

Pennsylvania Labor Relations Board

2019-2020 Report

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

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Introduction

This report explains the roles, responsibilities, and activities of the Pennsylvania Labor Relations Board (Board) during the 2019 and 2020 calendar years. The report contains summaries of board final orders and court opinions issued during those years; discussions and statistics on the Board's caseload; and case-processing activities for each of the statutes administered by the Board.

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

The Board is responsible for administering and enforcing four 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 protects employees, employers, and labor organizations engaged in legal activities associated with the collective bargaining process. The Board's private-sector jurisdiction is now very limited and only consists of Pennsylvania-based employers and their employees not covered by the [National Labor Relations Act \(NLRA\)](#), often referred to as the Wagner Act. Passed in 1935, the NLRA served as a precursor and model of the PLRA.

Most of the Board's jurisdiction is in the public sector. The [Public Employe Relations Act](#) (PERA), enacted in 1970, extends collective bargaining rights and obligations to most public employees and their employers at the state, county, and local government levels, and vests 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 grants collective bargaining rights to police officers and firefighters.

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

Board Responsibilities

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 exclusive bargaining representatives, as well as the authority to remedy and prevent unfair labor practices. In addition, for public employees other than police and firefighters, the Board plays a role in the 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 collective bargaining units, based on guidelines established in each act, case law, and policy. The Board then conducts secret ballot elections to determine whether a majority (or 50% under Act 111) of employees in an appropriate unit wish to be represented by an employee organization. Employees or employee organizations seeking representation must file a petition supported by a showing of interest of 30% 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 issue a certification.

Once certified as the exclusive bargaining representative, an employee organization can be decertified by the filing of a decertification petition, which must also be supported by a showing of interest of 30% of the employees in the unit. In the case of an employer-filed decertification 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 status if it does not receive a majority (or 50% under Act 111) of the valid votes cast in an election. A certified representative can also voluntarily relinquish its status through the filing of a disclaimer of interest.

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

Unfair Labor Practice Cases

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

The Board's [Rules and Regulations](#) authorize the Board Secretary to issue complaints in unfair practice charges when it is determined that a sufficient cause of action is stated in the charge. After a complaint is issued, the case is assigned to a hearing examiner for further investigation. Conciliation can be used for the purpose of arriving at a settlement of the case without a formal hearing. Should conciliation fail, the case proceeds to a formal hearing.

At the hearing, a representative of the party that filed the charge prosecutes the case before a hearing examiner. Both parties have the opportunity to present testimony and documentary evidence and cross-examine witnesses. After a hearing, the hearing examiner issues a decision called a Proposed Decision and Order containing a statement of the case, findings of fact, conclusions of law, and an order either dismissing or sustaining the charge. If the charge is sustained, appropriate actions to remedy the effect of the unfair

practice may be ordered. If necessary, the Board has the authority to petition the courts for the enforcement of its orders, appropriate temporary relief, or restraining orders.

Occasionally, charges are filed by public employees against employee organizations alleging violations of the union's duty of fair representation. These are dismissed for lack of jurisdiction based on a Pennsylvania Supreme Court decision that held that such actions do not constitute an unfair labor practice. Instead, these situations must be addressed in the courts by the individual. 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 Cmwlt 2001). Duty of fair representation charges filed by private-sector employees are also dismissed for lack of jurisdiction, but these employees may address their allegations to the National Labor Relations Board.

Impasse Resolution Cases

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

Fact Finding

Under PERA, the Board has the discretion to appoint fact finders to attempt to settle bargaining impasses if it feels it would be beneficial. Although the language of the statute refers to "panels", in almost all cases the Board appoints a single fact finder. Once appointed, the fact finder holds hearings and must issue a report within 40 days containing findings of fact and recommendations. The parties then have 10 days either to accept or reject the report. If either party rejects the report, it is published and the parties must reconsider for 10 days to accept or reject it. If either party again rejects the report, the process is concluded without resolution. If both parties accept the report, the bargaining impasse is resolved and the report is incorporated into a bargaining agreement.

Under Act 88, the authority for making fact-finding appointments in cases involving school employees transferred from PERA. Unlike PERA, Act 88 provides for mandatory appointment of fact-finders in certain circumstances based on timeframes contained in the act, as well as discretionary appointments.

