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Constitutional Law - Public Education - Teacher Strikes

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CONSTITUTIONAL LAW—PUBLIC EDUCATION—TEACHER STRIKES—The Supreme Court of Pennsylvania held that the provision of the Public Employees Relations Act permitting public school teachers to strike does not violate article III, section 14 of the Pennsylvania Constitution which requires the General Assembly to provide for a thorough and efficient system of public education.

Reichley v. North Penn School District, 626 A.2d 123 (Pa. 1993).

In 1986, the North Penn School District (“School District”) and the North Penn Education Association (“Education Association”) attempted to reach a new collective bargaining agreement.¹ After negotiations and mediation had failed to bring about a new agreement, teachers and other employees represented by the Education Association initiated a strike pursuant to section 1003 of the Public Employees Relation Act (“PERA”).²

In response to the strike, a number of students and parents (“Plaintiffs”) filed suit in the Common Pleas Court of Montgomery County against the School District, the Education Association, and the Commonwealth of Pennsylvania.³ The Plaintiffs sought an injunction ordering that the teachers cease striking⁴ and requested that, insofar as it permitted teachers to strike, PERA be declared unconstitutional.⁵

The Education Association and the School District filed preliminary objections alleging that the court lacked jurisdiction to hear the case and that the parents lacked standing to bring the action.⁶ The Plaintiffs then moved that the Commonwealth be removed as a defendant.⁷ The court of common pleas ruled that while the Commonwealth had been removed as a party to the action for in-

1. *Reichley v. North Penn Sch. Dist.*, 626 A.2d 123, 125 (Pa. 1993).

2. *Reichley*, 626 A.2d at 125. Section 1003 permits public employees to strike after they have first attempted collective bargaining, provided the strike does not create a clear and present danger or threat to the health, safety or welfare of the public. 43 PA. CONS. STAT. §§ 1101.101- 1101.2301 (1991).

3. *Reichley*, 626 A.2d at 125.

4. The teachers returned to work in compliance with an injunction granted at the School District’s request. *Id.* at n.1. The School District and the Education Association entered into a collective bargaining agreement in January, 1987. *Id.*

5. *Id.*

6. *Id.*

7. *Id.*

junctive relief, it remained an indispensable party to the action for declaratory relief.⁸ The court of common pleas dismissed the action, holding that it lacked jurisdiction to hear the case and both the parents and students lacked standing.⁹ The Plaintiffs appealed the ruling to the commonwealth court, which held that the Commonwealth was not an indispensable party, that the common pleas court could exercise jurisdiction, and that the plaintiffs did in fact have standing.¹⁰ The commonwealth court remanded the case to the common pleas court for trial.¹¹ On remand, the common pleas court held that PERA was unconstitutional to the extent that it permitted strikes by public educators.¹² The Education Association appealed to the Supreme Court of Pennsylvania, which addressed several issues to determine the constitutionality of PERA.¹³

The court first addressed the issue of whether the matter of the constitutionality of PERA was moot.¹⁴ The Education Association, citing *Gulnac v. South Butler County Education Association*,¹⁵ argued that the trial court erred in reaching the merits of the case

8. *Reichley*, 626 A.2d at 125.

9. *Id.* The court of common pleas stated that the commonwealth court had proper jurisdiction. *Id.*

10. *Id.*

11. *Id.*

12. *Id.*

13. *Reichley*, 626 A.2d at 125.

14. *Id.* A question is "moot" when it presents no actual controversy or where the issues have ceased to exist. BLACK'S LAW DICTIONARY 1008 (6th ed. 1990).

The mootness doctrine arises from the cases and controversies requirement of the United States Constitution. U.S. CONST. art. III, § 2. There are two aspects to mootness, "when the issues presented are no longer 'live' or the parties lack a legally cognizable interest in the outcome." *Powell v. McCormack*, 395 U.S. 486, 496 (1969).

The Supreme Court of Pennsylvania, in *In re Gross*, 382 A.2d 116, 119 (Pa. 1978), followed the federal doctrine of mootness by stating that an "actual controversy must be extant at all stages of review."

In *Roe v. Wade*, 410 U.S. 113 (1973), the United States Supreme Court established an exception to the mootness requirement. In that case, a woman sought a declaration that she had a right to an abortion. *Roe*, 410 U.S. at 125. She was pregnant when she filed suit but was no longer pregnant when the case reached the Supreme Court. *Id.* The Court stated that if the case was held moot, then it would be denied appellate review because the issue was "capable of repetition, yet evading review." *Id.* at 125 (citing *Southern Pacific Terminal Co. v. ICC*, 219 U.S. 498, 515 (1911)). See also *Commonwealth v. Joint Bargaining Committee for the Pennsylvania Social Services Union*, 398 A.2d 1001, 1002 (Pa. 1979).

