Law Offices of
Willig, Williams & Davidson
Twenty-Fourth Floor
1845 Walnut Street
Philadelphia, Pennsylvania 19103
(215) 656-3600
www.wwdlaw.com

Deborah R. Willig
Phone: (215) 656-3666
Fax: (215) 561-5135
dwillig@wwdlaw.com

Also Admitted in:
District of Columbia

February 19, 2013

008000-11

The Chief Justice and Justices
of the Pennsylvania Supreme Court
601 Commonwealth Avenue
Suite 4500
Harrisburg, PA 17106

Re: City of Philadelphia v. AFSCME District Council 33 Docket No. 27 EM 2013

To the Honorable, the Chief Justice and the Justices of the Pennsylvania Supreme Court:

This Amicus Curiae statement is filed on behalf of the following labor organizations: the Pennsylvania AFL-CIO; AFSCME Council 13; AFSCME District Council 47; AFT Pennsylvania; Association of Pennsylvania State College and University Faculties; Pennsylvania Conference of Teamsters; Pennsylvania State Building and Construction Trades Council; Pennsylvania State Education Association; Pennsylvania State Legislative Board, SMART; Philadelphia Federation of Teachers; SEIU Healthcare Pennsylvania; SEIU Local 32BJ; SEIU Local 668; United Food and Commercial Workers, Local 1776; UNITE HERE, Local 634; United Mine Workers of America; and United Steelworkers of America. The interest of Amici in the above captioned matter is based on their combined representation of nearly one (1) million employees in the Commonwealth of Pennsylvania, including public sector employees of the Commonwealth as well as virtually all counties, municipal governments and school districts in the Commonwealth. These public sector employees are covered by the Pennsylvania Public Employe Relations Act ("PERA"), 43 P.S. §§ 1101.101, *et seq.*, and the unions which represent them are regularly engaged in collective bargaining under the provisions of PERA.

Based on these vital interests, Amici jointly support the position of Respondent, AFSCME District Council 33, AFL-CIO, and oppose the City of Philadelphia's ("City") Application for Extraordinary Relief seeking to invoke this Court's

King's Bench powers or extraordinary jurisdiction under 42 Pa. C.S. § 726. Specifically, Amici strongly oppose the attempt of the City, a public employer under PERA, to overturn a longstanding precedent and to radically alter the balance of power between public employers and labor organizations which has existed since the passage of PERA in 1970. There is no justification for such a radical change, and this is not the time nor the case for the Court to reassess prior precedent, specifically the decision of the Commonwealth Court in *Philadelphia Housing Authority v. PLRB*, 153 Pa. Commw. 20, 628 A.2d 594 (1993) ("*PHA*").

Amici urge this Court to deny the City's Application for the following reasons.

1. This Case Is Not Ripe For King's Bench Jurisdiction.

First, there is no record that would provide this Court with a meaningful opportunity to review this labor dispute. The lack of a record is particularly problematic because, as Amici understand it, there are numerous factual disputes between the City of Philadelphia and AFSCME District Council 33. These disputes include the following:

- Whether, as claimed by the City, a bona fide impasse existed after just eleven (11) bargaining sessions at which a state appointed mediator attended only three (3);
- Whether the City's financial condition is as depicted and whether, after maintaining the status quo for four (4) years, it now justifies the immediate imposition of its drastic concessions;
- Whether, as claimed by the City, there is a need for pension reform and how much that will in fact save;
- Whether, as claimed by the City, its final offer is "fair and balanced."

Secondly, this is a case over which the Pennsylvania Labor Relations Board ("PLRB") has exclusive jurisdiction, as the Court is being asked to decide, fundamentally, an unfair labor practice case. *Hollinger v. Dep't. of Pub. Welfare*, 469 Pa. 358, 365 A.2d 1245 (1976). Whether the City as a public employer has the right to declare an "impasse" in negotiations and whether it is then licensed to impose harsh concessions on its employees directly implicate PERA, which requires a public employer to bargain collectively in good faith with an employee representative representing a unit of its employees. 43 P.S. § 1101.1201(a)(5).

