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In the Commonwealth Court of Pennsylvania

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DR. MARY ANN DAILEY,
Petitioner,

v.

PENNSYLVANIA LABOR RELATIONS BOARD,
Respondent.

BRIEF OF PETITIONER

Appeal from a Final Determination of the Pennsylvania Labor Relations Board
(Case No. PERA-C-15-131-E)

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INTRODUCTION

This case is about Respondent Pennsylvania Labor Relations Board's ("PLRB's") self-imposed jurisdictional limitation over what it calls "internal union matters" and its willingness to overlook a public-sector union's intentional manipulation of membership dues amounts. The PLRB's treatment of state-regulated unions is overly permissive, harmful to government employees, and contrary to the Public Employe Relations Act ("PERA"), 43 P.S. §§ 1101.101-1101.2301. This Court should reverse the PLRB's determination that it lacked jurisdiction to address Petitioner Dr. Mary Ann Dailey's ("Dr. Dailey's") charge of unfair practice ("Charge") and hold that the Association of Pennsylvania State College and University Faculties ("APSCUF") committed an unfair labor practice.

STATEMENT OF JURISDICTION

This Court has appellate jurisdiction over this matter pursuant to section 763(a) of the Judicial Code, 42 Pa.C.S. §§ 101-9913.

ORDER IN QUESTION

Dr. Dailey appeals from an order of the PLRB ("Order"), which reads:

> 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 Mary Ann Dailey are dismissed and the Secretary's June 16, 2015 decision not to issue a complaint be and the same is hereby made absolute and final.

A copy of the Order is attached hereto as Appendix "A."

STATEMENT OF THE SCOPE AND STANDARD OF REVIEW

Because this case "presents a matter of statutory interpretation, and '[a]s this is a purely legal question, [this Court's] standard of review is de novo and scope of review is plenary.' " Allstate Life Ins. Co. v. Commonwealth, 52 A.3d 1077, 1080 (Pa. 2012) (quoting In re Milton Hershey School, 911 A.2d 1258, 1261 (Pa. 2006)). "[W]hile deference may be given to an agency's interpretation of its statute, such deference is unwarranted where the meaning of the statute is a question of law and when the court is convinced that the agency's interpretation is unwise or erroneous." Cope v. Ins. Comm'r, 955 A.2d 1043, 1048 (Pa. Cmwlth. 2008) (internal quotation marks and citation omitted)).

STATEMENT OF THE QUESTIONS INVOLVED

I. WHETHER THE PLRB'S SELF-IMPOSED JURISDICTIONAL LIMITATION OVER "INTERNAL UNION MATTERS" CONFLICTS WITH THE PUBLIC EMPLOYE RELATIONS ACT

II. WHETHER APSCUF IS PERMITTED TO MANIPULATE ITS DUES AMOUNTS TO COERCE ADDITIONAL UNION AND POLITICAL CONTRIBUTIONS

STATEMENT OF THE CASE

Background and Procedural History

Dr. Dailey appeals from the PLRB's "Final Order" in Case No. PERA-C-15-131-E. See App'x A. On May 18, 2015, Dr. Dailey filed a Charge pursuant to section 1201(b)(1) of PERA. (R. 1a-246a). By letter dated June 16, 2015, the PLRB notified Dr. Dailey that it would not issue a complaint against APSCUF and intended to dismiss Dr. Dailey's Charge, (R. 247a-248a), to which Dr. Dailey timely filed exceptions and a supporting brief (R. 249a-259a). On February 16, 2016, the PLRB issued its Order, adopting and finalizing the decision not to issue a complaint against APSCUF. App'x A.

Dr. Dailey timely appealed to this Court.

