

## No. 1979-108

## AN ACT

## HB 1108

Amending the act of December 5, 1936 (2nd Sp.Sess., 1937 P.L.2897, No.1), entitled "An act establishing a system of unemployment compensation to be administered by the Department of Labor and Industry and its existing and newly created agencies with personnel (with certain exceptions) selected on a civil service basis; requiring employers to keep records and make reports, and certain employers to pay contributions based on payrolls to provide moneys for the payment of compensation to certain unemployed persons; providing procedure and administrative details for the determination, payment and collection of such contributions and the payment of such compensation; providing for cooperation with the Federal Government and its agencies; creating certain special funds in the custody of the State Treasurer; and prescribing penalties," further providing for eligibility criteria for certain employes.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. Section 402.1, act of December 5, 1936 (2nd Sp.Sess., 1937 P.L.2897, No.1), known as the "Unemployment Compensation Law," added July 6, 1977 (P.L.41, No.22), is amended to read:

Section 402.1. Benefits Based on Service for Educational Institutions.—Benefits based on service for educational institutions pursuant to Article X, XI or XII shall as hereinafter provided be payable in the same amount, on the same terms and subject to the same conditions as outlined in section 404(g); except that:

(1) With respect to service performed after December 31, 1977, in an instructional, research, or principal administrative capacity for an educational institution, benefits shall not be paid based on such services for any week of unemployment commencing during the period between two successive academic years, or during a similar period between two regular terms whether or not successive or during a period of paid sabbatical leave provided for in the individual's contract, to any individual if such individual performs such services in the first of such academic years or terms and if there is a contract or a reasonable assurance that such individual will perform services in any such capacity for any educational institution in the second of such academic years or terms.

(2) With respect to services performed after December 31, 1977, in any other capacity for an educational institution (other than an institution of higher education as defined in section 4(m.2)), benefits shall not be paid on the basis of such services to any individual for any week which commences during a period between two successive academic years or terms if such individual performs such services in the first of such academic years or terms and there is a reasonable assurance that such individual will perform such services in the second of such academic years or terms. **[However, if**

upon presenting himself for work at the end of such period between academic years or terms, the individual is not permitted to resume work of the same capacity, or resumes it for less than twenty working days, his claims for unemployment compensation during such period shall be accepted retroactively to the time the individual's benefits would have commenced if the individual had not received reasonable assurance of employment and considered under the eligibility provisions of this act and benefits shall be paid with respect to any weeks for which his eligibility is established. This provision shall apply also to holiday and vacation periods.]

(3) With respect to any services described in clause (1) or (2), benefits payable on the basis of such services shall be denied to any individual for any week which commences during an established and customary vacation period or holiday recess if such individual performed such services in the period immediately before such vacation period or holiday recess, and there is a reasonable assurance that such individual will perform such services in the period immediately following such vacation period or holiday recess.

*(4) With respect to weeks of unemployment beginning after January 1, 1979, benefits shall be denied to an individual who performed services in or near an educational institution while in the employ of an educational service agency for any week which commences during a period described in clauses (1), (2) and (3) if such individual performs any services described in clause (1) or (2) in the first of such periods, as specified in the applicable clause, and there is a contract or a reasonable assurance, as applicable in the appropriate clause, that such individual will perform such services in the second of such periods, as applicable in the appropriate clause. For purposes of this clause the term "educational service agency" means a governmental agency or governmental entity which is established and operated exclusively for the purposes of providing such services to one or more educational institutions. A political subdivision or an intermediate unit may establish and operate such an educational service agency. Nothing contained in this section shall be construed to modify existing collective bargaining units organized under the provisions of the act of July 23, 1970 (P.L.563, No.195), known as the "Public Employe Relations Act," unless specifically agreed to by both the employer and employe representatives.*

Section 2. This act has been adopted by the General Assembly solely to preclude nonconformity with the Federal Unemployment Tax Act and the accompanying loss of some \$700,000,000 annually in Federal unemployment tax credits, for Pennsylvania's private employers due to problems in the public sector, and the loss of some \$125,000,000 annually in administrative funding to the Office of Employment Security. Nothing contained herein shall be construed as an acceptance of the position of the Federal Department of Labor with regard to the issues of denial of benefits to school crossing guards without the establishment of educational service

agencies, or the right of the Commonwealth to establish an objective criteria for retroactive payment of benefits to nonprofessional primary or secondary school employes. The General Assembly endorses the appeal filed by the Pennsylvania Department of Justice to contest the Federal interpretation of these issues, as well as any subsequent judicial appeals.

Section 3. This amendatory act shall be suspended immediately upon the final disposition of such issue by a Federal court of competent jurisdiction which sustains the position of the Commonwealth on such issues.

Section 4. This act shall take effect immediately and shall be retroactive to January 1, 1979.

APPROVED—The 12th day of December, A. D. 1979.

DICK THORNBURGH