

## **Pennsylvania Labor Relations Board**

**Harrisburg, Pennsylvania**

### **2015-2016 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 official statement of board policy nor should it be offered as authority for any legal position.*

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## Introduction

This report explains the roles and responsibilities of the board and outlines its activities during the 2015 and 2016 calendar years. The report contains summaries of board final orders and court opinions issued during those years 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 Board administers and enforces four commonwealth laws concerning labor-management relations.

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](#).

The majority of the board's work is in the public sector; the board's private sector jurisdiction is very limited. 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 employee representatives, as well as the authority to remedy and prevent unfair labor practices. For public employees (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, employees may organize in units represented by employee 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 employees. 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 then conducts secret ballot elections to determine whether employees in an appropriate unit wish to be represented by an employee organization. Employees or employee representatives seeking representation must file a petition supported by a showing of interest of 30 percent of the employees 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 employee organization and joins with the employee 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 employees 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 a position 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 employee 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, employees or employee 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.

Some charges are filed against employee organizations by individuals alleging violations of the union's duty of fair representation. These must be dismissed for lack of jurisdiction, because the Pennsylvania Supreme Court has held that such actions do not constitute a violation of PERA. See [Ziccardi v. Commonwealth of Pennsylvania, Department of General Services, et.al.](#), 500 Pa. 326, 456 A.2d 979 (1982), and [Narcotics Agents Regional Committee, FOP, Lodge No. 74 v. AFSCME and the Commonwealth of Pennsylvania](#) 780 A.2d 863 (PA Cmwlth 2001).

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

### **Impasse Procedures**

Article VIII of PERA requires the PLRB's involvement in two types of impasse resolution procedures. The first of these is fact-finding. Under Section 802, the Board has the discretion to appoint fact-finders for the purpose of settling bargaining negotiations that have reached impasse.

Although the language of the statute refers to "panels" in almost all cases the Board has appointed a single fact-finder. Once a fact-finder has been appointed, he or she holds hearings, following which, if the impasse has not been settled, the fact-finder issues a report to the parties, 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 again will have 10 days to accept or reject it.

In July of 1992, Act 88 was enacted, which transferred the authority for making fact-finding appointments in school cases from PERA to the new act. As noted in other sections of this report, Act 88 provides for mandatory appointment of fact-finders in certain circumstances, in addition to discretionary appointment as had been provided in PERA. Most of the Board's fact-finding activity is currently being carried out pursuant to Act 88. In 2015, the board made appointments in 41 of 48 requests made of it for a fact-finder, including 40 pursuant to Act 88. In 2016, the Board made appointments in 30 out of 35 requests, including 25 pursuant to Act 88.

Fact-finding under PERA is limited because of the impact of the 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)).

The other responsibility with which the board is charged under Act 88 is that of partial payment of costs of mandatory non-binding arbitration. Act 88 provides that for mandatory arbitrations, the commonwealth shall pay one-half of the cost of the arbitrators, with the remaining one-half to be divided equally between the parties.

The board's other impasse resolution function involves the interest arbitration procedures outlined in Section 806 of the act for critical service employees. When arbitration panels are required in negotiations involving these employees, each party i.e., the employer and the employee representative selects one member, who in turn select a third, neutral member. If the arbitrators representing the parties cannot agree upon a third arbitrator, they request a list of seven candidates from the board. Each party, starting with the employer, then strikes from the list until one person is left and this remaining person serves as the neutral arbitrator. Whether the neutral is selected from a Board-submitted list or by the parties, the PLRB is responsible for compensating the neutral for his or her involvement.

### **Other Board Responsibilities**

The Board staff responds to informal inquiries from the press, private citizens and attorneys involved in a particular case, as well as national educational and research entities. This could include providing status updates on cases, or providing copies of requested unit certifications. The board also responds to formal requests for information under Right-To-Know legislation.

## Operations Summary

The following pages contain information detailing the board’s activities during the 2015 and 2016 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.

In 2015, a total of 512 cases were filed with the board, including 360 cases pursuant to PERA, 98 cases under Act 111, 47 cases pursuant to Act 88, and seven cases under PLRA. Charges of unfair practices comprised over 61 percent of all cases filed in 2015, while 21 percent of the filings were representation cases.

In 2016, a total of 529 cases were filed with the board, including 372 cases pursuant to PERA, 122 cases under Act 111, 29 cases pursuant to Act 88, and six cases under PLRA. Charges of unfair practices comprised almost 58 percent of all cases filed in 2016, while almost 26 percent of the filings were representation cases.