15. 587 A.2d 699 (Pa. 1991). In *Gulnac*, petitioners sought to enjoin teachers from striking and to have the act allowing them to strike be declared unconstitutional. *Gulnac*, 587 A.2d at 700. The common pleas court held that the parents lacked standing and then declared the statute unconstitutional. *Id.* The Pennsylvania Supreme Court vacated the trial court's decision on the grounds that once the trial court held that the parents lacked standing, then the issue of constitutionality became moot. *Id.*

because the issue was moot.¹⁶ The supreme court distinguished *Gulnac* from the present case because, in *Gulnac*, the parents lacked standing.¹⁷

The Education Association next argued that the issue of the provision's constitutionality was moot because the school district and the teachers had reached an agreement and the teachers had returned to work.¹⁸ The court found that the return of the teachers to work should not bar the action.¹⁹ The court concluded that the suit involved a question which frequently recurred but had evaded judicial review because districts and teachers often reach agreements before the case can be fully heard.²⁰

After deciding that the issue of constitutionality was not moot, the court examined the analysis applied by the trial court to determine whether PERA was unconstitutional.²¹ The Plaintiffs argued that the court should apply a strict scrutiny analysis,²² while the Education Association argued that the court should apply a rational basis analysis.²³ The trial court used the rational basis anal-

16. *Reichley*, 626 A.2d at 125.

17. *Id.* The court noted that in *Gulnac*, the issue of the constitutionality was moot because the trial court found that the parents lacked standing. *Id.* However, in this case, the trial court found that the parents did have standing because the parents' interest was sufficiently adverse to the teachers' interest to create a controversy that required judicial resolution. *Id.* at 126. Therefore, the Education Association could not rely on *Gulnac* for its contention that the issue of the constitutionality of the act was moot. *Id.*

18. *Id.*

19. *Id.* The court also found that the passage of Act 88 on July 9, 1992, during the pendency of the appeal did not render the issue moot. *Id.* at 126 n.3. Act 88 removes teachers from the scope of PERA and provides for collective bargaining in the Public School Code. 24 PA. CONS. STAT. § 11-1101-A (Supp. 1993). If a strike would prevent the school from meeting its 180 school day requirement, then both parties must submit to arbitration. 24 PA. CONS. STAT. § 11-1125-A(b) (Supp. 1993). However, arbitration is not binding because either the teachers or the school district could reject it within ten days. 24 PA. CONS. STAT. § 11-1125-A(k) (Supp. 1993). Teachers are still permitted to strike; the strike is merely suspended during the period of arbitration. *Reichley*, 626 A.2d at 126 n.3. Consequently, the issue of allowing public school teachers to strike still arises under Act 88. *Id.*

20. *Id.* See note 14 for discussion of the mootness doctrine and its exceptions.

21. *Reichley*, 626 A.2d at 126.

22. Under the strict scrutiny analysis, the statute must be rigidly construed to protect a compelling state interest. *Reichley*, 626 A.2d at 126.

The United States Supreme Court in *San Antonio Independent School District v. Rodriguez*, 411 U.S. 1, 40 (1973), explained the strict scrutiny analysis and noted that where state laws created suspect classifications or infringed upon constitutionally protected rights, so-called "fundamental rights," then the state law must be subjected to strict judicial scrutiny. *San Antonio*, 411 U.S. at 40.

23. *Reichley*, 626 A.2d at 126. Under a rational basis analysis, a statute is deemed to be constitutional if it reasonably relates to a valid state interest. *Id.*

The United States Supreme Court has stated that this traditional standard of review requires only that the state action be rationally related to a state's legitimate purpose. *San*

ysis because the harm to the students outweighed any possible interest the state might have in reducing labor tensions between teachers and school districts.²⁴ The supreme court, however, rejected both the rational basis test and the strict scrutiny test, stating that the use of these standards was limited to in equal protection cases.²⁵

The court noted that article III, section 14 of the Pennsylvania Constitution²⁶ was drafted to allow future legislatures the ability to modify any statute relating to education in order to adapt to changing educational needs.²⁷ For this reason, the court held that the proper standard to be used was one which inquired into 1) whether the statute was related to the objective of the constitutional provision regardless of how the legislature attempted to accomplish the purpose and 2) whether the statute attempted to limit the future employment of legislative power over the area of public education.²⁸

