

Pennsylvania Labor Relations Board

2022 Report

This report was prepared by the staff of the Pennsylvania Labor Relations Board to comply with Section 4(c) of the Pennsylvania Labor Relations Act of 1937, as amended, which requires that the board notify the governor of its caseload and activities. Interpretation of case law should not be construed as an official statement of board policy nor should it be offered as authority for any legal position. For copies of older reports, please contact (717) 787-1091.

Pennsylvania Labor Relations Board

James M. Darby, Chairman
Albert Mezzaroba, Member
Gary Masino, Member

Nathan F. Bortner
Board Secretary

Warren R. Mowery, Jr.
Chief Counsel

Central Office

651 Boas Street, Room 418
Harrisburg, PA 17121-0750
Telephone: 717-787-1091

Regional Office

301 5th Avenue, Suite 320
Pittsburgh, PA 15222-2438
Telephone: 412-565-5318

<https://www.dli.pa.gov/Individuals/Labor-Management-Relations/plrb/Pages/default.aspx>

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Introduction

This report explains the roles, responsibilities, and activities of the Pennsylvania Labor Relations Board (Board) during the 2022 calendar year. The report contains summaries of board final orders and court opinions issued during that year; discussions and statistics on the Board's caseload; and case-processing activities for each of the statutes administered by the Board.

The Board is composed of three members who are appointed by the governor and confirmed by the Senate to serve six-year terms, staggered at two-year intervals. The staff in the main Harrisburg office and the regional Pittsburgh office is responsible for the Board's administrative, operational, and adjudicative activities, while the three-member Board decides appeals of staff decisions and hearing examiner orders.

The Board is responsible for administering and enforcing four laws concerning collective bargaining rights and labor-management relations.

The [Pennsylvania Labor Relations Act](#) (PLRA), which created the Board in 1937, encourages the peaceful resolution of private-sector industrial conflict and unrest through collective bargaining between employers and their employees. The [National Labor Relations Act \(NLRA\)](#), often referred to as the Wagner Act, passed in 1935, served as a precursor and model of the PLRA. The PLRA protects employees, employers, and labor organizations engaged in legal activities associated with the collective bargaining process. The Board's private-sector jurisdiction is now very limited and only consists of Pennsylvania-based employers and employees not covered by the NLRA.

Today, most of the Board's jurisdiction is in the public sector. The [Public Employe Relations Act](#) (PERA), enacted in 1970, extends collective bargaining rights to most public employees and employers at the state, county, and local government levels, and vests the Board with the authority to implement its provisions.

A 1977 decision of the Pennsylvania Supreme Court further expanded the Board's jurisdiction in the public sector to include [Act 111 of 1968](#) (Act 111), which grants collective bargaining rights to police officers and firefighters.

[Act 88 of 1992](#) (Act 88) provides specific bargaining and impasse procedures for school employees and employers. Under Act 88, the Board makes fact-finding appointments under certain circumstances and within specific timeframes. Act 88 also provides that mandatory arbitration will be implemented after a strike has reached the point where 180 days of instruction can no longer be provided by the last day of school or June 15, whichever is later.

Board Responsibilities

Representation Cases

In accordance with each collective bargaining act, employees may organize in units represented by employee organizations of their own choosing for the purpose of bargaining with their employers over wages, hours, and other terms and conditions of employment. Under PERA, units of first-level supervisors may also be organized in order to “meet and discuss” with their employers concerning issues that are bargainable for other employees. One of the Board’s major functions is to determine the appropriateness of collective bargaining units, based on guidelines established in each act, case law, and policy. The Board then conducts secret-ballot elections to determine whether a majority (or 50 percent under Act 111) of employees in an appropriate unit wish to be represented by an employee organization. Employees or employee organizations seeking representation must file a petition supported by a showing of interest of 30 percent of the employees in the unit.

Units may also be certified without conducting elections if an employer does not question the appropriateness of a unit or the majority status of the petitioning employee organization and joins with the employee organization to request that the Board issue a certification.

