

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

UNITED STEEL, PAPER AND FORESTRY, :
RUBBER, MANUFACTURING, ENERGY, ALLIED :
INDUSTRIAL AND SERVICE WORKERS :
INTERNATIONAL UNION, AFL-CIO-CLC :
: :
: Case No. PERA-C-25-123-W
v. :
: :
UNIVERSITY OF PITTSBURGH :

FINAL ORDER

The University of Pittsburgh (University) filed timely exceptions with the Pennsylvania Labor Relations Board (Board) on April 16, 2026, challenging a Proposed Decision and Order (PDO) issued on March 31, 2026.¹ The University excepts to the Hearing Examiner's conclusion that it violated Section 1201(a)(1) and (5) of the Public Employee Relations Act (PERA) by sending a survey to its employees touching on various conditions of employment during contract negotiations.² Pursuant to an extension of time granted by the Secretary of the Board, a brief in support of exceptions was filed by the University on April 27, 2026. The United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL-CIO-CLC (Union) filed an answer to the exceptions on May 6, 2026, and pursuant to an extension granted by the Secretary, a brief in opposition to the exceptions on May 13, 2026.

The findings relevant to the exceptions are summarized as follows. The Union is the exclusive bargaining representative of a unit comprised of certain non-professional full-time and regular part-time white-collar staff employees of the University. (FF 2). At all times relevant to this matter, the Union and the University were actively engaged in negotiating their first collective bargaining agreement (CBA). (FF 3).

On February 4, 2025, counsel for the University, Thomas A. Smock, Esq., sent an email to Union leadership, which stated, in pertinent part, as follows:

In the spirit of collaboration, the University is providing the Union with advance notice of its intent to disseminate the Faculty and Employee Engagement survey to all employees, including those in the bargaining unit, in March 2025. As bargaining unit employees will receive the survey, the University wanted to be transparent and allow the Union to review it before the official release.

¹ The Board notes that the PDO contains a typographical error indicating an issuance date of March 31, 2025. Therefore, the Board has amended the issuance date of the PDO to reflect the correct date of issuance as March 31, 2026.

² The University's request for oral argument is denied.

The purpose of the survey is to recognize this is a transformational time for the University as it embarks on implementing its Reimagined Plan for Pitt - the first metrics-driven strategic plan. With a specific goal of being an employer of choice, [the University has] prioritized having a current baseline understanding of employee engagement at Pitt. . . .

. . . . The data and benchmark comparisons provided by Modern Think (the vendor responsible for the survey) will inform the HR dashboard and guide the work of the evolving HR business-partner model.

. . . [T]he University plans to release the survey in March 2025. As such, I have attached the survey to this email for your review. . . .

(FF 5). The draft survey attached to this email, was entitled "ModernThink Higher Education Insight Survey - Full Survey by Theme - 2024" (the ModernThink Survey).

The ModernThink Survey directed bargaining-unit members to rate their satisfaction with various benefits and programs offered by the University on a scale of: Very Satisfied, Satisfied, Neutral, Dissatisfied, Very Dissatisfied, and Not Applicable. Among the benefits mentioned in the survey were medical insurance, dental insurance, vision insurance, short-term disability benefits, long-term disability benefits, life insurance, paid time off (PTO), 403b/401k programs, tuition reimbursement programs, parental leave policy, and overall satisfaction with the benefits offered by the University. Additionally, the survey asked about employee satisfaction with professional development programs, physical workspace conditions, work/life balance programs, flexible work arrangements, wellness programs, employee activities and employee recognition programs. The Survey also asked "Open-Ended Questions" such as what the unit members appreciate most about their employment and what would make the University a better place to work. (FF 6).

The Union reviewed the survey and determined that it was an attempt to deal directly with its members by soliciting information about mandatory subjects of bargaining which would give the University valuable insight into the issues which were most important to bargaining unit members during the negotiation of the parties' first CBA. (FF 7). As such, on February 7, 2025, Union leadership answered the University by email, advising that it objected to the subject matter of the survey and therefore, would not agree to its use, stating that it was an "unlawful solicitation of input." (FF 8). The University then inquired as to the portions of the survey which were objectionable to the Union, with the Union responding that it strongly objected to the "Benefits Satisfaction" and "Open-ended Questions" sections of the survey in their entirety. (FF 9).

