

## **Pennsylvania Labor Relations Board**

### **2021 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 2021 calendar year. The report contains summaries of board final orders and court opinions issued during that year; 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 collective bargaining rights and 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 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.

Today, most of the Board's jurisdiction is in the public sector. The [Public Employee Relations Act](#) (PERA), enacted in 1970, extends collective bargaining rights to most public employees and 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 in the public sector to include [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 makes 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 percent 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 percent of the employees in the unit.

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

Once certified as the exclusive bargaining representative, an employee organization can be decertified by filing a decertification petition, which must also be supported by a showing of interest of 30 percent of the employees in the unit. In the case of an employer-filed 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 percent 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 the managerial, supervisory, or confidential status of a position. The Board may also amend a previously issued certification to reflect a change in an employee representative's name or affiliation.

### 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 can 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 Cmwlth 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 of 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 2021 calendar year. 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 2021, a total of 400 cases were filed with the board, including 285 cases under PERA, 98 under Act 111, 14 under Act 88, and 3 under PLRA. Charges of unfair practices comprised over 59 percent of all cases filed in 2021, while 22 percent of the filings were representation cases.

**Table 1: Cases Filed by Category of Employer for 2021**

| Category of Employer    | Year Filed | Charge of Unfair Practice | Representation | Unit Clarification | Decertification | Fact Finding | Arbitration |
|-------------------------|------------|---------------------------|----------------|--------------------|-----------------|--------------|-------------|
| <b>Authority</b>        | 2021       | 19                        | 0              | 0                  | 3               | 0            | 0           |
| <b>Commonwealth</b>     | 2021       | 29                        | 0              | 11                 | 0               | 0            | 0           |
| <b>County</b>           | 2021       | 27                        | 9              | 6                  | 2               | 1            | 55          |
| <b>Higher Education</b> | 2021       | 12                        | 1              | 1                  | 0               | 0            | 0           |
| <b>Municipality</b>     | 2021       | 97                        | 24             | 8                  | 4               | 4            | 0           |
| <b>Non-Profit</b>       | 2021       | 0                         | 1              | 0                  | 0               | 0            | 0           |
| <b>Private Sector</b>   | 2021       | 1                         | 0              | 0                  | 0               | 0            | 0           |
| <b>School District</b>  | 2021       | 50                        | 2              | 17                 | 0               | 13           | 0           |
| <b>Union</b>            | 2021       | 2                         | 0              | 0                  | 0               | 0            | 0           |
| <b>TOTAL</b>            | 2021       | 237                       | 37             | 43                 | 9               | 18           | 55          |

## UNFAIR LABOR PRACTICE CASES

In 2021, a total of 237 unfair practice charges were filed. Of these, 67 percent were filed under PERA, 32 percent under Act 111, and 1 percent under PLRA.

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

| <b>Cases Concluded</b>      | <b>Charges</b> | <b>2021</b> |
|-----------------------------|----------------|-------------|
| by Board Order              |                | 10          |
| by Hearing Examiner Order   |                | 26          |
| by Administrative Dismissal |                | 2           |
| by No Complaint Letter      |                | 45          |
| by Nisi Order of Withdrawal |                | 143         |
| <b>TOTAL</b>                |                | <b>226</b>  |

## REPRESENTATION CASES

In 2021, a total of 89 representation cases were filed. Of these, 75 percent were filed under PERA, 24 percent under Act 111, and less than 1 percent under PLRA.