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

Arbitration

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

Inquiries and Assistance

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

Total Case Summary

The following pages contain information detailing the Board’s activities during the 2019 and 2020 calendar years. Statistical data is provided regarding cases filed and concluded. Please note that the information contained in this report, while believed accurate, should not be relied upon for legal research.

In 2019, a total of 392 cases were filed with the board, including 292 cases under PERA, 75 under Act 111, 22 under Act 88, and 3 under PLRA. Charges of unfair practices comprised over 55% of all cases filed in 2019, while 29% of the filings were representation cases.

In 2020, the Board received 393 cases, including 306 filed under PERA, 78 under Act 111, 4 under Act 88, and 5 under PLRA. Charges of unfair practices comprised almost 61% of all cases filed in 2020, while almost 24% were representation cases.

Table 1: Cases Filed by Category of Employer for 2019 and 2020

Category of Employer	Year Filed	Charge of Unfair Practice	Representation	Unit Clarification	Decertification	Fact-Finding	Arbitration
Authority	2019	10	5	0	0	0	0
	2020	18	8	2	1	0	0
Commonwealth	2019	19	3	13	3	0	1
	2020	26	1	14	0	0	1
County	2019	17	7	6	4	0	35
	2020	38	8	2	2	0	53
Higher Education	2019	9	2	2	1	2	0
	2020	10	3	1	0	0	0
Municipality	2019	81	24	10	3	1	2
	2020	94	15	11	4	0	3
Non-Profit	2019	1	0	0	0	0	0
	2020	0	0	0	0	0	0
Private Sector	2019	1	0	0	0	0	0
	2020	4	0	0	0	0	0
School District	2019	75	2	29	1	21	0
	2020	47	5	16	0	4	0
Union	2019	2	0	0	0	0	0
	2020	2	0	0	0	0	0
TOTAL	2019	215	43	60	12	24	38
	2020	239	40	46	7	4	57

UNFAIR LABOR PRACTICE CASES

In 2019, a total of 215 unfair practice charges were filed. Of these, 70% were filed under PERA, 28% under Act 111, and 1% under PLRA.

In 2020, a total of 239 unfair practice charges were filed. Of these, 70% were filed under PERA, 28% under Act 111, and 1% under PLRA.

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

Cases Concluded - Charges	2019	2020
by Board Order	15	6
by Hearing Examiner Order	39	17
by Administrative Dismissal	8	2
by No Complaint Letter	40	49
by Nisi Order of Withdrawal	149	125
TOTAL	251	199

REPRESENTATION CASES

In 2019, a total of 115 representation cases were filed. Of these, 88% were filed under PERA, 12% under Act 111, and 0% under PLRA.

In 2020, a total of 93 representation cases were filed. Of these, 88% were filed under PERA, and 12% under Act 111, and 0% under PLRA.

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

Cases Concluded - Representation	2019	2020
by Certification of Representative	7	11
by Nisi Order of Certification	17	15
by Administrative Dismissal	16	11
by Nisi Order of Dismissal	1	2
by Hearing Examiner	10	8
by Final Order	2	1
by Nisi Order of Withdrawal	11	21
by Nisi Order of Unit Clarification	25	31
by Nisi Order of Decertification	7	4
TOTAL	96	104

Table 4: Elections Conducted, 2019

	Representation Election	Decertification Election
Non-Profit	0	0
Higher Education	0	0
Commonwealth	0	0
Authority	1	0
School District	5	0
County	5	0
Municipality	7	0
Private Sector	0	0
TOTAL	18	0

Table 5: Elections Conducted, 2020

	Representation Election	Decertification Election
Non-Profit	0	0
Higher Education	0	0
Commonwealth	0	0
Authority	3	0
School District	0	0
County	3	0
Municipality	11	0
Private Sector	0	0
TOTAL	17	0

Summaries of Board Orders

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

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

Summaries of the final orders issued by the Board in 2019 and 2020 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

Shamokin Area Education Association, PSEA/NEA v. Shamokin Area School District, PERA-C-17-337-E, 50 PPER 54 (Final Order, February 19, 2019). Sustained finding of a violation of Section 1201(a)(1) and (5) of PERA.