The court then addressed the final issue of whether the Plaintiffs had met their burden of proof in establishing that PERA was unconstitutional insofar as it allowed public school teachers to strike.²⁹ The court noted that in reaching the conclusion that PERA was unconstitutional, the trial court had examined several policy considerations.³⁰ However, the supreme court found that these considerations did not satisfy the heavy burden of showing that PERA was unconstitutional.³¹ Furthermore, the supreme

Antonio, 411 U.S. at 40.

24. *Reichley*, 626 A.2d at 126.

25. *Id.* The supreme court stated that "the 'strict scrutiny'/'rational basis' framework is not applicable to the question presented. This is not an equal protection case." *Id.* at 127.

26. Article III, section 14 of the Pennsylvania Constitution provides that "[t]he General Assembly shall provide for the maintenance and support of a thorough and efficient system of public education to serve the needs of the Commonwealth." PA. CONST. art. III, § 14.

27. *Reichley*, 626 A.2d at 126.

28. *Id.* at 128. The court also noted that proving a statute to be unconstitutional was a strong burden to meet. *Id.* The court further stated that if there were any doubts as to a statute's constitutionality, then the statute should be found to be constitutional. *Id.*

29. *Id.* at 128.

30. *Id.* The trial court found that strikes by teachers were disruptive to the educational process and were detrimental to the students in that students were disadvantaged regarding college applications and employment opportunities. *Id.*

31. *Id.* The court noted that anyone challenging the constitutionality of a statute bears the burden of demonstrating that the act "clearly, palpably, and plainly violates the Constitution, and any doubts are to be resolved in favor of a finding of constitutionality." *Id.* (citing *Pennsylvania Liquor Control Bd. v. Spa Athletic Club*, 485 A.2d 732, 735 (Pa. 1984)).

court stated that such policy considerations were for the legislature to address, not for the courts to decide.³²

An examination of cases interpreting article III, section 14 of the Pennsylvania Constitution is necessary in order to understand the court's ruling in the present case. The forerunner of this section was article X, section 1.³³ The initial interpretation of this section was adjudicated by the Supreme Court of Pennsylvania in *Malone v. Hayden*.³⁴ This case involved the Teachers' Tenure Act of 1937.³⁵ Various teachers who had been denied contracts under the act initiated mandamus actions against the school boards to compel the school boards to grant the teachers new contracts as required under the act.³⁶ The school boards contested the writs on the grounds that the Teachers' Tenure Act was unconstitutional.³⁷ The lower courts issued the writs of mandamus, requiring the school boards to tender new contracts to the teachers.³⁸ On appeal, the supreme court addressed the issue of whether the Teachers' Tenure Act violated article X, section 1 of the Pennsylvania Constitution by restricting the ability of future legislatures to enact laws necessary to carry out the function delegated to them by the constitution.³⁹

32. *Reichley*, 626 A.2d at 129.

33. Article X, section 1 of the Pennsylvania Constitution of 1874 provided that: "The General Assembly shall provide for the maintenance and support of a thorough and efficient system of public schools, wherein all children of this Commonwealth above the age of six years may be educated, and shall appropriate at least one million dollars each year for that purpose." PA. CONST. art. X, § 1 (1874), *amended and renumbered* by PA. CONST. art. III, § 14.

34. 197 A. 344 (Pa. 1938). This case is also commonly referred to as *The Teachers' Tenure Act Cases*. See *Reichley*, 626 A.2d at 127.

35. *Malone*, 197 A. at 349. Section 1201 of the Teachers' Tenure Act provided in pertinent part that: "The Board of Directors in every school district in this Commonwealth shall employ the necessary qualified teachers to keep the public schools open in their respective districts in compliance with the provisions of this act." Teachers' Tenure Act of 1937, 1937 Pa. Laws 214-15 (codified at 24 PA. CONS. STAT. § 11-1121 (1992)).

Section 1205 of the Teachers' Tenure Act provided in pertinent part that:

Each Board of School Directors or Board of public education in all school districts in this Commonwealth shall, within thirty days after the effective date of this act, enter into contract, in writing, with all professional employes now employed by them, and thereafter shall in the same manner enter into contracts in writing, with each professional employe at or before the time the employe first enters the service of the district.

