



# Pennsylvania Labor Relations Board 2007 - 2009 Report



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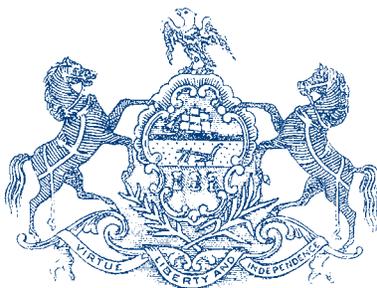
**PENNSYLVANIA LABOR RELATIONS BOARD**

**2007 - 2009 REPORT**

**Harrisburg, Pennsylvania**

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 official statement of Board policy nor should it be offered as authority for any legal position.



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## INTRODUCTION

The Pennsylvania Labor Relations Board (Board) administers and enforces four Commonwealth laws concerning labor-management relations.

This report explains the roles and responsibilities of the Board and outlines its activities during the 2007-2009 calendar years. The report contains summaries of Board final orders, court opinions issued during 2007-2009 that involved Board cases, discussions and statistical tables on the Board's caseload, and its case-processing activities for each of the statutes it administers.

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 central Harrisburg office and the regional Pittsburgh office is responsible for the Board's administrative and adjudicative activities, while the three-member Board resolves appeals of staff determinations and establishes overall policy and operating guidelines.

The Pennsylvania Labor Relations Act (PLRA), which created the Board in 1937, encourages the peaceful resolution of private sector industrial strife and unrest through collective bargaining between employers and their employees. The PLRA also protects employees, employers, and labor organizations engaged in legal activities associated with the collective bargaining process. The Board's private sector jurisdiction consists of Pennsylvania-based employers and their

employees not covered by the National Labor Relations Act.

While the Board's private sector jurisdiction is very limited, most of the Board's work is in the public sector. The Public Employee Relations Act (PERA), enacted in 1970, extended collective bargaining rights and obligations to most public employees and their employers at the state, county, and local government levels, and vested the Board with administrative authority to implement its provisions.

A 1977 decision of the Pennsylvania Supreme Court further expanded the Board's jurisdiction to include representation and unfair practice issues arising from Act 111 of 1968 (Act 111), which granted collective bargaining rights to police officers and firefighters.

Act 88 of 1992 (Act 88) provides bargaining procedures for school employees. Under Act 88, the Board is required to make fact-finding appointments upon the mutual request of the parties at any time, except during arbitration or between notice and conclusion of a strike. Act 88 provides that either party may request fact-finding no later than 84 days prior to the end of the school fiscal year (June 30, in most cases). The Board is empowered to appoint fact-finders within its discretion at times other than the mandated period. 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

Although specific provisions may vary, the Board's basic duties are similar in public and private sector cases. The Board has the responsibility to determine the appropriateness of collective bargaining units and certify employe representatives, as well as the authority to remedy and prevent unfair labor practices. For public employes (other than police and firefighters) the Board also has a limited role in resolution of collective bargaining impasses.

### *Representation Cases*

In accordance with each collective bargaining act, employes may organize in units represented by employe organizations of their own choosing for the purpose of bargaining collectively with their employers concerning 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 employes.

One of the Board's major functions is to determine the appropriateness of these collective bargaining units based on guidelines established in each act and case law. The Board conducts secret ballot elections to determine whether employes in an appropriate unit wish to be represented by an employe organization. Employes or employe representatives seeking representation must file a petition supported by a showing of interest of 30 percent of the employes in the unit.

Units may be certified without conducting elections if an employer does not question the appropriateness of a unit or the majority status of the petitioning employe organization, and joins with the employe organization to request that the Board certify the proposed unit.

Representatives may be decertified pursuant to the filing of a decertification petition, which must also be supported by a showing of interest of 30 percent of the employes in the unit. In the case of an employer-filed petition a statement or other evidence of a substantiated good faith doubt of the majority status of the representative is required. The certified representative will lose its bargaining status if it does not receive a majority (50 percent under Act 111) of the valid votes cast, or if it voluntarily relinquishes its

representative status through the filing of a disclaimer of interest.

Parties may petition the Board to include in or exclude from an existing unit. This procedure is used to allocate newly created positions and to determine managerial, supervisory, or confidential status of a position.

The Board may also amend a previously issued certification to reflect a change in the name of a party or affiliation of an employe representative.

### *Unfair Practice Cases*

The Board enforces and protects the rights of parties to organize and to bargain collectively through adjudication of charges of unfair practices and direction of remedies if such practices are found. Both the PLRA and PERA outline unfair practices prohibited for employers, employes or employe organizations; the unfair practice prohibitions in the PLRA are also 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. Conciliation is also used for the purpose of arriving at a settlement of the case without a formal hearing. Should the settlement effort fail, or should the case contain issues and circumstances that appear not to be amenable to a negotiated settlement, the case proceeds to a formal hearing.

At the hearing, a representative of the party that filed the charge prosecutes the case before a Board hearing examiner; the parties present testimony and documentary evidence and cross-examine witnesses. Upon conclusion of a hearing, the hearing examiner issues 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 may be ordered. The Board has the authority to petition the courts for the enforcement of its orders, appropriate temporary relief, or restraining orders.

### *Impasse Resolution Cases*

The Board has limited powers relating to bargaining impasses between employers and employees under PERA and Act 88.

Both PERA and Act 88 provide for mandatory mediation of bargaining impasses under the auspices of the Pennsylvania Bureau of Mediation. After the exhaustion of mediation, the Board has the discretion to appoint a fact-finder if the Board finds

that the issues and circumstances in the case are such that fact-finding would be beneficial. The fact-finder conducts a hearing and makes findings and recommendations for resolving the dispute.

The Board submits panels to assist parties in the selection of neutral arbitrators for interest arbitration proceedings authorized under PERA to resolve bargaining issues involving employees who do not have the right to strike.



## OPERATIONS SUMMARY

The following pages contain information detailing the Board’s activities during the 2007-2009 calendar years. Statistical data is provided regarding cases filed and concluded, as well as summaries of Board orders and court opinions involving Board cases.

Please note that the data and summaries contained in this report, while believed to be accurate, are informational only and should not be relied upon for legal research.

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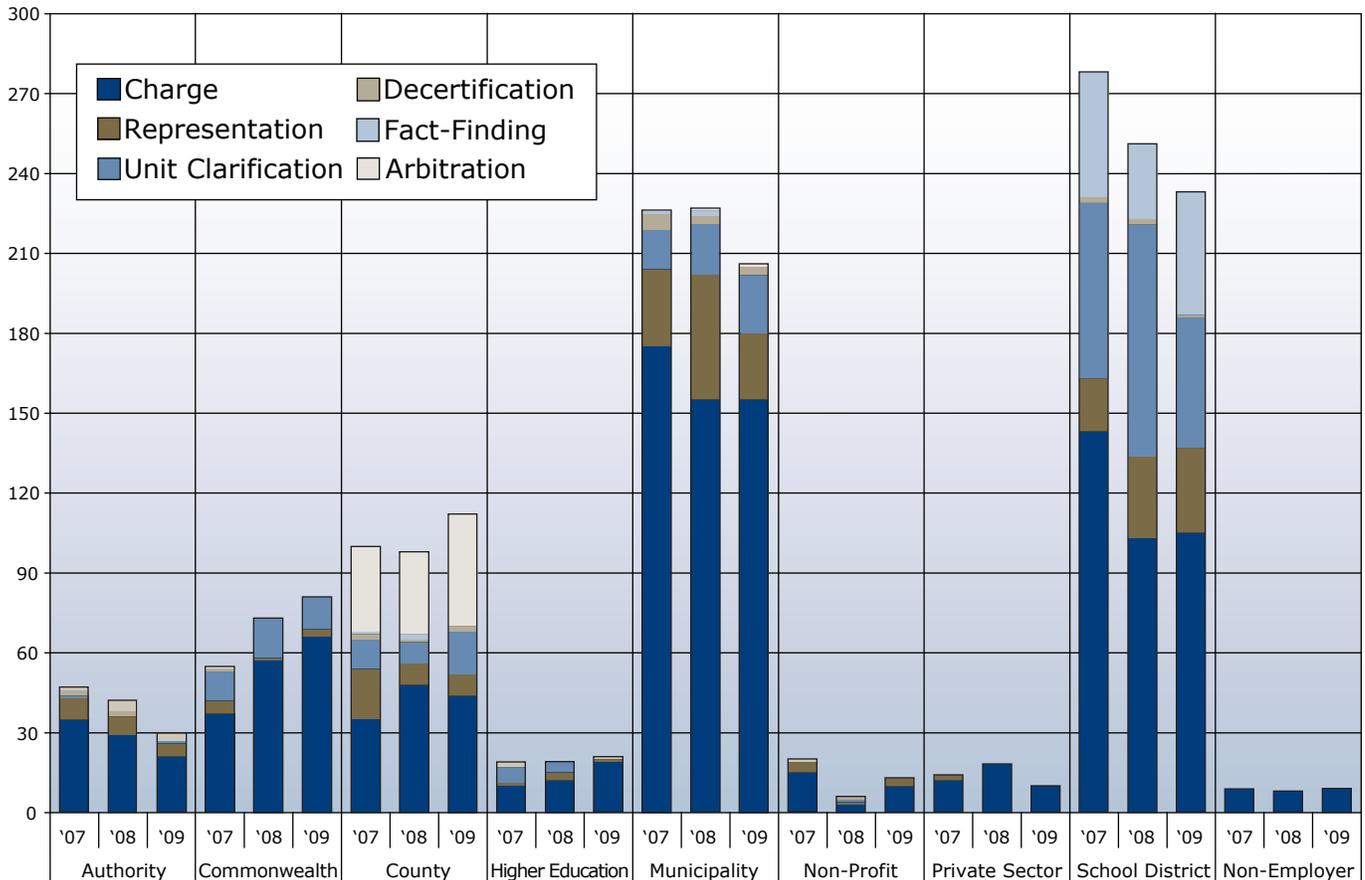
In 2007, a total of 768 cases were filed with the Board, including 536 cases pursuant to PERA, 171 cases under Act 111, 47 cases pursuant to Act 88, and 14 cases under the PLRA. Charges of unfair practices comprised 61 percent of all cases filed in 2007, while 28 percent of the filings were representation cases.