Thirdly, the Court would greatly benefit from input from the PLRB. As this Court has stated on several occasions, it "will not lightly substitute its judgment for that of a body selected for its expertise whose experience and expertise make it better qualified than a court of law to weigh facts within its field." *Joint Bargaining Comm. v. Pennsylvania Labor Relations Bd.*, 503 Pa. 236, 241, 469 A.2d 150, 152 (1983) (citing *Pennsylvania Relations Bd. v. Butz*, 411 Pa. 360, 377, 192 A.2d 707, 716 (1963)). Resolution of this case necessitates a factual and legal inquiry into what are the standards to determine that a bona fide impasse exists, whether the parties in this case are at a bona fide impasse, whether there are defenses to the declaration of impasse, what are the potential impacts of that impasse on the parties' obligations to bargain, and a host of other related issues. Given the PLRB's years of experience in adjudicating matters involving collective bargaining in the public sector, its expertise is needed to resolve these issues.

2. King's Bench Jurisdiction Is Unnecessary.

The City claims that it could prevail before the lower court without reversal of the decision in *PHA*. (City's Application at pp. 1, 3, 13, 18-19 fn. 6). Therefore, there is no reason for the Supreme Court to intervene at this stage. Furthermore, if the lower court or the PLRB finds that the parties were not at a bona fide impasse after just eleven (11) bargaining sessions, then there is no dispute that the City could not make unilateral changes, even though the collective bargaining agreement between the

parties has expired. *See, e.g., Appeal of Cumberland Valley School District*, 483 Pa. 134, 394 A.2d 946 (1978). In short, the exercise of extraordinary jurisdiction is unwarranted.

3. Granting King's Bench Jurisdiction Would Set A Dangerous Precedent.

The City's Application, if granted, suggests that parties can bypass the normal administrative procedure, as well as appellate review of administrative agency determinations, in order to seek reversal of longstanding precedents. Not only does this place the Supreme Court in the undesirable position of being a trier of fact, it opens the floodgates for additional appeals to King's Bench jurisdiction on the grounds that a particular precedent should be reversed. Surely, the City's claim of financial distress does not make it unique among the hundreds of public employers in the Commonwealth.

Jumping into this labor dispute, without the benefit of a record or the input of the PLRB, creates another danger. In *Pennsylvania Labor Relations Board v. State College Area School District*, 461 Pa. 494, 500, 337 A.2d 262, 265 (1975), this Court recognized "the wisdom of refraining from attempting to fashion broad and general rules that would serve as a panacea." Rather, it explained the "wiser course is to resolve disputes on a case by case basis . . ." 463 Pa. at 500, 337 A.2d at 265. The City's Application is contrary to this admonition, as it seeks a broad rule applicable to all public employers in all situations.

4. *PHA* Was Correctly Decided And Does Not Need To Be Reviewed.

PHA is consistent with the policy behind, and the specific language of, PERA. For twenty (20) years, it has promoted the public policy announced by the General Assembly in PERA that there should be "orderly and constructive relationships" between all public employers and their employees, that "[u]nresolved disputes" between public employers and their employees are injurious to the public and that "harmonious relationships" between public employers and their employees are best achieved through "written agreements evidencing the result of [collective] bargaining." 43 P.S. § 1101.101. *PHA* is consistent with various provisions of PERA, for example, those which limit a labor organization's ability to strike and which provide that a court can enjoin a strike if it threatens the health, safety or welfare of the public. 43 P.S. §§ 1101.1001-1004. It is consistent with PERA's limitations on what subjects over which a labor organization is entitled to bargain. 43 P.S. §§ 1101.702-703. By contrast, there is no explicit provision in PERA permitting an employer to unilaterally implement terms which are the subject of collective bargaining.

PHA is also consistent with prior pronouncements of this Court. The principle applied by the PLRB and affirmed by the Commonwealth Court in 1993 was not a new rule. In *Pennsylvania Labor Relations Board v. Williamsport Area School District*, this Court, in 1979, citing to its prior decision in *Appeal of Cumberland Valley School District*, 483 Pa. 134, 394 A.2d 946 (1978), stated the same rule:

> [W]e agree with the Board that the District [the public employer] in this case attempted a unilateral change in the terms and conditions of employment while the Association [the labor organization] members were at work and negotiations had not reached any impasse concerning the matter unilaterally changed by the District. To allow such unilateral changes from the status quo is not to foster labor peace.