Teachers' Tenure Act of 1937, 1937 Pa. Laws 214-15 (codified at 24 PA. CONS. STAT. § 11-1121 (1992)).

36. *Malone*, 197 A. at 351.

37. *Id.* at 352.

38. *Id.*

39. *Id.* See note 33 for text of article X, section 1 of the Pennsylvania Constitution.

The supreme court stressed the importance of education, recognizing that providing education was an essential government power and obligation.⁴⁰ The court noted that education was a vital element to the preservation of the state and democracy.⁴¹ Therefore, the court stressed, power over education by the state could not be weakened or ignored, and legislation which undermined the constitutional mandate to provide for a "thorough and efficient system of public schools" could not be tolerated.⁴²

The supreme court in *Malone* also set forth a standard for evaluating laws which relate to public education. The *Malone* court opined that a court should look not at the prudence or benefit of the law, but whether it had a reasonable relation to the intention expressed in article X, section 1 and whether the effect of the law violated the constitutional provision by avoiding it or by preventing future legislatures from altering a law.⁴³ The court held that the purpose of this constitutional provision was to allow future legislatures to adopt an evolving policy to adapt to advances in education.⁴⁴ The court stressed that anything related to the maintenance of a "thorough and efficient system of public schools" must be subject to future legislative action.⁴⁵ In applying the foregoing standard to the Teachers' Tenure Act, the court found that the act was constitutional.⁴⁶

Article X, section 1 was amended and renumbered in 1968 by article III, section 14.⁴⁷ One of the first cases decided after the amendment was *Bovino v. Board of School Directors of Indiana Area School District*.⁴⁸ In *Bovino*, the Commonwealth Court of Pennsylvania addressed the issue of whether this new section applied to uphold a dismissal of a teacher for immoral conduct.⁴⁹ Appellant, a tenured teacher, had been charged with making comments to a fourteen-year old student.⁵⁰ The school board dismissed

40. *Id.*

41. *Malone*, 197 A. at 352.

42. *Id.*

43. *Id.*

44. *Id.*

45. *Id.*

46. *Malone*, 197 A. at 353.

47. PA. CONST. art. III, § 14. The amendment did not alter the requirement that the General Assembly provide a "thorough and efficient" system of public schools. *Compare* note 33 to 26.

48. 377 A.2d 1284 (Pa. Commw. Ct. 1977).

49. *Bovino*, 377 A.2d at 1289.

50. *Id.* at 1286. On one occasion, appellant called the student a "slut." *Id.* at 1287. This incident was witnessed by another student. *Id.* On another occasion, appellant implied

appellant under section 11-1122 of the Public School Code of 1949.⁵¹ The board determined that the comments could be classified as "immoral" and "cruel" conduct which constituted grounds for dismissal under section 11-1122.⁵²

Appellant appealed his dismissal to the Secretary of Education, who upheld the board's decision.⁵³ Appellant then appealed to the commonwealth court, contending that section 11-1122 was unconstitutional on the grounds that the words "immoral" and "cruel" were vague and indefinite.⁵⁴ The commonwealth court rejected appellant's argument and held that the legislature can establish qualifications for teachers with respect to their education and abilities and also their moral characters in order to attain a "thorough and efficient system" of public education.⁵⁵

Article III, section 14 was further interpreted in *Danson v. Casey*,⁵⁶ where the supreme court addressed the issue of whether a legislatively enacted school financing scheme was constitutional.⁵⁷

to the student in class that she was a prostitute. *Id.* Other students present in the classroom testified that the remarks were made. *Id.*

51. *Id.* Section 11-1122 of the Public School Code provided that:

The only valid causes for termination of a contract heretofore or hereafter entered into with a professional employe shall be *immorality*, incompetency, intemperance, *cruelty*, persistent negligence, mental derangement, advocacy of or participation in un-American or subversive doctrines, persistent and wilful violation of the school laws of this Commonwealth on the part of the professional employee. . . .

24 PA. CONS. STAT. § 11-1122 (1992) (emphasis added).

52. *Bovino*, 377 A.2d at 1287.

53. *Id.*

54. *Id.* at 1288. "Immorality" was defined by the supreme court for purpose of the code as "not essentially confined to a deviation from sex morality; it may be such a course of conduct as offends the morals of the community and is a bad example to the youth whose ideals a teacher is supposed to foster and to elevate." *Horosko v. Mount Pleasant Township Sch. Dist.*, 6 A.2d 866, 868 (Pa. 1939), *cert. denied sub nom. Horosko v. School Dist. of Township of Mount Pleasant*, 308 U.S. 553 (1939).