In 2008, a total of 750 cases were filed with the Board, including 526 cases pursuant to PERA, 170 cases under Act 111, 36 cases pursuant to Act 88, and 18 cases under the PLRA. Charges of unfair practices comprised 58 percent of all cases filed in 2008, while 32 percent of the filings were representation cases.

In 2009, a total of 714 cases were filed with the Board, including 511 cases pursuant to PERA, 148 cases under Act 111, 45 cases pursuant to Act 88, and 10 cases under the PLRA. Charges of unfair practices comprised 61 percent of all cases filed in 2009, while 26 percent of the filings were representation cases.

Chart 1 illustrates all cases filed between 2007 and 2009, broken down by type of employer and type of case. Cases involving municipalities and school districts comprised 64 percent of the Board’s caseload during the reporting period.

Chart 1 - Cases filed with the Board, 2007 - 2009



## Representation Cases

The Board processes four types of representation cases: certification and decertification of an employee representative; clarification regarding whether a specific classification should be included in or excluded from a particular certified unit; and amendment of a certification to reflect a change in the name or affiliation of a certified employee representative.

In 2007, a total of 212 representation cases were filed, including 88 certification petitions, 13 decertification petitions, and 111 unit clarification and amendment of certification petitions. Eighty-seven percent of the representation cases initiated in 2007 were filed pursuant to PERA, while 12 and one percent were filed under Act 111 and the PLRA, respectively.

In 2008, a total of 241 representation cases were filed, including 112 certification petitions, nine decertification petitions, and 120 unit clarification and amendment of certification petitions. Ninety percent of the representation cases initiated in 2008 were filed pursuant to PERA, while 10 percent were filed under Act 111.

In 2009, a total of 184 representation cases were filed, including 77 certification petitions, six decertification petitions, and 101 unit clarification and amendment of certification petitions. Eighty-eight percent of the representation cases initiated in 2009 were filed pursuant to PERA, while 12 percent were filed under Act 111.

Table 1 details the representation cases concluded between 2007 and 2009, citing the method of disposition.

Table 1 - Representation Cases Concluded

	2007	2008	2009
<b>Certification Cases Concluded</b>			
by Board Order	0	1	1
by Certification of Representative	22	43	29
by Nisi Order*	44	31	38
<b>Decertification Cases Concluded</b>			
by Nisi Order	7	6	7
<b>Unit Clarification Cases Concluded</b>			
by Board Order	1	1	3
by Hearing Examiner Order	7	10	7
by Nisi Order	36	49	39
<b>Amendment of Certification Cases Concluded</b>			
by Nisi Order	17	26	7
<b>Cases Dismissed</b>			
by Administrative Dismissal	13	11	12
by Board Order	2	1	1
by Hearing Examiner Order	2	5	2
by Nisi Order	10	9	11
<b>Cases Withdrawn</b>			
by Nisi Order	26	36	35
by Withdrawal of Exceptions	0	1	0
<b>TOTAL</b>	<b>187</b>	<b>230</b>	<b>192</b>

\*A nisi order is a conditional order which is confirmed unless action is taken within a defined period of time. For the purposes of the Board, a nisi order is final unless exceptions are filed within twenty days of its issuance.

Chart 2 illustrates the elections the Board conducted between 2007 and 2009. As evidenced in the chart, cases involving municipalities and school districts consistently comprise the largest percentage of

representation cases prompting elections. In 2007, these two categories accounted for 68 percent of all elections, while they represented 71 and 67 percent in 2008 and 2009, respectively.

Chart 2 - Elections Conducted by the Board, 2007 - 2009

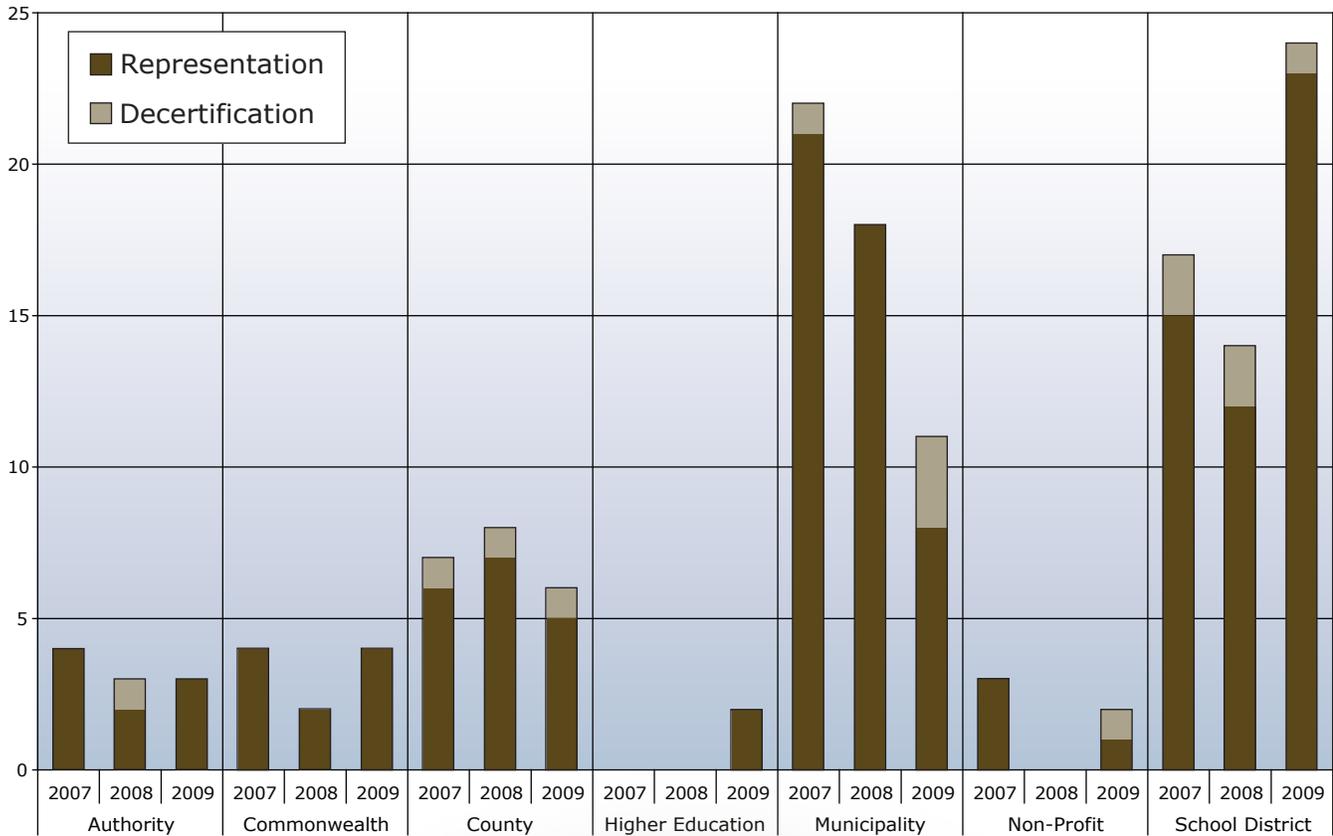
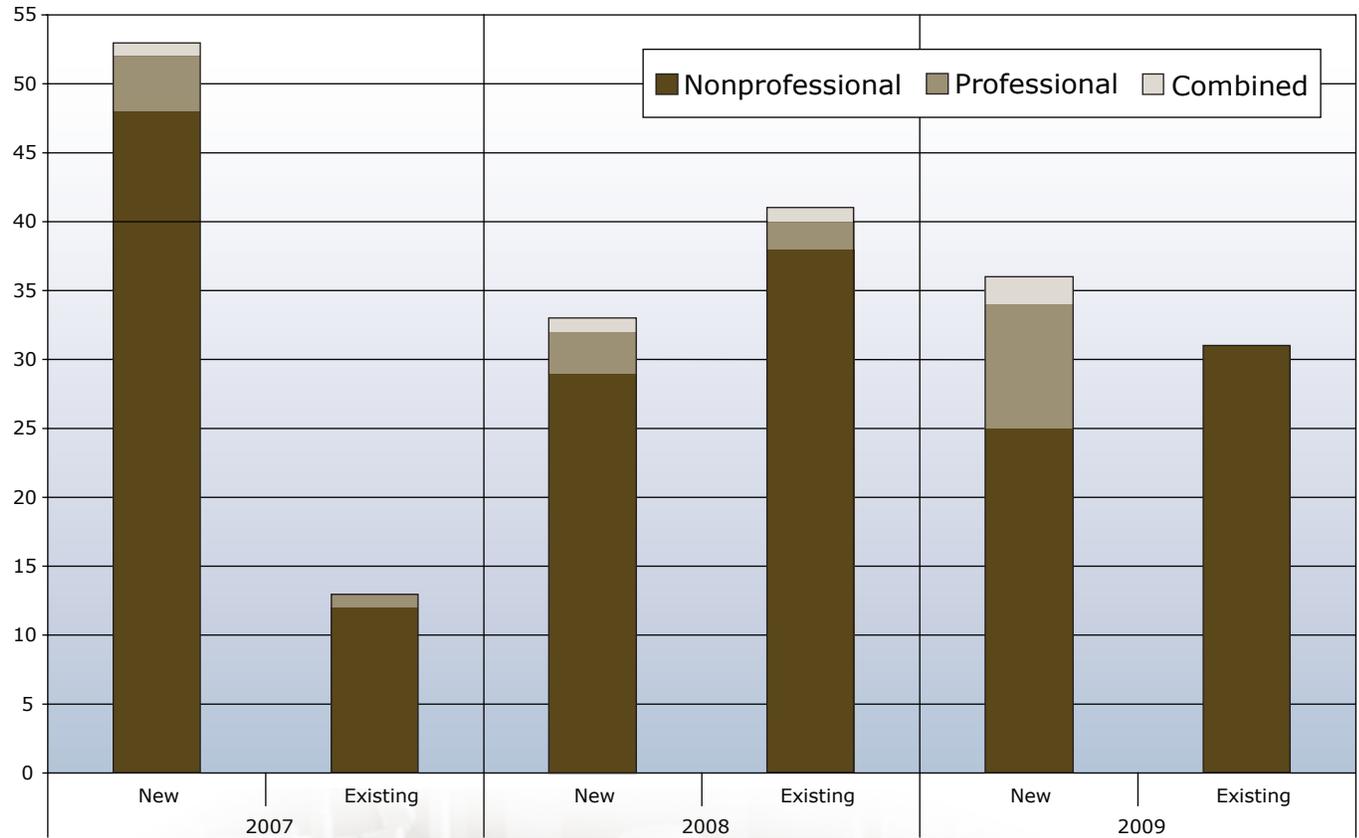


Chart 3 depicts the number and type of units certified from 2007 to 2009. Of the 207 units certified during this time period, 96 percent were collective

bargaining units, while four percent were meet and discuss units.

