

# **Pennsylvania Labor Relations Board**

**Harrisburg, Pennsylvania**

## **2010 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.*

*For copies of older reports, please contact the board at (717) 787-1091.*

### **Pennsylvania Labor Relations Board**

L. Dennis Martire, Chairman  
James M. Darby, Member

#### **Central Office**

651 Boas Street, Room 418  
Harrisburg, PA 17121-0750

Telephone: 717-787-1091

Jennifer Kreider, Board Secretary  
John B. Neurohr, Chief Counsel

#### **Regional Office**

301 5th Avenue, Suite 320  
Pittsburgh, PA 15222-2438

Telephone: 412-565-5318

Dennis R. Bachy, Administrative Officer

## **Table of Contents**

Introduction

Board Responsibilities

Representation Cases  
Unfair Practice Cases  
Impasse Resolution Cases

Operations Summary

Representation Cases  
Unfair Practice Cases  
Impasse Resolution Cases

Summaries of Board Orders

Final Orders  
Final Orders Dismissing Exceptions to Administrative Dismissals

Summaries of Court Opinions

Commonwealth Court  
Pennsylvania Supreme Court

Appendix I

Appendix II

## Introduction

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

This report explains the roles and responsibilities of the board and outlines its activities during the 2010 calendar year. The report contains summaries of board final orders and court opinions issued during 2010 that involved board cases, discussions and statistical tables on the board's caseload and its case-processing activities for each of the statutes it administers.

The board is composed of three members who are appointed by the governor and confirmed by the Senate to serve six-year terms, staggered at two-year intervals. The staff in the central Harrisburg office and the regional Pittsburgh office is responsible for the board's administrative and adjudicative activities, while the three-member board resolves appeals of staff determinations and establishes overall policy and operating guidelines.

The [Pennsylvania Labor Relations Act](#) (PLRA), which created the board in 1937, encourages the peaceful resolution of private sector industrial strife and unrest through collective bargaining between employers and their employees. The PLRA also protects employees, employers and labor organizations engaged in legal activities associated with the collective bargaining process. The board's private sector jurisdiction consists of Pennsylvania-based employers and their employees not covered by the [National Labor Relations Act](#).

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

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

[Act 88 of 1992](#) (Act 88) provides bargaining procedures for school employees. Under Act 88, the board is required to make fact-finding appointments upon the mutual request of the parties at any time, except during arbitration or between notice and conclusion of a strike. Act 88 provides that either party may request fact-finding no later than 84 days prior to the end of the school fiscal year (June 30, in most cases). The board is empowered to appoint fact-finders within its discretion at times other than the mandated period. Act 88 also provides that mandatory arbitration will be implemented after a strike has reached the point where 180 days of instruction can no longer be provided by the last day of school or June 15, whichever is later.

## Board Responsibilities

Although specific provisions may vary, the board's basic duties are similar in public and private sector cases. The board has the responsibility to determine the appropriateness of collective bargaining units and certify 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 employe organization and joins with the employe organization to request that the board certify the proposed unit.

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

Parties may petition the board to include in or exclude from 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 employe representative.

### **Unfair Practice Cases**

The board enforces and protects the rights of parties to organize and to bargain collectively through adjudication of charges of unfair practices and direction of remedies if such practices are found. Both the PLRA and PERA outline unfair practices prohibited for employers, employes or employe organizations; the unfair practice prohibitions in the PLRA are also applied to police, firefighters and their employers under Act 111.

The board's [Rules and Regulations](#) authorize the board secretary to issue complaints in unfair practice charges when it is determined that a sufficient cause of action is stated in the charge. After a complaint is issued, the case is assigned to a hearing examiner for further investigation. Conciliation is also used for the purpose of arriving at a settlement of the case without a formal hearing. Should the settlement effort fail, or should the case contain issues and circumstances that appear not to be amenable to a negotiated settlement, the case proceeds to a formal hearing.

At the hearing, a representative of the party that filed the charge prosecutes the case before a board hearing examiner; the parties present testimony and documentary evidence and cross-examine witnesses. Upon conclusion of a hearing, the hearing examiner issues a proposed decision and order containing a statement of the case, findings of fact, conclusions of law, and an order either dismissing or sustaining the charge. If the charge is sustained, appropriate actions to remedy the effect of the unfair practice may be ordered. The board has the authority to petition the courts for the enforcement of its orders, appropriate temporary relief or restraining orders.