The Commonwealth Court of Pennsylvania suggested the following definition of "cruelty" for purpose of the code: "the intentional and malicious infliction of physical suffering upon living creatures, particularly human beings; or, as applied to the latter, the wanton, malicious, and unnecessary infliction of pain upon the body, or the feelings and emotions; abusive treatment; inhumanity; outrage." *Caffas v. Board of Sch. Directors of Upper Dauphin Area Sch. Dist.*, 353 A.2d 898, 900 (Pa. Commw. Ct. 1976) (citing BLACK'S LAW DICTIONARY 541 (4th ed. 1968)).

55. *Bovino*, 377 A.2d at 1289.

56. 399 A.2d 360 (Pa. 1979).

57. *Danson*, 399 A.2d at 362. The statutory scheme through which public schools in Pennsylvania were financed created funding through state subsidies and local taxation. *Id.* At issue in *Danson* were the subsidies. *Id.* Subsidies were distributed by the State Treasurer and the State Secretary of Education. *Id.* For each child enrolled in a school district, that district was eligible to receive a "percentage of the median statewide actual instructional expense per student." *Id.* This percentage was calculated "by dividing the market value of

In *Danson*, the School District of Philadelphia and various parents filed suit alleging that because the district had insufficient revenues, the statutory financing scheme through which the district was funded violated article III, section 14 of the Pennsylvania Constitution.⁵⁸

The district sought a decree restraining the State Treasurer and Secretary of Education from paying money to any other school district until sufficient funds were made available to the School District of Philadelphia.⁵⁹ The commonwealth court dismissed the action on the grounds that the appellants had failed to state a cause of action and that the district did not have standing.⁶⁰

The Supreme Court of Pennsylvania affirmed the dismissal but addressed the constitutional challenge.⁶¹ The court rejected the idea that educational offerings to students in the commonwealth should be uniform or that each student should receive the same monetary expenditures.⁶² On the contrary, the court declared that article III, section 14 prevented the court from binding future legislatures and school boards to a current interpretation of what a normal education entails.⁶³ Thus, the court concluded that article III, section 14 was not violated by the statutory financing scheme.⁶⁴

In searching for the proper role of a "thorough and efficient system of public education," the commonwealth court in *Lisa H. v. State Board of Education*⁶⁵ rejected the claim that article III, section 14 gave each student an individual right to a certain quality of education.⁶⁶ In this case, two elementary school students were eval-

the district's real estate and its personal income tax bases by the district's students and comparing it to the state average real estate and income tax bases per student." *Id.* "If the district tax base and the state tax base [were] equal, the district receive[d] fifty percent of actual or median student cost, whichever [was] lower." *Id.* This was a basic instructional subsidy which was supplemented by payments for each student on welfare. *Id.* at 363-64.

58. *Danson*, 399 A.2d at 362. The district contended that it would have had to offer its students limited services due to the insufficient funding. *Id.*

59. *Id.*

60. *Id.* at 363.

61. *Id.*

62. *Id.* at 367. The court stated that when the "thorough and efficient" amendment to the Pennsylvania Constitution was adopted in 1873, the framers did consider requiring that the system of education offered in Pennsylvania be uniform. *Id.* However, they rejected this idea and adopted the concept of local control so that the different needs of each school district could be addressed. *Id.*

63. *Danson*, 399 A.2d at 366.

64. *Id.*

65. 447 A.2d 669 (Pa. Commw. Ct. 1982), *aff'd*, 467 A.2d 1127 (Pa. 1983).

66. *Lisa H.*, 447 A.2d at 673.

uated for participation in a gifted student education program.⁶⁷ Neither student was selected to participate in the program and their parents filed suit, alleging that the section of the State Board of Education Regulations defining gifted students⁶⁸ and sections of the code relating to gifted children⁶⁹ were unconstitutional.⁷⁰ The grounds for the suit were that the program excluded the students from available education and provided the students with an education inferior to that of students in the program.⁷¹

The commonwealth court, citing *Danson*,⁷² noted that article III, section 14 did not require that education offered be uniform.⁷³ Therefore, the court noted that a legislative system which only required individualized training and education for those students who deviate from the norm was one which was reasonably related to providing a "thorough and efficient system of [public] education."⁷⁴ The court found that students in Pennsylvania had a right to public education, but did not have a right to a particular level or quality of education, except in the case of exceptional children,⁷⁵ and therefore, the regulations and code sections were not unconstitutional.⁷⁶

The Supreme Court of Pennsylvania further interpreted article III, section 14 in *School District of Philadelphia v. Twer*,⁷⁷ ad-

67. *Id.* at 671.

