May 29, 2015

Mr. Paul Stepanoff, Board President
Dr. William Harner, Superintendent

Sent via email

We are writing to express the disappointment the PSBA Governing Board had after reading the media coverage of your board meeting on May 28, 2015. It is always upsetting to hear of dissatisfaction from PSBA members in regards to our effectiveness. PSBA has done much over the years to address the pension crisis all schools are currently facing.

PSBA was one of the first organizations to ring the warning bell of the looming pension crisis nearly a decade ago. We were the first education organization to take formal action to seek a solution. In 2007, the association convened a Pension Study Commission that consisted of school board members from around the state. The group researched pension concerns in Pennsylvania and around the nation, eventually resulting in a series of recommendations to the association that were endorsed by PSBA’s membership and embedded into the association’s legislative platform.

In December 2009, PSBA announced the introduction of its legislative proposal to reform the retirement system. It was introduced in early 2010 in both the House (HB 2135 by Rep. Glen Grell) and Senate (SB 1185 by Sen. Gene Yaw). These bills called for the creation of a hybrid pension system for school employees that would incorporate a defined-benefit and a defined-contribution system for new employees.

The recommendations made by PSBA’s Pension Task Force in 2007 still hold true today – there is a need for a short-term cost reducing and controlling reform measure and a long-term reform to provide stability to the pensions system. In our most recent platform, the Association made pension reform one of its top priorities and has worked with House and Senate staff to push legislation to address the crisis. We know that pension obligations are the highest increasing
mandated costs in school district budgets, and the number one reason for local tax hikes.

The association supports Senate Bill 1 (Sen. Corman, R-Centre) pension reform legislation that was recently passed by the Senate and is now in the House for consideration. Generally, Senate Bill 1 intends to generate both short-term and long-term savings by creating a new defined contribution plan that would be mandatory for all new employees and makes changes to future contributions for current employees in order to maintain current benefit levels.

We share your frustration regarding the pension crisis and political gridlock that continues to stymie effective progress in identifying both short- and long-term relief to school entities in Pennsylvania. While Quakertown Community School Board’s intentions of drawing attention to the pension crisis are notable, PSBA cannot, and will not, support school entities and individual directors that espouse knowingly violating state law. Such action could jeopardize school entities in the following ways:

- The Public School Employees’ Retirement Code, 24 Pa. C.A. § 8101 et seq., requires that public school entities make the required payments (see attached legal opinion). The state Department of Education would simply take the payment directly from the state subsidy it pays to the school so the crisis you hope to create would never happen.
- The district could be opening itself up for costly litigation and enforcement costs that would directly impact the taxpayers of the community.
- School directors who knowingly violate state law could potentially be removed as an elected school director from the board (see attached legal opinion).
- A school entity that knowingly violates state law could be deemed an unacceptable liability risk by any responsible insurance companies and find itself without the necessary liability coverage and protections to properly safeguard its assets.

It is never appropriate for a state association that is created to provide guidance and information to its members to encourage those members to ignore state law, even those we may not like. PSBA and all of our member entities are quite passionate about pension reform just like the members of the Quakertown Community School Board. We again encourage your board to work with PSBA to help solve the pension crisis within the boundaries of state law. Doing otherwise creates additional problems for school directors across the state and does nothing to mitigate the looming pension payments you are facing. Encouraging other school boards to take your position is, in effect, encouraging districts to not only violate state law, but also create an additional funding crisis as the PA Department of Education will most likely be forced to delay payment of subsidies to districts that fail to comply with their pension obligations.

PSBA continues to work with member school entities, the General Assembly and the Governor’s Office on a daily basis in developing a pension solution for school districts and their taxpayers. We hope Quakertown Community School Board will see fit to be a part of identifying and advocating for a workable solution instead of seeking a course of action that holds only the promise of additional conflict and distraction from the true pension crisis.

We hope that the district can pause and recognize that your actions have served to elevate the
conversation around the pension crisis. PSBA has valued your continued participation in our many programs and services over many years. We welcome your continued positive contributions to the association and, more importantly, to school children in your community and across the commonwealth.

Sincerely,

William S. LaCoff
2015 PSBA President

Nathan G. Mains
PSBA Executive Director

cc. PSBA Governing Board
Michael Levin, PSBA Outside General Counsel
PSBA member districts and individual directors
PSBA website (www.psba.org)
Thursday, May 21, 2015

VIA E-MAIL ONLY (Nathan.mains@psba.org)
Nathan Mains, Executive Director
Pennsylvania School Boards Association
400 Bent Creek Blvd.
Mechanicsburg, PA 17050-1873

Re: Appeal by Quakertown Area School District to Withhold Payments to PSERS

Dear Nathan:

I read in a number of media outlets that the Quakertown Area School District is calling for “civil disobedience” by having school districts across the Commonwealth withhold contributions to the Public School Employees’ Retirement System (“PSERS”). For example, the Intelligencer reported, in part:

In an act of civil disobedience, Quakertown Community School District is calling on all Pennsylvania school districts to create a crisis in Harrisburg by refusing to pay its share of pension costs. Wednesday night, Quakertown school leaders hosted a Legislative Council meeting for Bucks, Lehigh and Northampton county members of the Pennsylvania School Boards Association. Quakertown Community school board President Paul Stepanoff urged the 500 school boards across Pennsylvania to join the district in taking action against a growing statewide pension crisis that has wreaked havoc on nearly every district’s budget for the last few years.