Chart 3 - Units Certified by the Board, 2007 - 2009



## Unfair Practice Cases

The Board adjudicates allegations of unfair practices, as enumerated in PERA and the PLRA, and issues remedial relief as appropriate. PERA Section 1201(a) and PLRA Section 6(1) pertain to prohibited practices for employers, while PERA Section 1201(b) and PLRA Section 6(2) relate to prohibited practices for employee representative and employees. Please see

Appendices I and II to view the full text of Section 1201 of PERA and Section 6 of the PLRA.

Between 2007 and 2009, a total of 1343 unfair practice charges were filed (471 in 2007, 433 in 2008, and 439 in 2009). Of these charges, 66 percent were filed pursuant to PERA, while 31 and three percent were filed under Act 111 and the PLRA, respectively.

Table 2 details the unfair practice cases concluded between 2007 and 2009, citing the method of disposition.

Table 2 - Unfair Practice Cases Concluded

	2007	2008	2009
<b>Cases Sustained (Unfair Practice Found)</b>			
by Board Order	16	9	7
by Hearing Examiner Order	42	10	30
<b>Cases Dismissed</b>			
by Administrative Dismissal	46	40	79
by Board Order	20	31	13
by Hearing Examiner Order	22	21	14
by No Complaint Letter	67	57	54
<b>Cases Withdrawn</b>			
by Nisi Order	314	187	310
<b>TOTAL</b>	<b>527</b>	<b>355</b>	<b>507</b>

Table 3 details the specific subsections of PERA and the PLRA found to have been violated in the 114 unfair practice cases sustained from 2007 to 2009. You may

refer to Appendices I and II to view the text that correlates with each subsection.

Table 3 - Unfair Practices Found

	2007	2008	2009
<b>PERA Section 1201</b>			
(a)(1)	18	9	11
(a)(3)	2	2	2
(a)(4)	0	1	2
(a)(5)	12	11	8
(a)(6)	0	1	0
(a)(8)	5	1	0
(b)(3)	0	1	0
<b>PLRA Section 6</b>			
(1)(a)	38	6	25
(1)(c)	0	0	3
(1)(e)	37	6	22

**Impasse Resolution Cases**

Article VIII of PERA requires the Board’s involvement in two types of collective bargaining impasse resolution procedures: fact-finding and interest arbitration.

The Board has the authority to appoint fact-finders for the purpose of settling negotiations that have reached impasse. The majority of the Board’s fact-finding cases are filed pursuant to Act 88, which provides for a period of mandatory fact-finding appointments in addition to the discretionary appointments provided for in PERA.

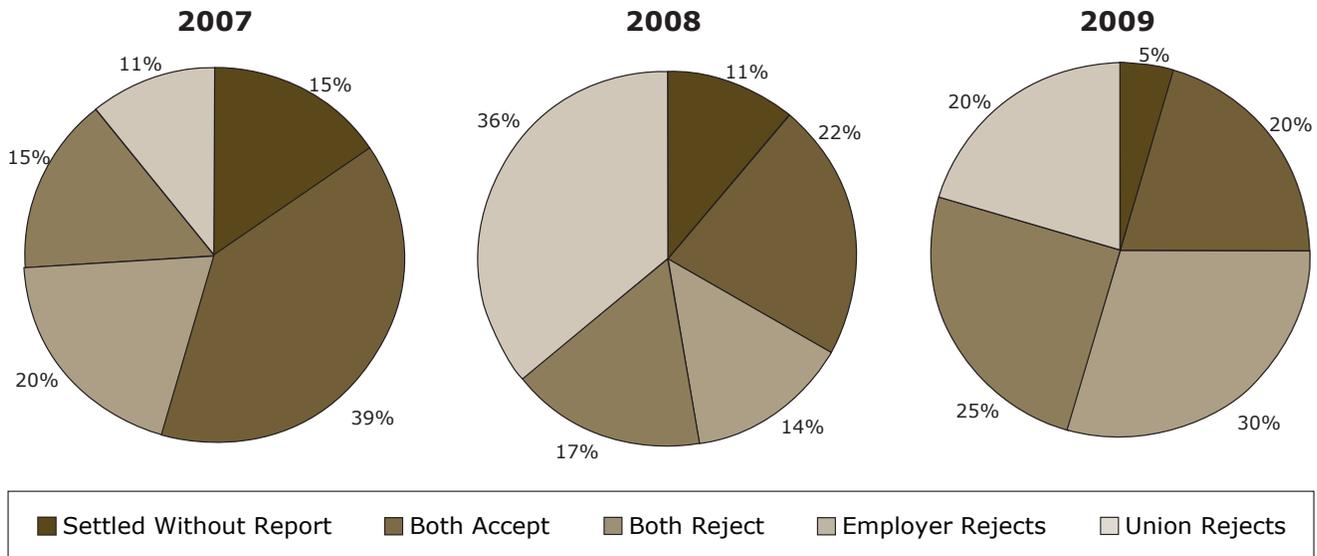
Upon appointment, the fact-finder has 40 days to hold hearings and issue a report containing nonbinding recommendations. The parties then have 10 days to accept or reject the recommendations. If either party rejects the report, it is published on the Board’s website and the parties have an additional 10 days to reconsider. If both parties do not ultimately accept the recommendations, they must resume bargaining.

In 2007, 47 fact-finding appointments were made, including 44 pursuant to Act 88 and three under PERA. In 2008, 36 appointments were made, including 28 pursuant to Act 88 and eight under PERA. In 2009, 45 fact-finding appointments were made, including 42 pursuant to Act 88 and three under PERA.

Chart 4 illustrates the outcomes of the Board’s fact-finding appointments between 2007 and 2009. There was one appointment in both 2007 and 2009 that did not result in a settlement or the issuance of a report. These appointments are not included in Chart 4.

The Board’s other impasse resolution function is to provide panels used in the selection of neutral arbitrators for interest arbitration proceedings. The Board received a total of 108 requests for arbitration panels from 2007 to 2009 (33 in 2007, 32 in 2008, and 43 in 2009).

**Chart 4 - Fact-Finding Outcomes**



## 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 to direct a hearing. Otherwise, the exceptions are dismissed through issuance of a Board final order.

Summaries of the final orders issued by the Board from 2007 to 2009 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, where applicable.

### *Final Orders*

[Pennsylvania State Corrections Officers Association v. Commonwealth of Pennsylvania, Department of Corrections, Fayette SCI](#)

Case No. PERA-C-05-367-E • 38 PPER 4 (January 23, 2007)

The Board sustained the proposed decision and order concluding that the employer did not violate Section 1201(a)(1) by escorting state-wide union representatives on a tour of a state corrections facility.

[E.B. Jermyn Lodge No. 2 of the Fraternal Order of Police v. City of Scranton](#)

Case No. PF-C-05-101-E (January 23, 2007)

The Board affirmed the proposed decision and order finding that employer violated Section 6(1)(a) and (e) by its failure to comply with a grievance arbitration award directing the employer to assign clerks to assist officers pursuant to an agreement with the union.

[Littlestown Borough Police Officers Association v. Littlestown Borough](#)

Case No. PF-C-06-128-E • 38 PPER 2 (January 23, 2007)

The Board made final a proposed decision and order finding that the employer did not violate Section 6(1)(a) and (e) where the employer rescinded changes to the employees' health care benefits before the changes would have taken effect.

[In the Matter of the Employes of North Schuylkill School District](#)

Case No. PERA-U-06-235-E • 38 PPER 17 (February 20, 2007)

The Board amended a Nisi Order of Unit Clarification to exclude the cafeteria manager from the bargaining unit, where the parties stipulated on exceptions to a mistake in agreeing to the inclusion of the cafeteria manager in the unit.

[Ellwood City Police Wage and Policy Unit v. Ellwood City Borough](#)

Case No. PF-C-06-116-W • 38 PPER 18 (February 20, 2007)

The Board sustained a proposed decision and order finding that the employer violated its bargaining obligation to the police officers' union under Section 6(1)(a) and (e) by unilaterally implementing a total ban on the use of tobacco products in borough buildings and vehicles.

Mifflin County Education Support Personnel Association, ESPA/PSEA/NEA v. Mifflin County School District  
Case No. PERA-C-05-551-E • 38 PPER 37 (March 20, 2007)

The Board reversed a proposed decision and order finding that the employer committed an unfair practice by hiring an educational interpreter at a rate of pay different than the agreed upon contract rate. The Board concluded that the employer did not violate Section 1201(a)(1) or (5) where circumstances beyond the employer's control prevented it from being able to hire an interpreter at the contractual rate within the time constraints required by law.

Temple University Hospital Nurses Association v. Temple University Hospital  
Case No. PERA-C-06-39-E • 38 PPER 38 (March 20, 2007)

The Board dismissed in part and sustained in part the employer's exceptions to a proposed decision and order finding that the employer violated Section 1201(a)(1) by directing that nurses could not wear a union button in any area of the hospital. The Board held that the employer could direct that nurses refrain from wearing a button that raised suspicions of patient safety in public areas of the hospital, but violated Section 1201(a)(1) by precluding the wearing of the button in non-public areas of the hospital.

Fraternal Order of Housing Police v. Philadelphia Housing Authority  
Case No. PERA-C-06-135-E • 38 PPER 79 (May 15, 2007)

The Board sustained in part and dismissed in part the employer's exceptions to a proposed decision and order finding that it had violated section 1201(a)(1) and (8) by failing to comply with a grievance arbitration award. The Board found that the employer was legally precluded from reinstating and paying back pay during the period of time the grievant lacked the state required municipal police officer certification.