486 Pa. 375, 381, 406 A.2d 329, 331-32 (1979). Accordingly, in *Williamsport*, the Supreme Court reinstated the order of the PLRB, finding that the public employer had committed an unfair practice in violation of PERA when it unilaterally changed working conditions.

Further, the Supreme Court declined to review the Commonwealth Court's decision in *PHA* at the time when it denied the employer's petition for allowance of appeal. *PHA,* 536 Pa. 634, 637 A.2d 294 (1993). There is no reason to do so now.

5. The City Is Attempting To Achieve An Unwarranted, Radical And Permanent Shift In Power For Public Employers.

Under the City's radical theory, a public employer can unilaterally declare an impasse in collective bargaining and impose whatever are the terms of its final offer. According to the City, impasse can be achieved "after days." (Application at p. 16). This principle, if adopted, would encourage public employers to demand drastic concessions at the outset of collective bargaining to which a union could not agree and then artificially create an impasse, permitting it to impose those drastic measures on its employees. Preserving the status quo (during which employees have their wages and benefits frozen), if the employees remain at work, encourages good faith collective bargaining. In contrast, under the City's theory, there would be little reason for public employers to reach mutual agreement. This change in the law will not only drastically shift power to public employers, it will harm the public. If employers have the ability to artificially declare an impasse and to unilaterally impose harsh economic terms and conditions on their employees, it will increase labor strife. Once imposition of a final offer occurs, there will be little deterrent against a union going on strike in response to those unilateral changes. The ensuing increase in labor strife and disruptive strikes will be detrimental to the public interest.

For all these reasons, Amici respectfully submit that this Court should reject the Application of the City of Philadelphia.

Respectfully submitted,

DEBORAH R. WILLIG
RALPH J. TETI
BRUCE M. LUDWIG

On behalf of the following labor organizations:

Pennsylvania AFL-CIO
AFSCME Council 13
AFSCME District Council 47
AFT Pennsylvania
Association of Pennsylvania State College and University Faculties
Pennsylvania Conference of Teamsters
Pennsylvania State Building and Construction Trades Council
Pennsylvania State Education Association
Pennsylvania State Legislative Board, SMART
Philadelphia Federation of Teachers
SEIU Healthcare Pennsylvania
SEIU Local 32BJ
SEIU Local 668
United Food and Commercial Workers, Local 1776
UNITE HERE, Local 634
United Mine Workers of America
United Steelworkers of America

SUPREME COURT OF PENNSYLVANIA

CITY OF PHILADELPHIA :

v. : DOCKET NO. 27 EM 2013

AFSCME DISTRICT COUNCIL 33, AFL-CIO :

PROOF OF SERVICE

I hereby certify that I am this day serving the foregoing letter from Amicus Curiae upon the persons and in the manner indicated below, which service satisfies the requirement of Pa.R.A.P. 121:

Service by first class U.S. Mail addressed as follows:

Shannon Druri-Lanessa Farmer, Esquire
Ballard Spahr, LLP
1735 Market Street, 51st Floor
Philadelphia, PA 19103-7599
215-665-8500

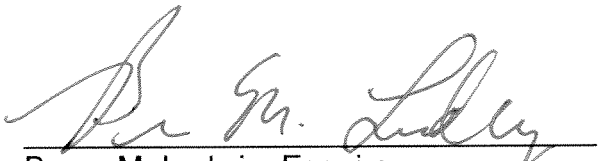
[Attorney for Petitioner, City of Philadelphia]

Samuel L. Spear, Esquire
Spear Wilderman Borish Endy Spear & Runckel
230 South Broad Street, Suite 1400
Philadelphia, PA 19102
215-732-0101

[Attorney for Respondent, AFSCME District Council 33, AFL-CIO]

Nicole Maltz Sugarman, Esquire
Ballard Spahr, LLP
1735 Market Street, 51st Floor
Philadelphia, PA 19103-7599
215-864-8221

[Attorney for Petitioner, City of Philadelphia]



Bruce M. Ludwig, Esquire
Attorney I.D. No. 23251
1845 Walnut Street, 24th Floor
Philadelphia, PA 19103
215-656-3644
[Co-Counsel for Amici Curiae]

February 19, 2013