Facts

Dr. Dailey, like other APSCUF-represented professors, must pay union dues or fees as a condition of employment. (R. 99a). And, like other APSCUF-represented professors, she is purportedly prohibited from resigning as a member of APSCUF until the last 15 days of APSCUF's collective bargaining agreement ("CBA"). (R. 99a); see also 43 P.S. §§ 1101.301(18), 1101.401. In that context, APSCUF calculated its 2014-15 annual dues as 1.15% of salary and automatically deducted member dues from Dr. Dailey and other APSCUF professors. (R. 170a).

However, in 2015, APSCUF determined that each of its 5,300 members were entitled to a "rebate" of $25, an apparent overcharge of at least $132,000. (R. 4a). In connection with the rebate, APSCUF provided members with a brochure from APSCUF's political action committee, "Committee for Action through Politics" ("CAP"), in which was enclosed a card. (R. 175a-176a). The card read:[1]

> **COMMITTEE FOR ACTION THROUGH POLITICS**
> Dues Rebate Designation
> For dues rebated by action of the APSCUF Legislative Assembly during the current fiscal year and on any subsequent occasion (unless revoked by me in writing according to the APSCUF rules), I designate the following disposition:

DESIGNATION (*please check one box*)	
	I hereby donate any rebate to APSCUF/CAP (political contribution).
	I direct that the rebate be paid to me.
	I direct that the rebate be retained by the treasury.

PERSONAL INFORMATION	
Name (*print*):	
SSN/Employee ID:	Date:
Signature:	
University:	

> APSCUF will accept no designation for payment of a dues rebate except on this form. Forms are available at the state or local APSCUF offices. Any change in Designation must be made on this form and must be received at the local APSCUF office by April 1 or postmarked by April 1 of

1. The block quote includes text from the card but omits logos and address blocks for APSCUF and APSCUF/CAP, respectively. Copies of both the brochure and the card are included within the reproduced record. (R. 175a-176a, 178a).

any year to be effective during or any subsequent fiscal year.

Postmark/Date Received

RETURN TO LOCAL APSCUF OFFICE OR MAIL TO: APSCUF, 319 N. Front Street, Harrisburg, PA 17101-1203

(R. 178a).

Not apparent from the form is APSCUF's default rule: if the employee fails to respond by April 1, APSCUF retains the "rebate" in its general treasury fund. (R. 212a).

As it turns out, APSCUF has "discovered" a similar overcharge and offered a similar "rebate" every year since at least 1997. (R. 3a). In fact, in materials submitted by Dr. Dailey to the PLRB, APSCUF discusses the annual "rebate" in the context of a highly intentional, highly promoted "Dues Rebate Campaign" ("Campaign") intended to raise money for political activity. (R. 172a-204a, 212a-246a). As APSCUF explained on its website:

> CAP donations are needed because APSCUF dues cannot be used for political contributions. Contributions allow APSCUF to support our endorsed allies in the general assembly and statewide offices. These contributions provide vital access to legislators.

(R. 172a).

The record is silent with respect to APSCUF's reasons for retaining funds not sent to CAP or claimed by April 1. Likewise, there is nothing in the record to indicate APSCUF's reasons for imposing an April 1 deadline each year.

In 2014[2] and again in 2015, APSCUF failed to provide Dr. Dailey with a "Dues Rebate Designation" card before APSCUF's April 1 deadline or provide meaningful notice that the Campaign was underway. (R. 4a). Instead, in 2014, Dr. Dailey learned about the Campaign and requested that APSCUF provide her with a card; but the April 1 deadline passed by the time she received it. (R. 3a). Then, in 2015, Dr. Dailey did not receive a Dues Rebate Designation card at all until after the deadline had elapsed. (R. 3a). Because APSCUF's default rule is to keep the $25 overcharge, on April 1, 2014 and 2015, Dr. Dailey's money was retained by APSCUF. (R. 4a, 212a).

