction of personnel." Id.

10. Id. at § 1101.801. Once mediation has been initiated, it continues until the two sides reach a settlement. Id. at § 1101.802.

11. Id. A settlement must be reached "in no event later than one hundred thirty days prior to the 'budget submission date.'" Id.

12. Id. The Labor Board has discretion to appoint qualified members, who are broadly representative of the public, to the fact-finding panel. Id. at § 1101.503. The panel possesses
Both the public employer and public employees possess a statutory duty to participate, in good faith, in the mediation and fact-finding procedures. In addition, during the mediation and fact-finding periods the teachers are prohibited from going on strike. The school board and union also have the option to submit all unresolved contract issues to binding arbitration. However, arbitration is not mandatory in Pennsylvania, and once the teachers have completed the statutorily required bargaining processes, the union has the freedom to go out on strike. Only two statutory provisions may impinge upon the teachers' right to strike. The school district may directly attack the strike by arguing that it represents a "clear and present danger" to the health and welfare of the community. In attempting to obtain an injunction forcing a union back to work, the school board's case may also be indirectly aided by the statutory requirement that a public school system provide its students with 180 days of instruction.
Because Act 195 took effect in the summer of 1970, the courts of Pennsylvania were first required to interpret the meaning of "clear and present danger or threat to the health, safety, or welfare of the public" when teachers unions went on strike during 1971 and school districts sought injunctions to force their employees back to work. The commonwealth court’s initial attempt to interpret the injunction language of Act 195 occurred in Armstrong Education Association v. Armstrong School District. In that case, the issue before the commonwealth court was whether a clear and present danger to the public existed to warrant the lower court granting an injunction ordering the union to return to the classroom. Twelve days of classroom instruction had been lost, the district was in jeopardy of losing state subsidies, extracurricular activities and varsity sports had been cancelled, future "inservice days" were threatened, transportation plans for the students were in jeopardy, and school board directors had faced harassment.


23. 5 Pa. Commw. 378, 291 A.2d 120 (1972). There, the teachers entered into collective bargaining with the school district in December of 1970, but when an impasse was reached the union went on strike effective April 27, 1971. Id. at 380, 291 A.2d at 122. An injunction was issued on May 11, 1971 ordering the teachers back to work and the 1970-71 instructional year was completed without further incident. Id. However, negotiations throughout the summer of 1971 were not fruitful, and on August 30, immediately before classes were to commence, the Armstrong Education Association went back out on strike. Id. A requested injunction by the school district was denied on September 1, but following a September 14 hearing, an injunction was granted ordering the teachers back to work on September 15, 1971. Id. at 380, 291 A.2d at 122-23. The union complied with the order, but filed an appeal with the commonwealth court. Id. at 381, 291 A.2d at 123.

24. Id. The commonwealth court’s standard of review in injunction cases is limited to whether any reasonable grounds existed to justify the lower court’s action, and the appellate court will not further examine the merits “unless it is plain that no such grounds existed or that the rules of law relied on are palpably wrong or clearly inapplicable.” Id. (quoting Community Sports, Inc. v. Denver Ringsby Rockets, Inc., 429 Pa. 565, 569, 240 A.2d 832, 834 (1968)).

25. If the 180 day requirement under the School Code is not satisfied, the school district may lose state subsidies which are distributed to the school system on a per day of instruction basis. See 24 P.S. § 15-1501 (Purdon 1962 & Supp. 1988).

26. Armstrong, 5 Pa. Commw. at 380, 291 A.2d at 122. In granting the September 14 injunction, the court of common pleas found a clear and present danger to the public existed “based on the strained atmosphere in the community as evidenced by the harassment of School Board Directors as well as the Judge, and on the fact that 12 days of school, which would have to be made up, had already been lost.” Id. at 380, 291 A.2d at 122-23.
The Armstrong opinion drew an analogy between the Act 195 "clear and present danger" standard and a similar use of the phrase in cases addressing government interference with first amendment rights. The court defined "clear" as including "that which is not speculative but real, not imagined but actual," and "present" as including "that which exists as contrasted with that which does not yet exist and that which has ceased to exist." In interpreting "danger" or "threat," the commonwealth court determined that these terms must mean more than the normal inconveniences that are inevitable when public employees go on strike.

The court reasoned that the harassment faced by the school directors was "clear and present," but was a common result of a strike and therefore failed to constitute a "danger" as envisioned by Act 195. Along the same line, the Armstrong decision noted that while considerable inconvenience was caused by the disruption of the school district's normal operating procedures and cancellation of student activities, these problems were also anticipated side effects of a teachers strike and did not warrant the issuance of an injunction. As for the potential for losing state subsidies, the commonwealth court determined that less funding amounted to a "danger," but with numerous make-up days still available before the 180 day requirement was threatened, the danger was not yet "clear and present." Therefore, the court concluded that the Armstrong teachers union strike did not present a clear and present danger to the public and an injunction ordering the teachers back to work should not have been issued.

27. The commonwealth court decision was written by Judge Blatt. Id. at 378, 291 A.2d at 121.
28. Id. at 381, 291 A.2d at 123 (citing Dennis v. United States, 341 U.S. 494 (1951) and Terminiello v. City of Chicago, 337 U.S. 1 (1949)).
31. Id.
32. Id. "If we were to say that such inconveniences, which necessarily accompany any strike by school teachers from its very inception, are proper grounds for enjoining such a strike, we would in fact be nullifying the right to strike granted to school teachers by the legislature in Act No. 195." Id.
33. Id. Subsequently, the Pennsylvania Supreme Court held that when a school district only provided 173 days of instruction because of a teachers strike, the state Department of Education may withhold 7 days worth of state subsidies that would have been available if the school district had provided a full 180 days of classes. See School Dist. of Pittsburgh v. Commonwealth, Dep't of Educ., 492 Pa. 140, 422 A.2d 1054 (1980).
34. Armstrong, 5 Pa. Commw. at 386-87, 291 A.2d at 125. The court stated:
In dictum, the Armstrong court speculated that had the threat of the school district losing state subsidies been a present danger, the trial court would have possessed proper grounds for enjoining the strike. Specifically, the court stated that "[if] the strike lasted so long, therefore, that any continuation would make it unlikely that enough days would be available to make up the 180 required, the teachers could be properly enjoined from continuing it." The commonwealth court noted, however, that in the present case only twelve school days were sacrificed to the strike and thirty-nine make-up days were available, twenty days in June as well as nineteen planned holidays, to satisfy the 180 day requirement. Thus, the court concluded that a strike must have progressed to the point where its continuation would prohibit any potential for satisfying the 180 day requirement and directly threaten the district’s receipt of state subsidies, and not until that time, under the facts in Armstrong, would an injunction be appropriate.