### **Impasse Resolution Cases**

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

Both PERA and Act 88 provide for mandatory mediation of bargaining impasses under the auspices of the [Pennsylvania Bureau of Mediation](#). After the exhaustion of mediation, the board has the discretion to appoint a fact-finder if the board finds that the issues and circumstances in the case are such that fact-finding would be beneficial. The fact-finder conducts a hearing and makes findings and recommendations for resolving the dispute.

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

## Operations Summary

The following pages contain information detailing the board’s activities during the 2010 calendar year. Statistical data is provided regarding cases filed and concluded, as well as summaries of board orders and court opinions involving board cases.

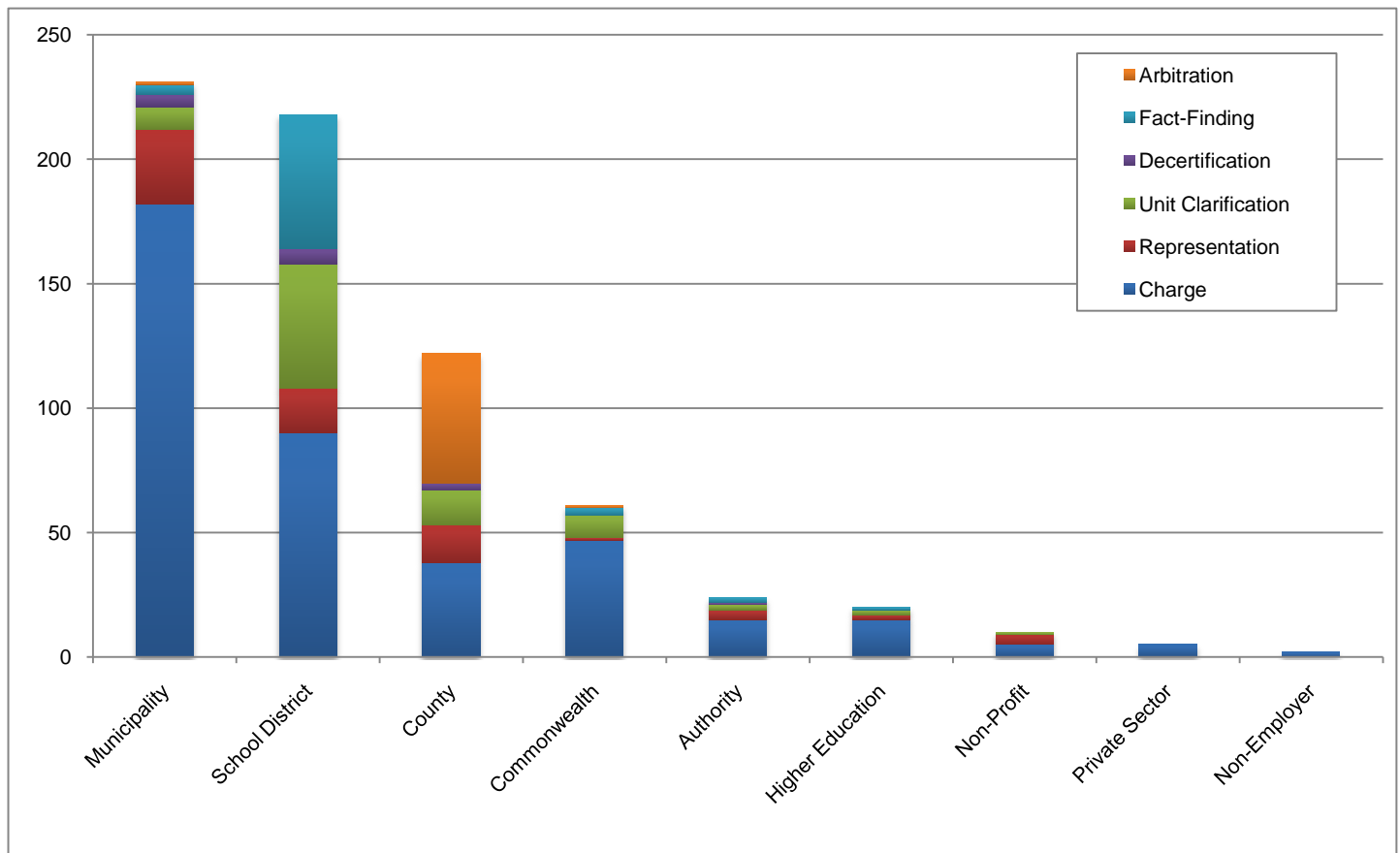
Please note that the data and summaries contained in this report, while believed to be accurate, are informational only and should not be relied upon for legal research.