North Hills Education Association, PSEA/NEA v. North Hills School District  
Case No. PERA-C-06-310-W • 38 PPER 78 (May 15, 2007)

The Board affirmed the proposed decision and order finding that the employer violated Section 1201(a)(1) and (8) by failing to reinstate the grievant to her former ninth grade teaching position as required by a grievance arbitration award.

York City Employees Union v. City of York  
Case No. PERA-C-06-375-E • 38 PPER 80 (May 15, 2007)

The Board affirmed a proposed decision and order holding that the employer violated Section 1201(a)(1) and (5) by directly dealing with employees concerning temporary assignments to non-bargaining unit work.

Teamsters Local 776 v. Rye Township  
Case No. PERA-C-04-642-E • 38 PPER 97 (June 19, 2007)

The Board sustained a proposed decision and order concluding that the employer violated Section 1201(a)(1) and (5) by failing to abide by the terms of an employee handbook where the employer had previously followed the handbook provisions regarding employee disability benefits.

International Brotherhood of Painters and Allied Trades Local Union 1968 v. Erie City School District  
Case No. PERA-C-05-538-W • 38 PPER 98 (June 19, 2007)

The Board affirmed a proposed decision and order finding that the employer did not violate an employee's Weingarten right under Section 1201(a)(1), where the employer refused to allow the union's attorney to attend an investigatory interview when the employee did not request that the union attorney represent him.

Bucks County Security Guards Association v. Bucks County  
Case No. PERA-C-06-518-E • 38 PPER 99 (June 19, 2007)

The Board made final a proposed decision and order finding that the employer violated Section 1201(a)(1) and (5) by eliminating the employees' option to select one of two health maintenance organization plans.

E.B. Jermyn Lodge No. 2 of the Fraternal Order of Police v. City of Scranton

Case No. PF-C-05-131-E • 38 PPER 104 (July 17, 2007)

The Board made final the proposed decision and order finding that the employer violated Section 6(1)(a) where the employer's threats (insinuating discipline of a union bid officer over the posting of position) would tend to coerce employes in their decision of holding the bid officer position with the union.

Northwest Area Education Association v. Northwest Area School District

Case No. PERA-C-06-188-E • 38 PPER 147 (July 17, 2007)

The Board affirmed the proposed decision and order dismissing a charge alleging that the employer violated Section 1201(a)(1) and (5) by providing an opportunity for the public to review and comment on a tentative collective bargaining agreement before ratification by the public employer.

In the Matter of the Employes of Erie County

Case No. PERA-R-06-508-W • 38 PPER 114 (August 21, 2007)

The Board sustained the hearing examiner's dismissal of a representation petition seeking to sever deputy sheriffs from the court-related nonprofessional unit because there was no evidence that the deputy sheriffs were guards within the meaning of Section 604(3).

John Caldwell and Upper Merion Township Police Officers v. Upper Merion Township

Case No. PF-C-06-80-E • 38 PPER 115 (August 21, 2007)

The Board affirmed a hearing examiner's dismissal of a charge alleging violations of Section 6(1)(a) and (c) where there was no evidence of union animus in the employer's decision not to select the employe for open positions.

Allegheny Court Associated Professional Employes v. Allegheny County

Case No. PERA-C-07-15-W • 38 PPER 116 (August 21, 2007)

The Board made final a proposed decision and order finding that the employer violated Section 1201(a)(5) by refusing to arbitrate a grievance over the interpretation of an interest arbitration award.

Montrose Area Education Association v. Montrose Area School District

Case No. PERA-C-06-15-E • 33 PPER 127 (September 18, 2007)

The Board made final a proposed decision and order finding that the employer violated Section 1201(a)(1) and (3) by terminating the employment of permanent daily substitute teachers in response to the union having filed a grievance concerning their compensation and benefits.

Pennsylvania State Troopers Association v. Commonwealth of Pennsylvania, Pennsylvania State Police

Case No. PF-C-06-102-E • 38 PPER 125 (September 18, 2007)

The Board sustained a hearing examiner's conclusion that the employer violated Section 6(1)(a) and (e) by unilaterally transferring school bus inspections exclusive to non-bargaining unit employes.

Shoemakersville Borough Police Association v. Shoemakersville Borough

Case No. PF-C-06-151-E • 38 PPER 126 (September 18, 2007)

The Board made final a proposed decision and order finding that the employer did not violate Section 6(1)(a) or (e) by declining to proceed to interest arbitration for a successor contract following its managerial decision to disband the police force.

Brookville Area Education Association, PSEA/NEA v. Brookville Area School District

Case No. PERA-C-06-562-W • 38 PPER 136 (October 16, 2007)

The Board sustained the hearing examiner's dismissal of a charge alleging that the employer violated Section 1201(a)(1) and (3), where the employe was not engaged in protected activity by emailing coworkers during worktime.

East Hempfield Township Police Association v. East Hempfield Township

Case No. PF-C-07-76-E • 38 PPER 138 (October 16, 2007)

The Board affirmed a proposed decision and order dismissing the union's allegations of Section 6(1)(a) and (e) violations where the hearing examiner found that the union failed to establish the employer's refusal to comply with a grievance arbitration award where the reinstatement was conditioned on the employee's recovery from a work-related injury from which the grievant had not fully recovered.

Corry Area Education Association, PSEA/NEA v. Corry Area School District

Case No. PERA-C-06-86-W • 38 PPER 155 (November 20, 2007)

The Board sustained the union's exceptions to the hearing examiner's remedy for the employer's violation of Section 1201(a)(1) and (8), and held that the employee was entitled to make-whole relief during the period of the employer's noncompliance with the grievance arbitration award, including reimbursement for health care benefit co-payments incurred as the result of securing interim employment.

Temple Association of University Professionals, AFT Local 4531 v. Temple University

Case No. PERA-C-06-274-E • 38 PPER 156 (November 20, 2007)

The Board made final a proposed decision and order finding that the employer violated Section 1201(a)(1) and (e) by directly dealing with an employee for a confidentiality agreement which it asserted superseded contractual rights.

Teamsters Local 401 v. Hazle Township

Case No. PERA-C-07-107-E • 38 PPER 157 (November 20, 2007)

The Board affirmed a proposed decision and order finding that the employer violated Section 1201(a)(1) and (8) by failing to comply with a grievance arbitration award reinstating an employee with full seniority and benefits, but without back pay.

Fraternal Order of Police, Lodge No. 5 v. City of Philadelphia

Case No. PF-C-06-63-E • 38 PPER 183 (December 18, 2007)

The Board sustained the hearing examiner's determination that the employer did not interfere with an employee's Weingarten right to union representation under Section 6(1)(a) where the employee was not being questioned at an investigatory meeting with the employer.

Fraternal Order of Police, Lodge No. 5 v. City of Philadelphia

Case No. PF-C-06-98-E • 38 PPER 184 (December 18, 2007)

The Board dismissed the union's exceptions to a proposed decision and order finding that the employer had not violated section 6(1)(c) where the union failed to establish that the employer's reasons were a mere pretext for unlawful discrimination.

North Wales Borough Police Department v. North Wales Borough

Case No. PF-C-06-107-E • 38 PPER 181 (December 18, 2007)

The Board vacated, in part, a proposed decision and order that dismissed the union's claims under Section 6(1)(a) and (e), where the record showed that the employer unlawfully transferred bargaining unit work to a non-bargaining unit part-time employee.

Boyertown Borough Police Department v. Boyertown Borough

Case No. PF-C-06-175-E • 39 PPER 182 (December 18, 2007)

The Board vacated a proposed decision and order and held that the employer did not violate Section 6(1)(a) and (e), where the employer consistently applied the terms of a pension plan ordinance to set employee contributions to the pension fund.

Fraternal Order of Police, Lodge No. 5 v. City of Philadelphia

Case No. PF-C-06-69-E • 39 PPER 9 (January 15, 2008)

The Board made final a proposed decision and order finding that the employer violated Section 6(1)(a) and (e) by failing to comply with an interest arbitration award despite its pending appeal of the award.

In the Matter of the Employees of North Wales Borough

Case No. PF-U-06-146-E • 39 PPER 10 (January 15, 2008)

The Board made final a hearing examiner's dismissal of a unit clarification petition seeking to exclude the chief of police as a managerial employe.

International Brotherhood of Painters and Allied Trades, Local 1968 v. Erie City School District

Case No. PERA-C-07-14-W • 39 PPER 8 (January 15, 2008)

The Board affirmed a hearing examiner's dismissal of a charge filed under Section 1201(a)(1) and (3) where there was no showing of an unlawful discriminatory motive for the employer's actions.

American Federation of State, County and Municipal Employees, District Council 85, Local 2184, AFL-CIO v. McKean County

Case No. PERA-C-05-259-W • 39 PPER 21 (February 19, 2008)

The Board vacated a proposed decision and order and held that the county did not violate Section 1201(a)(1) or (5), where the union negotiated the successor contract with a private contractor who was the successor employer.

Teamsters Local Union No. 764 v. Berwick Area Joint Sewer Authority

Case No. PERA-C-07-48-E • 39 PPER 22 (February 19, 2008)

The Board made final the proposed decision and order finding that the employer violated Section 1201(a)(1), (3) and (5) by discharging an employe for participating in a grievance and engaging in conduct that was found to be a binding past practice.

Brandywine Regional Police Association v. Brandywine Regional Police Commission, East Brandywine Township, Wallace Township

Case No. PF-C-07-51-E • 39 PPER 23 (February 19, 2008)

The Board sustained the hearing examiner's dismissal of a charge under Section 6(1)(a) and (e) where the charge filed against the regional police department was amended to include the municipal employers after the statute of limitations had expired.

International Association of Fire Fighters, Local 293 v. City of Erie

Case No. PF-C-07-3-W • 39 PPER 31 (March 18, 2008)

The Board affirmed a proposed decision and order finding that the employer violated Section 6(1)(a) and (e) by repealing a pension benefit that was incorporated into a collective bargaining agreement by reference.