Oil City Education Support Professionals, PSEA/NEA v. Oil City Area School District, PERA-C-17-362-W, 50 PPER 68 (Final Order, March 19, 2019). Dismissed allegations of violation of Section 1201(a)(1) and (5) of PERA.

AFSCME District Council 47, Local 2187 v. City of Philadelphia, PERA-C-17-187-E, 50 PPER 75 (Final Order, April 16, 2019). Dismissed allegations of violation of Section 1201(a)(1) and (5) of PERA as untimely.

Fraternal Order of Transit Police, FOP Lodge 109 v. Southeastern Pennsylvania Transportation Authority, PERA-C-17-55-E, 50 PPER 76 (Final Order, April 16, 2019). Sustained finding of a violation of Section 1201(a)(1) and (5) of PERA.

In the Matter of the Employees of University of Pittsburgh, PERA-U-17-149-W, 50 PPER 84 (Final Order, May 21, 2019). Affirmed Proposed Order of Unit Clarification.

AFSCME District Council 47, Local 2187, AFL-CIO v. City of Philadelphia, PERA-C-17-43-E, ___ PPER ___ (Final Order, July 16, 2019). Dismissed allegations of violation of Section 1201(a)(5) of PERA.

Fraternal Order of Police Lodge 5 v. City of Philadelphia, PF-C-15-42-E, PF-C-15-53-E, ___ PPER ___ (Final Order, July 16, 2019). Dismissed allegations of violation of Section 6(1)(a) and (e) of the PLRA at PF-C-15-42-E as prematurely filed. Dismissed allegations of violation of Section 6(1)(a), (c) and (e) of the PLRA at PF-C-15-53-E.

International Association of Fire Fighters, Local 104, AFL-CIO v. City of Wilkes-Barre, PF-C-16-83-E, ___ PPER ___ (Final Order, July 16, 2019). Dismissed allegations of violation of Section 6(1)(a) and (c) of the PLRA.

Teamsters Local Union No. 261 v. Lawrence County, Lawrence County Prison Board, PERA-C-18-29-W, 51 PPER 18 (Final Order, August 20, 2019). Sustained finding of a violation of Section 1201(a)(1) and (3) of PERA.

Fraternal Order of Police, Lodge 5 v. City of Philadelphia, PF-C-17-27-E, 51 PPER 28 (Final Order, October 15, 2019). Dismissed allegations of violation of Section 6(1)(a) and (e) of the PLRA.

Teamsters Local Union No. 249 v. City of Pittsburgh, PERA-C-18-140-W, ___ PPER ___ (Final Order, December 17, 2019). Sustained finding of a violation of Section 1201(a)(1) and (5) of PERA.

International Brotherhood of Teamsters, Local No. 8 v. Pennsylvania State University, PERA-C-18-303-E, 51 PPER 47 (Final Order, January 21, 2020). Sustained finding of a violation of Section 1201(a)(1) and (5) of PERA and dismissed allegations of violation of Section 1201(a)(8) of PERA.

Faculty Federation of Community College of Philadelphia, Local 2026 AFT, AFL-CIO v. Philadelphia Community College, PERA-C-17-332-E, ___ PPER ___ (Final Order, April 21, 2020). Dismissed allegations of violation of Section 1201(a)(1), (3) and (5) of PERA.

Lackawanna County Deputy Sheriff's Association v. Lackawanna County, Lackawanna County Sheriff, PERA-C-18-103-E, ___ PPER ___ (Final Order, April 21, 2020). Sustained finding of a violation of Section 1201(a)(1) and (3) of PERA.

Officers of Towamencin Township Police Department v. Towamencin Township, PF-C-18-11-E, ___ PPER ___ (Final Order, July 21, 2020). Sustained finding of a violation of Section 6(1)(a) and (e) of the PLRA.

In the Matter of the Employes of Pennsylvania State System of Higher Education (Indiana University), PERA-U-19-27-E, ___ PPER ___ (Final Order, September 15, 2020). Affirmed Proposed Order of Unit Clarification.

Allegheny County Prison Employees Independent Union v. Allegheny County, PERA-C-19-113-W, ___ PPER ___ (Final Order, December 15, 2020). Sustained finding of a violation of Section 1201(a)(1) and (5) of PERA.