In 2010, a total of 693 cases were filed with the board, including 451 cases pursuant to PERA, 183 cases under Act 111, 54 cases pursuant to Act 88 and 5 cases under the PLRA. Charges of unfair practices comprised 57 percent of all cases filed in 2010, while 25 percent of the filings were representation cases.

Chart 1 illustrates all cases filed in 2010, broken down by type of employer and type of case. Cases involving municipalities and school districts comprised 64 percent of the board’s caseload during the reporting period.

**Chart 1—Cases Filed with the Board, 2010**



### Representation Cases

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

In 2010, a total of 176 representation cases were filed, including 74 certification petitions, 15 decertification petitions and 87 unit clarification and amendment of certification petitions. Eighty-eight percent of the representation cases initiated in 2010 were filed pursuant to PERA, while 12 percent were filed under Act 111; no representation cases were filed under the PLRA.

Table 1 details the representation cases concluded in 2010, citing the method of disposition.

**Table 1—Representation Cases Concluded**

<b>Certification Cases Concluded</b>	
by Certification of Representative	12
by Nisi Order*	46
<b>Decertification Cases Concluded</b>	
by Nisi Order	5
<b>Unit Clarification Cases Concluded</b>	
by Board Order	2
by Hearing Examiner Order	12
by Nisi Order	50
<b>Amendment of Certification Cases Concluded</b>	
by Nisi Order	11
<b>Cases Dismissed</b>	
by Administrative Dismissal	13
by Board Order	4
by Hearing Examiner Order	3
by Nisi Order	8
<b>Cases Withdrawn</b>	
by Nisi Order	32
<b>TOTAL</b>	<b>198</b>

\*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.

Chart 2 illustrates the 54 elections conducted by the board in 2010. Cases involving municipalities comprised the largest percentage of representation cases prompting elections at 40 percent of the total.

**Chart 2—Elections Conducted by the Board, 2010**

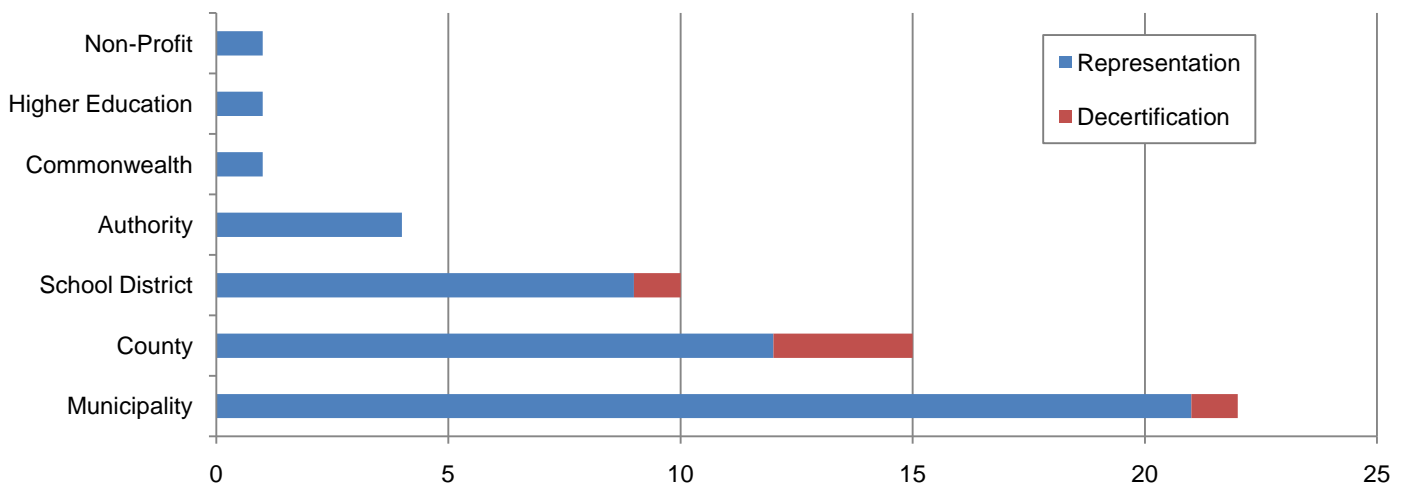
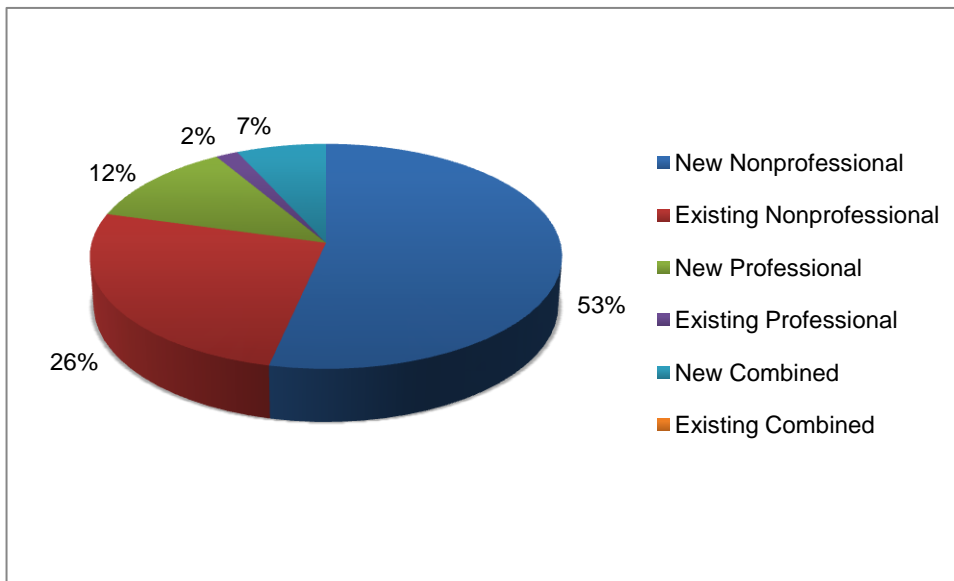


