

PENNSYLVANIA LABOR RELATIONS BOARD

2014

ANNUAL 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. By limited public distribution of this report, the Board also seeks to provide general information concerning its functions and role in Pennsylvania labor relations. Interpretation of case law should not be construed as official statement of Board policy, and should not be offered as authority for any legal position.

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INTRODUCTION

This report explains the role and responsibilities of the Pennsylvania Labor Relations Board (PLRB), and outlines its activities during the 2014 calendar year. The report contains summaries of all PLRB final orders, all court opinions involving PLRB cases issued during 2014, discussions and statistical tables on the PLRB's caseload, and its case-processing activities for each of the statutes it administers.

The PLRB administers and enforces four commonwealth laws dealing with labor-management relations.

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. While the full-time staff in the central office in Harrisburg and a regional office in Pittsburgh are responsible for day-to-day activities, the three-member Board resolves appeals from 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 and protects employees, employers, and labor organizations engaged in legal activities associated with the collective bargaining process. The Board's private-sector jurisdiction is limited to employers and their employees not covered by the National Labor Relations Act, for the most part only small, local businesses.

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, which granted collective bargaining rights to police officers and firefighters.

Act 88 of 1992 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 between notice and conclusion of a strike or during arbitration. The Act provides that either party may request fact-finding not later than 81 days prior to the end of the school fiscal year (June 30), and that the Board must appoint a fact-finding panel upon receipt of such request. The Board is also empowered to appoint fact-finders within its discretion at other times than the mandated period. The Act 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. In these cases, the Board must pay one-half of the costs of the arbitrators.

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 to 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

Under 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 which would be 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 in relevant case law. The Board also determines whether employees in an appropriate unit wish to be represented by a specific labor or employee organization. This is principally done through the conduct of secret ballot elections. Employees or employee representatives seeking elections must file petitions supported by 30 percent of the employees in the unit.

Units may be certified without conducting elections if an employer does not question either the appropriateness of a unit or the majority status of a 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 be supported by 30 percent of the employees in the unit, or in the case of an employer- filed petition, by a statement or other evidence of what is referred to as a “substantiated good faith doubt” of the majority status of the representative. 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 in a decertification election, or if it voluntarily decides to relinquish its representative status through the filing of a disclaimer of interest.

Parties may petition the Board under PLRA, PERA, or Act 111 for clarification of whether certain positions should be properly included in a unit. This procedure is frequently applied to determine managerial, supervisory, or confidential status, to allocate newly created positions to appropriate bargaining units, or to merge two or more existing units.

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 investigation of charges of unfair practices and direction of remedies if such practices are found. Both the Pennsylvania Labor Relations Act and the Public Employee Relations Act 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.

Since the PLRA and PERA grant similar collective bargaining rights for private-and-public sector employees, some of their enumerated prohibited practices are similar. For instance, both acts prohibit employers from interfering, restraining, or coercing employees in the exercise of their rights.

Employers may not refuse to bargain, dominate, or interfere with the formation or administration of any employee organization, or discriminate against employees because of union activity. The enumerated employee's or employee organization's unfair practices in both acts restrict similar interference and unlawful restraints that could occur in bargaining relations with employers or in dealing with individual employees.

The Board's rules and regulations authorize the secretary of the Board to issue complaints in unfair practice charges when, upon review, it is determined that a sufficient cause of action is stated in the charge. After a complaint is issued, the case may be assigned directly to a hearing or to a conciliator for further investigation or discussions between the parties for the purpose of arriving at a settlement of the case short of a formal hearing. Should the settlement effort fail, or should the case contain issues and circumstances which appear not to be amenable to a negotiated settlement, the case will go to a formal hearing.

At the hearing, a representative of the party filing the charge will prosecute the case before a PLRB hearing examiner. The Board does not provide legal counsel for individuals who have filed charges of unfair practices. The parties present testimony, examine, and cross-examine witnesses and introduce evidence concerning the charge. A stenographic record is made of the hearing.

Upon conclusion of a hearing, the hearing examiner will issue 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 to the parties. If the charge is sustained, appropriate actions to remedy the effect of the unfair practice, including reinstatement of employees discharged in violation of one of the acts, with or without back pay, may be ordered. The Board has the authority to petition the courts for the enforcement of such orders, and for appropriate temporary relief or restraining orders.