**Table 1: Cases Filed with the Board for 2015 and 2016**

Category of Employer	Year Filed	Charge of Unfair Practice	Representation	Unit Clarification	Decertification	Fact-Finding	Arbitration
<b>Authority</b>	2015	20	2	1	0	1	0
	2016	23	6	0	6	2	0
<b>Commonwealth</b>	2015	20	0	5	0	0	0
	2016	25	1	8	2	0	1
<b>County</b>	2015	38	6	6	5	0	43
	2016	34	20	5	6	0	51
<b>Higher Education</b>	2015	21	4	2	0	0	0
	2016	21	2	2	0	1	0
<b>Municipality</b>	2015	114	30	8	5	0	0
	2016	123	31	11	7	3	1
<b>Non-Profit</b>	2015	3	0	0	0	0	0
	2016	2	0	0	0	0	0
<b>Private Sector</b>	2015	7	0	0	0	0	0
	2016	3	0	0	0	0	0
<b>School District</b>	2015	86	3	30	0	47	0
	2016	71	6	23	0	29	0
<b>Union</b>	2015	5	0	0	0	0	0
	2016	3	0	0	0	0	0
<b>TOTAL</b>	2015	314	45	52	10	48	43
	2016	305	66	49	21	35	53

## 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 representatives and employees. Please see Appendices I and II to view the full text of Section 1201 of PERA and Section 6 of the PLRA.

In 2015, a total of 314 unfair practice charges were filed. Of these charges, 72 percent were filed pursuant to PERA, while 26 percent and 2 percent were filed under Act 111 and the PLRA, respectively.

In 2016, a total of 305 unfair practice charges were filed. Of these charges, 66 percent were filed pursuant to PERA, while 32 percent and 2 percent were filed under Act 111 and the PLRA, respectively.

Table 2 details the unfair practice cases concluded in 2015 and 2016, citing the method of disposition.

**Table 2: Unfair Practice Cases Concluded**

<b>Cases Sustained (Unfair Practice Found)</b>	<b>2015</b>	<b>2016</b>
by Board Order	8	7
by Hearing Examiner Order	24	28
<b>Cases Dismissed</b>		
by Administrative Dismissal	22	11
by Board Order	8	11
by Hearing Examiner Order	14	19
By Nisi Order	0	0
by No Complaint Letter	47	83
<b>Cases Withdrawn</b>		
by Nisi Order	236	222
<b>TOTAL</b>	<b>359</b>	<b>381</b>

## REPRESENTATION CASES

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

In 2015, a total of 107 representation cases were filed. Of these cases, 85 percent were filed pursuant to PERA and 15 percent were filed in accordance with Act 111.

In 2016, a total of 136 representation cases were filed. Of these cases, 82 percent were filed pursuant to PERA and 18 percent were filed in accordance with Act 111.

**Table 3: Certification Cases Concluded by Method of Disposition and Type of Order, 2015 and 2016**

	2015	2016
<b>Cases concluded by Unit Certification</b>		
by Certification of Representative	6	7
by Nisi Order*	27	25
<b>Cases Dismissed</b>		
by Administrative Dismissal	4	7
by Nisi Order of Dismissal	5	3
By Hearing Examiner	0	2
By Final Order	0	1
<b>Cases Withdrawn</b>		
by Nisi Order	1	9
<b>TOTAL</b>	43	54

\*A nisi order is a conditional order that 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 20 days of its issuance.



Tables 4 and 5 depict the total number and type of units certified in 2015 and 2016. All units certified were collective bargaining units; no meet and discuss units were certified during this time period. Combined units include both professional and nonprofessional employees.

**Table 4: Types of Units Certified, 2015**

	New Units	Existing Units		Total Certified
		Rival	Incumbent	
<b>Collective Bargaining Units</b>				
Professional	0	2	0	2
Nonprofessional	23	7	1	31
Professional & Nonprofessional	0	0	0	0
<b>Meet and Discuss</b>	0	0	0	0
<b>TOTAL</b>	23	9	1	33

**Table 5: Types of Units Certified, 2016**

	New Units	Existing Units		Total Certified
		Rival	Incumbent	
<b>Collective Bargaining Units</b>				
Professional	3	0	0	3
Nonprofessional	19	9	0	28
Professional & Nonprofessional	0	1	0	1
<b>Meet and Discuss</b>	0	0	0	0
<b>TOTAL</b>	22	10	0	32

**Table 6: Decertification Cases Concluded by Method of Disposition and Type of Order, 2015 and 2016**

	2015	2016
<b>Cases concluded by Decertification</b>		
by Nisi Order of Decertification	6	9
<b>Cases Dismissed</b>		
by Administrative Dismissal	1	2
by Nisi Order of Dismissal	0	2
by Hearing Examiner Order	0	1
by Final Order	0	1
<b>Cases Withdrawn</b>		
by Nisi Order	1	1
<b>TOTAL</b>	8	16