68. Gifted and talented children were defined under the State Board of Education Regulations as "[t]hose who, in accordance with criteria prescribed in standards developed by the Secretary of Education, have outstanding intellectual or creative ability, the development of which requires special activities or services not ordinarily provided to regular children by local educational agencies." *Lisa H.*, 447 A.2d at 671 n.2. (citing 22 PA. CODE § 13.1(ii) (reserved 1990, replaced with 22 PA. CODE ch. 14, 20 Pa. Bull. 3339, June 15, 1990)).

69. *Lisa H.*, 447 A.2d at 671 n.3. (citing 22 PA. CODE §§ 13.21, 13.22, 13.23, 13.31, 13.32, 13.33, 341.1(iv) and 341.1(x) (reserved 1990, replaced with 22 PA. CODE ch. 14, 20 Pa. Bull. 3339, June 15, 1990)).

70. *Lisa H.*, 447 A.2d at 671.

71. *Id.*

72. *Danson v. Casey*, 399 A.2d 360 (Pa. 1979). See notes 56-64 and accompanying text.

73. *Lisa H.*, 447 A.2d at 673.

74. *Id.* The *Lisa H.* court utilized the standard set forth in *Malone*, that a legislative enactment regarding education must have a reasonable relation to the purpose expressed in the constitution. *Id.*

75. *Id.* A school district is not required to devise a scheme of education which best utilizes each child's abilities and talents, but is only required to identify which children are exceptional and to design programs which serve the child's individual needs. *Id.* (citing *Shanberg v. Secretary of Educ.*, 426 A.2d 232 (Pa. Commw. Ct. 1981)).

76. *Lisa H.*, 447 A.2d at 673.

77. 447 A.2d 222 (Pa. 1982).

addressing the issue of whether the section applied to prevent demotions of employees caused by financial constraints.⁷⁸ In *Twer*, the school district adopted a reduced budget which required that 240 employees of the school district be demoted to reduce expenditures.⁷⁹ The employees appealed their demotions to the Secretary of Education, who determined that the demotions violated sections 11-1151 and 11-1127 of the Public School Code of 1949.⁸⁰ The school district appealed the Secretary's decision to the commonwealth court, which affirmed the Secretary's finding.⁸¹ The district subsequently appealed to the supreme court.⁸²

In holding that the demotions were permissible under article III, section 14, the supreme court noted that the school district faced the dilemma of having a deficit and being required to balance its budget.⁸³ The court stressed, however, that the financial problems faced by the school district could not interfere with its primary responsibility to maintain "a thorough and efficient system of public education."⁸⁴ The court stated that although the application of this concept should have been obvious, it required reinforcement due to the ongoing labor disputes and other disruptions occurring in public education.⁸⁵ The court emphasized that maintenance of a

78. *Twer*, 447 A.2d at 223.

79. *Id.*

80. *Id.* Section 11-1151 of the School Code provides in pertinent part that: [T]here shall be no demotion of any professional employe either in salary or in type of position, except as otherwise provided in this act, without the consent of the employe, or, if such consent is not received, then such demotion shall be subject to the right to a hearing before the board of school directors and an appeal in the same manner as hereinbefore provided in the case of the dismissal of a professional employe.

24 PA. CONS. STAT. § 11-1151 (1992).

Section 11-1127 of the School Code provides:

Before any professional employe having attained a status of permanent tenure is dismissed by the board of school directors, such board of school directors shall furnish such professional employe with a detailed written statement of the charges upon which his or her proposed dismissal is based and shall conduct a hearing. A written notice signed by the president and attested by the secretary of the board of directors shall be forwarded by registered mail to the professional employe setting forth the time and place when and where such professional employe will be given an opportunity to be heard either in person or by counsel, or both, before the board of school directors and setting forth a detailed statement of the charges. Such hearing shall not be sooner than ten (10) days nor later than fifteen (15) days after such written notice.

24 PA. CONS. STAT. § 11-1127 (1992).

81. *Twer*, 447 A.2d at 223.

82. *Id.*

83. *Id.* at 224.