The commonwealth court was also asked to apply the clear and present "threat to the health, safety or welfare of the public" standard of Act 195 in Philadelphia Federation of Teachers v. Ross. In that case, the court considered whether an injunction ordering the teachers back to work should be upheld when increased gang activity had occurred, the city was expending an additional $133,000 per day for extra police protection, and the debt-ridden school district faced the potential loss of financial aid, although this threat was not yet a present reality. The court found

We must hold that at the time this injunction was issued, there were no reasonable grounds on which the lower court could find that the strike by the [teachers union] was a 'clear and present danger or threat to the health, safety or welfare of the public.' We must hold ... that the proper purpose of an injunction under Act No. 195 is to avert present danger, not to prevent danger which may never occur at all or which can only occur, if it does occur, at some future time before which the grievances concerned can reasonably be expected to be settled.

Id.

35. Id. at 385-86, 291 A.2d at 124-25.
36. Id. at 386, 291 A.2d at 125.
37. Id.
38. Id. See supra note 33.
39. 43 P.S. § 1101.1003 (Purdon Supp. 1988) (as compared with the clear and present "danger" standard).
40. 8 Pa. Commw. 204, 301 A.2d 405 (1973). The court's opinion was written by President Judge Bowman. Id. at 207-16, 301 A.2d at 406-411. A dissenting opinion was filed by Judge Crumlish. Id. at 216-17, 301 A.2d at 411-12. A dissent was also submitted by Judge Blatt, who was joined by Judge Mencer. Id. at 218-23, 301 A.2d at 412-14.
41. Id. at 213-14, 301 A.2d at 410. The teachers union had been on strike from Sep-
that these circumstances threatened the welfare of the general public, and the additional problems of instructional idleness for underachievers, uncertainty about making up lost school days, and the potential that high school seniors would be ineligible for college combined to threaten the student segment of the public. Therefore, the majority of the commonwealth court concluded that a threat existed to the health, welfare or safety of the public and the injunction was properly ordered.

Judge Blatt filed a dissenting opinion in the Ross case and disputed the majority's finding that either a clear and present danger or clear and present threat to the public welfare existed when the trial court issued an injunction only hours after the teachers' union had gone on strike. The dissent argued that neither the extent of harm to underachieving students nor the burden of additional security expenses had been clearly and specifically established by the school district. These problems, as well as others discussed by the majority, would not be unusual in a strike situation; however, Judge Blatt contended that at the time the hearing took place, several hours after the teachers' walkout, the evidence presented by the school district reflected an estimate of the potential danger or threat to the public, not evidence of a

tember 5, 1972, until September 28, at which time the employees returned to work under a Memorandum of Understanding. Id. at 208, 301 A.2d at 407. The Memorandum expired on January 7, 1973, and the rank and file voted to go back on strike effective January 8; however, the school district obtained an injunction on January 11, prohibiting the strike and ordering the teachers back to work. Id. Nevertheless, the union ignored the court order and remained on strike, while at the same time appealing the issuance of the injunction to the commonwealth court. Id. at 216 n.2, 301 A.2d at 411 n.2.

42. Id. at 214-15, 301 A.2d at 410-11.

43. Id. at 216, 301 A.2d at 411. "We do decide in the instant case that the facts reasonably found to exist by the lower court are sufficient to establish as a matter of law a threat to the health, welfare or safety of the public." Id.

44. Judge Blatt wrote the opinion in Armstrong Educ. Ass'n v. Armstrong School Dist., 5 Pa. Commw. 378, 291 A.2d 120 (1972), where the commonwealth court dissolved an injunction issued by the lower court because a 12 day strike did not present a clear and present danger to the public. Id. at 386-87, 291 A.2d at 124-25. See also supra notes 23-38 and accompanying text.

45. Judge Blatt's dissenting opinion was joined by Judge Mencer. Ross, 8 Pa. Commw. at 223, 301 A.2d at 414.

46. Id. at 221-23, 301 A.2d at 413-14 (emphasis in original). The teachers strike commenced on Monday, January 8, 1973; the trial court also held its hearing on January 8, at which time evidence was presented on whether the strike constituted a clear and present danger or threat to the public; the injunction was issued on Thursday, January 11, 1973. Id. at 220, 301 A.2d at 413.

47. Id. at 222-23, 301 A.2d at 414.
clear and present danger or threat. In conclusion, the dissent surmised that the Pennsylvania General Assembly, in passing Act 195, anticipated that the public would suffer some inconvenience and expense, and only a unique threat to the public's welfare, unlike the common type of difficulties expected to be faced by the Philadelphia school district, would justify granting an injunction.

The commonwealth court, in *Bellefonte Area Education Association v. Board of Education of Bellefonte Area School District*, examined the issue of whether a clear and present danger or threat to the public existed when the school district might be unable to continue its "quality assessment program" and thirteen instructional days had been lost to the strike. The court reasoned that with fifteen summer vacation days and numerous scheduled holidays available to satisfy the state's 180 day requirement, the lower court erred in ruling that the potential loss of state reimbursements represented a clear and present danger or threat to the public. The *Bellefonte* decision also determined that the school district's lack of participation in the quality assessment program was not so harmful as to justify denying the teachers their right to strike under Act 195. Therefore, the court concluded that the strike failed to endanger or threaten the public's welfare, and an injunction of the teachers' strike was inappropriate.

48. *Id.* (emphasis added). Judge Blatt interpreted the words "clear and present" as modifying not only a "danger," but also a "threat" to the public's welfare, health and safety. *Id.*

49. *Id.* Judge Blatt took the position that if Philadelphia wanted a special exception made for its school district because of the problems unique to an urban community, Philadelphia would have to obtain the exception from the state legislature, not the courts. *Id.*

50. 9 Pa. Commw. 210, 304 A.2d 922 (1973). The court's opinion was presented by Judge Rogers. *Id.* at 212-29, 304 A.2d at 923-26. A concurring opinion was filed by Judge Kramer, who was joined by Judge Crumlish. *Id.* at 219-20, 304 A.2d at 926. President Judge Bowman concurred in part and dissented in part. *Id.* at 220-21, 304 A.2d at 927.

51. The quality assessment program is designed to measure the effectiveness of a school district and compare it with other systems around the country. *Id.* at 215, 304 A.2d at 924.

52. *Id.* at 214, 304 A.2d at 923-24.