Chart 3 depicts the number and type of units certified in 2010. Of the 58 units certified, 96 percent were collective bargaining units, while 4 percent were meet and discuss units.

**Chart 3—Units Certified by the Board, 2010**



**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 employe 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 2010, a total of 399 unfair practice charges were filed. Of these charges, 58 percent were filed pursuant to PERA, while 40 percent and 2 percent were filed under Act 111 and the PLRA, respectively.

Table 2 details the unfair practice cases concluded in 2010, citing the method of disposition.

**Table 2—Unfair Practice Cases Concluded, 2010**

<b>Cases Sustained (Unfair Practice Found)</b>	
by Board Order	11
by Hearing Examiner Order	32
<b>Cases Dismissed</b>	
by Administrative Dismissal	66
by Board Order	21
by Hearing Examiner Order	35
by No Complaint Letter	50
<b>Cases Withdrawn</b>	
by Nisi Order	304
<b>TOTAL</b>	<b>519</b>

Table 3 details the specific subsections of PERA and the PLRA found to have been violated in the 43 unfair practice cases sustained in 2010. Refer to Appendices I and II to view the text that correlates with each subsection.

**Table 3—Unfair Practices Found**

<b>PERA Section 1201</b>	
(a)(1)	16
(a)(3)	2
(a)(5)	13
<b>PLRA Section 6</b>	
(1)(a)	26
(1)(c)	2
(1)(e)	24