Impasse Resolution Cases

The Board has limited powers relating to bargaining impasses between employers and employees under the Public Employee Relations Act and Act 88 of 1992.

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 under both PERA and Act 88 to appoint a fact-finding panel to make findings and recommendations for resolving the dispute if it finds that the issues and circumstances in the case are such that fact-finding would be beneficial. In Act 88 cases, all of which involve school employees, the Board is also directed to make fact-finding appointments under certain circumstances.

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

2014 Operations Summary

Since the enactment of the Public Employee Relations Act in 1970, the majority of all cases filed with the Board each year have been under this Act.

In 2014, there were 601 cases filed, including 421 cases under PERA, 129 cases under Act 111, 12 cases under the Pennsylvania Labor Relations Act, and 39 cases under Act 88 of 1992.

Charges of unfair practices were 66 percent of total filings in 2014; representation, decertification, and unit clarification cases constituted 19 percent of the caseload in 2014.

In 2014, municipalities had the highest percentage of cases filed with 34 percent. After municipalities, school districts were the second largest source of filings with 30 percent, while counties accounted for 17 percent of cases. About seven percent of cases filed involved the commonwealth. Table 1 shows overall figures for cases filed by type of employer and type of case.

There were 39 elections conducted in 2014, 75 percent of which were pursuant to the Public Employee Relations Act. Approximately 8 percent of elections conducted during 2014 were held within 60 days from filing the petition. An additional 74 percent of elections were conducted within 120 days from filing.

Detailed breakdowns of cases filed and information on cases concluded are contained in the sections of this report pertaining to activity under each statute. Act 88 information is presented in the section on the Public Employee Relations Act. The Board concluded 393 charge cases, 60 representation cases, and 133 combined unit clarification, amendment of certification and decertification cases in 2014.

In addition to statistical information on the Board's activity under each statute, this report contains brief summaries of final orders issued by the Board and court opinions issued during 2014 relating to Board cases. Citations for the Board's final orders are given as the Board's case number, and the volume and page number of the Pennsylvania Public Employee Reporter (PPER). Court opinions are cited to PPER and, at the appellate level, the appropriate court citation is included if available. Concluded cases are those which have been closed prior to reaching the final order stage and those in which a final order has been issued. Not all cases which are shown as concluded by final order are closed, as there are court appeals or enforcement actions pending in some of them.

The reader should be careful to note that appellate developments for Board decisions covered by this report show only those decisions issued during the reporting period. Further developments will be contained in subsequent reports.

The court case summaries are informational only, and should not be relied upon for legal research.

TABLE 1**CASES FILED BY TYPE OF EMPLOYER AND TYPE OF CASE: 2014**

Type of Employer	All Cases	Unfair Practice	Representation	Unit Clarification	Decertification	Others*
Authorities	30	19	6	1	0	4
Commonwealth	40	28	0	11	0	1
Counties	102	40	7	7	2	46
Higher Education	10	9	1	0	0	0
Municipalities	203	157	23	16	4	3
Non-Profit	9	7	0	2	0	0
Private Sector	12	9	2	0	1	0
School Districts	183	114	6	21	3	39
Non-Employers	12	11	0	0	0	1
Total	601	394	45	58	10	94

*Includes fact-finding, interest arbitration and Act 88 cases.

PUBLIC EMPLOYE RELATIONS ACT

SUMMARY OF CASELOAD AND CASE PROCESSING

In 2014, there were 421 cases filed under the Public Employee Relations Act, including 275 unfair practice charges, 31 certification petitions, seven decertification petitions, 53 unit clarification or amendment of certification petitions, six fact-finding cases, one other and 48 arbitration cases.

In 2014, there were 39 cases filed under Act 88 of 1992, all of which were initiated as fact-finding requests. Thirty-eight total fact-finding appointments were made, the majority being Act 88.

There were 393 PERA cases concluded in 2014, including 286 unfair practice cases, 45 certification cases, 11 decertification cases, and 51 unit clarification or amendment of certification cases.

Unfair Practice

Of the 275 unfair practice cases alleging violations of the provisions of the Public Employee Relations Act in 2014, 11 were filed against employe organizations.

Some charges are filed against employe 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).

Table 2 provides statistical summaries of the disposition of unfair practice cases concluded in 2014. Information is presented on the number of cases concluded by the three general types of dispositions possible: Sustention, dismissal, and withdrawal. The disposition categories are then subdivided by the type of order concluding the case.