54. *Bellefonte*, 9 Pa. Commw. at 215-16, 304 A.2d at 924. [The quality assessment program], and other desirable things, including many extra-curricular activities which are the delight of secondary school life, were bound to be lost to districts undergoing strikes, which the legislature decided, when it passed the Act, were required to be sanctioned in order 'to promote orderly and constructive relationships between all public employers and their employees.' *Id.* (quoting 43 P.S. § 1101.101 (Purdon Supp. 1988)).

55. *Bellefonte*, 9 Pa. Commw. at 214, 304 A.2d at 923.
Judge Kramer filed a concurring opinion in *Bellefonte* which outlined a concern for whether the school children were being properly represented in the controversy between the school board and teachers’ union.\(^{56}\) The public school students of Pennsylvania have a constitutional right to a “thorough and efficient system of public education.”\(^{57}\) Judge Kramer criticized the court for not considering the impact of lost holiday and summer vacation days on students either holding jobs during these periods or needing grades from completed courses before applying to colleges or planning to attend summer school in order to qualify for college admission.\(^{58}\) The school children appeared to be “pawns in an adult game of economics.”\(^{59}\) Thus, Judge Kramer concluded that if the school district, teachers’ union, Attorney General, Secretary of Education, and state legislature would not recognize the problems of Pennsylvania’s public school children and protect their constitutional rights, then the courts must be willing to do so.\(^{60}\)

The commonwealth court also considered whether a teachers’ strike was properly enjoined by the trial court in *Bristol Township Education Association v. School District of Bristol Township*.\(^{61}\) There, the strike had lasted for twenty-six instructional days and only twenty-three possible make-up days were available.\(^{62}\) In addition, the labor dispute caused the normal disruptions incident to a strike: students were denied educational programs, working mothers were inconvenienced by children at home during the weekday, high school seniors were inadequately prepared for college entrance exams, there was a lack of special education programs for handicapped students, and various community-wide programs were cancelled.\(^{63}\)

The *Bristol* court recognized that state subsidies to the school district could be lost because an inadequate number of days were

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56. *Id.* at 219-20, 304 A.2d at 926.
57. *Id.* (quoting Pa. Const. art. III, § 14).
59. *Id.* “If the teachers and the school district agree to use all legal holidays, all weekends and all vacation time to make up for the lost days of a strike, does that mean the students will have no rest? Do they have any rights?” *Id.*
60. *Id.*
61. 14 Pa. Commw. 463, 322 A.2d 767 (1974). The court’s decision was written by Judge Blatt. *Id.* at 466-72, 322 A.2d at 768-71. Judge Mencer, joined by Judge Kramer, submitted a dissenting opinion. *Id.* at 472-78, 322 A.2d at 771-74. Judge Kramer also filed a separate dissenting opinion. *Id.* at 478, 322 A.2d at 774.
62. *Id.* at 468, 322 A.2d at 769.
63. *Id.* at 468-69, 322 A.2d at 769-70. The trial court judges made a total of 17 findings that supported the granting of an injunction. *Id.*
available to replace the school days already forfeited by the strike. While cautioning that the legislature did not intend to limit the maximum number of strike days, and the loss of state subsidies alone would not warrant issuing an injunction, the commonwealth court found that the lower court did not err in granting an injunction. The court went on to further warn that it could not hold that the lower court’s other findings, either taken alone or collectively, would necessarily amount to a clear and present danger or threat. However, the opinion stated that it was not necessarily unreasonable for the lower court to find an injunction appropriate in the face of twenty-six lost school days and the accumulation of the inconveniences common to a strike. Thus, the injunction issued by the lower court was affirmed.

Judge Mencer filed a dissenting opinion in Bristol, arguing that the majority’s decision essentially equated the inability of a school district to satisfy the 180 day requirement with a clear and present danger or threat to the public. The dissent quoted the language of the Armstrong decision, which stated that a danger or threat justifying an injunction must be one that the legislature would not have considered normally incident to a strike. In an attempt to minimize the impact of the 180 day requirement, Judge Mencer noted that a school district possesses a statutory alternative to instead provide 990 hours of instruction per school year.

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64. Id. at 469-70, 322 A.2d at 770. See supra notes 25, 33.
65. Bristol, 14 Pa. Commw. at 469-70, 322 A.2d at 770. “The Chancellor . . . determined that the threatened loss of the subsidies would constitute a danger which required that the strike be enjoined. We cannot hold that he erred in so finding.” Id.
66. See supra note 63 and accompanying text.
68. Id.
69. Id. at 470, 322 A.2d at 771.
70. Id. at 472, 322 A.2d at 771. Judge Mencer’s dissent was joined by Judge Kramer. Id. at 478, 322 A.2d at 774.
71. Id. at 472, 322 A.2d at 771. Judge Mencer claimed that the concept that a threat to the 180 requirement equaled a clear and present danger to the public originated from the case of Root v. Northern Cambria School Dist., 10 Pa. Commw. 174, 309 A.2d 175 (1973). Bristol, 14 Pa. Commw. at 472, 322 A.2d at 771. In Root, the commonwealth court considered whether the dictum of Armstrong required “that the danger that the district will lose state subsidy by the failure to teach 180 days, if clear and present, would be proper grounds for enjoining a strike. . . .” Root, 10 Pa. Commw. at 180, 309 A.2d at 178.
73. Bristol, 14 Pa. Commw. at 473, 322 A.2d at 772. The School Code provides that a school district may request the Secretary of Education to approve “a school year containing a minimum of nine hundred ninety hours of instruction at the secondary level or nine hundred (900) hours of instruction at the elementary level as the equivalent of one hundred
one-half hour to the normal school day, a district may satisfy its state subsidy requirements in 165 days, and an additional one hour of classroom instruction would meet the requirements in 153 school days.\textsuperscript{74} Using this alternative, Judge Mencer contended that the teachers' statutory right to strike and the school district's statutory duty to provide 180 days, or 990 hours, of instruction could be better harmonized; but, in any event, the dissent concluded that the loss of state subsidies from offering less than 180 days of instruction did not create a clear and present danger or threat to the public and could not justify issuing an injunction.\textsuperscript{75}

Based upon the various decisions of the commonwealth court,\textsuperscript{76} the judges of the court of common pleas have attempted to develop a workable analysis for determining when a teachers strike presents a "clear and present danger or threat to the health, safety or welfare of the public."\textsuperscript{77} A classic opinion addressing this issue was delivered by Judge Narick of the Court of Common Pleas of Allegheny County in the case of \textit{Bethel Park School District v. Bethel Park Federation of Teachers}.\textsuperscript{78} There, the teachers union went on strike at the beginning of the 1986-87 school year, and on October 6, 1986, the school board sought an injunction ordering the teachers back to work.\textsuperscript{79} The school district presented evidence that unless instruction commenced by October 20, the district would be unable to satisfy the 180 day requirement and state subsidies would be lost.\textsuperscript{80} The school board also claimed that educa-