SUMMARY OF ARGUMENT

The PLRB's decision was erroneous, in at least three respects, and should be reversed. First, the PLRB's self-imposed "internal union matters" jurisdictional bar operates to discourage legitimate charges of unfair labor practices and is contrary

2. Dr. Dailey recognizes that the statute of limitations prevents a finding of unfair labor practices as to APSCUF's conduct in 2014. See 43 P.S. § 1101.1505. Dr. Dailey offered this information before the PLRB and now to this Court as context for APSCUF's conduct in 2015.

to PERA. Second, the PLRB erred in holding that the Campaign constituted an internal union matter because it involved union conduct with no basis in internal union affairs and involved possible loss of employment. And third, APSCUF's conduct in fact violated the statutory language protecting an employee's right to refrain from assisting the union. In each instance, the PLRB ignored PERA and the rights of Dr. Dailey and other employees granted by the General Assembly.

ARGUMENT

I. THE PLRB'S SELF-IMPOSED JURISDICTIONAL LIMITATION OVER "INTERNAL UNION MATTERS" CONFLICTS WITH PERA

The PLRB erred in invoking its self-imposed "internal union matters" jurisdictional bar, which is contrary to PERA. This Court should clarify that the PLRB should be protecting workers' rights even in the context of internal union matters.

The General Assembly passed PERA for the stated purpose of "promot[ing] orderly and constructive relationships between all public employers and their employes." 43 P.S. § 1101.101. PERA was intended to, inter alia, "establish[ ] procedures to provide for the protection of the rights of the public employe, the public employer and the public at large." Id. (emphasis added). To that end, article IV, section 401, of PERA ("Article IV") grants, among other rights specific to the public employee, the "right to refrain" from union-related activities:

> It shall be lawful for public employes to organize, form, join or assist in employe 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.

43 P.S. § 1101.401 (emphasis added).

Both public employers and public-sector unions are specifically prohibited from "restraining" or "coercing" employees who wish to exercise the right to refrain from union-related activities. 43 P.S. § 1101.1201(a)(1), (b)(1). And the PLRB is indisputably charged with enforcement of that prohibition, both as a matter of course, see 43 P.S. § 1101.501, and specifically in the unfair labor practice context, 43 P.S. § 1101.1201.

Unfortunately, the PLRB frequently pronounces a nonstatutory jurisdictional restriction grounded in its sweeping, legally dubious assumption that unions "have the right to govern their internal affairs without interference." Girard Sch. Dist. v. Int'l Bhd. of Painters and Allied Trades, Local 1968, 38 PPER ¶ 128, 2007 WL 7563573 (PLRB Sept. 18, 2007); see also Williamsport Area Support Personnel Ass'n v. Williamsport Area Sch. Dist., 41 PPER ¶ 15, 2010 WL 6808189 (PLRB Jan. 29, 2010) (hrg. exam'r decision); Penns Manor Area Sch. Dist. v. Penns Manor Educ. Support

Personnel Ass'n, 39 PPER ¶ 81, 2008 WL 8586486 (PLRB May 15, 2008) (hrg. exam'r decision); In re Windber Area Sch. Dist., 34 PPER ¶ 53, 2003 WL 26073092 (PLRB Apr. 13, 2003).

The PLRB's assumption follows—though not necessarily so—from 25-year-old dicta rendered by this Court in Pennsylvania Labor Relations Board v. Eastern Lancaster County Education Ass'n, 427 A.2d 305, 308 (Pa. Cmwlth. 1981). This Court in Eastern Lancaster was faced first[3] with the question of whether union nonmembers were entitled a contract ratification vote, ultimately holding that unions could exclude nonmembers from voting on contracts provided the union had codified the restriction in its constitution or bylaws. Id. at 309. En route to reaching its holding, this Court remarked that it considered "well established . . . the right of unions and other voluntary associations to govern their internal affairs without judicial interference." Id. at 308. This Court implied that the remedy for