After making only slight modifications to the wording, the University advised the Union that the final version of the survey would be rolled out March 31, 2025. The final version, as revised, asked employees to "rate your awareness of the following benefits and programs ... [as] Extremely Aware, Moderately Aware, Not At All Aware", regarding health care benefits, PTO, tuition reimbursement programs, parental leave, career development programs, wellness programs, employee recognition programs, and employee activities. It also included the open-ended questions concerning what unit members appreciate most about working for the University, and what could make it a

better place to work. On March 27, 2025, this final version was sent to the Union and to the bargaining unit members via their University e-mail. (FF 11).

Thereafter, in April of 2025, without the knowledge or consent of the Union, the University sent a different survey to staff in the Department of Medicine (DOM survey). (FF 13). The DOM survey asked the employees to indicate their satisfaction level with their current salary in relation to their role, responsibilities and performance as well as their awareness of their eligibility to join the Union and their level of preparedness for the Union vote. (FF 15). Further, the Office of the Chair of the Department of Medicine sent repeated follow-up emails to staff members including bargaining unit members urging them to participate in the DOM survey. (FF 16).

The Union filed its Charge of Unfair Practices on May 22, 2025, alleging that the University violated Section 1201(a)(1) and (5) of PERA by e-mailing bargaining unit members a survey which included topics covering mandatory subjects of bargaining that were currently under negotiation. The Union further alleged that the University committed an independent violation of Section 1201(a)(1) of PERA by asking bargaining unit members about Union activity in that survey. On July 2, 2025, the Secretary of the Board issued a Complaint and Notice of Hearing and assigned this matter to a Hearing Examiner. After a continuance with consent of the parties, hearings were held on December 15 and 16, 2025, at which time the parties in interest were afforded a full opportunity to present testimony, cross-examine witnesses and introduce documentary evidence. Both parties filed post-hearing briefs.

In the PDO, the Hearing Examiner initially considered whether the Union's allegations were sufficiently specific to put the University on notice that the DOM survey was part of the Union's charge. Pointing to language in the Charge taken directly from the DOM survey, the Hearing Examiner determined that the University could not credibly claim that it was unaware that the DOM survey was part of the instant dispute.

Further, the Hearing Examiner decided that the ModernThink Survey circulated by the University to its employees violated PERA's prohibition against direct dealing because it permitted the University to judge the employees degree of support for various bargaining issues during the critical stages of bargaining a first CBA. In particular, the Hearing Examiner stated that:

[T]he ModernThink Survey 'undercut[s] the authority of the employees' duly selected representative' as the exclusive bargaining agent of the bargaining-unit members and is an unfair practice. [citations omitted]. If, during negotiations, the University wants to know what bargaining-unit members think about mandatory subjects of bargaining and what relative importance they place on one mandatory subject of bargaining compared to another, the University must ask the Union and may not directly deal with bargaining-unit members on these topics through mass surveys.

(PDO at 10). As such, the Hearing Examiner concluded that the University's actions regarding the ModernThink Survey constituted direct dealing in violation of Section 1201(a)(1) and (5) of PERA.

Likewise, the Hearing Examiner determined that the DOM survey was an obvious and overt illustration of direct dealing in violation of PERA because the questions contained therein "undercut the authority of the employees' duly selected representative." Finally, the Hearing Examiner concluded that the DOM survey's probe of bargaining unit members as to their opinions about unionization was an independent violation of 1201(a)(1) because such an inquiry would create a question in the mind of a reasonable employee about the legitimacy of the election and serve to undermine the Union's solidarity during a crucial time in its contract negotiations with the University.

On exceptions, the University initially alleges that the Hearing Examiner erred by concluding that the Board has jurisdiction over the Union's claims regarding the DOM survey because the allegations in the Union's Charge did not comply with the Board's pleading requirements. In particular, the University claims that the Charge referenced only the ModernThink Survey by name, and therefore, the allegations concerning the DOM survey did not comply with the requirement that a charge contain "[a] clear and concise statement of the facts constituting the alleged unfair practice, including the names of the individuals involved in the alleged unfair practice, the time, place of occurrence and nature of each particular act alleged, and reference to the specific provisions of the act alleged to have been violated." 34 Pa. Code § 95.31(b)(3).

To satisfy the pleading requirement under Section 95.31(b)(3) of the Board's Rules and Regulations, the Board has held that the charging party must by way of its specification of charges put the responding party on notice regarding the conduct alleged to be the unfair practice. Independent State Store Union v. Commonwealth of Pennsylvania (Liquor Control Board), 22 PPER ¶ 22009 (Final Order 1991); Iroquois Education Association v. Iroquois School District, 37 PPER 167 (Final Order 2006). However, this is not a strict pleading requirement, "all that is required is that the language convey sufficient definite warning as to the prescribed conduct when measured by common understanding and practices". Youngwood Borough Police Department v. Youngwood Borough, 17 PPER ¶ 17039 at 102 (Order Directing Remand, 1986) (quoting Pittsburgh Press Co. v. Pittsburgh Commission on Human Relations, 287 A.2d 161 (Pa. Cmwlth. 1972)).