Table 3 shows the subsections of Section 1201 cited as violated in the cases concluded by an unfair practice finding. (See Appendix I for specific unfair practices listed in Section 1201 of PERA).

Many of the withdrawals reflect the Board's efforts to conciliate unfair practice cases which may be amenable to resolution. The Board has found that conciliation affords the parties an opportunity to arrive at mutually agreed upon solutions to problems without the expense and time required in litigation.

Representation

The PLRB receives four basic types of representation cases: (1) cases requesting the certification of an employe representative; (2) cases requesting the decertification of a previously certified employe representative; (3) cases requesting clarification of whether certain classifications should be included within a certain certified unit; and (4) cases requesting an amendment to a certification to reflect a change in the name or affiliation of a certified employe representative.

The following sections address the PLRB's caseload and case processing activities for each of the four types of representation cases.

Certification

In 2014, 31 PERA certification cases were filed, including six from school districts, seven from counties, 11 from municipalities, six from authorities, and one from higher education.

Table 4 provides a summary of the disposition of the certification cases concluded in 2014. The data shows that representatives were certified in 30 units and 15 cases were dismissed or withdrawn. Cases are dismissed based on election results or administratively. Administrative dismissals in certification cases are commonly based on one of two reasons: (1) the petitioner requests a unit which is inappropriate under the Act and/or under Board standards; or (2) the petition is untimely filed under the Act (e.g., when a challenging petition is filed at a time other than during the "window period" contained in the Act).

In 2014, the PLRB conducted certification elections under PERA in 25 cases. There were two elections in decertification cases.

Decertification

In 2014, seven petitions were filed for decertification under PERA. Table 7 shows the breakdown of decertification cases concluded.

Unit Clarification and Amendment of Certification

In 2014, 53 petitions were filed under PERA for unit clarification and amendment of certification. Of this total, 21 were from school districts, 12 from municipalities, 10 from the commonwealth, seven from counties, two from non-profits, and one from an authority.

Table 7 shows the breakdown of cases concluded through unit clarifications and amendments of certification.

When parties jointly petition to have a unit clarified, or the PLRB is able to obtain a stipulated agreement between the parties regarding a unit clarification question, the need to hold a hearing is eliminated.

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 2014, the Board made appointments in 38 of the 45 requests made of it for a fact-finder.

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 arbitration, 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.

The Board issued arbitration panels in 47 cases in 2014. 24 of those cases involved court employees, and 23 cases involved prison units.

TABLE 2

PUBLIC EMPLOYE RELATIONS ACT

UNFAIR PRACTICE CASES CONCLUDED,
BY METHOD OF DISPOSITION AND TYPE OF ORDER: 2014

Cases Sustained (Unfair Practice Found):		16
By Board Order	2	
By Hearing Examiner Order	12	
By Miscellaneous Order	2	
Cases Dismissed:		75
By Administrative Dismissal	9	
By Board Final Order	2	
By Hearing Examiner Order	11	
By No Complaint Letter	44	
By Proposed Order of Dismissal	1	
By Nisi Order	8	
Cases Withdrawn by Nisi Order	194	194
Consent Order	1	1
Total Number of Cases Concluded		286

TABLE 3

PUBLIC EMPLOYE RELATIONS ACT

UNFAIR PRACTICES FOUND, BY SUBSECTIONS OF
SECTION 1201 OF PERA: 2014

Specific subsection(s) Cited in Charges Sustained:		
(a)(1)		1
(a)(1) and (5)		12
(a)(5)		1
(a)(1) and (8)		1
Total Charges Sustained		15

TABLE 4

PUBLIC EMPLOYE RELATIONS ACT

CERTIFICATION CASES CONCLUDED, BY METHOD
OF DISPOSITION AND TYPE OF ORDER: 2014

Method of Disposition, by Type of Order		Totals
Cases Concluded by Unit Certification:		
By Certification of Representative	5	
By Nisi Order	25	30
Cases Dismissed:		
By Administrative Dismissal	2	
By Nisi Order	5	7
Cases Withdrawn by Nisi Order	6	8
By Order	2	
Total Number of Cases Concluded		45

TABLE 6

PUBLIC EMPLOYE RELATIONS ACT

DECERTIFICATION CASES CONCLUDED,
BY METHOD OF DISPOSITION AND TYPE
OF ORDER: 2014

Method of Disposition, by Type of Order		Totals
Cases Concluded by Decertification:		
By Nisi Order	6	6
Cases Dismissed:		5
By Nisi Order of Withdrawal	1	
By Administrative Dismissal	4	
Total Number of Cases Concluded		11