Once certified as the exclusive bargaining representative, an employee organization can be decertified by employees filing a decertification petition, which must also be supported by a showing of interest of 30 percent of the employees in the unit. Employers may also independently file a decertification petition with a statement or other evidence of a substantiated good faith doubt of the majority status of the representative. The certified representative will lose its status if it does not receive a majority (or 50 percent under Act 111) of the valid votes cast in an election. A certified representative can also voluntarily relinquish its status through the filing of a disclaimer of interest.

Parties may also petition the Board to amend an existing unit to include or exclude positions. This procedure, called a Unit Clarification, is used to allocate newly created positions and to determine the managerial, supervisory, or confidential status of a position. The Board may also amend a previously issued certification to reflect a change in an employee representative’s name or affiliation.

Unfair Labor Practice Cases

The Board enforces and protects the rights of parties to organize and bargain collectively through adjudication of charges of unfair labor practices and direction of remedies if such practices are found. Both the PLRA and PERA outline the unfair practices prohibited by employers, employees, and employee organizations. The unfair practice prohibitions in the PLRA are applied to police, firefighters and their employers under Act 111.

The Board’s [Rules and Regulations](#) authorize the Board Secretary to issue complaints in unfair practice charges when it is determined that a sufficient cause of action is stated in the charge. After a complaint is issued, the case is assigned to a hearing examiner for further investigation.

At the hearing, a representative of the party that filed the charge prosecutes the case before a hearing examiner. Both parties can present testimony and documentary evidence and cross-examine witnesses. After a hearing, the hearing examiner issues a decision called a Proposed Decision and Order containing a statement of the case, findings of fact, conclusions of law, and an order either dismissing or sustaining the charge. If the charge is sustained, appropriate actions to remedy the effect of the unfair practice are ordered. If necessary, the Board has the authority to petition the courts for the enforcement of its orders, appropriate temporary relief, or restraining orders.

Occasionally, charges are filed by public employees against employee organizations alleging violations of the union’s “duty of fair representation.” These are dismissed for lack of jurisdiction based on a Pennsylvania Supreme Court decision that held that such actions do not constitute an unfair labor practice. Instead, these situations must be addressed in the courts by the individual. Duty of fair representation charges filed by

private-sector employees are also dismissed for lack of jurisdiction, but these employees may address their allegations to the National Labor Relations Board.

Impasse Resolution Cases

The Board has certain authority relating to collective bargaining impasses between employers and employees under PERA and Act 88. Both PERA and Act 88 provide for mandatory mediation of bargaining impasses through the [Pennsylvania Bureau of Mediation](#). In the event mediation is utilized and exhausted, the Board becomes involved in two types of impasse resolution processes: fact finding and arbitration.

Fact Finding

Under PERA, the Board has the discretion to appoint fact finders to attempt to settle bargaining impasses under certain circumstances. Once appointed, the fact finder holds hearings and must issue a report within 40 days containing findings of fact and recommendations. The parties then have 10 days either to accept or reject the report. If either party rejects the report, it is published and the parties must reconsider for 10 days to accept or reject it. If either party again rejects the report, the process is concluded without resolution. If both parties accept the report, the bargaining impasse is resolved and the report is incorporated into a bargaining agreement.

Under Act 88, the Board also has the discretion to appoint fact finders for bargaining impasses involving school employees and employers. Unlike PERA, Act 88 provides for mandatory appointment of fact finders in certain circumstances in addition to discretionary appointments.

Most of the Board's fact-finding appointments are made pursuant to Act 88. Fact-finding under PERA is limited because of a 1992 decision of the Pennsylvania Supreme Court, which held that the Board lacks authority to appoint fact finders later than 130 days prior to the employer's budget submission date (City of Philadelphia v. Pennsylvania Labor Relations Board, 614 A.2d 213, 23 PPER ¶23186 (1992)).