**Impasse Resolution Cases**

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

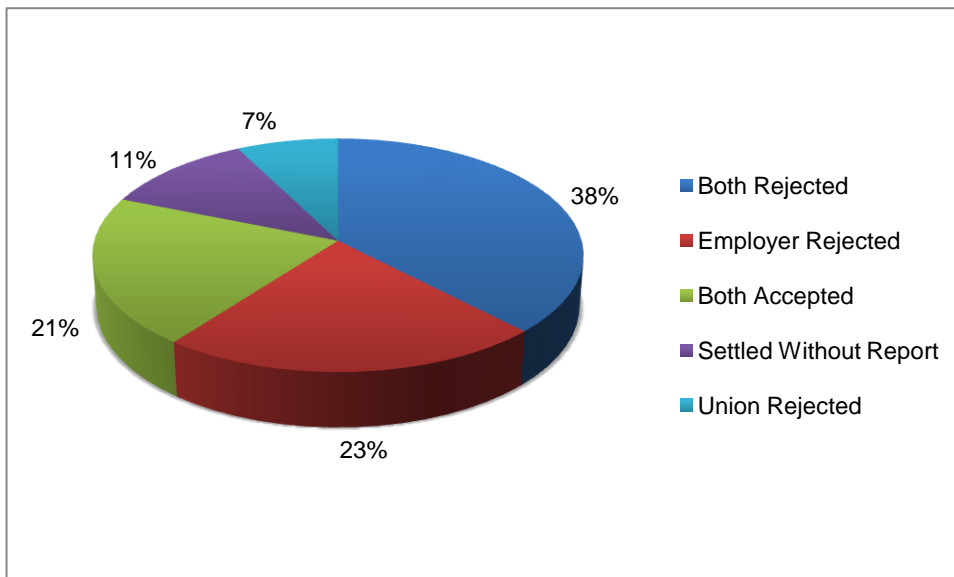
The board has the authority to appoint fact-finders for the purpose of settling negotiations that have reached impasse. The majority of the board’s fact-finding cases are filed pursuant to Act 88, which provides for a period of mandatory fact-finding appointments in addition to the discretionary appointments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

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

In 2010, 53 fact-finding appointments were made, including 47 pursuant to Act 88 and six under PERA.

Chart 4 illustrates the outcomes of the board’s fact-finding appointments during 2010. There was one appointment in which the employer took no action; this outcome is included in Chart 4.

**Chart 4 - Fact-Finding Outcomes**



The board’s other impasse resolution function is to provide panels used in the selection of neutral arbitrators for interest arbitration proceedings; the board received 54 requests for arbitration panels during 2010.

## 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 2010 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

#### [Temple University Hospital Nurses Association, Temple University Hospital Allied Health Professionals and Northeastern Hospital Nurses Association v. Temple University Health System](#)

Case No. PERA-C-09-97-E • 41 PPER 3 (Jan. 19, 2010)

The board upheld the hearing examiner's finding that employer's unilateral change to tuition reimbursement policy violated Section 1201(a)(1) and (5) of PERA.

#### [Fraternal Order of Police, Reading Lodge No. 9 v. City of Reading](#)

Case No. PF-C-08-164-E • 41 PPER 4 (Jan. 19, 2010)

The board sustained the hearing examiner's determination that the employer's unilateral assignment of civilian employees to monitor city streets for crime via video surveillance cameras was an unlawful removal of bargaining unit work.

#### [Jefferson County Court Appointed Employees Association v. Jefferson County](#)

Case No. PERA-C-04-353-W • 41 PPER 16 (Feb. 16, 2010)

On remand from the Pennsylvania Supreme Court, the board issued a final order finding that the County violated PERA by refusing to implement the resolution of the President Judge in a grievance regarding the employment of court-appointed employees.

#### [In the Matter of the Employees of Wyoming Area School District](#)

Case No. PERA-U-08-313-E • 41 PPER 17 (Feb. 16, 2010)

The board found that the school district's athletic trainer was a professional employe within the meaning of Section 301(7) of PERA.

#### [John Smith v. Bethel Township](#)

Case No. PF-C-09-70-E • 41 PPER 18 (Feb. 16, 2010)

Agreeing with the hearing examiner's finding that the employer had legitimate nondiscriminatory reasons for its actions, the board sustained the dismissal of a charge of unfair labor practices alleging that the employe's removal from the schedule was for discriminatory anti-union reasons.

#### [American Federation of State County and Municipal Employees, District Council 83 v. Summit Township](#)

Case No. PERA-C-08-83-W • 41 PPER 29 (March 16, 2010)

The board affirmed a proposed decision and order finding that the employer unlawfully repudiated a collective bargaining agreement executed by a majority of its previous governing board.

#### [Minersville Area Educational Support Personnel Association, PSEA/NEA v. Minersville Area School District](#)

Case No. PERA-C-09-7-E • 41 PPER 31 (March 16, 2010)

The board upheld the hearing examiner's determination that the employer violated its statutory bargaining obligation by unilaterally requiring employees to work a weekend shift on a rotating basis.