84. *Id.*

85. *Id.*

public school system was for the education of the students, and financial benefits to those participating in the school system were only incidental to this primary goal.⁸⁶ Therefore, any examination of a legislative act relating to public education must be made in reference to the responsibility to provide for a "thorough and efficient system of public education."⁸⁷

This concept of a "thorough and efficient system of public education" was further applied in *Agostine v. School District of Philadelphia*⁸⁸ by the commonwealth court to address the issue of whether a learning disabled student was entitled to a particular level of education.⁸⁹ In *Agostine*, a student was placed in a class for the educable mentally retarded⁹⁰ when in fact, she was only learning disabled.⁹¹ The student brought an action for negligence against the school district on the grounds that she was denied her

86. *Twer*, 447 A.2d at 224.

87. *Id.* at 225.

88. 527 A.2d 193 (Pa. Commw. Ct. 1987).

89. *Agostine*, 527 A.2d at 195.

90. Educable mentally retarded is defined under the Public School Code as:

Mentally retarded—Impaired mental development which adversely affects the educational performance of a person. A mentally retarded person exhibits significantly impaired adaptive behavior in learning, maturation, or social adjustment as a result of subaverage intellectual functioning. The degree of retardation and the level of social and academic functioning, not deviant behavior patterns, shall be the factors in determining the individualized program. A person shall be assigned to a program for the mentally retarded when the evaluation and Individualized Education Program indicate that such a program is appropriate; provided that no person shall be assigned to a program for the . . . educable mentally retarded unless the IQ score of the person is lower than 80.

Agostine, 527 A.2d at 194 n.1 (citing 22 PA. CODE § 341.1(v) (reserved 1990, replaced with 22 PA. CODE ch. 342, 20 Pa. Bull. 3357, June 15, 1990)).

91. *Agostine*, 527 A.2d at 194. A learning disability is defined under the Public School Code as:

A deficiency in the acquisition of basic learning skills, including but not limited to the ability to reason, think, read, write, spell, or do mathematical calculations, as identified by an educational and psychological evaluation. Persons who have learning disorders which are primarily the result of visual, hearing, or other handicaps, mental retardation, emotional factors, or environmental disadvantage are not learning disabled. The term learning disabled does not exclude the possibility that a learning disabled person may also exhibit such conditions as brain damage or minimal brain dysfunction. A person shall be assigned to a program for the learning disabled when the evaluation and Individualized Education Program indicate that such a program is appropriate; provided that the evaluation clearly indicates that the person can demonstrate average or above average intellectual functioning on an appropriate intelligence measure. The evaluation shall include an assessment of specific academic strengths and weaknesses.

Agostine, 527 A.2d at 194 n.3 (citing 22 PA. CODE § 341.1(iii) (reserved 1990, replaced with 22 PA. CODE ch. 342, 20 Pa. Bull. 3357, June 15, 1990)).

right to receive the education to which she was entitled under the Pennsylvania Constitution.⁹² The school district moved for a judgment on the pleadings.⁹³ The court of common pleas found in favor of the school district, and the student appealed.⁹⁴

In affirming the common pleas court decision, the commonwealth court noted that the mandate of article III, section 14 did not guarantee an individual right to each student to a particular level or quality of education.⁹⁵ The court stated that the mandate imposed upon the legislature a duty to provide for the "maintenance and support of a thorough and efficient system of public education."⁹⁶ Since the legislature had delegated to the Department of Education the duty to adopt educational standards, the court concluded that the recovery for injury occurring from education was statutory in nature.⁹⁷

The foregoing analysis of cases interpreting the General Assembly's duty to provide for a "thorough and efficient system of public education" indicates that Pennsylvania courts have been consistent in their interpretations of the effect of this mandate. The duty of the General Assembly to provide for a "thorough and efficient system of public education" cannot be impeded by any enactment of legislation which is not capable of changing to meet the consistently developing needs of the educational system. The Supreme Court of Pennsylvania in *Reichley* was consistent with the holdings of the other cases in failing to find a violation of article III, section 14. However, the analysis applied by the court appears to be a rather loose and liberal one. It is difficult to imagine any statute which would violate this section as interpreted by the Pennsylvania courts.

The court in *Reichley* developed what is essentially a new test that is to be applied in situations involving the constitutionality of statutes relating to education not involving an equal protection issue.⁹⁸ The court further noted that while its new test did inquire into whether the statute has a reasonable relation to the purpose of article III, section 14, this test is not the same as the rational

92. *Agostine*, 527 A.2d at 194.

93. *Id.* at 195.