North Pocono Educational Support Personnel Association v. North Pocono School District

Case No. PERA-C-06-495-E • 39 PPER 44 (April 15, 2008)

The Board made final a proposed decision and order finding that by promoting an employe to a non-bargaining unit position and then assigning the employe their prior bargaining unit duties, the employer unlawfully removed bargaining unit in violation of Section 1201(a)(1) and (5).

Temple University Hospital Nurses Association / PASNAP v. Temple University Health System and Health Professionals and Allied Employees, AFT/AFL-CIO, Local 5106 v. Temple University Health System

Case Nos. PERA-C-07-261-E and PERA-C-07-212-E • 39 PPER 45 (April 15, 2008)

The Board affirmed the hearing examiner's conclusion that the employer violated its bargaining obligations under Section 1201(a)(1) and (5) by implementing a random drug testing policy.

American Federation of State, County and Municipal Employees, District Council 84 v. Pittsburgh Parking Authority

Case No. PERA-C-07-243-W • 39 PPER 74 (May 20, 2008)

The Board sustained the hearing examiner's dismissal of the union's charge filed under Section 1201(a)(1) and (8) where the union failed to establish the employer's noncompliance with the terms of the award.

McKeesport Educational Support Personnel Association, PSEA/NEA v. McKeesport Area School District

Case No. PERA-C-07-379-W • 39 PPER 75 (May 20, 2008)

The Board affirmed the hearing examiner's conclusion that the employer violated Section 1201(a)(1) and (8) by failing to reinstate an employe to his former position in accordance with a grievance arbitration award.

Pennsylvania State Troopers Association v. Commonwealth of Pennsylvania, Pennsylvania State Police

Case No. PF-C-07-156-E • 39 PPER 77 (May 20, 2008)

The Board made final the hearing examiner's conclusion that the union failed to establish that the employer violated Section 6(1)(a) and (e) by implementing scheduling changes for patrol troopers based on crime and accident data.

Pennsylvania State Troopers Association v. Commonwealth of Pennsylvania, Pennsylvania State Police

Case No. PF-C-04-123-E (June 17, 2008)

The Board made final a hearing examiner's conclusion that the employer was not in compliance with a prior Board that had directed the reinstatement of work to the bargaining unit.

International Union of Operating Engineers, Local 542 v. Quakertown Borough

Case No. PERA-C-06-570-E (June 17, 2008)

The Board affirmed the hearing examiner's dismissal of a charge alleging that the employer violated Section 1201(a)(1) and (5), where the employer's policy of whether to allowing employes to have personal use of the employer's equipment and property is a managerial prerogative.

Temple University Hospital Nurses Association v. Temple University Health System

Case No. PERA-C-07-446-E (June 17, 2008)

The Board made final a proposed decision and order holding that the employer violated Section 1210(a)(1) and (8) by failing to comply with a grievance arbitration award that had been affirmed by the Court of Common Pleas.

Fraternal Order of Police, Lodge No. 7 v. City of Erie

Case No. PF-C-07-110-W (June 17, 2008)

The Board affirmed a proposed decision and order finding that the employer violated Section 6(1)(a) and (c) in refusing to promote an employe because the employe had been successful in a grievance arbitration.

Pennsylvania State System of Higher Education v. Association of Pennsylvania State College and University Faculties

Case No. PERA-C-05-377-E • 39 PPER 101 (July 15, 2008)

The Board made final a proposed decision and order dismissing the employer's charge under Section 1201(b)(3) over an alleged grievance settlement where the question of arbitrability of the grievance is a matter for an arbitrator.

New Britain Borough Police Benevolent Association v. New Britain Borough

Case No. PF-C-07-63-E • 29 PPER 102 (July 15, 2008)

The Board sustained the hearing examiner's dismissal of a charge under Section 6(1)(e) over bargain tactics as moot where the parties reached a successor collective bargaining agreement.

Timothy A. Eirich, Aaron Rendos and Coudersport Area Education Association v. Coudersport Area School District

Case No. PERA-C-07-348-E • 39 PPER 121 (August 19, 2008)

The Board sustained a hearing examiner's determination that the employer did not violate an employee's Weingarten right under section 1201(a)(1) where the employee's representative was not reasonably available.

In the Matter of the Employees of State College Area School District

Case No. PERA-U-07-100-E • 39 PPER 129 (September 16, 2008)

The Board made final a proposed order of dismissal rejecting the union's petition to clarify the professional bargaining unit to include tutors.

American Federation of State, County and Municipal Employees, District Council 33 and American Federation of State, County and Municipal Employees, Local 159 v. City of Philadelphia

Case No. PERA-C-07-489-E • 39 PPER 128 (September 16, 2008)

The Board affirmed the hearing examiner's conclusion that the employer violated Section 1201(a)(1) and (5) by refusing to proceed to interest arbitration for City of Philadelphia prison guards.

Easton Area Education Support Personnel Association v. Easton Area School District

Case No. PERA-C-05-320-E • 39 PPER 149 (October 21, 2008)

The Board sustained the hearing examiner's proposed decision and order on compliance with a prior Board final order, finding that the Board's make-whole relief required employees to contribute their share to the retirement system and that the employer was required to separately reimburse the employees for the cost of interim health care coverage.

Port Authority Transit Police Association v. Port Authority of Allegheny County

Case No. PERA-C-07-323-W • 39 PPER 147 (October 21, 2008)

The Board affirmed the hearing examiner's dismissal of a charge alleging that the employer violated section 1201(a)(1) and (5) where language in the collective bargaining agreement supported the employer's assertion that it was permitted to apply changes in the pension plan to bargaining unit employees.

Joan F. Smith, Gabriel H. Petorak, John F. Larkin, and Ellen E. Kozlosky v. Lakeland School District

Case Nos. PERA-C-07-356-E, PERA-C-07-357-E, PERA-C-07-358-E and PERA-C-07-359-E • 39 PPER 148 (October 21, 2008)

The Board made final a proposed decision and order finding that the employer violated Section 1201(a)(1) and (3) by not the renewing complainants' annual appointment because the employees had engaged protected activities.

AFSCME, District Council 88 v. Berks County and Berks County Coroner

Case No. PERA-C-02-405-E • 39 PPER 155 (November 18, 2008)

The Board sustained a hearing examiner's proposed decision and order directing the employer to pay back pay based on full-time employment in order to comply with a Board order reinstating two employees and making them whole for the employer's violation of Section 1201(a)(1) and (3).

Bucks County Security Guards Association v. Bucks County

Case No. PERA-C-07-265-E • 39 PPER 160 (December 16, 2008)

The Board affirmed the hearing examiner's dismissal of a charge alleging that the employer violated Section 1201(a)(1) and (5) by refusing to proceed to interest arbitration where the security guards at issue were found not to be directly involved with and necessary to the functioning of the court.

In the Matter of the Employees of Temple University Health System

Case No. PERA-U-07-339-E • 40 PPER 3 (January 21, 2009)

The Board sustained the hearing examiner's determination that accreted regular part-time pool nurses into the existing unit of nurses. The Board determined that no election was necessary because the addition of regular part-time pool nurses would not exceed fifteen percent of the existing unit.

International Brotherhood of Painters and Allied Trades, Local Union 1968 v. Erie City School District

Case No. PERA-C-07-377-W • 40 PPER 12 (February 7, 2009)

The Board made final a hearing examiner's dismissal of a charge alleging that the employer violated Section 1201(a)(1) and (3) of PERA by refusing to return an employee to his previous position following a work injury.

In the Matter of the Employees of Westmoreland County

Case No. PERA-R-06-100-W • 40 PPER 35 (April 21, 2009)

The Board dismissed exceptions to a Nisi Order of Certification finding that the duties of Adult Probation Supervisor, Juvenile Probation Supervisor and Establishment/Case Initiation Supervisor were not management nor supervisory within the meaning of PERA.

In the Matter of the Employees of Allegheny County

Case No. PF-R-08-74-W • 40 PPER 34 (April 21, 2009)

The Board affirmed the hearing examiner's dismissal of a petition seeking to represent county deputy sheriffs under Act 111.

Radnor Township Education Association, PSEA/NEA v. Radnor Township School District

Case No. PERA-C-07-104-E • 40 PPER 44 (May 9, 2009)

The Board affirmed the hearing examiner's finding that the employer did not violated Section 1201(a)(1) and (5) of PERA by refusing to apply an alleged grievance settlement to teachers for whom no grievance was filed.

Association of Pennsylvania State College and University Faculties v.

Pennsylvania State System of Higher Education

Case No. PERA-C-08-373-E • 40 PPER 43 (May 19, 2009)

The Board reversed the hearing examiner and found that the employer violated its bargaining obligation by imposing a campus-wide smoking ban where the Clean Indoor Air Act did not explicitly preclude bargaining over employe smoking outdoors.

Nazareth Borough Police Association v. Nazareth Borough

Case No. PF-C-08-42-E • 40 PPER 51 (June 16, 2009)

The Board made final the proposed decision and order finding that the employer violated 6(1)(a) and (e) of the PLRA by changing from a 12-hour shift schedule to an 8-hour shift schedule.

In the Matter of the Employees of the City of Erie

Case No. PF-U-07-98-W • 40 PPER 69 (July 21, 2009)

The Board affirmed the hearing examiner's determination that firebox inspectors are not firefighters within the meaning of Act 111 and therefore they were excluded from the bargaining unit.

Susquenita Education Association, PSEA/NEA v. Susquenita School District

Case No. PERA-C-08-72-E • 40 PPER 68 (July 21, 2009)

The Board agreed with the hearing examiner that the employer did not violate Section 1201(a)(1) or (3) of PERA when reassigning a teacher to a substitute position.

Northampton County Deputy Sheriffs Association v. Northampton County

Case No. PERA-C-08-350-E • 40 PPER 86 (September 15, 2009)

The Board affirmed the hearing examiner's denial of complete make-whole relief for the employer's unfair practice of removal of bargaining unit work, where a subsequent interest arbitration award permitted employer subcontracting and there was no evidence that any bargaining unit employee lost wages or hours as a result of the subcontract.