**Table 7: Unit Clarification and Amendment of Certification Cases Concluded by Method of Disposition and Type of Order, 2015 and 2016**

	2015	2016
<b>Cases concluded by Unit Clarification</b>		
by Hearing Examiner Order	4	8
by Nisi Order of Unit Clarification	33	27
by Board Order	1	1
<b>Cases concluded by Amendment of Certification</b>		
by Nisi Order of Amendment	1	2
<b>Cases Dismissed</b>		
by Administrative Dismissal	3	1
by Hearing Examiner Order	1	0
by Board Order	1	3
<b>Cases Withdrawn</b>		
by Nisi Order	12	8
<b>TOTAL</b>	56	50

**Table 8: ACT 111 of 1968 (Police & Firefighters) Certification, Decertification and Unit Clarification cases concluded, by method of disposition and type of order, 2015 and 2016**

	2015	2016
<b>ACT 111 Certification Cases Concluded</b>		
by Nisi Order of Certification	10	6
by Final Order	0	0
by Proposed Order of Unit Clarification	0	0
by Certification of Representative	2	3
by Nisi Order of Withdrawal	0	4
by Administrative Dismissal	0	0
<b>ACT 111 Decertification Cases Concluded</b>		
by Nisi Order of Decertification	2	1
by Final Order	0	0
<b>ACT 111 Unit Clarification Cases Concluded</b>		
by Nisi Order of Unit Clarification	0	2
by Proposed Order of Unit Clarification	0	0
by Nisi Order of Withdrawal	3	1
by Administrative Dismissal	0	0
<b>TOTAL</b>	17	17

**Table 9: Elections Conducted, 2015**

	Representation Election	Decertification Election
Non-Profit	0	0
Higher Education	4	0
Commonwealth	0	0
Authority	1	0
School District	2	0
County	4	1
Municipality	21	1
Private Sector	1	1
<b>TOTAL</b>	33	3

**Table 10: Elections Conducted, 2016**

	Representation Election	Decertification Election
Non-Profit	0	0
Higher Education	0	0
Commonwealth	0	0
Authority	1	3
School District	7	0
County	7	3
Municipality	13	0
Private Sector	0	0
<b>TOTAL</b>	28	6

## 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 orders 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 issuance of a board final order.

Summaries of the final orders issued by the board in 2015 and 2016 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 Employees of City of Philadelphia, PERA-U-13-175-E, 46 PPER 64 (Order Directing Remand to Hearing Examiner for Further Proceedings, January 21, 2015). The board affirmed the hearing examiner's proposed order of unit clarification holding that security officers at a juvenile detention facility were prison guards within the meaning of Section 604(3) of PERA. However, because only the local union for the guards filed the unit clarification petition, the Board remanded to the Hearing Examiner for findings of whether the district council as the representative of City of Philadelphia employees under Section 2003 of PERA, agreed to the filing of the petition.

Blackhawk Education Association, PSEA/NEA v. Blackhawk School District, PERA-C-14-58-W, 46 PPER 70 (Final Order, February 17, 2015). The board made final the hearing examiner's determination that the school district violated Section 1201(a)(1) and (5) by repudiating a collective bargaining agreement executed by the predecessor school board. The Board affirmed the holding that members of the school board who were not nominated for re-election were not in "lame duck" status when the collective bargaining agreement was ratified prior to the general election.

Daniel C. Angelucci v. Commonwealth of Pennsylvania, Pennsylvania Board of Probation and Parole, PERA-C-14-44-E, 46 PPER 92 (Final Order, April 21, 2015). The hearing examiner did not err in finding that the employer was not unlawfully motivated by the employee's protected activities when the employer issued a pre-disciplinary conference notice regarding the employee's alleged falsification of leave slips.

In the Matter of the Employees of Temple University, PERA-U-12-332-E, 46 PPER 93 (Final Order, April 21, 2015). The board affirmed the proposed order of unit clarification finding that faculty department chairs were management level employees under Section 301(16) of PERA or supervisors under Section 301(6) of PERA, and therefore excluded from the faculty bargaining unit.

In the Matter of the Employees of Carbon County, PERA-R-14-337-E, 47 PPER 2 (Final Order, June 16, 2015). The board upheld the hearing examiner's finding that the extent to which the sergeants in the sheriff's department performed supervisory duties did not render them supervisors within the meaning of Section 301(6) of PERA. Therefore, the board also sustained the finding that the lieutenants were not above the first level of supervision and thus management level employees under Section 301(16) of PERA.