94. *Id.*

95. *Id.*

96. *Id.*

97. *Agostine*, 527 A.2d at 196.

98. *Reichley*, 626 A.2d at 127.

relationship test applicable in equal protection cases.⁹⁹ Although this analysis by the court may appear perplexing, the court was correct in not applying the strict scrutiny or rational basis test. The Plaintiffs in this case did not allege that they were being denied equal protection under the law or that their substantive due process rights were being violated.¹⁰⁰ If they had argued on either of these grounds, then the trial court would have been correct in applying the rational basis test. However, the Plaintiffs alleged that their right to receive an education, as guaranteed by article III, section 14, was being violated because the strike prevented them from receiving their mandated education.¹⁰¹ The trial court applied the rational basis test and examined whether the statute was reasonably related to a legitimate state interest.¹⁰² The trial court found that the harm to the students outweighed any possible interest which the state might have in reducing labor tensions between teachers and the school districts.¹⁰³ In fact, the lower court noted that labor tensions did not decrease but, on the contrary, that confrontations arose which did not aid in settlement of disputes.¹⁰⁴ Therefore, the court of common pleas found that there was no reasonable relationship between the statute and a legitimate state interest and so held that the statute was unconstitutional.¹⁰⁵

Although the supreme court set forth a test to determine if a statute relating to education is unconstitutional, it did not analyze PERA using the standard or remand the case back to the trial court for application of the standard by the trial court. If the court had analyzed PERA using the two-pronged test which it set forth, it may have found that the statute did not meet the test.

The first leg of the test is that the statute must be related to the objective of the constitutional provision regardless of how the legislature attempted to accomplish the purpose.¹⁰⁶ With regard to PERA, this would mean that allowing teachers to strike would be related to the mandate of providing for a "thorough and efficient system of education." In this case, there does not seem to be such

99. *Id.*

100. *Reichley v. North Penn Sch. Dist.*, 126 Montg. Co. L. R. 52, 53 (1990).

101. *Id.*

102. *Id.* at 62.

103. *Id.* at 63.

104. *Id.*

105. *Reichley*, 126 Montg. Co. L. R. at 63.

106. *Reichley*, 626 A.2d at 128.

a relation. In fact, allowing teachers to strike hinders a "thorough and efficient system of education" for various reasons. Strikes are disruptive to the educational process.¹⁰⁷ Strikes injure students by placing them at a disadvantage in regard to athletics, education, college applications, and employment opportunities.¹⁰⁸ Strikes also foster an animosity between the teachers and students which does not cease when the strikes are over.¹⁰⁹ All of the above considerations seem to negate any advantage which may occur out of allowing teachers to strike. Pennsylvania teachers strike more than teachers in any other state, but have not fared any better in the collective bargaining process than their counterparts in other states.¹¹⁰

The second leg of the test is whether the statute attempted to limit future legislation over the area of public education.¹¹¹ This is the part of the standard which few statutes would fail. Any statute can be repealed and changed by the legislature. Therefore, this leg should not be determinative of the constitutionality of a statute relating to education.

The problem of teachers' strikes is one of vital concern to all citizens. It affects teachers, students, parents, and the community at large. The Supreme Court of Pennsylvania, instead of addressing the issue head-on, skirted around the issue and avoided responsibility by stating that the legislature should address the issue.¹¹² This would be acceptable if there were no issue of constitutionality present. However, the prevalence and impact of teachers' strikes indicates that these strikes may indeed interfere with the requirement of a "thorough and efficient system of public education."¹¹³ Strikes adversely affect the students and the teachers, and do not put teachers in a better bargaining position.¹¹⁴ One need only watch the news each fall to learn of new strikes and see that the bitterness and resentment created on both sides only hampers the educational process. Strikes may eventually end, but the emotions and turmoil created by the strikes endure.

Therefore, considering the prevalence of teachers strikes in the

107. *Reichley*, 126 Montg. Co. L. R. at 54-56.

108. *Id.*

109. *Id.* at 57-58.

110. *Id.* at 66-67.

111. *Reichley*, 626 A.2d at 128.

112. *Id.* at 129.

113. *Reichley*, 126 Montg. Co. L. R. at 66-67.

114. *Id.*

Commonwealth of Pennsylvania,¹¹⁵ the Supreme Court of Pennsylvania will probably again be confronted with this same issue. The court in the future should address the issue with more than the cursory inspection that was granted in the *Reichley* case.

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115. *Id.*