Here, the Union's Charge avers that **"another version** of the survey" asked employees to comment on whether they felt "adequately informed and prepared to make a decision regarding the Union vote" as well as their "awareness of eligibility" to join the Union. Because the Charge indicated there was a second survey and utilized language which **quoted directly from the DOM survey**, it is disingenuous for the University to assert that the DOM survey was not included as part of the Union's Charge. On this record, it is not prejudicial to ask the University to defend the Charge as to the DOM survey because it had adequate warning that the language from the DOM survey was alleged to be an unfair practice. As such, the Hearing Examiner had jurisdiction to consider that portion of the Union's Charge dealing with the DOM survey.

Additionally, the University excepts to Finding of Facts 11 and 14 in the PDO as unsupported by the record. For purposes of exceptions, the Hearing Examiner's Findings of Fact will be sustained by the Board where there is substantial evidence in the record to support the finding. Pennsylvania State Rangers Association v. Commonwealth of Pennsylvania, Department of Conservation and Natural Resources, 45 PPER 1 (Final Order, 2013). Substantial evidence is such "relevant evidence as a reasonable mind

might accept as adequate to support a conclusion." PLRB v. Kaufman Department Stores, 29 A.2d 90 (Pa. 1942).

Upon review, the Board concludes that Finding of Fact 11 accurately reflects the evidence and testimony of record that the final version of the ModernThink Survey was sent by Valerie in Attorney Smock's office to Union representative, Matthew Nader. Therefore, the University's exception as to FF 11 is denied. As to Finding of Fact 14, the Board determines that it also is supported in the record, given that Matthew Nader specifically testified on cross-examination that the Union became aware "a week, week-and-a-half, maybe even two" weeks after the University sent the DOM survey to bargaining unit members. (N.T. 49). Therefore, the University's exception as to Finding of Fact 14 is likewise denied.

Next, the University alleges that the Hearing Examiner erred by finding the University had violated Section 1201(a)(1) and (5) of PERA's prohibition against direct dealing. Section 1201(a)(1) of PERA prohibits a public employer's attempts to exercise coercion or control over its employees vis-à-vis the union. 43 P.S. § 1101.1201(a)(1). Section 606 of PERA expressly provides that "[r]epresentatives selected by public employees in a unit appropriate for collective bargaining purposes shall be the exclusive representative of all the employees in such unit to bargain on wages, hours, terms and conditions of employment..." 43 P.S. § 1101.606. Pursuant to Section 1201(a)(5), a public employer is obligated to bargain in good faith with the union's "exclusive representative." 43 P.S. § 1101.1201(a)(5).

Direct dealing in violation of the employer's statutory obligation to deal with the union under Section 1201(a)(1) and (5) of PERA occurs when a public employer communicates with its employees in a manner which undermines the union's status as the bargaining representative of the employees. AFSCME, Local Union 1971 v. Philadelphia Office of Housing and Community Development, 31 PPER ¶ 31055 (Final Order, 2000). Indeed, as noted by the Hearing Examiner in this case, "it is necessary to insulate [employees] from any efforts by the public employer, direct or indirect, to undercut the authority of the employees' duly selected representative, or fragment the unity of the bargaining unit." (PDO at 9, quoting Northern Bedford School District, 7 PPER 194 (Nisi Decision and Order, 1976).

In the instant case, relying on Board precedent, the Hearing Examiner concluded that both the ModernThink and DOM surveys violated PERA's prohibition against direct dealing because it severely undermined the Union's status as the bargaining unit members' exclusive representative. Specifically, citing to Philadelphia Office of Housing and Community Development, *supra*, and Northern Bedford School District, *supra*, the PDO concluded that because the University acted without the Union's participation or agreement in seeking input directly from bargaining unit members on subjects such as, *inter alia*, medical insurance, vacation time, and tuition reimbursement, during contract negotiations, the employees were improperly thrust into the midst of those negotiations, thereby severely undercutting the Union's status as their exclusive bargaining representative. Indeed, as the Hearing Examiner astutely noted, "[i]f ... the University wants to know what bargaining-unit members think about mandatory subjects of bargaining ... the University must ask the Union and may not directly deal with bargaining-unit members on these topics..." (PDO at 10).