American Federation of State County and Municipal Employees, District Council 47 v. City of Philadelphia, PERA-C-11-387-E, 47 PPER 18 (Final Order, July 21, 2015). The board affirmed the hearing examiner's conclusion that the city violated Section 1201(a)(1) and (5) of PERA by unilaterally implementing changes to a deferred retirement option pension benefit.

American Federation of State County and Municipal Employees, District Council 33 v. City of Philadelphia, PERA-C-11-324-E, 47 PPER 14 (Final Order, July 21, 2015). The board sustained the hearing examiner's conclusion that the city violated its bargaining obligation under Section 1201(a)(1) and (5) of PERA by unilaterally implementing changes to a deferred retirement option pension benefit for bargaining unit employees.

Transport Workers Union of America, Local 282 v. Bristol Township School District, PERA-C-12-341-E, 47 PPER 13 (July 21, 2015). The board affirmed the hearing examiner's finding that the school district was not a joint employer of the personal care assistants with a private contractor, and thus did not have an obligation to bargain their wages, hours and working conditions under Section 1201(a)(5) of PERA.

Upper St. Clair Education Support Professional Association, PSEA/NEA v. Upper St. Clair School District, PERA-C-14-265-W, 47 PPER 35 (Final Order, September 15, 2015). The board held that the hearing examiner did not err in concluding that under Section 903 of PERA the employer's refusal to process a dispute over arbitrability of the grievance to arbitration was a *per se* violation of Section 1201(a)(5) of PERA.

Pennsylvania State Corrections Officers Association v. Commonwealth of Pennsylvania, Department of Corrections, Rockview SCI, PERA-C-14-3`19-E, 47 PPER 43 (Final Order, October 20, 2015). The Board made absolute and final a proposed decision and order finding that the Commonwealth violated Section 1201(a)(1) and (5) of PERA by failing to comply with a grievance settlement agreement concerning staffing.

In the Matter of the Employees of Ford City Borough, PERA-U-14-257-W, 47 PPER 51 (Final Order, November 17, 2015). The board affirmed the hearing examiner's clarification of the unit to exclude the position of borough secretary as a confidential employee under Section 301(13) of PERA.

Chester Upland Education Association, PSEA/NEA v. Chester Upland School District, PERA-C-13-327-E, and Chester Upland Educational Support Personnel Association, PSEA/NEA v. Chester Upland School District, PERA-C-13-328-E, 47 PPER 50 (Final Order, November 17, 2015). The board sustained exceptions filed by the associations and held that the district violated Section 1201(a)(1) and (5) of PERA by unilaterally implementing an attendance and punctuality policy that differed from the negotiated sick leave benefit set forth in the parties' collective bargaining agreement.

In the Matter of the Employees of Midd-West School District, PERA-U-14-354-E, 47 PPER 61 (Final Order, December 15, 2015). The board upheld the hearing examiner's determination that the district failed to establish that the duties of the administrative secretary-payroll/tax collection position were confidential within the meaning of Section 301(13) of PERA.

United Steelworkers of America, Local 2599 v. Northampton County, Gracedale Nursing Home, PERA-C-15-3-E, 47 PPER 85 (Final Order, March 15, 2016). The board made absolute and final the hearing examiner's determination that the employer violated Section 1201(a)(1) and (5) of PERA by failing to maintain the *status quo* and unilaterally changing healthcare benefits after contract expiration.

Northampton County Deputy Sheriff's Association v. Northampton County, PERA-C-15-13-E, 47 PPER 90 (Final Order, March 15, 2016). The board made absolute and final the hearing examiner's determination that the employer violated Section 1201(a)(1) and (5) of PERA by failing to maintain the *status quo* and unilaterally changing healthcare benefits after contract expiration.

Jeanette M. Polizzi v. Lehigh Carbon Community College, PERA-C-13-256-E, 47 PPER 87 (Final Order, March 15, 2016). The board affirmed the Hearing Examiner's conclusion that that the complainant failed to establish that the employer violated Section 1201(a)(1) and (4) of PERA when it reduced her twelve-month position to a ten-month position with a corresponding salary reduction.

Elease Elliot v. Lancaster County, PERA-C-14-358-E, 47 PPER 86 (Final Order, March 15, 2016). The board upheld the hearing examiner's determination that the employee did not prove that the employer violated Section 1201(a)(1), (3) or (4) in connection with an alleged refusal to grant a requested shift change.