[Pennsylvania State Troopers Association v. Commonwealth of Pennsylvania, Pennsylvania State Police](#)

Case No. PF-C-08-100-E • 41 PPER 32 (March 16, 2010)

The board affirmed the hearing examiner's finding that the Commonwealth violated Section 6(1)(a) and (e) of the PLRA by unilaterally altering an agreement concerning the assignment of discretionary overtime hours.

[Pennsylvania State Troopers Association v. Commonwealth of Pennsylvania, Pennsylvania State Police](#)

Case No. PF-C-08-154-E • 41 PPER 33 (March 16, 2010)

The board upheld the finding that, despite the employee's allegedly disparaging comments about management, the employer discriminated against the employee by subjecting him to a disciplinary investigation over an e-mail concerning collective bargaining matters disseminated to the bargaining unit members.

[Pennsylvania State Troopers Association v. Commonwealth of Pennsylvania, Pennsylvania State Police](#)

Case No. PF-C-09-54-E • 41 PPER 34 (March 16, 2010)

The board affirmed the hearing examiner's finding that the Commonwealth violated Section 6(1)(a) and (e) of the PLRA by unilaterally altering an agreement concerning the assignment of discretionary overtime hours.

[Williamsport Area Support Personnel Association v. Williamsport Area School District](#)

Case No. PERA-C-09-219-E • 41 PPER 46 (April 20, 2010)

The board made final and absolute the hearing examiner's determination that the District violated its bargaining obligation by prematurely declaring impasse over subcontracting and outsourcing its transportation services.

[International Union of Operating Engineers, Local 66 v. Connoquenessing Township](#)

Case No. PERA-C-09-271-W • 41 PPER 47 (April 20, 2010)

The board affirmed the hearing examiner's finding that the employer's stated reasons for discharging bargaining unit employees was pretextual and that the employer discriminated against the employees in violation of Section 1201(a)(3) of PERA.

[Independent State Store Union v. Commonwealth of Pennsylvania, Liquor Control board](#)

Case No. PERA-C-08-194-E • 41 PPER 54 (May 18, 2010)

The board reversed the hearing examiner's finding of a violation of Section 1201(a)(1) of PERA, noting that the union's allegations of intimidation and coercion supporting an independent violation of Section 1201(a)(1) were not alleged until after the four-month statute of limitations.

[Philadelphia Joint Board Workers United, SEIU v. School Cafeteria Employees, Local 634 and Philadelphia Joint board Workers United, SEIU v. Philadelphia School District](#)

Case Nos. PERA-C-09-438-E and PERA-C-09-439-E • 41 PPER 55 (May 18, 2010)

The board sustained the hearing examiner's proposed decision and order finding that the charging party failed to sustain its burden of establishing that the incumbent union engaged in improper campaign activities or that the employer discriminatorily denied it access to its facilities.

[Moshannon Valley Education Support Professionals v. Moshannon Valley School District](#)

Case No. PERA-C-09-359-W • 41 PPER 81 (July 20, 2010)

The board made final a hearing examiner's finding that the employer violated PERA by unilaterally implementing salary increases following the board's certification of the bargaining representative.

[William C. Plouffe, Jr. v. State System of Higher Education, Kutztown University, F. Javier Cevallos, Sharon Picus, Anne Zayaitz](#)

Case No. PERA-C-09-459-E • 41 PPER 82 (July 20, 2010)

The hearing examiner properly dismissed a claim that the employer unlawfully denied the employee's alleged request for union representation during a meeting with the employer.

[In the Matter of the Employes of Neshannock Township School District](#)

Case No. PERA-U-09-137-W • 41 PPER 83 (July 20, 2010)

The board made final the hearing examiner's determination that the secretaries to the superintendent, assistant superintendent and director of pupil services, and the accounts payable clerk, were confidential employes excluded from the bargaining unit under Section 301(13) of PERA.

[Pennsylvania State Troopers Association v. Commonwealth of Pennsylvania, Pennsylvania State Police](#)

Case No. PF-C-09-112-E • 41 PPER 84 (July 20, 2010)

The board sustained the hearing examiner's conclusion that the employer's letter admonishing the union president not to conduct independent investigations during work time, was consistent with the terms of the parties' collective bargaining agreement, and thus did not violate Section 6(1)(a) or (e) of the PLRA.

[In the Matter of the Employes of Commonwealth of Pennsylvania, Department of Corrections](#)

Case No. PERA-U-09-79-E • 41 PPER 100 (Aug. 17, 2010)

The board sustained the hearing examiner's determination that the barber manager, barber instructor and cosmetology instructor at the correctional facilities were prison guards within the meaning of Section 604(3) of PERA.