The University further contends that it did not run afoul of Section 1201(a)(1) and (5) of PERA because the surveys at issue were only gathering

information such that the Hearing Examiner's decision was an impermissible expansion of the doctrine of direct dealing in this Commonwealth. In particular, the University relies on Fraternal Order of Police Washington Lodge No. 17 v. City of Easton, 53 PPER 24 (Proposed Decision and Order, 2021), as legal authority for its stance that a public employer may directly survey its employees during contract negotiations concerning a mandatory subject of bargaining without violating the Act so long as the employer doesn't attempt to negotiate changes to mandatory subjects with the employees nor make misrepresentations regarding contract negotiations to them. As noted by the Hearing Examiner, the City of Easton decision is factually and legally distinguishable from the instant matter.³

While a public employer has a First Amendment right to express its views, see Portage Area School District, 7 PPER 325 (Nisi Decision and Order 1976); Northern Bedford School District, 7 PPER 194 (Nisi Decision and Order, 1976), it does not have the unfettered right to solicit the views of its represented employees concerning wages, hours or working conditions. Indeed, with regard to discussing mandatory subjects of bargaining, the employer has the statutory obligation to seek out the union and obtain those views from the employees' exclusive representative. 43 P.S. §§ 1101.606; 1101.1201(a)(5). To be sure, Section 606 of PERA recognizes that "[r]epresentatives selected by public employees in a unit appropriate for collective bargaining purposes shall be the exclusive representative of all the employees in such unit...." 43 P.S. § 1101.606. While individual employees may approach the employer with grievances, the opposite is not true. The employer must deal only and exclusively with the union where the employees' wages, hours or working conditions are concerned. 43 P.S. § 1101.606.

Thus, not only is City of Easton factually distinguishable, but expanding that case to the facts here would not further the purposes and policies of PERA and would be legally flawed. Not only does PERA expressly require the employer to discuss matters of wages, hours and working conditions through the union, but the directive to deal with matters of wages, hours and working conditions through the union is generally understood as a fundamental principle in labor law. Indeed, even the National Labor Relations Board's decisions have been consistent concerning this issue, supporting the conclusion that surveys of employees concerning matters of wages, hours and working conditions, such as that conducted by the University in this case, amount to unlawful direct dealing. See Allied-Signal Inc., 307 NLRB 752 (1992); El Paso Electric Co., 355 NLRB 544 (2010); Obie Pacific, Inc., 196 NLRB 458 (1972); Harris-Teeter Super Markets, Inc., 310 NLRB 216 (1993); Fortune-Media (USA) Corp., 2023 WL 2495995 (NLRB Division of Judges, March 13, 2023).

The University asserts that the record contains "no credible evidence establishing that the surveys constituted an attempt by the University to

³ The Board is not bound by the proposed decision in City of Easton, International Union of Operating Engineers, Local 542 v. Upper Southampton Township, 36 PPER 112 (citing Fraternal Order of Police, Star Lodge No. 20 v. PLRB, 522 A.2d 697 (Pa. Cmwlth. 1987), *aff'd*, 560 A.2d 145 (Pa. 1989)), nor by the *dicta* contained therein. See AFSCME v. Pennsylvania Liquor Control Board, 14 PPER ¶ 14134 (Final Order, 1983).

negotiate directly with employees." However, the record clearly indicates that the University's stated purpose in sending out the surveys was to acquire "data showing areas where [it] could **improve**" and to "shape the future of [its] workplace." See Union Exhibits 14 & 15. Considering that any "improvements" in wages, hours or working conditions could not legally be made absent negotiating with the Union, it is clear that the University was attempting to circumvent the Union and gain an unfair advantage in contract negotiations by seeking its employees' feedback on the very matters being bargained without their exclusive bargaining representative's participation. As such, this was impermissible direct dealing pursuant to PERA, and a failure to bargain in good faith with the employees' exclusive representative in violation of Section 1201(a) (5).

Additionally, the University argues that the Hearing Examiner erred in concluding that the University's circulation of the DOM survey inquiring into the bargaining unit members' union activity were "unlawful interrogations" in violation of Section 1201(a) (1) of PERA. Section 1201(a) (1) of PERA proscribes public employers from "interfering, restraining, or coercing employees" in the exercise of the rights provided by PERA. 43 P.S. § 1101.1201(a) (1). An independent violation of Section 1201(a) (1) arises where a public employer's actions tend to be coercive considering the totality of circumstances under which the conduct at issue occurred. Bellefonte Area School District, 36 PPER 135 (Proposed Decision and Order, 2005). This is so regardless of whether any employees were, in fact, coerced. Id.