\textsuperscript{77} \textit{Bristol}, 14 Pa. Commw. at 474, 322 A.2d at 772.
\textsuperscript{78} 135 Pgh. L.J. 127 (C.P. Alleq. Co. 1986). The Bethel Park school district had suffered through its first teachers strike in the Fall of 1979. The union members were ordered back to work under an injunction issued October 17, 1979, and the teachers worked for the entire 1979-80 school year without a contract. Bethel Park School District v. Bethel Park Federation of Teachers, 414 A.2d 145, 146 (1980). A new collective bargaining agreement was eventually reached during the summer of 1980.
\textsuperscript{79} \textit{Bethel Park}, 135 Pgh. L.J. at 128. The school district requested an injunction based upon not only the "clear and present danger" standard of Act 195, 43 P.S. § 1101.1003 (Purdon Supp. 1988), but also the 180 day requirement under the school code, 24 P.S. § 15-1501 (Purdon 1962 & Supp. 1988).
\textsuperscript{80} \textit{Bethel Park}, 135 Pgh. L.J. at 129. The school district began offering on September...
tional programs would be adversely affected by the strike's continuation and the district was incurring additional expenses in the custodial, food service, security, and transportation areas.\textsuperscript{81}

Initially, in reviewing case law from the commonwealth court, Judge Narick noted that the potential loss of state subsidies, for failure to satisfy the 180 day requirement, was not in itself a sufficient justification for enjoining a teachers strike.\textsuperscript{82} The Bethel Park opinion also found that to satisfy the "danger or threat to the public" requirement of Act 195, the school board must prove harmful circumstances which would not normally arise out of a strike by school teachers.\textsuperscript{83} Judge Narick labeled the disruption of administrative procedures, postponement of extracurricular activities, and extension of the school year further into June as "inconveniences" to the public.\textsuperscript{84} These problems, however, are inherent in the very nature of a school strike, and the common pleas court concluded that to grant an injunction because of these inconveniences would essentially nullify the teachers' statutory right to strike.\textsuperscript{85}

The issue in the Bethel Park case, as phrased by Judge Narick, was whether the right of public school teachers to strike under Act 195 "may only continue for a specific number of days, whether it be 26, 30 or 32 days, if no agreement is reached and then the injunction would automatically be issued. . . ."\textsuperscript{86} The court cited cases which held that a school district may provide less than 180 days of instruction when strike activities make rescheduling of all

\textsuperscript{10} four and one-half hours of instruction per day to the district's 510 high school seniors. \textit{Id.} at 128.

\textsuperscript{81} \textit{Id.} at 129. The court noted that, in contrast to the 1979 strike, sports programs and related extracurricular activities were continuing and various testing programs, including PSAT, ACT, and SAT, would be administered as planned. \textit{Id.} The court also heard evidence that the earliest college application deadlines were in November and many universities set no cut off date for application. \textit{Id.}

\textsuperscript{82} \textit{Id.} at 130-31 (citing Bristol Township Educ. Ass'n v. School Dist. of Bristol Township, 14 Pa. Commw. 463, 322 A.2d 767 (1974)).

\textsuperscript{83} Bethel Park, 135 Pgh. L.J. at 132.

\textsuperscript{84} \textit{Id.} The Bethel Park court quoted the following language from the commonwealth court:

However difficult it may be to envision a strike of public employes which would not constitute a threat to the public welfare, this court has nonetheless unanimously held that the Act did not intend that courts should enjoin strikes by public employes because they produce effects normally incident to a strike. \textit{Id.} (quoting Bellefonte Area Educ. Ass'n v. Board of Educ. of Bellefonte Area School Dist., 9 Pa. Commw. 210, 213 n.1, 304 A.2d 922, 923 n.1 (1973)).

\textsuperscript{85} \textit{Bethel Park}, 135 Pgh. L.J. at 132.

\textsuperscript{86} \textit{Id.}
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the days lost impossible. Judge Narick determined that under the current statutory laws impacting on a teachers' strike, it was impossible for the court to reconcile the right to strike under Act 195, the school district's duty to provide 180 days of instruction under the School Code, and the students right to a thorough and efficient system of public education under the state constitution. In addition, the common pleas court recognized that the judiciary is in no position to effectively reconcile the statutory provisions, and that this task may only be accomplished by the legislature through a complete reexamination of the entire area of the law.

In summary, Judge Narick concluded that a clear and present danger or threat to the public is not created when a teachers' strike prevents a school district from providing 180 days of instruction and the district consequently faces the potential loss of state subsidies. Any other holding would require that a teachers' strike which infringed on the 180 day requirement be presumed invalid and subject to an immediate injunction. The court also reasoned that a contrary ruling would mean that "the school board is assured that its position in negotiations at the bargaining table, whether fair or unfair, will prevail if only it can hold out long enough to encroach in the 180-day requirement." Judge Narick would only grant an injunction if the evils of the strike were extremely serious and the level of immediate danger extremely high. Finding none of these circumstances present, Judge Narick

90. Bethel Park, 135 Pgh. L.J. at 133. The students' constitutional right to a public education is outlined in Article III, § 14 of the Pennsylvania Constitution.
91. Id.
92. Id. Judge Narick stated:
I do not believe that where a teachers' strike prevents a school district from having 180 days of instruction in the school year with a consequence of possible loss of state subsidy, there is thereby a clear and present danger or threat to the health, safety, or welfare of the public.