Fraternal Order of Police Lodge 85 v. Commonwealth of Pennsylvania

Case No. PF-C-08-79-E • 40 PPER 90 (September 15, 2009)

The Board affirmed the hearing examiner's dismissal of a charge where the union failed to establish that the employer unlawfully removed work from the bargaining unit.

Fraternal Order of Police, Lodge 85 v. Commonwealth of Pennsylvania

Case No. PF-C-08-169-E • 40 PPER 89 (September 15, 2009)

The Board reversed the hearing examiner and found that the employer established a sound arguable basis in the parties' collective bargaining agreement to assign private security guards to operate scanning equipment.

United Transportation Union v. Southeastern Pennsylvania Transportation Authority, Victory District

Case No. PERA-C-09-128-E • 40 PPER 87 (September 15, 2009)

The Board made final the hearing examiner's decision that the employer did not violate Section 1201(a)(1) or (2) of PERA when it refused to allow non-employee representative of the union access to employees during work time to discuss an upcoming representation election.

Pennsylvania State Corrections Officers Association v. Commonwealth of Pennsylvania,  
Department of Corrections, Fayette SCI

Case No. PERA-C-04-560-E • 40 PPER 104 (October 20, 2009)

The Board affirmed the hearing examiner's finding that the employer failed to comply with a binding grievance settlement in violation of Section 1201(a)(1) and (5).

Wyoming Area Educational Support Personnel Association v. Wyoming Area School District

Case No. PERA-C-08-84-E • 40 PPER 105 (October 20, 2009)

The Board sustained a hearing examiner's conclusion that the employer discriminatorily terminated the employment of the association president, finding that the employer's assertion that the employee abandoned his employment was pretextual.

Teamsters Local Union No. 205 v. Munhall Borough

Case No. PERA-C-09-76-W • 40 PPER 102 (October 20, 2009)

The Board sustained the hearing examiner's conclusion that the employer violated Section 1201(a)(1) and (5) of PERA by unilaterally implementing a mandatory on-call policy for snow removal.

Lakeland Educational Support Professionals, PSEA/NEA v. Lakeland School District, Margaret Billings-Jones

Case No. PERA-C-06-54-E • 40 PPER 120 (November 17, 2009)

The Board upheld the hearing examiner's dismissal of a charge alleging a violation of Section 1201(a)(1) and (3) where the employer established a legitimate business reason for an employee's ten-day suspension.

In the Matter of the Employees of Slippery Rock Borough

Case No. PERA-U-08-446-W • 40 PPER 122 (November 17, 2009)

The Board made final the determination of the hearing examiner that the code enforcement officer is a management level position excluded from the bargaining unit.

Woodland Hills Educational Support Personnel Association, PSEA/NEA v. Woodland Hills School District  
Case No. PERA-C-07-452-E • \_\_ PPER \_\_ (December 15, 2009)

The Board sustained the hearing examiner's determination that the unilateral removal of bargaining unit employees from shared duties violated Section 1201(a)(1) and (5) of PERA.

Fraternal Order of Police, E.B. Jermyn Lodge No. 2 v. City of Scranton

Case No. PF-C-08-132-E • \_\_ PPER \_\_ (December 15, 2009)

The Board reversed, in part, the proposed decision and order finding that the employer violated the employees' Weingarten right, and sustained the hearing examiner's determination that the employer's comments violated Section 6(1)(a) of the PLRA.

### ***Final Orders Dismissing Exceptions to Administrative Dismissals***

American Federation of State County and Municipal Employees, Council 13 v. Commonwealth of Pennsylvania, Department of Agriculture

Case No. PERA-C-06-581-E (April 17, 2007)

The Board sustained the Secretary's dismissal of a charge alleging that the employer violated Section 1201(a)(1) and (3) by revoking approval for supplementary employment of a grievant, and other similarly situated employees, where the charge revealed that by doing so the employer was enforcing an established supplementary employment policy in a non-discriminatory fashion.

In the Matter of the Employees of Allentown City School District

Case No. PERA-R-07-120-E • 38 PPER 100 (June 19, 2007)

The Board made final a Secretary's decision declining to direct a hearing on a representation petition for a proposed bargaining unit of informational technology employees, where those employees were certified in the broad-based unit of nonprofessional school employees.

Girard School District v. International Brotherhood of Painters and Allied Trades Local 1968

Case No. PERA-C-07-250-W • 38 PPER 128 (September 18, 2007)

The Board concluded that the union bargaining representative's declining to present employer's bargaining proposals to a ratification vote of the union membership did not allege a violation of the union's statutory obligation to bargain with the employer. The Board made final the Secretary's decision declining to issue a complaint on the employer's charge of unfair practices against the union alleging a violation of Section 1201(b)(1) and (3).

International Brotherhood of Painters and Allied Trades Local 1968 v. Girard School District

Case No. PERA-C-07-251-W • 38 PPER 129 (September 18, 2007)

The Board sustained the Secretary's dismissal of the union's charge alleging a violation of Section 1201(a)(4) where there were no averments in the charge that employees ever filed an affidavit, petition or charge with the Board.

International Brotherhood of Painters and Allied Trades Local 1968 v. Girard School District

Case No. PERA-C-07-304-W • 38 PPER 124 (September 18, 2007)

The Board made final the Secretary's dismissal of a charge alleging that the employer violated its bargaining obligation under 1201(a)(5) by refusing to submit its financial information and documentation to an outside auditor at the request of the union.

Lincoln University Chapter of the American Association of university Professors v. Lincoln University

Case No. PERA-C-07-347-E • 38 PPER 137 (October 16, 2007)

The Board made final the Secretary's dismissal of a charge alleging violations of Section 1201(a)(1) and (5), where having employees acknowledge their duties when accepting annual appointments to their jobs falls within the ambit of direction of personnel.

Nancy L. Avau and Gail M. Herron v. Pennsylvania State Education Association

Case No. PERA-C-07-354-E • 38 PPER 139 (October 16, 2007)

The Board sustained the Secretary's decision not to issue a complaint on a charge filed by employees alleging that their union breached its duty of fair representation in negotiating a collective bargaining agreement.

Nancy L. Avau and Gail M. Herron v. Riverside Beaver County Education Association

Case No. PERA-C-07-355-W • 38 PPER 140 (October 16, 2007)

The Board sustained the Secretary's decision not to issue a complaint on a charge filed by employees alleging that their union breached its duty of fair representation in negotiating a collective bargaining agreement.

Association of Pennsylvania State College and University Faculties v. State System of Higher Education

Case No. PERA-C-07-276-E • 38 PPER 180 (December 18, 2007)

The Board sustained the Secretary's decision declining to issue a complaint alleging bargaining violations under Section 1201(a)(1), (3) and (5), where the employer took no action against the employees and the alleged bargaining violations were mooted by the parties' agreement on a successor collective bargaining agreement.

Service Employees International Union, Local 668 v. Westmoreland County

Case No. PERA-C-07-517-W • 39 PPER 28 (March 18, 2008)

The Board affirmed the Secretary's dismissal of a charge alleging the employer's refusal to bargain under Section 1201(a)(5) where a rival union's petition for representation was pending with the Board.

In the Matter of the Employees of Allegheny County

Case No. PF-R-07-160-W • 39 PPER 30 (March 18, 2008)

The Board sustained the Secretary's decision declining to direct a hearing on the union's petition to amend the PERA certification where the union was seeking to represent deputy sheriffs as police under Act 111.

Governor Mifflin Education Association, PSEA/NEA v. Governor Mifflin School District

Case No. PERA-C-08-45-E • 39 PPER 29 (March 18, 2008)

The Board made final the Secretary's dismissal of a charge where the charge was filed more than four months after the alleged unfair practice.

Governor Mifflin Education Association, PSEA/NEA v. Governor Mifflin School District

Case No. PERA-C-08-66-E • 39 PPER 46 (April 15, 2008)

The Board made final a Secretary's declining to issue a complaint on the union charge under Section 1201(a)(1) and (8) where the allegations could not establish the employer's failure to comply with a grievance arbitration award.

Jan Sklaroff v. Philadelphia School District

Case No. PERA-C-08-127-E • 39 PPER 68 (May 20, 2008)

The Board sustained the Secretary's dismissal of a charge as untimely.

Fraternal Order of Police, Lodge No. 5 v. City of Philadelphia

Case No. PF-C-07-158-E • 39 PPER 100 (July 15, 2008)

The Board sustained the Secretary's dismissal of a charge under Section 6(1)(a) and (e) as untimely.

Raymond D. Ramon v. Shuman Juvenile Detention Center and Bruce Atkins

Case No. PERA-C-08-173-W • 39 PPER 122 (August 19, 2008)

The Board sustained the Secretary's dismissal of a charge where the allegations in the charge did not allege an unfair practice under PERA.

American Federation of State, County and Municipal Employees, District Council 47, Local 2187 v. Philadelphia Parking Authority

Case No. PERA-C-08-174-E • 39 PPER 123 (August 19, 2008)

The Board made final the Secretary's dismissal of a charge as untimely, where after three years the union should have known that the employer's delay in providing information was unreasonable.

Pennsylvania State Troopers Association v. Commonwealth of Pennsylvania, Pennsylvania State Police

Case No. PF-C-08-51-E • 39 PPER 130 (September 16, 2008)

The Board affirmed the Secretary's decision not to issue a complaint on a charge alleging a violation of Section 6(1)(a) and (e) for an alleged refusal to comply with a grievance arbitration award where the facts could not support the employer's failure to comply with that award.

Amity Township Police Association v. Amity Township

Case No. PF-C-08-73-E • 39 PPER 131 (September 16, 2008)

The Board made final the Secretary's dismissal of a charge alleging that the employer violated Section 6(1)(a) and (e) because assignment of an employee to a light duty position is a managerial prerogative and the union failed to allege a severable effect on wages, hours or working conditions for impact bargaining.

In the Matter of the Employees of Clearfield County Career and Technology Center

Case No. PERA-U-08-221-W • 39 PPER 153 (November 18, 2008)

The Board sustained the Secretary's dismissal of a joint petition for unit clarification where based on the allegations the contested position was not supervisory nor did it lack an identifiable community of interest with the certified bargaining unit.