TABLE 7**PUBLIC EMPLOYE RELATIONS ACT****UNIT CLARIFICATION AND AMENDMENT OF CERTIFICATION CASES CONCLUDED,
BY METHOD OF DISPOSITION AND TYPE OF ORDER: 2014**

Method of Disposition, by Type of Order		Totals
Cases Concluded by Unit Clarification:		
By Hearing Examiner Order	5	
By Nisi Order	26	31
Cases Concluded by Amendment of Certification:		
By Nisi Order	3	3
Cases Dismissed:		
By Administrative Dismissal	4	
By Hearing Examiner Order	1	
By Board Order	1	6
Cases Withdrawn by Nisi Order	11	11
Total Number of Cases Concluded		51

In 2014, the PLRB conducted 27 elections under PERA. 25 involved representation matters, two pertained to decertification.

Public Employe Relations Act: Summary of Board Final Orders

Pocono Mountain Education Support Professionals PSEA/NEA v. Pocono Mountain School District, PERA-C-12-94-E, 45 PPER 80 (Final Order, January 21, 2014). Board held that the hearing examiner did not err in concluding that the school district violated Section 1201(a)(1), (5) and (8) of PERA by failing to comply with a grievance arbitration award reinstating a bus driver.

Teamsters Local 776 v. Susquehanna Township School District, PERA-C-12-354-W, 45 PPER 95 (Final Order, March 18, 2014). The Board upheld the hearing examiner's determination that the school district violated Section 1201(a)(1) and (5) by refusing to process a grievance.

Pennsylvania Liquor Enforcement Association v. Commonwealth of Pennsylvania Pennsylvania State Police Bureau of Liquor Control Enforcement, PERA-C-13-1-E, 45 PPER 99 (Final Order, April 15, 2014). The Board affirmed the hearing examiner's finding that the employer violated its duty to impact bargain over discipline for erratic driving after lawfully implementing automatic vehicle location devices.

Shaler Area Education Association PSEA/NEA v. Shaler Area School District, PERA-C-10-408-W, 46 PPER 51 (Final Order, May 20, 2014). The Board sustained the hearing examiner's decision that independent therapy for students was not bargaining unit work and thus the district did not violate Section 1201(a)(1) and (5) of PERA by hiring an outside contractor to provide those services.

Deputy Sheriffs Association of Chester County v. Chester County, PERA-C-12-68-E, 46 PPER 22 (Final Order, August 19, 2014). The Board sustained the employer's exceptions and concluded that the county did not violate Section 1201(a)(1) and (3) of PERA where it established a nondiscriminatory reason for imposition of discipline.

Crestwood Educational Support Personnel Association PSEA/NEA v. Crestwood School District, PERA-C-13-62-E, 46 PPER 23 (Final Order, August 19, 2014). The Board affirmed the hearing examiner's finding that the district violated Section 1201(a)(1) and (5) of PERA by unilaterally declaring a secretarial position to be confidential and excluded from the bargaining unit where no unit clarification petition was filed with the Board.

Penncrest Education Association PSEA/NEA v. Penncrest School District, PERA-C-12-385-W, 46 PPER 58 (Final Order, December 16, 2014). The Board upheld a hearing examiner determination that the district did not violate Section 1201(a)(1) and (5) of PERA where it eliminated a dental hygienists screening program, and thereby would be state-mandated to provide dental examinations through private dentists.

Public Employe Relations Act:
Final Orders Dismissing Exceptions to Administrative Dismissals

Morton Harr v. Westmoreland County Community College, PERA-C-13-279-W, 45 PPER 85 (Final Order, January 21, 2014). The Board sustained the secretary's determination that the charge of unfair practices alleging a failure to assign overtime was untimely, and that the complainant lacked standing to file charges under Section 1201(a)(5), (6) and (9) of PERA.

In the Matter of the Employes of Franklin Area School District, PERA-U-13-359-W, 45 PPER 86 (Final Order, February 18, 2014). The Board upheld the secretary's decision declining to direct a hearing on the school district's unit clarification petition where grievance arbitration is available to determine inclusion of a position within the certified broad-based bargaining unit.