Id.
93. Id. The court reasoned that if a threat to the 180 day rule equaled a danger to the public's welfare, "then it would follow that any strike which infringes upon the 180-day requirement is infected with almost presumptive invalidity." Id.
94. Id. at 133-34. The court also found that combining the inconveniences inherent in a labor dispute with the encroachment on the 180 day requirement would still not justify enjoining a teachers' strike. Id. at 134.
95. Id. In Judge Narick's view:
[T]he evil, which is not the strike itself, which is permitted, nor the natural disrup-
held on October 17, 1986, that the Bethel Park teachers' strike did not present a clear and present danger or threat to the health, safety or welfare of the public, and therefore, the school district's request for an injunction was denied.\(^6\)

Act 195 was first passed in 1970, but the Pennsylvania Supreme Court did not attempt to interpret the "clear and present danger or threat" to the public language until the 1988 case of *Jersey Shore Area School District v. Jersey Shore Education Association*.\(^7\) The issue before the court was whether the trial court was justified\(^8\) in granting an injunction ordering the striking teachers back to work when the strike's continuation would prevent the district from providing 180 days of instruction and the community had suffered from the common problems incident to a teachers' strike.\(^9\) Considering these circumstance, the supreme court att-

\(^{10}\)ions flowing therefrom, but [the evil] must be extremely serious and the degree of imminent danger extremely high before the court can utilize the extraordinary remedy of injunctive relief to terminate a strike specifically authorized by statute. \(\text{Id. (emphasis added).}\)

\(^{96}\) *Id.* After Judge Narick denied the request for an injunction on Friday, October 17, the Bethel Park school board and the Bethel Park Federation of Teachers returned to the bargaining table. A new labor agreement was tentatively reached on Sunday, October 19 and the teachers returned to work on Monday, October 20, 1986. Because the high school seniors had attended classes during the strike, they graduated on time in early June of 1987. The school district canceled scheduled holidays, but all other grades were still required to attend school until June 30, 1987. The school district fell six days short of the 180 day requirement, the teachers were paid for six less days of work, and the following year the school district received a proportionate reduction in its state subsidies. Telephone Interview with Dr. Peter H. Zonca, Assistant Superintendent of the Bethel Park School District (March 9, 1989).

\(^{97}\) 548 A.2d 1202 (1988). The majority opinion was written by Justice Stout, who was joined by Chief Justice Nix and Justices Flaherty and McDermott. \(\text{Id. at 1203-08. A dissenting opinion was filed by Justice Larsen, who was joined by Justice Papadakos. Id. at 1208-10. A dissent was also submitted by Justice Zappala. Id. at 1210-11.}\)

\(^{98}\) The supreme court's standard of review is a narrow one. \(\text{Id. at 1204. A chancellor's findings of fact will not be disturbed unless there exists "an abuse of discretion or a capricious disbelief of the evidence or a lack of evidentiary support on the record for such findings." Id. (quoting Shapiro v. Shapiro, 424 Pa. 120, 127, 224 A.2d 164, 168 (1966)). In addition, the supreme court will not reverse an injunction order, except when "the rules of law relied on are palpably wrong or clearly inapplicable." Jersey Shore, 548 A.2d at 1204 (quoting Lindenfelser v. Lindenfelser, 385 Pa. 342, 343-44, 123 A.2d 626, 627 (1956)).}\)

\(^{99}\) *Jersey Shore*, 548 A.2d at 1203-04. The Jersey Shore teachers' union went on strike on September 10, 1984, and were ordered back to work on October 11, under an injunction issued by the Lycoming County Court of Common Pleas. \(\text{Id. at 1204. The commonwealth court affirmed the injunction on the ground that the strike threatened the school district's ability to provide 180 days of education to its students. Jersey Shore Educ. Ass'n v. Jersey Shore Area School Dist., 99 Pa. Commw. 163, 512 A.2d 805 (1986). The supreme court disagreed with the commonwealth court's decision to affirm the injunction "solely" on the basis that the 180 day requirement was in jeopardy, but the supreme court nonetheless affirmed the injunction on the record as a whole. Jersey Shore, 548 A.2d at 1204 (emphasis in original).}\)
tempted to reconcile the conflicting limitations placed on a school strike by the provisions of Act 195 and the School Code's 180 day requirement.\footnote{Jersey Shore, 548 A.2d at 1203.}

Justice Stout began her opinion by reviewing the pertinent facts in the case.\footnote{Id. at 1204.} After only four days of classes at the beginning of the 1984-85 school year, the Jersey Shore teachers went on strike.\footnote{Id.} On October 8, 1984, the school district sought an injunction ordering the teachers back to work.\footnote{Id.} The Jersey Shore superintendent testified that October 15 was the last day that the school district could reasonably provide 180 days of education.\footnote{Id. at 1204-05. The superintendent allowed for six snow days in the schedule, as well as two non-mandatory holidays. Id.} The superintendent also presented evidence that the school district would lose $26,637 per day in state subsidies for every day the school district fell short of the 180 day requirement.\footnote{Id. at 1205. The superintendent also claimed that the strike had already cost the school district $65,944. Id. The union responded with expert testimony that the school district would actually have a net savings of $24,199, even with the potential of lost subsidies. Id.} The school district contended that high school seniors' SAT preparations, scholarship applications, and guidance counseling services were all adversely affected by the strike.\footnote{Id. The district contended that other grades would also be at a disadvantage when taking state mandated remedial testing programs and a greater strain would be placed on remedial courses because marginal students had already missed so much school. Id.} Finally, the school board claimed that loss of learning capacity was resulting from the students extended stay away from the classroom.\footnote{Id. The superintendent presented test scores taken after a previous strike which showed a decrease in student aptitude. Id. The teachers' union called an expert witness who disputed the superintendent's interpretation of the prior test scores. Id.} After the testimony was completed, the common pleas court elected to issue an injunction on the ground that all of the evidence had established a clear and present danger to the public.\footnote{Id. The commonwealth court affirmed the injunction order, \textit{solely} on the basis that the strike threatened the school district's ability to provide 180 days of education. Id. at 1204 (emphasis in original) (citing Jersey Shore Educ. Ass'n v. Jersey Shore Area School Dist., 99 Pa. Commw. 163, 512 A.2d 805 (1986)).}

After reviewing past case law,\footnote{Id. at 548 A.2d at 1206-07.} the supreme court held that the loss of state subsidies from the failure to satisfy the 180 day rule, \textit{alone}, does not create a clear and present danger or threat to the
public's welfare, safety or health.\textsuperscript{110} Justice Stout cautioned that "the length of the instructional calendar and the loss of state funding" represented only one factor the trial court should consider in determining whether a clear and present danger or threat existed to justify issuing an injunction.\textsuperscript{111} Based upon the facts present in the Jersey Shore strike, the court reasoned that these factors, \textit{in conjunction}, created actual, impending and ever increasing harm to the school district's students.\textsuperscript{112} Consequently, "the health and welfare of the students, who cannot and must not be treated as a category separate from the public at large, was clearly endangered and threatened."\textsuperscript{113} Therefore, the supreme court majority opinion affirmed the commonwealth court's decision to uphold the injunction ordering the Jersey Shore teachers' union back to work.\textsuperscript{114}

Justice Larsen filed a dissenting opinion\textsuperscript{115} where he noted that the state legislature gave public school teachers "\textit{the right to strike}," while fully cognizant that the School Code required 180 days of student instruction.\textsuperscript{116} The legislature only made allowance for the court's to issue an injunction when a "\textit{clear and present danger or threat}" to the public existed.\textsuperscript{117} Justice Larsen argued that this standard for granting an injunction under Act 195 required far more "than the myriad inevitable and expected inconveniences and disruptions" inherent in any teachers' strike, including an encroachment on the 180 day rule "of which the legislature was well aware."\textsuperscript{118} In support of his position that the facts present in the Jersey Shore teachers' strike did not warrant the issuance of an injunction, Justice Larsen quoted extensively from the \textit{Bethel Park} case where Judge Narick deemed many of the same strike related problems inadequate to justify an injunction.\textsuperscript{119}

\textsuperscript{110} Id. at 1207 (emphasis added). Justice Stout noted that: "We resist the facile temptation to legislate judicially a 180-day limit to the teachers' right to strike. We leave it to the legislature . . . to decide whether such a limit should be imposed." Id. at 1207 n.9.