Public schools have been forced to cut academic and extracurricular programs, reduce staffing, delay building repairs and renovations, draw down reserve funds and enact significant property tax increases to pay for a spike in pension costs for retired teachers and other school faculty. By creating a crisis in Harrisburg, the governor and state legislators would be forced to take action to resolve the ongoing Public School Employees Retirement System funding crisis, according to Stepanoff.
We would all agree that there is a crisis and that prompt and effective action is needed. However, I would strongly recommend that school districts comply with all legal requirements, that PSBA disavow any effort to violate the law, and that PSBA ensure that school directors understand the legal requirements and the potential consequences of intentionally violating legal requirements.

The Public School Employees' Retirement Code ("the Retirement Code"), 24 Pa. C.A. § 8101 et seq., requires that public school entities make the required payments. Section 8327 of the Retirement Code state, quite plainly:

*Each employer, . . . shall make payments to the fund each quarter* in an amount equal to one-half the sum of the percentages, as determined under section 8328 (relating to actuarial cost method), applied to the total compensation during the pay periods in the preceding quarter of all its employees who were members of the system during such period, including members on activated military service leave. In the event a member on activated military service leave does not return to service for the necessary time or receives an undesirable, bad conduct or dishonorable discharge or does not elect to receive credit for activated military service under section 8302(b.1)(3) (relating to credited school service), the contributions made by the employer on behalf of such member shall be returned with valuation interest upon application by the employer. (emphasis added)

24 Pa. C.S.A. § 8327.

Further, the Retirement Code contains what can be described as “fail safe” provisions to ensure that the payments are made. Section 8327 of the Retirement Code provides, in part:

To facilitate the payment of amounts due from any employer to the fund through the State Treasurer and to permit the exchange of credits between the State Treasurer and any employer, the Secretary of Education and the State Treasurer shall cause to be deducted and paid into the fund from the amount of any moneys due to any employer on account of any appropriation for schools or other purposes amounts equal to the employer and pickup contributions which an employer is required to pay to the fund, as certified by the board, and as remains unpaid on the date such appropriations would otherwise be paid to the employer.

24 Pa. C.S.A. § 8327.

In short, as a result of the foregoing provision, school districts cannot actually withhold funds in any effective or meaningful way. It would be an empty gesture. In addition to the gesture being an empty gesture, it can lead to the removal of any school director who takes action to violate the law and the legal requirement to make the required payments. Section 318 of the School Code provides:
If the board of school directors in any district (1) fail[s] to organize as hereafter provided, or (2) refuse[s] or neglect[s] to perform any duty imposed upon it by the provisions of this act\(^1\) relating to school districts, . . . any ten resident taxpayers in the district or, in the case of a distressed school district as defined in this act, the special board of control provided for in section 692\(^1\) of this act, may present their or its petition in writing, verified by the oath or affirmation of at least three such resident taxpayers or, in the case of a distressed school district, by the Superintendent of Public Instruction to the court of common pleas of the county in which such district or the largest part in area is located, setting forth the facts of such refusal or neglect of duty on the part of such school directors. The court shall grant a rule upon the school directors, returnable in not less than ten or more than twenty days from the date of issue thereof, to show cause why they should not be removed from office. The school directors shall have at least five days' notice of the granting of the rule. On or before the return day of the rule the school directors, individually or jointly, shall file in writing their answer or answers to the petition, under oath. If the facts set forth in the petition, or any material part thereof, is denied, the court shall hear the several parties on such matters as are contained in the petition. If on such hearing, or if when no answer is filed denying the facts set forth in the petition, the court shall be of the opinion that any duty imposed on the board of school directors, which is by the provisions of this act made mandatory upon them to perform, has not been done or has been neglected by them, the court shall have power to remove the board, or such of its number as in its opinion is proper, and appoint for the unexpired terms other qualified persons in their stead, subject to the provisions of this act.

The court shall impose the cost of such proceedings upon the petitioners, or upon the school directors, or upon the school district, or may apportion the same among them as it shall deem just and proper.

Any person so removed from the office of school director shall not be eligible again as school director for the period of five (5) years thereafter.

24 P.S. § 3-318.

In light of the foregoing, it is our opinion that school districts cannot withhold required PSERS payments, that any attempt to do so would be wholly ineffective and unlawful, and that any school board director who voted to withhold the funds would be subject to removal under section 318 of the School Code.

\(^1\) Although the sanction of removal applies only to violations of “this act,” it is our opinion that the failure of a school board to make the payments when required under the Retirement Code would be a violation of “this act” for purposes of removal. First, the Retirement Code is a “part” of the School Laws. See, 24 Pa.C.S.A. §8101. Second, any actions taken by a school board to withhold payments to PSERS would be taken under the School Code. Further, Chapter 6 of the School Code, 24 P.S. §6-601 et seq., relating to school finances, makes it clear that school directors must use school funds for the purposes for which they are provided and properly budgeted. In short, any action by a school director to cause a required payment to PSERS not to be made would, in my opinion, constitute a violation of “this act” for purposes of removal under section 318 of the School Code.
Let me know if you have any questions or concerns.

Very truly yours,
LEVIN LEGAL GROUP, P.C.

Michael I. Levin

cc: Stuart Knade, General Counsel