Westmoreland County Court-related Employees Association v. Westmoreland County

Case No. PERA-C-08-269-W • 39 PPER 167 (December 16, 2008)

The Board sustained the Secretary's decision not to issue a complaint on a charge alleging that the employer committed an unfair practice by failing to deduct union dues from court-related employees in the absence of a collective bargaining agreement with the successor union.

Westmoreland County Court-related Employees Association v. Westmoreland County

Case No. PERA-C-08-270-W • 39 PPER 166 (December 16, 2008)

The Board sustained the Secretary's dismissal of a charge alleging that the employer committed an unfair practice by failing to deduct union dues from court-appointed employees in the absence of a collective bargaining agreement with the successor union.

Donnell Ponton v. City of Philadelphia

Case No. PERA-C-08-406-E • 39 PPER 161 (December 16, 2008)

The Board made final the Secretary's dismissal of a charge as untimely and upheld the decision declining to issue a complaint on a charge alleging that the employer's challenging unemployment compensation benefits was an unfair practice.

Donnell Ponton v. American Federation of State, County and Municipal Employees, District Council 33, Local 427, AFL-CIO

Case No. PERA-C-08-407-E • 39 PPER 162 (December 16, 2008)

The Board sustained the Secretary's dismissal of the charge as untimely and affirmed the decision not to issue a complaint on a charge alleging the union's breach of the duty of fair representation.

Association of Pennsylvania State College and University Faculties v. State System of Higher Education, California University

Case No. PERA-C-08-398-E • 40 PPER 2 (January 21, 2009)

The Board sustained the Secretary's determination that a charge alleging anticipated changes to the employee parking policy was premature and, therefore, no complaint would be issued.

In the Matter of the Employees of the City of Philadelphia

Case No. PERA-U-08-414-E • 40 PPER 4 (January 21, 2009)

The Board made final the Secretary's decision not to direct a hearing on a unit clarification petition which sought to exclude correctional lieutenants and sergeants from the AFSCME represented unit covered by the 1961 City of Philadelphia ordinance.

William Eisenhart v. Eastern Lancaster County School District, Robert Hollister, Carol Kelsall and Joe Terch

Case No. PERA-C-08-439-E • 40 PPER 11 (February 17, 2009)

The Board sustained the Secretary's dismissal of a charge as untimely where the charge was filed more than four months after the alleged unfair practice.

Neshaminy Federation of Teachers, Local Union 1417 v. Neshaminy School District

Case No. PERA-C-08-374-E • 40 PPER 32 (March 17, 2009)

The Board made final the Secretary's decision declining to issue a complaint on a charge alleging that the employer's refusal to pay wage increases for academic credits while the parties negotiated a successor agreement was an unfair practice within the meaning of PERA.

Service Employees International Union, Local 668 v. Commonwealth of Pennsylvania, Department of Military and Veterans Affairs, Southwestern Veterans Center

Case No. PERA-C-09-239-E • 40 PPER 88 (September 15, 2009)

The Board held that the Secretary did not err in declining to issue a complaint on a charge alleging that the employer violated its duty to bargain by implementing changes to its drivers' licensing requirements.

Plains Township Police Officers Association v. Plains Township

Case No. PF-C-09-50-E • 40 PPER 103 (October 20, 2009)

The Board sustained the Secretary's decision not to issue a complaint on a charge alleging a failure to bargain over the implementation of a temporary light duty policy.

Marion Sunderman v. Teamsters Local 401

Case No. PERA-C-09-363-E • 40 PPER 121 (November 17, 2009)

The Board sustained the Secretary's dismissal of an employee's charge against her union alleging that the union committed unfair practices by failing to clarify her position into the bargaining unit.

***Orders Dismissing Exceptions***

In the Matter of the Employees of Bethlehem Area School District

Case No. PERA-U-08-41-E • 39 PPER 124 (August 19, 2008)

The Board issued an order dismissing exceptions as untimely rendering the proposed decision of unit clarification to include bus monitors final.

## SUMMARIES OF COURT OPINIONS

The following court opinions involving Board cases were issued between 2007 and 2009. Court opinions are cited to PPER 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 now has first level appellate jurisdiction over appeals of Board final orders. See 42 Pa. C.S. §§ 763 and 933 (as amended).

### *Court of Common Pleas*

#### Lycoming County v. Pennsylvania Labor Relations Board and Teamsters Local No. 764

No. 624-CV-2006 • 38 PPER 88 (February 15, 2007)

A visiting judge for the court of common pleas affirmed and enforced the Board final order finding that the employer violated Section 1201(a)(1), (3) and (5) by refusing to comply with the financial terms of an interest arbitration award for assistant district attorneys and assistant public defenders where sufficient contingency funds were available in the county budget.

#### American Federation of State, County and Municipal Employees, District Council 85, Local 2184 v. Pennsylvania Labor Relations Board

No. 513 C.D. 2008 • 39 PPER 99 (July 3, 2008)

The court of common pleas affirmed the Board's conclusion that the county did not violate Section 1201(a)(1) or (5) where the union was negotiating the contract with a successor private employer.

#### County of Bucks v. Pennsylvania Labor Relations Board and Bucks County Security Guards Association

No. 07-05906-29-6 • 39 PPER 105 (July 22, 2008)

The court of common pleas affirmed the Board's conclusion that the employer violated Section 1201(a)(1) and (5) by eliminating the employees' option to select one of two health maintenance organization plans.

#### Berwick Area Joint Sewer Authority v. Pennsylvania Labor Relations Board and Teamsters Local Union No. 764

No. 415-CV-2008 • 39 PPER 115 (August 5, 2008)

The court of common pleas affirmed the Board final order holding that the employer violated Section 1201(a)(1), (3) and (5) by discharging an employee for engaging in protected activity.

#### McKeesport Area School District v. Pennsylvania Labor Relations Board and McKeesport Educational Support Personnel Association PSEA/NEA

No. SA08-000709 (December 4, 2008)

The court of common pleas affirmed the Board's finding that the employer violated Section 1201(a)(1) and (8) by failing to reinstate an employee to his former position in accordance with a grievance arbitration award.

### *Commonwealth Court*

#### Carmelita Case, et al v. Pennsylvania Labor Relations Board and Hazelton Area School District

No. 990 C.D. 2006 • 915 A.2d 1262 (January 30, 2007)

Commonwealth Court reinstated the Board's final order dismissing a charge brought by employees against their employer under Section 1201(a)(5), holding that individual employees lack standing to bring charges of unfair practice against their employer for an alleged failure to bargain.

Hempfield Area School District v. Pennsylvania Labor Relations Board (Hempfield Area Education Association, PSEA/NEA)

No. 988 C.D. 2006 • 920 A.2d 222 (March 12, 2007)

Commonwealth Court affirmed a lower court opinion sustaining the Board's finding of a violation of Section 1201(a)(1) and (5) for the employer's refusal to proceed to arbitration on a grievance filed by the union over the elimination of medical benefits for retirees.

Carmalita Case et al v. Pennsylvania Labor Relations Board and Hazelton Area Educational Support Personnel Association, PSEA/NEA

No. 989 C.D. 2006 • 928 A.2d 1154 (July 9, 2007)

The Commonwealth Court reinstated the Board Secretary's decision declining to issue a complaint on the employes' charge alleging that their union violated Section 1201(b)(3) by not representing them fairly in negotiations with the employer. The Commonwealth Court held that the Board lacks jurisdiction over an employe's claims against the union arising from an alleged breach of the union's duty of fair representation in the bargaining process.

McAdoo Police Association v. Pennsylvania Labor Relations Board

No. 1698 C.D. 2006 • unreported • 38 PPER 110 (August 1, 2007)

Commonwealth Court affirmed the Board's dismissal of a charge alleging that the employer violated its bargaining obligation to the union under Section 6(1)(a) and (e), by refusing to reimburse the union for the arbitrator's fees for cancelled hearings.

County of Lycoming v. Pennsylvania Labor Relations Board and Teamsters Local No. 764

No. 474 C.D. 2007 • unreported (December 3, 2007)

The Commonwealth Court affirmed a lower court's decision sustaining the Board's finding that the employer violated Section 1201(a)(1), (3) and (5) by refusing to comply with the financial provisions of an interest arbitration award where discretionary funds were available in the employer's budget.

Lycoming County v. Pennsylvania Labor Relations Board and Teamsters Local No. 764

No. 1496 C.D. 2006 • 943 A.2d 333 (December 3, 2007)

The Commonwealth Court affirmed the Board's final order holding that the employer violated Section 6(1)(a), (c) and (e) by refusing to comply with the financial provisions of an interest arbitration award where discretionary funds were available in the employer's budget.

Borough of Ellwood City v. Pennsylvania Labor Relations Board

No. 473 C.D. 2007 • 941 A.2d 728 (January 4, 2008)

Commonwealth Court reversed a final order in which the Board found that the employer violated Section 6(1)(a) and (e) by issuing an ordinance banning use of tobacco in borough buildings and vehicles without first bargaining with the union.

Carmalita Case et al v. Hazelton Area Educational Support Personnel Association, PSEA/NEA and the Pennsylvania Labor Relations Board

No. 2242 C.D. 2007 • unreported (July 25, 2008)

Following a remand, the Commonwealth Court affirmed the court of common pleas decision to reinstate the Board's dismissal of a charge by an employe alleging a breach of a duty of fair representation against the union and reaffirmed its holding in Carmalita Case et al v. Pennsylvania Labor Relations Board and Hazelton Area Educational Support Personnel Association, PSEA/NEA, 928 A.2d 1154 (Pa. Cmwlth. 2007).

Boyertown Borough v. Pennsylvania Labor Relations Board

No. 49 C.D. 2008 • unreported • 39 PPER 154 (November 10, 2008)

The Commonwealth Court reversed a final order of the Board, and held that the employer violated Section 6(1)(a) and (e) by increasing employee pension contributions contrary to a borough resolution that was the result of collective bargaining.

Association of Pennsylvania State College and University Faculties v. Pennsylvania Labor Relations Board

No. 29 C.D. 2008 • 962 A.2d 709 (December 16, 2008)

Commonwealth Court reversed a Board final order that had dismissed a charge as moot where the union alleged a violation 1201(a)(1) but had subsequently executed a collective bargaining agreement based on the finding that the case was capable of repetition and worthy of Board review.