In the Matter of the Employees of Wilkinsburg Borough, PERA-U-15-191-W, 47 PPER 108 (Final Order, May 17, 2016). The board sustained the hearing examiner's clarification of an existing bargaining unit to exclude the code enforcement officer as a management level employee.

In the Matter of the Employees of Plum Borough School District, PERA-U-15-196-W, 48 PPER 4 (Final Order, June 21, 2016). The board sustained the employer's exceptions to the proposed order of unit clarification and held the position of confidential secretary for personnel and central administration was confidential under Section 301(13)(ii) of PERA.

Abington Heights Education Association v. Abington Heights School District, PERA-C-11-407-E (Final Order, July 19, 2016). The board affirmed the hearing examiner's determination that the employer did not violate Section 1201(a)(1) or (3) of PERA by issuing a directive to a nurse to follow a student's 504 plan after her testimony at an arbitration hearing.

In the Matter of the Employees of Wattsburg Area School District, PERA-U-12-240-W (Final Order, July 19, 2016). The board made final the hearing examiner's proposed order of dismissal concluding that the ROTC instructors are jointly employed by the United States Air Force and therefore are properly excluded from the bargaining unit of professional employees of the district.

Pittston Area Education Support Personnel Association v. Pittston Area School District, PERA-C-14-283-E, 48 PPER 32 (Final Order, September 20, 2016). The board upheld the hearing examiner's determination that the employer violated Section 1201(a)(1) and (5) of PERA by unilaterally having supervisors perform maintenance work that was performed by bargaining unit employees.

Erie County Technical School Federation of Teachers v. Erie County Technical School, PERA-C-15-345-W, 48 PPER 41 (Final Order, October 18, 2016). The board affirmed the hearing examiner's conclusion that the employer violated its obligation to bargain in good faith with the employee representative by distributing its final and best offer to the employees with a memorandum indicating that retroactivity may be withdrawn if not accepted by its deadline.

Conneaut Education Association v. Conneaut School District, PERA-C-14-379-W, 48 PPER 61 (Order Directing Remand to Hearing Examiner for Further Proceedings, November 15, 2016). The board reversed the hearing examiner and held that the employer's decision to implement cyber snow days was a managerial prerogative, but remanded the case to the hearing examiner for a determination of whether the employer unlawfully refused to bargain the impact of the program on severable issues of wages, hours and working conditions.

In the Matter of the Employees of the Port Authority of Allegheny County, PERA-U-14-267-W, 48 PPER 47 (Final Order, November 15, 2016). In a bargaining unit of first-level supervisors of the port authority, the board dismissed the employer's exceptions and affirmed the hearing examiner's finding that the maintenance training specialist was not a management level employee, but sustained the union's exceptions, and reversed the hearing examiner, to find that the position of technical trainer was also not a management level employee.

Jersey Shore Area Education Association, PSEA/NEA, and Frank Girardi, Jr. v. Jersey Shore Area School District, PERA-C-15-359-E, 48 PPER 50 (Final Order, November 15, 2016). The board made final the hearing examiner's decision concluding that the employer violated Section 1201(a)(1) and (5) of PERA by refusing to arbitrate its claims regarding the arbitrability of the employee's grievance.

Abington Heights Education Association v. Abington Heights School District, PERA-C-15-277-E, 48 PPER 56 (Final Order, December 20, 2016). The board sustained the hearing examiner's proposed decision and order finding that the employer violated Section 1201(a)(1) and (5) of PERA by refusing to arbitrate its claims regarding the arbitrability of the employee's grievance.

Palmyra Borough Police Officers Association v. Palmyra Borough, PF-C-13-65-E, 46 PPER 72 (Final Order, February 17, 2015). The board affirmed the Hearing Examiner's conclusion that the Borough violated Section 6(1)(a) and (c) of the PLRA. While the work rules concerning time limits for police activity, detailed daily activity logs, increased enforcement of vehicle stop sign violations, and preparation of crash reports, were managerial prerogative, the Hearing Examiner did not err in finding that the manner and issuance of separate rules in rapid succession during interest arbitration proceedings was done with union animus in violation of Section 6(1)(c) of the PLRA.

Middletown Borough Police Officers Association v. Middletown Borough, PF-C-13-109-E, 47 PPER 30 (Final Order, August 18, 2015). The board upheld the hearing examiner's conclusion that the borough violated Section 6(1)(e) of the PLRA by unilaterally adopting a policy manual which included changes to the employee disciplinary procedures. The Board also sustained the determination that the borough violated Section 6(1)(a) by failing to provide an employee a representative during an investigatory interview.