3. Interestingly, this Court in Eastern Lancaster, 427 A.2d at 310, was also faced with the question of whether an increase in union dues was subject to challenge. In holding that such an increase was "an internal union affair," id., this Court cited to federal case law that would nevertheless require the union to provide "sufficient information about all proposals" to ensure a "reasoned and informed vote," Blanchard v. Johnson, 532 F.2d 1074 (6th Cir. 1976), cert. denied sub nom. Maritime Engineers Beneficial Ass'n v. Johnson, 429 U.S. 834 (1976)). Additionally, this Court in Eastern Lancaster, 427 A.2d at 310, specified that the increase in dues was entirely the result of the union becoming an affiliate of a statewide or national organization.

employees aggrieved by such "internal affairs" was to alter their union's constitution or bylaws.[4] See id.

More recently, this Court rejected the notion that a union's right to govern its internal affairs is absolute. See Chambersburg Borough v. Pennsylvania Labor Relations Bd., 106 A.3d 212 (Pa. Cmwlth. 2014), appeal granted, 113 A.3d 808 (Pa. 2015). In Chambersburg Borough, the PLRB determined that its "internal union matters" jurisdictional limitation protected a union as it pressured volunteer firefighters not to provide services to a borough with which the union was experiencing labor strife. But this Court reversed the PLRB's determination and held that the union's conduct constituted an unfair labor practice.[5] Id. at 225. In reaching its conclusion, this Court recognized that, under federal labor law, even the well-settled right of a union to discipline its members must be tempered:

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4. This Court also suggested that an employee could file a civil complaint on the theory of breach of the duty of fair representation. Eastern Lancaster, 427 A.2d at 308-09. However, it also recognized that "the usual fair representation case requires a showing of disparate impact of the contract terms on the complainant group," therefore not applicable to a case in which union conduct applied uniformly. Id. at 309.

5. Although Chambersburg Borough involved the Pennsylvania Labor Relations Act ("PLRA"), not PERA, the PLRB is charged with enforcement in both contexts, and the unfair labor practice at issue in Chambersburg Borough is the PLRA analog—with important differences discussed infra—to the unfair labor practice alleged by Dr. Dailey. Compare 43 P.S. § 211.6(2)(a) with 43 P.S. § 1101.1201(b)(1).

"[w]hen application of a union rule is found to run contrary to national labor policy, the disciplinary action is regarded as coercive within the meaning of section 8(b)(1)(A) [of the National Labor Relations Act ("NLRA"), 29 U.S.C. § 158(b)(1)(A)]."[6] Id. (quoting NLRB v. Glaziers & Glassworkers Local Union No. 1621, 632 F.2d 89, 91 (9th Cir. 1980)) (internal quotation marks omitted).

Indeed, in interpreting the nearly-identical guarantee of the right to refrain in the NLRA, 29 U.S.C. § 157, the United States Supreme Court has determined that the law "protects the employment rights of the dissatisfied member, as well as those of the worker who never assumed full union membership." Pattern Makers' League of N. Am., AFL-CIO v. Nat'l Labor Relations Bd., 473 U.S. 95, 106 (1985). Federal labor law merely "leaves a union free to enforce a properly adopted rule which reflects a legitimate union interest, impairs no policy Congress has imbedded in the labor laws, and is reasonably enforced against union members who are free to leave the union and escape the rule." Scofield v. NLRB, 394 U.S. 423, 430 (1969).[7]

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6. Section 8(b)(1)(A) of the NLRA, like section 1201(b)(1) of PERA, makes it an unfair labor practice "to restrain or coerce" employees exercising their right to refrain from union activities. 29 U.S.C. § 158(b)(1)(A).