Arbitration

The Board's other impasse resolution authority involves the arbitration procedures outlined in Section 805 of PERA for critical service employees who do not have the right to strike, such as employees of the courts, prison guards, or guards at mental hospitals. When arbitration is necessary for negotiations involving these employees, the employer and the employee representative each select one arbitrator that must then jointly select a third, neutral arbitrator. If the arbitrators representing the parties cannot agree upon a third arbitrator, they may request a list of seven arbitrators from the Board. Each party, starting with the employer, strikes from the list until one arbitrator remains and serves as the neutral arbitrator. The panel of three arbitrators then issues an award, with the ability of an arbitrator to offer a dissent to some or all of the award.

Inquiries and Assistance

Board staff frequently respond to inquiries from the press, employers, unions, and citizens regarding a wide range of questions and issues. This includes providing status updates on cases, researching and providing copies of public documents, researching and providing caselaw, providing analysis on proposed legislation involving collective bargaining, and explaining the Board's roles and responsibilities. The Board also frequently responds to formal requests for information under Pennsylvania's Right to Know Law.

Total Case Summary

The following pages contain information detailing the Board’s activities during the 2022 calendar year. Statistical data is provided regarding cases filed and concluded. Please note that the information contained in this report, while believed accurate, should not be relied upon for legal research.

In 2022, a total of 418 cases were filed with the board, including 333 cases under PERA, 65 under Act 111, 10 under Act 88, and 10 under PLRA. Charges of unfair practices comprised 50 percent of all cases filed in 2022, while 32 percent of the filings were representation cases.

Table 1: Cases Filed by Category of Employer for 2022

Category of Employer	Year Filed	Charge of Unfair Practice	Representation	Unit Clarification	Decertification	Fact-Finding	Arbitration
Authority	2022	18	2	1	2	0	0
Commonwealth	2022	16	4	22	1	0	0
County	2022	22	19	10	5	0	60
Higher Education	2022	10	0	0	0	0	0
Municipality	2022	74	16	10	4	2	0
Non-Profit	2022	5	0	0	0	0	0
Private Sector	2022	0	1	1	0	0	0
School District	2022	64	5	32	0	10	0
Union	2022	1	0	0	0	0	0
TOTAL	2022	210	47	76	12	12	60

UNFAIR LABOR PRACTICE CASES

In 2022, a total of 210 unfair practice charges were filed. Of these, 71 percent were filed under PERA, 25 percent under Act 111, and 4 percent under PLRA.

Table 2: Unfair Practice Cases Concluded (cases do not necessarily conclude in the same year they are filed)

Cases Concluded - Charges	2022
by Board Order	5
by Hearing Examiner Order	29
by Administrative Dismissal	29
by No Complaint Letter	37
by Nisi Order of Withdrawal	158
TOTAL	258

REPRESENTATION CASES

In 2022, a total of 135 representation cases were filed. Of these, 90 percent were filed under PERA, 9 percent under Act 111, and 1 percent under PLRA.

Table 3: Representation Cases Concluded (cases do not necessarily conclude in the same year they are filed)

Cases Concluded - Representation	2022
by Certification of Representative	9
by Nisi Order of Certification	15
by Administrative Dismissal	28
by Nisi Order of Dismissal	3
by Hearing Examiner	1
by Final Order	4
by Nisi Order of Withdrawal	13
by Nisi Order of Unit Clarification	39
by Nisi Order of Decertification	10
TOTAL	122

Table 4: Elections Conducted, 2022

	Representation Election	Decertification Election
Non-Profit	0	0
Higher Education	2	0
Commonwealth	0	0
Authority	0	0
School District	0	0
County	7	1
Municipality	7	2
Private Sector	0	0
TOTAL	16	3

Summaries of Board Orders

The Board issues several different types of orders. The most common type of board order is a final order. Parties may appeal hearing examiner decisions by filing exceptions with the Board. After considering the exceptions, the Board issues a final order dismissing or sustaining the exceptions in whole or in part, or may remand the case to the hearing examiner for further proceedings.