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

| Cases Concluded Representation      | 2021      |
|-------------------------------------|-----------|
| by Certification of Representative  | 5         |
| by Nisi Order of Certification      | 25        |
| by Administrative Dismissal         | 13        |
| by Nisi Order of Dismissal          | 1         |
| by Hearing Examiner                 | 8         |
| by Final Order                      | 4         |
| by Nisi Order of Withdrawal         | 12        |
|                                     |           |
| by Nisi Order of Unit Clarification | 25        |
|                                     |           |
| by Nisi Order of Decertification    | 6         |
|                                     |           |
| <b>TOTAL</b>                        | <b>99</b> |
|                                     |           |

**Table 4: Elections Conducted, 2021**

|                  | Representation Election | Decertification Election |
|------------------|-------------------------|--------------------------|
| Non-Profit       | 1                       | 0                        |
| Higher Education | 1                       | 0                        |
| Commonwealth     | 0                       | 0                        |
| Authority        | 1                       | 0                        |
| School District  | 3                       | 0                        |
| County           | 7                       | 1                        |
| Municipality     | 16                      | 2                        |
| Private Sector   | 0                       | 0                        |
|                  |                         |                          |
| <b>TOTAL</b>     | <b>29</b>               | <b>3</b>                 |
|                  |                         |                          |



## 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 the issuance of a board final order.

Summaries of the final orders issued by the Board in 2021 are provided below. Citations for the Board's orders are given as the Board's case number and the Pennsylvania Public Employee Reporter (PPER) reference.

### FINAL ORDERS

In the Matter of the Employes of East Stroudsburg Area School District, PERA-U-19-184-E, 52 PPER 51 (Final Order, February 16, 2021). Affirmed Proposed Order of Dismissal.

Abington Heights Education Association v. Abington Heights School District, PERA-C-19-202-E, 52 PPER 58 (Final Order, March 16, 2021). Sustained finding of a violation of Section 1201(a)(1) and (5) of PERA.

SEIU Local 668 PSSU v. York County and York County Court of Common Pleas, PERA-C-18-120-E, 52 PPER 73 (Final Order, April 20, 2021). Dismissed allegations of violation of Section 1201(a)(1) and (3) of PERA.

Middleburg Borough Police Officers Association v. Middleburg Borough, PF-C-19-74-E, 53 PPER 2 (Final Order, June 15, 2021). Sustained allegations of a violation of Section 6(1)(a) and (e) of the PLRA.

Teamster Local Union No. 776 v. Central Dauphin School District, PERA-C-19-218-E, 53 PPER 26 (Final Order, September 21, 2021). Dismissed allegations of violation of Section 1201(a)(1), (3) and (5) of PERA.

In the Matter of the Employes of University of Pittsburgh, PERA-R-17-355-W, 53 PPER 25 (Final Order, September 21, 2021). Affirmed Nisi Order of Dismissal.

Judith Ainsworth v. Temple University, PERA-C-20-103-E, \_\_ PPER \_\_ (Final Order, November 16, 2021). Sustained finding of a violation of Section 1201(a)(1) and (3) of PERA.

West Conshohocken Borough Police Officers v. West Conshohocken Borough, PF-C-20-16-E, \_\_ PPER \_\_ (Final Order, November 16, 2021). Dismissed allegations of violation of Section 6(1)(a) and (e) of the PLRA.

### FINAL ORDERS DISMISSING EXCEPTIONS TO ADMINISTRATIVE DISMISSALS

AFSCME, District Council 47, Local 810 v. City of Philadelphia, PERA-A-20-305-E, 52 PPER 49 (Final Order, February 16, 2021). Dismissed request for panel of neutral interest arbitrators.

In the Matter of the Employes of Fort Cherry School District, PERA-U-21-124-W, \_\_ PPER \_\_ (Final Order, November 16, 2021). Dismissed Petition for Unit Clarification and Amendment of Certification.

Transport Workers Union Local 234 v. SEPTA, PERA-C-21-194-E, \_\_ PPER \_\_ (Final Order, December 21, 2021). Dismissed allegations of violation of Section 1201(a)(1) and (5) of PERA.

In the Matter of the Employees of Chester County, PERA-R-21-146-E, \_\_ PPER \_\_ (Final Order, December 21, 2021). Dismissed Petition for Representation.

## **Summaries of Court Opinions**

The following court opinions involving board cases were issued in 2021. 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**

There were no Commonwealth Court opinions involving board cases in 2021.

### **SUPREME COURT**

There were no Supreme Court opinions involving board cases in 2021.