7. The limited right of unions to handle internal union matters derives from the qualified statutory requirement that employees exhaust certain union-provided remedies before initiating a civil suit; as the United States Supreme Court explained:

> This policy [of forestalling judicial interference with internal union matters] has its statutory roots in §

Here, this Court should correct the PLRB's insistence on avoiding "internal union matters," which has no place in Pennsylvania law. In crafting PERA, the General Assembly plainly intended to protect Dr. Dailey and other public employees from abuses of public-sector unions, employing broad language that protects employees from being forcibly engaged in union activities of any kind, 43 P.S. § 1101.401, and tasking the PLRB with protection of those rights, 43 P.S. §§ 1101.501, 1101.1201(b)(1). Nowhere does the General Assembly exempt or otherwise bless a union's so-called "internal" union matters. The PLRB's jurisdictional bar, very simply, violates PERA.

> 101(a)(4) of the Landrum-Griffin Act, 73 Stat. 522, 29 U.S.C. § 411(a)(4), which is part of the subchapter of that Act entitled "Bill of Rights of Members of Labor Organizations." Section 101(a)(4) provides:
>
> > No labor organization shall limit the right of any member thereof to institute an action in any court, . . . Provided, That any such member may be required to exhaust reasonable hearing procedures (but not to exceed a four-month lapse of time) within such organization, before instituting legal . . . proceedings against such organizations or any officer thereof. . . .
>
> Clayton v. Int'l Union, United Auto., Aerospace, & Agr. Implement Workers of Am., 451 U.S. 679, 688 n.13 (1981) (emphasis removed) (internal quotation marks omitted).

Moreover, ASPCUF has no legitimate union interest in retaining the ability to intentionally inflate its membership dues beyond that reasonably anticipated as necessary for actual union activity. The courts and the General Assembly are already heavily engaged in how and to what extent a public-sector union may charge employees for its services. See, e.g., Hohe v. Casey, 956 F.2d 399 (3d Cir. 1992). But here, APSCUF is not even attempting to charge for actual union services. As APSCUF's own promotional materials indicate quite clearly, the markup in "dues" is intended to be diverted, through the Campaign, to activity in which it would not be lawful for a union to engage. (R. 172a).

Finally, the PLRB's rationale is particularly egregious in this instance, where APSCUF members are not provided notice of the dues inflation and, like many other public employees in Pennsylvania, have no established right to leave their union over coercive union rules. See Scofield, 394 U.S. at 430 ("[Section] 8(b)(1) leaves a union free to enforce a properly adopted rule which reflects a legitimate union interest, impairs no policy Congress has imbedded in the labor laws, and is reasonably enforced against union members who are free to leave the union and escape the rule.") (emphasis added). Unlike federal law,[8] PERA purports to restrict

8. See Pattern Makers' League, 473 U.S. at 106 ("By allowing employees to resign from a union at any time, [federal law] protects the employee whose views come to diverge from those of his union.") (emphasis added).

employees from resigning as members of the union for virtually the entire term of a collective bargaining agreement. See 43 P.S. § 1101.301(18). And APSCUF, for one, has taken full advantage. (R. 99a). In its collective bargaining agreement with the Pennsylvania State System of Higher Education, APSCUF requires that:

> All FACULTY MEMBERS who are members of APSCUF as of the date of ratification of this Agreement or who, thereafter, during its term become members of APSCUF, shall, as a condition of continued employment, maintain their membership in APSCUF for the term of this Agreement; provided, however, that any such FACULTY MEMBER may resign from membership in APSCUF during the period of fifteen days prior to the expiration of the Agreement . . . .

(R. 99a). An APSCUF-represented employee wishing to avoid APSCUF's blatant dues manipulations would have no ability to do so without PLRB enforcement of Article IV.[9]

9. Alternatively, were this Court to hold that public employees could resign from their union at any time—and such a ruling would be strongly supported—the threat of unpoliced internal union matters would largely evaporate. See McCahon v. Pennsylvania Turnpike Comm'n, 491 F.Supp.2d 522, 526-27 (M.D. Pa. 2007) ("[T]he 'maintenance of membership' provision may have a direct and deleterious impact on plaintiffs' rights under the First Amendment. Although Otto [v. Pennsylvania State Education Association-NEA, 330 F.3d 125, 128 (3d Cir. 2003)] and other similar cases involve non-members' First Amendment right not to associate, the court finds that plaintiffs are reasonably likely to succeed in extending this right to union members who are unable to resign unilaterally because of a 'maintenance of membership' provision.").