Pennsylvania Social Services Union, Local 668, Service Employees International Union v. Lancaster County, PERA-C-13-348-E, 45 PPER 94 (Final Order, March 18, 2014). The Board held that the union's exceptions to the secretary's decision to dismiss the charge of unfair practices were untimely filed, and stated that the secretary did not err in declining to issue a complaint on the union's allegation that that the employer violated Section 1201(a)(5) of PERA with regard to discussing a location for bargaining.

Radnor Township v. Radnor Association of Township Employees, PERA-C-14-88-E, 46 PPER 1 (Final Order, June 17, 2014). The Board dismissed exceptions to the secretary's determination that the district failed to allege facts to support that the union violated Section 1201(b)(3) or (5) by filing a grievance after an alleged settlement where under the express terms of the agreement the settlement was void if the employe refused to sign.

Wes L. Brown v. Elegant Arrivals Limousine Service, Steve Miga, PERA-C-14-196-E, 46 PPER 32 (Final Order, September 16, 2014). The Board upheld the secretary's determination that under PERA the Board lacked jurisdiction over the employer, a limousine company.

Allentown Education Association PSEA/NEA v. Allentown City School District, PERA-C-14-203-E, 46 PPER 37 (Final Order, October 21, 2014). The Board dismissed the union's exceptions for lack of specificity, rendering final the secretary's decision not to issue a complaint on the union's charge under Section 1201(a)(1), (2) and (3) of PERA.

International Brotherhood of Electrical Workers, Local 29 v. Beaver Borough, PERA-C-14-244-W, 46 PPER 39 (Final Order, October 21, 2014). The Board made final the secretary's determination that the allegations of misrepresentations made during bargaining did not rise to the level of an unfair practice under PERA warranting the issuance of a complaint.

Public Employe Relations Act: Summary of Court Opinions

Commonwealth Court

Rochester Township v. Pennsylvania Labor Relations Board, No. C.D. 2013 (December 12, 2014). In an unreported decision, the Commonwealth Court affirmed the Board's final order holding that the township violated Section 1201(a)(1) and (3) of PERA by refusing to employ the township clerk in a hybrid secretary/clerk position because of the manner in which the union assisted her in negotiating and resolving grievances.

Supreme Court

Lancaster County v. Pennsylvania Labor Relations Board, No. 36 MAP 2013, 94 A.3d 979 (June 16, 2014). The Supreme Court reversed the Commonwealth Court and reinstated the Board's final order holding that maintenance mechanics at the county prison who monitored inmates working outside the prison walls were guards at prisons within the meaning of Section 604(3) of PERA.

ACT 111 OF 1968

SUMMARY OF CASELOAD AND CASE PROCESSING

In 2014, 129 cases were filed with the PLRB relating to police officers and firefighters under Act 111 of 1968. These cases included 110 unfair practice cases, 12 certification cases, five unit clarification cases, and two decertification cases. The unfair practice prohibitions and procedures of the Pennsylvania Labor Relations Act also apply to Act 111 cases, and specify both employer and employee organization unfair practices. As noted in the section of this report pertaining to the Public Employee Relations Act, the Board lacks jurisdiction over unfair practice charges alleging duty of fair representation failures by unions.

As shown in Table 10 on page 17, the Board concluded 107 police and firefighter unfair practice cases. Table 11 shows the subsections of the PLRA cited in the sustained charges.

Representation

Following is a summary of activity involving certification, decertification and unit clarification of police and firefighter bargaining units.

The Public Employee Relations Act requires that all new collective bargaining units under PERA must be certified as appropriate by the PLRB. Under the Pennsylvania Labor Relations Act, which applies in police and fire cases, PLRB certification of a unit is only required when a question concerning representation is raised. This means that, under the PLRA, bargaining may occur and a bargaining obligation may exist without the PLRB's first certifying the employee representative involved.

While the PLRA contains no specific provisions for decertification, a petition on behalf of 30 percent or more of the employees in an existing certified unit can request an election which will result in decertification of the bargaining unit if the majority of the voting employees vote for no representation. A decertification order may also be issued if the bargaining representative disclaims interest in the unit.

In 2014, the Board concluded 26 representation related cases under Act 111. Table 12 on page 17 gives more detailed information about the method of disposition for certification, decertification and unit clarification cases under Act 111.

Finally, in 2014 the Board conducted 11 certification and one decertification elections under Act 111.