Catasauqua Police Officers Association v. Catasauqua Borough, PF -C-15-24-E (Final Order, June 21, 2016). The board affirmed the hearing examiner's proposed decision and order concluding that the employer did not violate its bargaining obligation under Section 6(1)(a) and (e) of the PLRA by placing an officer on administrative duty after his involvement in an on-duty shooting.

Fraternal Order of Police, Lodge 5 v. City of Philadelphia, PF-C-15-37-E (Final Order, August 16, 2016). The board affirmed the hearing examiner's determination that the employer violated Section 6(1)(a) and (e) of the PLRA by failing to comply with a grievance arbitration award directing relief to "all affected bargaining unit members" regarding take home vehicles.

Bensalem Township Police Benevolent Association v. Bensalem Township, PF-C-15-11-E, 48 PPER 40 (Final Order, October 18, 2016). The board sustained the hearing examiner's determination that the charge of unfair labor practice, alleging that the employer violated Section 6(1)(a) and (e) of the PLRA by failing to bargain a policy requiring a local agency law hearing for Heart and Lung Act benefits, was filed more than six-weeks after implementation of the policy and thus was untimely under the statute of limitations in Section 9(e) of the PLRA.

In the Matter of the Employees of Kaolin Mushroom Farms, Inc., PLRA-D-14-8-E (Final Order, July 21, 2015). The board upheld a Nisi Order of Decertification, and adopted a maximum three-year contract bar for representation petitions under the PLRA.

## **FINAL ORDERS DISMISSING EXCEPTIONS TO ADMINISTRATIVE DISMISSALS**

Allentown Education Association, PSEA/NEA v. Allentown City School District, PERA-C-14-406-E, 46 PPER 71 (Final Order, February 17, 2015). The board upheld the secretary's determination that the charge of unfair practices alleging the unilateral implementation of a leave policy in violation of 1201(a)(5) of PERA was not filed within the four-month statute of limitations under Section 1505.

Teamsters Local 529 v. Elkland Borough, PERA-C-15-42-E, 46 PPER 91 (Final Order, April 21, 2015). Because PERA expressly precludes police officers from the definition of employees under PERA, the secretary did not err in declining to issue a complaint on a charge of unfair practices alleging that the borough violated PERA by failing to comply with a settlement of a grievance involving police officers.

Allentown Education Association, PSEA/NEA v. Allentown City School District, PERA-C-15-65-E, 46 PPER 97 (Final Order, May 19, 2015). The board secretary's decision not to issue a complaint was upheld where the alleged increase in the workload of special education teachers would be a managerial prerogative.

Pearl MacKerchar v. Philadelphia School District and Public School Employees' Retirement System, PERA-C-15-150-E, 47 PPER 31 (Final Order, August 18, 2015). The board sustained the dismissal of the charge of unfair practices where the alleged unfair practice occurred more than four-months prior to the filing of the charge.

Anthony Stevenson v. Great Valley School District, PERA-C-15-232-E, 47 PPER 59 (Final Order, December 15, 2015). The board affirmed the secretary's determination that the charge of unfair practices failed to allege violations of Section 1201(a)(1) or (2) of PERA and thus no complaint would be issued.

John Gatto v. Somerset Area School District, PERA-C-15-270-W, 47 PPER 60 (Final Order, December 15, 2015). The board sustained the secretary's decision not to issue a complaint on a charge of unfair practices alleging that the district violated PERA by issuing a warning that future misconduct would result in discipline, where the allegations were that, prior to the employee engaging in protected activity, the district had notified the employee that a written warning would be forthcoming and that future misconduct could result in further discipline.

Amalgamated Transit Union, Local 1279 v. Cambria County Transit Authority, PERA-C-15-286-W, 47 PPER 70 (Final Order, January 19, 2016). The board upheld the secretary's determination not to issue a complaint on a charge of unfair practices alleging that the employer violated PERA by removing a water cooler from a break room in retaliation for the union processing to arbitration.

In the Matter of the Employees of Beaver County Community College, PERA-R-15-236-W, 47 PPER 78 (Final Order, February 16, 2016). A majority of the board made final the secretary's decision declining to direct a hearing on petition seeking to represent only part-time faculty employed by the college.



Mary Ann Dailey v. Association of Pennsylvania State College and University Faculties, PERA-C-15-131-E, 47 PPER 77 (Final Order, February 16, 2016). The board affirmed the Secretary's dismissal of a charge of unfair practices that alleged that the union's annual dues rebate program violated Section 1201(b)(1) of PERA.