[Pennsylvania State Troopers Association v. Commonwealth of Pennsylvania, Pennsylvania State Police](#)

Case Nos. PF-C-08-27-E and PF-C-08-106-E • 41 PPER 101 (Aug. 17, 2010)

The board reversed the hearing examiner and dismissed a charge where the board noted that the employer's work rule challenged by the complainant as vague and overbroad was directed at employes other than those represented by the complainant.

[Erie Education Association v. Erie City School District](#)

Case No. PERA-C-09-207-W • 41 PPER 115 (Sept. 21, 2010)

The board affirmed the hearing examiner's finding that the employer did not discriminate against an employe for protected activity and did not violate its past practice with respect to releasing the full text of grievance arbitration awards.

[International Association of Fire Fighters, Local 955 v. City of Uniontown](#)

Case No. PF-C-09-6-W • 41 PPER 113 (Sept. 21, 2010)

The board affirmed the hearing examiner's finding that the fire chief's demotion and elimination of extra-duty compensation were improperly motivated by the chief's protected concerted activities in opposition to proposed layoffs.

[In the Matter of the Employes of the City of Philadelphia](#)

Case No. PF-U-09-25-E • 41 PPER 114 (Sept. 21, 2010)

The board made final the hearing examiner's determination that Fire Service Paramedics were not firefighters and could not remain in the existing Act 111 bargaining unit.

[Fraternal Order of Police Lodge 5 v. City of Philadelphia](#)

Case No. PF-C-08-115-E • 41 PPER 163 (Nov. 16, 2010)

The board sustained the hearing examiner's determination that the employer violated its bargaining obligation by assigning civilians to monitor for criminal activity via surveillance cameras, because those were duties of bargaining unit police officers.

[Teamsters Local 764 v. Milton Regional Sewer Authority](#)

Case No. PERA-C-09-229-E • 41 PPER 168 (Dec. 21, 2010)

The board made final the hearing examiner's determination that the employer violated its bargaining obligation by unilaterally altering a past practice of allowing employes the use of the employer's dumpster.

[Homer-Center Education Association, PSEA v. Homer-Center School District](#)

Case No. PERA-C-10-130-W • 41 PPER 169 (Dec. 21, 2010)

The board affirmed the hearing examiner's determination that the employer violated Section 1201(a)(1) and (5) of PERA by refusing to process a grievance to arbitration.

[In the Matter of the Employees of Brandywine Heights Area School District](#)

Case No. PERA-U-08-266-E • 41 PPER 170 (Dec. 21, 2010)

The board dismissed a union's unit clarification petition, finding that the challenged payroll position was confidential within the meaning of Section 301(13) of PERA.

**Final Orders Dismissing Exceptions to Administrative Dismissals**

[Greater York Professional Fire Fighters and EMTS v. Spring Garden Township, York Area United Fire and Rescue Department](#)

Case No. PF-C-09-66-E • 41 PPER 5 (Jan. 19, 2010)

The board sustained the secretary's dismissal of a charge where exceptions to amend the charge to reflect a violation of Section 6(1)(e) occurred after the six-week statute of limitations.

[American Federation of State County and Municipal Employees, District Council 47, Local 2186 v. Philadelphia Housing Authority](#)

Case No. PERA-C-09-422-E • 41 PPER 30 (March 16, 2010)

The board upheld the secretary's dismissal of a charge alleging that the employer refused to proceed to arbitration over a grievance filed on behalf of a first level supervisor under a memorandum of understanding.

[Lackawanna Trail Educational Support Personnel Association v. Lackawanna Trail School District](#)

Case No. PERA-C-09-360-E • 41 PPER 48 (April 20, 2010)

The board affirmed the secretary's decision declining to issue a complaint on a charge alleging that the employer had not bargained with the union over the assignment of new work duties to an employee.

[In the Matter of the Employees Bucks County](#)

Case No. PERA-U-10-94-E • 41 PPER 56 (May 18, 2010)

In the absence of changed circumstances, the board secretary properly declined to direct a hearing on a unit clarification petition seeking to include county security guards in a court-related bargaining unit where the issue was previously litigated.