City of Erie v. Pennsylvania Labor Relations Board

No. 652 C.D. 2008 • unreported (March 5, 2009)

The Commonwealth Court reversed the Board, and found that the employer did not violate its bargaining obligation by rescinding a pension benefit set forth in the city ordinances, but not expressly set forth in the collective bargaining agreement.

City of Philadelphia v. Pennsylvania Labor Relations Board

No. 190 C.D. 2009 • 982 A.2d 136 (October 20, 2009)

The Commonwealth Court affirmed a Board final order finding that the City of Philadelphia violated its bargaining obligations by refusing to engage in interest arbitration for the terms and conditions of employment or prison guards.

Association of Pennsylvania State College and University Faculties v. Pennsylvania Labor Relations Board

No. 263 C.D. 2009 • unreported (October 22, 2009)

The Commonwealth Court affirmed the Board's final order that upheld the Secretary's decision not to issue a complaint because the union's charge, alleging anticipated changes in the employee parking policy, was premature.

Neshaminy Federation of Teachers, Local Union 1417 v. Pennsylvania Labor Relations Board

No. 687 C.D. 2009 • \_\_ A.2d \_\_ (December 8, 2009)

The Commonwealth Court affirmed the Board's final order sustaining the Secretary's decision not to issue a complaint on a charge alleging a failure to pay wage increases for academic credits during contract negotiations.

***Pennsylvania Supreme Court***Commonwealth of Pennsylvania, Office of Administration v. Pennsylvania Labor Relations Board (Pennsylvania State Corrections Officers Association)

No. 101 MAP 2005 • 591 Pa. 176 • 916 A.2d 541 (February 20, 2007)

The Pennsylvania Supreme Court reversed a decision of the Commonwealth Court and reinstated the Board's holding that an employee's Weingarten right to union representation at investigatory meetings with the employer is an individual right of the employee under Section 1201(a)(1), subject only to availability of the representative, and thus the employer violated Section 1201(a)(1) by refusing to allow an employee the representative of his choice.

Gehring v. Pennsylvania Labor Relations Board

No. 105 MAP 2005 • 591 Pa. 574 • 920 A.2d 181 (April 17, 2007)

The Pennsylvania Supreme Court modified a Commonwealth Court opinion and reversed the Board's holding that it lacked standing over a probationary police officer's claims of discrimination under Section 6(1)(c). The Supreme Court held that a union has the statutory right to bargain for probationary police officers, who would then be protected by Section 6(1)(c) in their pursuit of a grievance to enforce those contractual rights.

Commonwealth of Pennsylvania, Office of Administration v. Pennsylvania Labor Relations Board (Pennsylvania State Corrections Officers Association)

No. 530 MAL 2004 • 593 Pa. 313 • 929 A.2d 629 (July 10, 2007)

On an issue of an employee's Weingarten rights under Section 1201(a)(1), the Pennsylvania Supreme Court *per curiam* granted the Board's appeal and reversed an order of the Commonwealth Court in accordance with Commonwealth of Pennsylvania, Office of Administration v. Pennsylvania Labor Relations Board (Pennsylvania State Corrections Officers Association), 591 Pa. 176, 916 A.2d 541 (2007).

Jefferson County Court Appointed Employees Association v. Pennsylvania Labor Relations Board

No. 37 WAP 2007 • \_\_ Pa. \_\_ • \_\_ A.2d \_\_ (December 28, 2009)

The Pennsylvania Supreme Court reversed a decision of the Commonwealth Court that had affirmed a Board final order. The Commonwealth Court had agreed with the Board that a dispute between the county commissioners and the president judge concerning the funding for employees of the court of common pleas needed to be addressed in a judicial forum not as an unfair practice. The Supreme Court reversed, finding that the commissioner's failure to abide by the president judge's grievance resolutions, directing reinstatement of the laid-off employees, impaired the judiciary and was an unfair practice within the meaning of PERA.



## APPENDIX I

### *Public Employe Relations Act (Act 195)*

#### ARTICLE XII - Unfair Practices

Section 1201. (a) Public employers, their agents or representatives are prohibited from:

- (1) Interfering, restraining or coercing employes in the exercise of the rights guaranteed in Article IV of this act.<sup>†</sup>
- (2) Dominating or interfering with the formation, existence or administration of any employe organization.
- (3) Discriminating in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any employe organization.
- (4) Discharging or otherwise discriminating against an employe because he has signed or filed an affidavit, petition or complaint or given any information or testimony under this act.
- (5) Refusing to bargain collectively in good faith with an employe representative which is the exclusive representative of employes in an appropriate unit, including but not limited to the discussing of grievances with the exclusive representative.
- (6) Refusing to reduce a collective bargaining agreement to writing and sign such agreement.
- (7) Violating any of the rules and regulations established by the board regulating the conduct of representation elections.
- (8) Refusing to comply with the provisions of an arbitration award deemed binding under section 903 of Article IX.
- (9) Refusing to comply with the requirements of "meet and discuss."

(b) Employe organizations, their agents, or representatives, or public employes are prohibited from:

- (1) Restraining or coercing employes in the exercise of the rights guaranteed in Article IV of this act.
- (2) Restraining or coercing a public employer in the selection of his representative for the purposes of collective bargaining or the adjustment of grievances.
- (3) Refusing to bargain collectively in good faith with a public employer, if they have been designated in accordance with the provisions of this act as the exclusive representative of employes in an appropriate unit.
- (4) Violating any of the rules and regulations established by the board regulating the conduct of representation elections.

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<sup>†</sup> It shall be lawful for public employes to organize, form, join or assist in employe organizations or to engage in lawful concerted activities for the purpose of collective bargaining or other mutual aid and protection or to bargain collectively through representatives of their own free choice and such employes shall also have the right to refrain from any or all such activities, except as may be required pursuant to a maintenance of membership provision in a collective bargaining agreement.

- (5) Refusing to reduce a collective bargaining agreement to writing and sign such agreement.
- (6) Calling, instituting, maintaining or conducting a strike or boycott against any public employer or picketing any place of business of a public employer on account of any jurisdictional controversy.
- (7) Engaging in, or inducing or encouraging any individual employed by any person to engage in a strike or refusal to handle goods or perform services; or threatening, coercing or restraining any person where an object thereof is to (i) force or require any public employer to cease dealing or doing business with any other person or (ii) force or require a public employer to recognize for representation purposes an employe organization not certified by the board.
- (8) Refusing to comply with the provisions of an arbitration award deemed binding under section 903 of Article IX.
- (9) Refusing to comply with the requirements of “meet and discuss.”



## APPENDIX II

### *Pennsylvania Labor Relations Act (Act 294)*

Section 6. Unfair Labor Practices. (1) It shall be an unfair labor practice for an employer –

- (a) To interfere with, restrain or coerce employees in the exercise of the rights guaranteed in this act.
  - (b) To dominate or interfere with the formation or administration of any labor organization or contribute financial or other material support to it: Provided, That subject to rules and regulations made and published by the board pursuant to this act, an employer shall not be prohibited from permitting employes to confer with him during working hours without loss of time or pay.
  - (c) By discrimination in regard to hire or tenure of employment, or any term or condition of employment to encourage or discourage membership in any labor organization: Provided, That nothing in this act, or in any agreement approved or prescribed thereunder, or in any other statute of this Commonwealth, shall preclude an employer from making an agreement with a labor organization (not established, maintained or assisted by any action defined in this act as an unfair labor practice) to require, as a condition of employment, membership therein, if such labor organization is the representative of the employes, as provided in section seven (a) of this act<sup>‡</sup>, in the appropriate collective bargaining unit covered by such agreement when made and if such labor organization does not deny membership in its organization to a person or persons who are employes of the employer at the time of the making of such agreement, provided such employe was not employed in violation of any previously existing agreement with said labor organization.
  - (d) To discharge or otherwise discriminate against an employe because he has filed charges or given testimony under this act.
  - (e) To refuse to bargain collectively with the representatives of his employes, subject to the provisions of section seven (a) of this act<sup>‡</sup>.
  - (f) To deduct, collect, or assist in collecting from the wages of employes any dues, fees, assessments, or other contributions payable to any labor organization, unless he is authorized so to do by a majority vote of all the employes in the appropriate collective bargaining unit taken by secret ballot, and unless he thereafter receives the written authorization from each employe whose wages are affected.
- (2) It shall be an unfair labor practice for a labor organization, or any office or officers of a labor organization, or any agent or agents of a labor organization, or any one acting in the interest of a labor organization, or for an employe or for employes acting in concert-
- (a) To intimidate, restrain, or coerce any employe for the purpose and with the intent of compelling such employe to join or to refrain from joining any labor organization, or for the purpose or with the intent of influencing or affecting his selection of representatives for the purposes of collective bargaining.

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<sup>‡</sup> Representatives designated or selected for the purposes of collective bargaining by the majority of the employes in a unit appropriate for such purposes, shall be the exclusive representatives of all the employes in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment: Provided, That any individual employe or a group of employes shall have the right at any time to present grievances to their employer.

- (b) During a labor dispute, to join or become a part of a sit-down strike, or, without the employer's authorization, to seize or hold or to damage or destroy the plant, equipment, machinery, or other property of the employer, with the intent of compelling the employer to accede to demands, conditions, and terms of employment including the demand for collective bargaining.
- (c) To intimidate, restrain, or coerce any employer by threats of force or violence or harm to the person of said employer or the members of his family, with the intent of compelling the employer to accede to demands, conditions, and terms of employment including the demand for collective bargaining.
- (d) To picket or cause to be picketed a place of employment by a person or persons who is not or are not an employe or employes of the place of employment.
- (d) To engage in a secondary boycott, or to hinder or prevent by threats, intimidation, force, coercion or sabotage the obtaining, use or disposition of materials, equipment or services, or to combine or conspire to hinder or prevent by any means whatsoever, the obtaining, use or disposition of materials, equipment or services.
- (e) To call, institute, maintain or conduct a strike or boycott against any employer or industry or to picket any place of business of the employer or the industry on account of any jurisdictional controversy.





**Pennsylvania Labor Relations Board**  
[www.dli.state.pa.us/plrb](http://www.dli.state.pa.us/plrb)