TABLE 10

ACT 111 OF 1968 (POLICE AND FIREFIGHTERS)

UNFAIR PRACTICE CASES CONCLUDED,
BY METHOD OF DISPOSITION AND TYPE OF ORDER: 2014

Method of Disposition by Type of Order		Totals
Cases Sustained (Unfair Practice Found):		
By Hearing Examiner Order	5	5
Cases Dismissed:		
By Board Final Order	1	
By Hearing Examiner Order	3	
By No Complaint Letter	12	16
Cases Withdrawn by Nisi Order	85	86
By Withdrawal of Exceptions	1	
Total Number of Cases Concluded		107

TABLE 11

ACT 111 OF 1968 (POLICE AND FIREFIGHTERS)

UNFAIR PRACTICES FOUND, BY SUBSECTIONS OF SECTION 6 OF THE PLRA: 2014

Specific subsection(s) Cited in Charges Sustained:	
(1)(a) and (c)	2
(1)(a) and (e)	3
Total Charges Sustained	5

TABLE 12

ACT 111 OF 1968 (POLICE AND FIREFIGHTERS)

CERTIFICATION, DECERTIFICATION AND UNIT CLARIFICATION CASES
CONCLUDED, BY METHOD OF DISPOSITION AND TYPE OF ORDER: 2014

Total Number of Certification Cases Concluded:	16
By Nisi Order of Certification	2
By Final Order	1
By Nisi Order of Certification of Representative	10
By Order	3
Total Number of Decertification Cases Concluded:	3
By Nisi Order of Decertification	3
Total Number of Unit Clarification Cases Concluded:	7
By Nisi Order of Unit Clarification	1
By Proposed Order of Unit Clarification	5
By Administrative Dismissal	1

Act 111 of 1968:
Summary of Board Final Orders

In the Matter of the Employees of Emmaus Borough, PR-R-13-100-E, 46 PPER 33 (Final Order, September 16, 2014). The Board affirmed the hearing examiner's determination that firefighters who were paid an hourly wage by the borough and who were under the supervision and direction of a borough employe, were employes of the borough for purposes of Act 111.

Act 111 of 1968:
Final Orders Dismissing Exceptions to Administrative Dismissals

Fraternal Order of Police, Fort Pitt Lodge No. 1 v. City of Pittsburgh, PF-C-14-41-E, 46 PPER 2 (Final Order, June 17, 2014). The Board affirmed the Secretary's decision not to issue a complaint on the union's allegations that the city violated Section 6(1)(a) and (e) of the PLRA where the mutual aid agreement between the city and county bomb squads did not effectuate a removal of bargaining unit work.

Leonard E. Bloom v. Philipsburg Borough, PERA-C-14-240-E, 46 PPER 34 (Final Order, September 16, 2014). The Board sustained the Secretary's determination that the Board lacked jurisdiction over a retired police officer's unfair practice charge filed under PERA.

Act 111 of 1968:
Summary of Court Opinions

Commonwealth Court

Chambersburg Borough v. Pennsylvania Labor Relations Board, Nos. 2008 C.D. 2013 and 2009 C.D. 2014 (December 4, 2014). In a reported decision, the Commonwealth Court reversed the Board and held 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.

APPENDIX I

SECTION 1201 OF THE PUBLIC EMPLOYE RELATIONS ACT

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.
- (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 employee 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."

Section 1201. (b) Employe organizations, their agents, or representatives, or public employes are prohibited from:

- (1) Restraining or coercing public 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 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 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

SECTION 6 OF THE PENNSYLVANIA LABOR RELATIONS ACT

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

- (a) To interfere with, restrain or coerce employes 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, 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 had 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.
- (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 thereafter received written authorization from each employe whose wages are affected.

Section 6. Unfair Labor Practices -- (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 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 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 to accede to demands, conditions, and terms of employment including the demand for collective bargaining.
- *(d) (Act of June 30, 1947) 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) (Act of July 7, 1947) 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.

*Both the Act of June 30, 1947, and the Act of July 7, 1947, amended Section 6, subsection (2) of the Act by adding new clauses which were designated as "(d)". The PLRB distinguishes the two clauses by referring to them as "(d) Act of June 30, 1947" and "(d) Act of July 7, 1947". These two amendments were declared unconstitutional by the Pennsylvania Supreme Court in PLRB v. Chester and Delaware Counties Bartenders, etc., Union, et al., 361 Pa. 246 (1947).