An employer soliciting an employee's views of the union without a legitimate reason for doing so is generally a *per se* violation under Section 1201(a) (1) of PERA. As the Board had noted in Carbon-Lehigh Intermediate Unit 21, 17 PPER ¶ 17122 at 321 (Final Order, 1986), "Section 401 of PERA guarantees to employees the right to organize, form, join or assist in employee organizations as well as the right to refrain from any or all such activities. Employer questioning with regard to membership in the union is not conducive to the guarantee of this right..." Thus, an employer questioning an employee concerning their support of the union without a legitimate reason to do so, would generally, under the totality of circumstances, tend to be coercive in violation of Section 1201(a) (1) of PERA.

Indeed, even under application of the criteria delineated in Bourne v. NLRB, 332 F.2d 47 (2nd Cir. 1964) as part of the Board's totality of circumstances test, the DOM survey weighs in favor of finding of an unfair practice. See United Services Automobile Association v. NLRB, 387 F.3d 908 (D.C. Cir. 2004). In the DOM survey, only nine (9) months after a major campaign to unionize, which was very closely watched by the University, the bargaining unit members were asked to agree or disagree with the following statements: "I feel I was adequately informed and prepared to make a decision regarding the Union vote" and "I am aware of my eligibility to join the Union." The survey was sent from the highest levels of the University's administration directly to the employees through their work email and came in the nature of a formal written survey. Management then followed up with employees urging them to complete the survey. The University has not proffered any reason why these questions could be necessary or relevant to "shape the future of the workplace," which was its stated goal in sending out the surveys. Under these circumstances, it is entirely reasonable that a bargaining unit member would feel intimidated or coerced by this inquiry because it tends to suggest that the University is surveilling the protected activity of its employees, thereby raising fears of retaliation by the

University for supporting the Union. As such, the Hearing Examiner did not err concluding on this record that the totality of circumstances amounted to an independent violation of Section 1201(a)(1) in reliance on well-established Board precedent.

Finally, the University argues that the remedy ordered by the Hearing Examiner is inappropriate and beyond his authority. However, this claim is without merit. Section 1303 of PERA specifically authorizes the Board to order a public employer to "cease and desist from such unfair practice, and to take such reasonable affirmative action ... as will effectuate the policies of [the] act." 43 P.S. § 1101.1301. In determining how best to expunge the effect of an unfair practice, the Board has "broad authority" to effectuate a "reasonable" remedy. Appeal of Cumberland Valley School District, 394 A.2d 946 (Pa. 1978). Here, the University was ordered to share the results of the surveys with the Union. This is an entirely reasonable remedy to level the playing field between the parties during the ongoing negotiation of their first CBA. Indeed, failing to require the University to share the survey results only countenances the commission of the unfair practice. Moreover, the University has failed to, and presumably cannot, suggest any other remedy for the harm caused to the Union by its actions which would be more "reasonable". As such, the Board concludes that the Hearing Examiner properly crafted appropriate remedial relief, and the remedy will not be disturbed.

ORDER

In view of the foregoing and in order to effectuate the policies of the Public Employe Relations Act, the Board

HEREBY ORDERS AND DIRECTS

that the exceptions filed by the University of Pittsburgh are dismissed, and the March 31, 2026, Proposed Decision and Order be and the same is hereby made absolute and final.

SEALED, DATED and MAILED at Harrisburg, Pennsylvania pursuant to conference call meeting of the Pennsylvania Labor Relations Board, Gary Masino, Chairman, Albert Mezzaroba, Member, and William Trusky, Jr., Member, this twentieth day of October, 2026. The Board hereby authorizes the Secretary of the Board, pursuant to 34 Pa. Code 95.81(a), to issue and serve upon the parties hereto the within Order.

MEMBER WILLIAM TRUSKY, JR., DID NOT PARTICIPATE IN THE CONSIDERATION OR DECISION OF THIS CASE.

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

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AFFIDAVIT OF COMPLIANCE

The University of Pittsburgh hereby certifies that it has ceased and desisted from its violation of Section 1201(a)(1) and (5) of the Public Employe Relations Act; that it has complied with the Proposed Decision and Order and Final Order as directed therein; that, if bargaining over the first collective bargaining agreement is ongoing, it immediately disclosed to the Union the results of the ModernThink and DOM surveys regarding mandatory subjects of bargaining in a manner consistent with the Proposed Decision and Order and Final Order; that it has posted a copy of the Proposed Decision and Order and Final Order as directed; and that it has served an executed copy of this affidavit on the Union at its principal placed of business.

Signature/Date

Title

SWORN AND SUBSCRIBED TO before me
the day and year first aforesaid.

Signature of Notary Public