[Collier Township v. Teamsters Local 249](#)

Case No. PERA-C-10-187-W • 41 PPER 102 (Aug. 17, 2010)

The board sustained the secretary's decision declining to issue a complaint on a charge where the employer alleged that the employees' representative had refused to provide requested medical questionnaire information, where the employer failed to allege facts to establish that the information requested was in the possession of, or available to, the union.

[International Brotherhood of Painters and Allied Trades, Local 1968 v. Girard School District](#)

Case No. PERA-C-10-220-W • 41 PPER 103 (Aug. 17, 2010)

The board affirmed the secretary's dismissal of a charge on the basis that the charge was filed outside the four-month statute of limitations.

[Fraternal Order of Police, Lodge 32 v. City of Butler](#)

Case No. PF-C-10-94-W • 41 PPER 116 (Sept. 21, 2010)

The board made final the secretary's decision not to issue a complaint on a refusal to bargain charge holding that rules regarding employee cell phone use during work time are a managerial prerogative.

[Teamsters Local 776 v. Rye Township](#)

Case No. PF-C-10-119-E • 41 PPER 143 (Oct. 19, 2010)

The board affirmed the secretary's dismissal of a charge filed by the police bargaining unit under Section 6(1)(a), (c) and (e) of the PLRA, where it was alleged that the municipality ceased providing police services.

[Pennsylvania State Troopers Association v. Commonwealth of Pennsylvania](#)

Case No. PF-C-10-121-E • 41 PPER 144 (Oct. 19, 2010)

The board sustained the secretary's decision not to issue a complaint on a refusal to bargain charge on the basis that the employer's policy of placing employees on medically limited duty was a managerial prerogative.

## Summaries of Court Opinions

The following court opinions involving board cases were issued in 2010. 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

#### Westmoreland County v. Pennsylvania Labor Relations Board

991 A.2d 976 (Pa. Cmwlth. 2010)

The Commonwealth Court affirmed the board's finding that "Supervisor" positions in the County Probation Office were neither supervisory within the meaning of Section 301(6), nor management under Section 301(16) of PERA, and thus included in the court-appointed bargaining unit.

#### Allegheny County Deputy Sheriff's Association v. Pennsylvania Labor Relations Board

990 A.2d 86 (Pa. Cmwlth. 2010), *petition for allowance of appeal granted*, 1 A.3d 867 (Pa. 2010)

The Commonwealth Court affirmed the board's dismissal of a petition to represent a bargaining unit of deputy sheriffs under Act 111.

#### Capitol Police Lodge No. 85, FOP v. Pennsylvania Labor Relations Board

10 A.3d 407 (Pa. Cmwlth. 2010)

The Commonwealth Court affirmed the board's conclusion that the employer had a sound arguable basis in the parties' contract for utilizing private security guards to operate scanning equipment in a newly leased office building.

### Pennsylvania Supreme Court

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

8 A.3d 300 (Pa. 2010)

Pennsylvania Supreme Court reinstated the board's dismissal of a bargaining-related charge on the basis that the charge was rendered moot by a successor collective bargaining agreement.

#### Borough of Ellwood City v. Pennsylvania Labor Relations Board

998 A.2d 589 (Pa. 2010)

The Supreme Court reversed a decision of the Commonwealth Court and reinstated the board's Final Order insofar as it found that the employer's ban on use of tobacco for the bargaining unit police officers was a mandatory subject of bargaining under Act 111.

## Appendix I

### Public Employe Relations Act (Act 195)

#### ARTICLE XII Unfair Practices

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

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

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

- (1) Restraining or coercing 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 employes 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."

\*\*It shall be lawful for public employes 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 employes shall also have the right to refrain from any or all such activities, except as may be required pursuant to a maintenance of membership provision in a collective bargaining agreement.

## 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 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.

(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 or the members of his family, with the intent of compelling the employer to accede to demands, conditions, and terms of employment including the demand for collective bargaining.

(d) To picket or cause to be picketed a place of employment by a person or persons who is not or are not an employe or employes of the place of employment.

(d) To engage in a secondary boycott, or to hinder or prevent by threats, intimidation, force, coercion or sabotage the obtaining, use or disposition of materials, equipment or services, or to combine or conspire to hinder or prevent by any means whatsoever, the obtaining, use or disposition of materials, equipment or services.

(e) To call, institute, maintain or conduct a strike or boycott against any employer or industry or to picket any place of business of the employer or the industry on account of any jurisdictional controversy.

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