Another common board order is a final order dismissing exceptions to an administrative dismissal. The Board Secretary may administratively dismiss a charge or petition if it is untimely, if it fails to state a cause of action, or if the document filed is not a signed and notarized original. Parties may appeal administrative dismissals by filing exceptions with the Board. If the exceptions are sustained, the Board issues an order remanding the case to the Board Secretary for issuance of a complaint. Otherwise, the exceptions are dismissed through the issuance of a board final order.

Summaries of the final orders issued by the Board in 2022 are provided below. Citations for the Board's orders are given as the Board's case number and the Pennsylvania Public Employee Reporter (PPER) reference.

FINAL ORDERS

In the Matter of the Employees of Erie Metropolitan Transit Authority, PERA-U-20-140-W, 53 PPER 67 (Final Order, February 15, 2022). Affirmed Proposed Order of Unit Clarification.

United Auto Workers International Union v. Delaware County & Delaware County Public Defender's Office, PERA-C-20-271-E & PERA-C-20-273-E, 53 PPER 64 (Final Order, March 15, 2022). Sustained finding of a violation of Section 1201(a)(1) and (5) of PERA.

AFSCME, District Council 89 v. Lebanon County, PERA-C-20-104-E, 54 PPER 26 (Final Order, August 16, 2022). Dismissed allegations of violation of Section 1201(a)(1) and (5) of PERA.

Pennsylvania State Corrections Officers Association v. Commonwealth of Pennsylvania, Department of Corrections, PERA-C-21-20-E, __ PPER __ (Final Order, November 15, 2022). Sustained finding of a violation of Section 1201(a)(1) of PERA.

Lansdale Police Benevolent Association v. Lansdale Borough, PF-C-21-38-E, __ PPER __ (Final Order, December 20, 2022). Dismissed allegations of violation of Section 6(1)(a) and (e) of the PLRA.

FINAL ORDERS DISMISSING EXCEPTIONS TO ADMINISTRATIVE DISMISSALS

In the Matter of the Employees of Erie Metropolitan Transit Authority, PERA-U-20-293-W, 53 PPER 68 (Final Order, February 15, 2022). Dismissed Petition for Unit Clarification.

In the Matter of the Employees of Bucks County, PERA-U-22-102-E, __ PPER __ (Final Order, August 16, 2022). Dismissed Petition for Unit Clarification.

In the Matter of the Employees of Wayne County, PERA-R-22-247-E, 54 PPER 40 (Final Order, December 20, 2022). Dismissed Petition for Representation.

Summaries of Court Opinions

The following court opinions involving board cases were issued in 2022. Court opinions are cited to The Pennsylvania Public Employee Reporter (PPER), published annually, and at the appellate level, the appropriate court citation is included if available.

Please note that the appellate developments for board decisions covered by this report include only those decisions issued during the reporting period; further developments will be detailed in subsequent reports.

Act 35 of 2008 (the Act of July 4, 2008, P.L. 286) removed jurisdiction over appeals from decisions of the board from the courts of common pleas. Consequently, the Commonwealth Court has first-level appellate jurisdiction over appeals of board final orders. See 42 Pa. C.S. §§ 763 and 933 (as amended).

COMMONWEALTH COURT

Abington Heights School District v. Pennsylvania Labor Relations Board, 404 C.D. 2021, 274 A.3d 775 (Pa. Cmwlth. February 10, 2022). Reversing Board's finding of a violation of Section 1201(a)(1) and (5) of PERA. Petition for Allowance of Appeal granted, 118 MAL 2022, 286 A.3d 1236 (Pa. October 27, 2022).

Towamencin Township v. Pennsylvania Labor Relations Board, 789 C.D. 2020, 288 A.3d 136 (Pa. Cmwlth. October 7, 2022). Reversing Board's finding of a violation of Section 6(1)(a) and (e) of the PLRA. Petition for Allowance of Appeal filed, 621 MAL 2022 (Pa. December 28, 2022).

SUPREME COURT

There were no Supreme Court opinions involving board cases in 2022.