\textsuperscript{111} Id.

\textsuperscript{112} Id. at 1207-08 (emphasis added).

\textsuperscript{113} Id. at 1208.

\textsuperscript{114} Id. "In this case the school district demonstrated beyond peradventure the existence of a 'clear and present danger or threat to the health, safety or welfare of the public.'" Id. at 1207.

\textsuperscript{115} Id. at 1208-10. Justice Larsen's dissent was joined by Justice Papadakos. Id. at 1210.

\textsuperscript{116} Id. at 1208 (emphasis in original).

\textsuperscript{117} Id. (emphasis in original).

\textsuperscript{118} Id. (emphasis in original).

\textsuperscript{119} Id. at 1208-09 (quoting Bethel Park School Dist. v. Bethel Park Fed'n of Teachers, 135 Pgh. L.J. 127, 132-34 (C.P. Alleg. Co. 1986)). \textit{See also supra} notes 78-96 and accompanying text.
Justice Larsen reiterated in his *Jersey Shore* dissent that the legislature did not intend the inherent disruptions and normal inconveniences associated with a teachers' strike, as were present in the Jersey Shore and Bethel Park strikes, to authorize the court's use of the "extraordinary remedy" of injunctive relief. The dissent charged that Justice Stout's majority opinion seriously undermined the public school teachers' right to strike and turned "the ordinary into the extraordinary." Justice Larsen also expressed concern that the majority's decision will allow school boards to unfairly wait out a strike until the 180 day deadline approaches and then go into court, present the standard list of inconveniences associated with a teachers' strike, and obtain an injunction.

In conclusion, Justice Larsen warned that the gains public school teachers had made, because of collective bargaining and the right to strike, might prove fleeting under the majority opinion, and therefore, he urged the legislature to take steps to protect the advances won by public school teachers since Act 195 was passed in 1970.

Justice Zappala also submitted a dissenting opinion in the *Jersey Shore* case. Justice Zappala agreed with Justice Stout's holding that the risk of losing state subsidies for failure to satisfy the 180 day requirement was not a clear and present danger or threat to the public's welfare. The dissent, however, contended that the majority's emphasis on the common inconveniences faced by students during a teachers' strike had, in effect, created a per se rule that a school district's inability to provide 180 days of instruction represented a clear and present danger or threat to the pub-

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120. *Jersey Shore*, 548 A.2d at 1209-10. Justice Larsen elaborated that:

These types of harms usually associated with a public school teachers' strike were not unknown or unimaginable when the legislature prohibited courts from interfering with such strikes unless or until a clear and present danger or threat to the public health, safety or welfare were presented, and the legislature could not have equated the former harm with the latter clear and present danger or threat. *Id.*

121. *Id.* at 1210.

122. *Id.* Justice Larsen credits Judge Narick for the observation that the school district gains an unfair bargaining advantage when the courts equate the clear and present danger standard with an encroachment on the 180 day requirement. *Id. See Bethel Park*, 135 Pgh. L.J. at 133-34.

123. *Jersey Shore*, 548 A.2d at 1210. Justice Larsen strongly urged "the legislature to take prompt action to preserve the hard fought gains of this Commonwealth's front line soldiers in the war against ignorance and anarchy." *Id.*

124. *Id.* at 1210-11.

125. *Id.* at 1210.
Justice Zappala reasoned that because the inconveniences to students automatically develop whenever a teachers' strike commences, once the school district can also establish the potential for lost state subsidies from an inability to satisfy the 180 day rule, under the majority opinion a common pleas court will have little choice but to enjoin the strike.127

Justice Zappala's dissent in *Jersey Shore* also took issue with Justice Stout's attempt in the majority opinion to equate a danger or threat to the student population with a danger or threat to the general public.128 The dissent interpreted the legislature's passage of Act 195 as a conscious decision to favor a public teacher's right to strike over other competing interests, including those of the public school children.129 Justice Zappala claimed that the unique problems faced by the student population were not synonymous with the definition of public welfare contemplated by the legislature.130 Thus, contrary to legislative intent, the majority opinion "places student inconveniences in a preeminent position and relegates the teachers' right to strike to a secondary concern."131 In further support of his position, Justice Zappala cited numerous commonwealth court cases132 which considered the inconveniences experienced by school students, and noted that the legislature had never attempted to amend Act 195 in a manner which would circumscribe the clear meaning of the word "public."133 Therefore, the dissent in *Jersey Shore* concluded that the judiciary should not disrupt the balance created by the legislature when it passed Act 195.134

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126. *Id.* Justice Zappala found that "while the majority professes to resist any temptation to judicially legislate a 180-day limitation to the right to strike, it has in fact succumbed to that temptation." *Id.*

127. *Id.* Justice Zappala also concluded that "[a] teachers' strike which lasts long enough to create that economic threat [of lost state subsidies] will always give rise as well to the student inconveniences which concern the majority." *Id.*

128. *Id.*

129. *Id.* The dissent recognized that "[t]he student population was directly affected by [Act 195]. But it was the clear mandate of the legislature that a strike by public employees 'shall not be prohibited unless or until the strike creates a clear and present danger or threat to the . . . public.'" *Id.* (emphasis added) (quoting 43 P.S. § 1101.1003 (Purdon Supp. 1988)).

130. *Id.* at 1210-11.

131. *Id.* at 1211.

132. *Id.* See supra note 76.

133. *Jersey Shore*, 548 A.2d at 1211 (emphasis in original).