Downingtown Area Education Association, PSEA/NEA v. Downingtown Area School District, PERA-C-15-363-E, 47 PPER 98 (Final Order, April 19, 2016). The board held that the secretary properly declined to issue a complaint because the district's utilization of new technology regarding on-line class work and assignments fell within its managerial prerogative under Section 702 of PERA.

In the Matter of the Employees of Glassport Borough, PERA-D-16-25-W, 47 PPER 95 (Final Order, April 19, 2016). The board found that the secretary correctly determined the employer lacked standing to file exceptions to the Secretary's dismissal of the union's disclaimer of interest with respect to only the clerical employees in a broad based unit of all nonprofessional employees.

In the Matter of Employees of Montgomery County, PERA-R-16-125-E (Final Order, July 19, 2016). The board held that the secretary properly dismissed a representation petition that was limited to employees of the county's department of health on the ground that it does not comply with the Board's broad-based bargaining unit policy.

In the Matter of the Employees of Wissahickon School District, PERA-U-14-212-E, 48 PPER 23 (Final Order, August 16, 2016). The board dismissed as untimely exceptions to a nisi order of dismissal in the nature of an objection to the conduct of an election under Section 95.57 of the Board regulations. The board also dismissed the exceptions challenging Section 604(2) of PERA that requires a majority of all professional employees to vote for inclusion in a combined unit with nonprofessional employees.

In the Matter of the Employees of the Commonwealth of Pennsylvania, PERA-R-16-124-E, 48 PPER 22 (Final Order, August 16, 2016). The board affirmed the secretary's determination that the proposed bargaining unit limited to the job title of solid waste program specialists employed by the state Department of Environmental Protection was inappropriately narrow.

Intermediate Unit #6 Education Association, PSEA/NEA v. Riverview Intermediate Unit #6, PERA-C-16-115-W, 48 PPER 31 (Final Order, September 20, 2016). The charge of unfair practices was not received by the board within the four-month statute of limitations under Section 1505, and therefore the board upheld the secretary's decision not to issue a complaint.

Quentin Salem v. Commonwealth of Pennsylvania, Pennsylvania Higher Education Assistance Agency, PERA-C-16-233-E, 48 PPER 51 (Final Order, November 15, 2016). The board sustained the secretary's dismissal of the charge of unfair practices filed eleven months after the complainant's termination, as beyond the four-month limitations period under Section 1505 of PERA.

Gail S. Knauer v. City of Reading, PF-C-15-6-E, 47 PPER 1 (Final Order, June 16, 2015). The board sustained the Secretary's decision not to issue a complaint where the employee failed to allege facts supporting discrimination under Section 6(1)(c) in the charge of unfair labor practices and the employee lack standing to allege a violation of Section 6(1)(e) for an alleged refusal to process her grievance.

Gail S. Knauer v. International Association of Fire Fighters, Local 1803, PF-C-15-7-E, 47 PPER 5 (Final Order, June 16, 2015). The board affirmed the secretary's determination that the charge of unfair labor practices was not filed within the six-week statute of limitations under Section 9(e) of the PLRA. Additionally, the charge of unfair labor practices filed by an employee against the union alleging a failure to process a grievance was not within the jurisdiction of the board.

Fraternal Order of Police, Lodge 34 v. City of Farrell, PF-C-15-94-W, 47 PPER 84 (Final Order, March 15, 2016). The board upheld the secretary's decision that a charge alleging that the city had announced an intent to withdraw from a regional police department, was filed prematurely.

In the Matter of the Employees of Philadelphia Parx Racetrack, PLRA-R-14-11-E, 46 PPER 65 (Final Order, January 21, 2015). The board sustained the secretary's decision not to direct a hearing on a

representation petition filed by the jockeys, noting a prior determination, to which no exceptions were filed, holding that the jockeys were independent contractors.

## Summaries of Court Opinions

The following court opinions involving board cases were issued in between 2015 and 2016. 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 has first-level appellate jurisdiction over appeals of board final orders. See 42 Pa. C.S. §§ 763 and 933 (as amended).

### COMMONWEALTH COURT

Lancaster County v. Pennsylvania Labor Relations Board, 1110 C.D. 2012 (July 6, 2016). On remand from the Pennsylvania Supreme Court, the Commonwealth Court affirmed the board's determination that county committed unfair labor practices in violation of Section 1201(a)(1) and (3) of PERA when it terminated two employees of county youth intervention center for their union activities.

Trometter v. Pennsylvania Labor Relations Board, 1484 C.D. 2015, 147 A.3d 601 (September 8, 2016). The Commonwealth Court reversed an order of the board referring to the Attorney General a report of political contributions under Section 1701 of PERA. Commonwealth Court held that the obligation to adjudicate the report and determine whether unlawful political contributions were made by the union, was statutorily vested in the Board.