FINAL ORDERS DISMISSING EXCEPTIONS TO ADMINISTRATIVE DISMISSALS

Fraternal Order of Police, Delaware County Lodge 27 v. Yeadon Borough, PF-C-18-100-E (Final Order, January 8, 2019). Dismissed allegations of violation of Section 6(1)(a) and (e) of the PLRA.

In the Matter of the Employes of Bristol Township, PERA-D-18-272-E, 50 PPER 77 (Final Order, April 16, 2019). Dismissed Petition for Decertification.

Pennsylvania State Troopers Association v. Commonwealth of Pennsylvania, Pennsylvania State Police, PF-C-19-13-E, 50 PPER 85 (Final Order, May 21, 2019). Dismissed allegations of violation of Section 6(1)(a) and (c) of the PLRA.

Angelique Jenkins v. Transport Workers Union Local 234, PERA-C-19-61-E, ___ PPER ___ (Final Order, July 16, 2019). Dismissed allegations of violation of Section 1201(b)(1), (2), (3), (4) and (9) of PERA.

Fraternal Order of Transit Police v. Southeastern Pennsylvania Transportation Authority, PERA-C-19-219-E, ___ PPER ___ (Final Order, December 17, 2019). Dismissed allegations of violation of Section 1201(a)(1) and (5) of PERA.

Springfield Township Police Bargaining Unit v. Springfield Township, PF-C-20-25-E, ___ PPER ___ (Final Order, July 21, 2020). Dismissed allegations of violation of Section 6(1)(a), (b), (c), (d), (e) and (f) of the PLRA.

Summaries of Court Opinions

The following court opinions involving board cases were issued in 2019 and 2020. Court opinions are cited to The Pennsylvania Public Employee Reporter (PPER), published annually, and at the appellate level, the appropriate court citation is included if available.

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

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

COMMONWEALTH COURT

Community College of Philadelphia v. Pennsylvania Labor Relations Board, 613 C.D. 2017, 205 A.3d 436 (Pa. Cmwlth. March 13, 2019). Affirming Board's dismissal of allegations of violation of Section 1201(b)(3) of PERA.

Daniel Angelucci v. Pennsylvania Labor Relations Board, 75 C.D. 2018, 210 A.3d 367 (Pa. Cmwlth. April 2, 2019). Affirming Board's dismissal of Petition for Decertification.

Keith Grube v. Pennsylvania Labor Relations Board, 76 C.D. 2018, 212 A.3d 105 (Pa. Cmwlth. April 2, 2019). Affirming Board's dismissal of Petition for Decertification.

Amalgamated Transit Union Local 1279 v. Pennsylvania Labor Relations Board, 1134 C.D. 2018, 2019 WL 1906237 (Pa. Cmwlth. April 30, 2019). Affirming Board's dismissal of allegations of violation of Section 1201(a)(1), (2), (3) and (4) of PERA.

Lower Swatara Township v. Pennsylvania Labor Relations Board, 1276 C.D. 2018, 208 A.3d 521 (Pa. Cmwlth. May 2, 2019). Affirming Board's Nisi Order of Certification.

Bristol Township v. Pennsylvania Labor Relations Board, 547 C.D. 2019, 230 A.3d 523 (Pa. Cmwlth. April 24, 2020). Affirming Board's dismissal of Petition for Decertification.

City of Philadelphia v. Pennsylvania Labor Relations Board, 1052 C.D. 2019, 242 A.3d 999 (Pa. Cmwlth. December 14, 2020). Quashed Petition for Review of Board's dismissal of allegations of violation of Section 6(1)(a) and (e) of the PLRA at PF-C-15-42-E for lack of standing.

SUPREME COURT

Exeter Township v. Pennsylvania Labor Relations Board, 49 MAP 2018, 50 MAP 2018, 211 A.3d 752 (Pa. July 17, 2019). Affirming Board's dismissal of Petition for Unit Clarification seeking to exclude zoning officer position.

Association of Pennsylvania State College and University Faculties v. Pennsylvania Labor Relations Board, 67 MAP 2018, 226 A.3d 1229 (Pa. March 26, 2020). Affirming Board's dismissal of allegations of violation of Section 1201(a)(1) and (5) of PERA.

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