134. *Id.* Justice Zappala cautioned that "[a]lthough the Legislature's inattention to student inconveniences may be perceived by some as a failure, the remedy properly rests with the Legislature." *Id.*
How the "clear and present danger or threat to the health, safety and welfare" language of Act 195 will be interpreted in the future by the courts, interested parties, and the state legislature may not be known exactly, but certain assumptions and predictions seem in order subsequent to the supreme court's *Jersey Shore* decision. If nothing else, Justice Stout's majority opinion clarifies that a school district's loss of state subsidies for failure to satisfy the 180 day requirement, *alone*, does not justify a court ordered injunction to end a teachers' strike. 135 Beyond this holding, the *Jersey Shore* case merely affirmed that the facts present in the Jersey Shore strike, particularly the adverse affects upon the student population, were more than adequate for the trial court to find a clear and present danger to the public's welfare and grant an injunction. 136

The procedural setting in which the supreme court reviewed the *Jersey Shore* case must also be considered. The standard of review in equity cases, including injunctions, is very narrow. 137 A trial court's findings of fact will not be disturbed unless there exists either an abuse of discretion, a total disbelief of the evidence, or a lack of evidence to support the findings of fact. 138 The supreme court gives stricter scrutiny to conclusions of law, 139 but a trial court's injunction will not be reversed unless "the rules of law relied on are palpably wrong or clearly inapplicable." 140 Therefore, the findings of the trial court, that the Jersey Shore school district's students were suffering harms that presented a clear and present danger to the public, were subject to only a very limited review by the supreme court.

In light of the supreme court's analysis in the *Jersey Shore* decision, and its procedural setting, a common pleas court judge entertaining a school district's injunction request in the future should

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135. *Id.* at 1207 (emphasis added).
136. *Id.* at 1207-08.
137. *Id.* at 1204 (citing Butler v. Butler, 464 Pa. 522, 347 A.2d 477 (1975)).
139. *Id.*
continue to exercise independent judgment. The trial judge cannot issue an injunction solely because the school district will otherwise lose state subsidies, but the judge should still exercise discretion concerning whether the other problems associated with the strike are creating a clear and present danger or threat to the public. Otherwise, the concerns of the dissenting justices in Jersey Shore will be realized as the judiciary will have effectively usurped the legislature and created a per se rule entitling a school district to an automatic injunction whenever a teachers' strike encroaches on the 180-day rule.

In determining the necessity of an injunction, the common pleas court judge should also consider whether the school district avoided serious negotiations with the union and instead waited for the 180 day deadline to approach. If evidence exists that the school board was so motivated, the trial judge must deny the injunction request or run the risk of presiding over the destruction of the public school teachers' statutory right to bargain collectively and strike against their public employers.

The impact of the Jersey Shore decision on the "clear and present danger to the public" standard should also be seriously evaluated by the teachers' unions in Pennsylvania. The unions may take heart in the supreme court's holding that the 180 day requirement does not, in and of itself, justify the issuing of an injunction. However, the teachers' union must be concerned with Justice Stout's implication that the standard inconveniences suffered by the district's school children during a strike, combined with lost state subsidies, justify ordering striking teachers back to work. The unions should therefore consider implementing steps during future strikes to minimize the labor dispute's adverse impact upon the students. Specifically, striking teachers should: allow high school

141. Jersey Shore, 548 A.2d at 1207.
142. See supra notes 115-134 and accompanying text for a discussion of the dissenting opinions filed by Justices Larsen and Zappala in Jersey Shore.
143. See Jersey Shore, 548 A.2d at 1208-10 (Larsen, J. dissenting) and Bethel Park, 135 Pgh. L.J. at 133-34.
144. Id. While no evidence was presented in the Bethel Park case that the school board was avoiding serious negotiations while waiting for the 180 day deadline to arrive, once the injunction was denied by Judge Narick on October 17, 1986, the school district and teachers' union reached a tentative agreement a mere two days later. See supra note 97.
145. All teachers' union locals in Pennsylvania are affiliated with either the Pennsylvania State Education Association (PSEA) or the American Federation of Teachers (AFT).
146. See Bethel Park, 135 Pgh. L.J. at 134, where the strategy of reducing the strike's impact on the students was met with apparent success when Judge Narick denied the school district's petition for an injunction. Id. In contrast to the 1979 strike, where the union took
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seniors to attend classes; authorize guidance counselors to consult on college admissions; hold SAT preparatory classes; provide special education instructors; and encourage the continuation of extracurricular activities and sports. In addition, if the teachers' union has evidence that the school board, in reliance on Jersey Shore, is merely waiting for the 180 day deadline to arrive, the union should file unfair labor practice charges against the school district for its failure to negotiate in good faith.\textsuperscript{147}

The school districts of Pennsylvania also should reevaluate, in light of the Jersey Shore opinion, what "danger or threat to the public" must be demonstrated by the public employer in order to obtain an injunction order. School board members have a duty to negotiate in good faith and not merely wait until the passage of time aggravates the strike situation and increases the potential for judicial intervention. After the strike commences, documentation by the school district of the resulting problems, especially the injuries relating to the students, would be very advantageous if the district goes to court. In addition, the superintendent should continually revise the school year calendar and track not only when the 180 day requirement can no longer be satisfied by the district, but also how much state funding would be sacrificed on a per day basis.

The more interesting question, from a school board's perspective, is whether the district should implement any available contingency plans for continuing such programs as classes for high school seniors, preparatory seminars on the SAT's, and extracurricular activities and sports. Based upon Justice Stout's emphasis in Jersey Shore on the injuries suffered by students exposed to a teachers' strike,\textsuperscript{148} if the school district offers alternative programs, the district decreases harm to the students, but also potentially reduces the chances of later obtaining an injunction. On the other hand, if the district takes no steps to continue a minimum level of educational and extracurricular programs, the school board may increase their ability to later petition for an injunction order. The school

\textsuperscript{a} a hard line throughout the dispute and an injunction order was issued, during the 1986 strike high school seniors attended classes, extracurricular activities and fall sports programs continued, and arrangements were made to administer various testing programs. \textit{Id.} at 128-29.

\textsuperscript{147} See 43 P.S. § 1101.1201(5) (Purdon Supp. 1988). Section 1201(5) prohibits a public employer from refusing to bargain in good faith with the employees' exclusive bargaining representative. \textit{Id.}

\textsuperscript{148} Jersey Shore, 548 A.2d at 1207-08.
district obviously has a duty to its school children to provide the best education available under the circumstances; however, a school board involved in a bitter labor dispute might consider offering little in the way of alternative forms of education, claim that the students were suffering severe injury as a result of the strike, and request that a common pleas court order the teachers back to work.