Dailey v. Pennsylvania Labor Relations Board, 413 C.D. 2016, 148 A.3d 920 (October 14, 2016), *re-argument denied* (Nov. 30, 2016). The Commonwealth Court affirmed the board's Final Order dismissing the charge of unfair practices alleging that the union violated Section 1201(b)(1) of PERA by allowing employees to voluntarily select to have twenty-five dollars of their union dues rebated to them, retained in the union's general fund, or donated to a political action committee.

Chester Upland School District v. Pennsylvania Labor Relations Board, 2599 C.D. 2015, 150 A.3d 143 (November 16, 2016). The Commonwealth Court affirmed the board's Final Order holding that the employer violated Section 1201(a)(1) and (5) of PERA by unilaterally implementing an attendance and punctuality policy that differed from the provisions for sick leave under the expired collective bargaining agreement.

Kaolin Workers Union v. Pennsylvania Labor Relations Board, 1433 C.D. 2015, 140 A.3d 748 (June 15, 2016). The Commonwealth Court affirmed the Board's Order of Decertification, agreeing with the Board's adoption of a three-year contract bar under the PLRA, and held that a seven-year collective bargaining agreement entered into in 2009 did not bar a decertification petition filed in 2014.

### PENNSYLVANIA SUPREME COURT

Lancaster County v. Pennsylvania Labor Relations Board, 109 and 110 MAP 2014, 124 A.3d 1269 (October 27, 2015). The Pennsylvania Supreme Court reversed a decision of the Commonwealth Court, and reinstated the board's conclusion that the county committed unfair labor practices in violation of Section 1201(a)(1) and (3) of PERA when it terminated two employees of county youth intervention center for their union activities. The Supreme Court however, remanded the case to the Commonwealth Court to address issues that were not discussed in the Commonwealth Court's December 30, 2013 Opinion.

American Federation of State, County and Municipal Employees v. Pennsylvania Labor Relations Board, 11 MAP 2014, 111 A.3d 1140 (March 25, 2015). The Pennsylvania Supreme Court affirmed the Opinion of the Commonwealth Court which held that the Board did not err in finding that the union failed to establish that the Workforce Investment Board's decision to subcontract work previously performed by county employees was an unfair practice committed by the county.

Chambersburg Borough v. Pennsylvania Labor Relations Board, Nos. 37, 38, 39. 40 MAP 2015, 139 A.3d 189 (June 20, 2016). Following oral argument, the Pennsylvania Supreme Court entered an order dismissing the appeals filed by the PLRB and IAFF as improvidently granted, thus leaving intact a reported decision of the Commonwealth Court reversing the board and holding that a letter sent by the local representative of the borough firefighters to volunteer firefighters asking them to refrain from volunteering in the borough, was engaging in a secondary boycott in violation of Section 6(2)(d) of the PLRA and thus the borough did not violate Section 6(1)(a) and (c) by disciplining the local union president.

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## Appendix I

### Public Employee 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 employees in the exercise of the rights guaranteed in Article IV of this act.\*\*
- (2) Dominating or interfering with the formation, existence or administration of any employee 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 employee organization.
- (4) Discharging or otherwise discriminating against an employee 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 employee representative which is the exclusive representative of employees 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) Employee organizations, their agents, or representatives, or public employees are prohibited from:

- (1) Restraining or coercing public employees 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 employees in an appropriate unit.
- (4) Violating any of the rules and regulations established by the board regulating the conduct of representation elections.
- (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 employee 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."

\*\*It shall be lawful for public employees to organize, form, join or assist in employee 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 employees 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.

## 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 employees 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 employees, as provided in section seven(a) of this act\*\*\*, 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 employees of the employer at the time of the making of such agreement, provided such employee was not employed in violation of any previously existing agreement with said labor organization.

(d) To discharge or otherwise discriminate against an employee because he had filed charges or given testimony under this act.

(e) To refuse to bargain collectively with the representatives of his employees, subject to the provisions of section seven(a) of this act.\*\*\*

(f) To deduct, collect, or assist in collecting from the wages of employees 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 employees in the appropriate collective bargaining unit taken by secret ballot, and unless thereafter received written authorization from each employee whose wages are affected.

(2) It shall be an unfair 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 employee or for employees acting in concert—

(a) To intimidate, restrain, or coerce any employee for the purpose and with the intent of compelling such employee 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 purpose of collective bargaining.

(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 employee or employees 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.

\*\*\*Representatives designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes, shall be the exclusive representatives of all the employees 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 employee or a group of employees shall have the right at any time to present grievances to their employer.