All interested parties evaluating the future impact of the *Jersey Shore* decision on the Act 195 injunction standard must also consider the precarious coalition of justices forming the majority opinion. The seven member Pennsylvania Supreme Court produced only a four-justice majority in the *Jersey Shore* case.\textsuperscript{149} Justice Stout, the author of the majority opinion, reaches the mandatory retirement age of 70 in March of 1989 and will step down from her seat on the court. Thus, only three justices on the supreme court remain in favor of the *Jersey Shore* decision and this plurality cannot expect to pick up any support from the other three justices who filed adamant dissenting opinions.\textsuperscript{150} A new justice will be elected to the supreme court in November of 1989 and assume office in January of 1990. This new member of the court will represent the swing vote on any judicial interpretation of Act 195's "clear and present danger or threat to the health, safety or welfare of the public" injunction standard, and until the supreme court reconsiders this language the precedential value of *Jersey Shore* may remain in doubt.

Although the supreme court waited eighteen years before first attempting to interpret the injunction language under Act 195, and the exact impact of the court's *Jersey Shore* decision remains unclear, a definitive understanding of section 1003\textsuperscript{151} would emerge if the legislature attempted to either amend or clarify the public school teachers' statutory right to strike. When Act 195 was passed by the Pennsylvania legislature, the lawmakers were precise in defining the right to strike, but only provided the vague "clear and present danger or threat to the public" language as guidance for when the courts should issue an injunction restricting the teachers'

\textsuperscript{149} Id. at 1203. The *Jersey Shore* majority consisted of Chief Justice Nix and Justices Flaherty, McDermott, and Stout.

\textsuperscript{150} Justice Larsen, joined by Justice Papadakos, wrote a dissenting opinion in *Jersey Shore*. Id. at 1208-10. Justice Zappala also submitted a dissenting opinion. Id. at 1210-11.

\textsuperscript{151} 43 P.S. § 1101.1003 (Purdon Supp. 1988). Section 1003 encompasses the "clear and present danger or threat to the health, safety or welfare of the public" language of Act 195. Id.
ability to strike. Even with the uncertain language of section 1003 and the courts’ obvious difficulty in formulating a pragmatic standard of analysis, the legislature has not seriously considered amending or clarifying the injunction language of Act 195 since its inception in 1970.

Several theories may be presented to explain why the legislature has not amended Act 195, in spite of its apparent shortcomings. For instance, the members of the state legislature may have been satisfied with the court of common pleas’ and commonwealth court’s prior interpretations of Act 195 and considered these decisions consistent with legislative intent. A second explanation for legislative inactivity might be that while the legislature was not completely content with the current state of affairs, the elected representatives were unable to develop any practical alternatives without seriously infringing on the public employees’ right to collective bargaining. Finally, one could contend that the legislature desired to at least consider substantive revisions to section 1003, but lacked the will to proceed. This last theory seems especially meritorious since maintenance of the status quo, at least prior to Jersey Shore, favored the teachers, and their unions, the PSEA and PFT, had the political muscle to fight off any challenges to their right to collectively bargain and strike.


When Legislatures finally determine to adopt a wholly new concept of public management, they usually do so in terms more expressive of their fear of the unforeseeable harm which may result from the new policy than of their confidence in the good it will accomplish. Hence, such legislation is often tentative, imprecise, elliptical and incomplete, leaving the hard choices either to the improbable chance that they ‘may not come up’, or to the courts. [Act 195] is an example of such legislation.

Id.

153. The argument that the legislature’s decision not to amend § 1003 indicates satisfaction with prior judicial interpretations of Act 195 was presented in Jersey Shore by Justice Zappala. See Jersey Shore, 548 A.2d at 1211 (Zappala, J. dissenting).

154. The teachers’ union locals in Pennsylvania are affiliated with either the Pennsylvania State Education Association (PSEA) or the Pennsylvania Federation of Teachers (PFT).

155. As of February, 1989, the PSEA had 105,896 members state-wide, and operated approximately 600 collective bargaining units for teachers and support staff throughout Pennsylvania. Each PSEA member pays $196 a year in dues, giving the PSEA and annual operating budget of over $20 million. Telephone Interview with David E. Helfman, PSEA Director of Compensation (March 10, 1989). The PFT has around fifty bargaining locals for teachers and support staff in Pennsylvania, including the Philadelphia and Pittsburgh school districts, representing approximately 35,000 teachers. Each professional member pays a total of $325 per year in dues, with $69 going to the state organization. Thus, the PFT has an annual budget in excess of $2.4 million. Telephone Interview with Ed White, Staff Rep-
A reasonable presumption may be made that the legislature did not amend Act 195 prior to *Jersey Shore* at least partially because the teachers’ unions were satisfied with the commonwealth court’s interpretation of section 1003. Thus, the question becomes whether the unions will now encourage the legislature to amend the “clear and present danger” language in response to the *Jersey Shore* decision. If, as the dissenters feared, the majority opinion is interpreted as creating a *per se* rule that an injunction must be ordered when a strike infringes on the 180 day requirement, the legislature may be motivated to take action. The elected state representatives might find this restrictive interpretation of Act 195 contrary to the intentions of section 1003. In addition, the PSEA and PFT would certainly consider such an interpretation contrary to their interests and institute lobbying efforts to encourage the legislature to clarify and strengthen the teachers’ rights. The unions, however, may find the task of altering the law, as interpreted in *Jersey Shore*, more difficult than their earlier objective of maintaining the status quo under the commonwealth court’s interpretation of section 1003.

If the common pleas courts continue to exercise independent judgment after the *Jersey Shore* decision, as the judges did under the commonwealth court decisions, and do not adhere to a *per se* 180 day rule when considering whether to issue an injunction order, the legislature is not likely to amend section 1003 of Act 195. Members of the legislature, however, should consider another alternative which does not impinge upon the public teachers’ right to strike, but instead discourages strikes by financially rewarding school districts and unions that reach agreement without a strike. Act 195 could be amended to provide that any school district which enters into an ‘early bird’ contract, before June 1 of the year in which the old labor contract expires, would receive additional state subsidies for either the upcoming year or the life of the contract.

Under an ‘early bird’ statute, both the school district and the teachers’ union would be motivated to settle their differences early, in order to obtain the additional state funds, and would be less likely to subject the community and its children to a strike. The additional funding would allow the school district to pay competi-
ative wages, attract quality personnel, and provide important educational programs, without raising local property taxes. The teachers would achieve a better standard of living for themselves while avoiding the need for a strike. Thus, while the legislature may avoid amending Act 195's "clear and present danger or threat to the health, safety or welfare of the public" language, the state's lawmakers should attempt to reduce the potential that a teachers' strike will create a danger or threat to the public's welfare by passing an 'early bird' amendment to Act 195.

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