Yet, for years, the PLRB has restated its self-imposed jurisdictional limitation, discouraging legitimate unfair labor practice charges and encouraging union coercion, including APSCUF's inflation of union dues. The reality is, public employees in Pennsylvania are entitled to greater protection, and the PLRB has abandoned its watch. This Court should make clear that the PLRB is not prohibited from addressing—and correcting—internal union matters that violate public employees' rights.

II. THE PLRB ERRED IN CONCLUDING THAT APSCUF IS PERMITTED TO MANIPULATE ITS DUES AMOUNTS TO COERCE ADDITIONAL UNION AND POLITICAL CONTRIBUTIONS

This Court should also determine that the PLRB erred in finding that APSCUF was permitted to manipulate dues amounts to coerce support from Dr. Dailey and other public employees. APSCUF's practice is not an internal union matter, and artificial inflation of union dues is an unfair labor practice under section 1201(b)(1) of PERA.

A. APSCUF's practice is not an "internal union matter"

Even if the PLRB is prohibited from addressing internal union matters—and it is not—APSCUF's manipulation of union dues is not a purely internal union matter. This Court should correct the PLRB's misunderstanding.

The PLRB's self-imposed "internal union matter" jurisdictional limitation, discussed above, appears to remain limited to a class of cases involving a member's exercise of union-provided rights, such as the right to vote on union action. See, e.g., Williamsport Area Support Personnel Ass'n, 41 PPER ¶ 15, 2010 WL 6808189; Penns Manor Area Sch. Dist., 39 PPER ¶ 81, 2008 WL 8586486; Girard Sch. Dist., 38 PPER ¶ 128, 2007 WL 7563573; In re Windber Area Sch. Dist., 34 PPER ¶ 53, 2003 WL 26073092. In Chambersburg Borough, 106 A.3d 212, when the PLRB attempted to extend its internal union matter bar to a union's imposition of a secondary boycott, this Court reversed the PLRB's determination and labeled the conduct an unfair labor practice.

Here, the Campaign is wholly distinguishable from unfair labor charges involving a member's exercise of membership rights. Unlike the right to vote, for example, the terms of which are typically set forth in a union's constitution or bylaws, the rights associated with the Campaign (if any) were never provided to Dr. Dailey, whether in APSCUF's organizational documents or otherwise. (R. 8a-246a). Perhaps if the Campaign was fully described to members in organizational documents, disagreement over the Campaign may fairly be viewed as an internal matter; however, it is precisely because no internal disclosures made membership

aware of the manipulation of dues that the PLRB cannot label the conduct "internal."

Equally important, failure to pay APSCUF's inflated dues amount would implicate loss of a job,[10] despite the fact that the Campaign has nothing to do with actual matters of employment.[11] Accordingly, in setting an inflated dues amount, APSCUF coerced Dr. Dailey and other union members into assisting the union financially, beyond the amount that may reasonably be required, with the threat of potential job loss. (R. 99a).

10. As APSCUF's collective bargaining agreement clearly states, "[t]he payment of dues and assessments while he/she is a member shall be the only requisite employment condition." (R. 99a); see Allen Bradley Co. v. NLRB, 286 F.2d 442, 446 (7th Cir. 1961) ("We assume that a union has broad powers in prescribing rules relative to the acquisition and retention of its members. However, that power, in our view, is not absolute. It goes beyond any permissible limit when it imposes a sanction upon a member because of his exercise of a right guaranteed by the Act. Coercive action, whether by way of fine, discharge or otherwise, which deprives a member of his right to work and his employer of the benefit of his services, cannot be said to relate only to the internal affairs of the union.") (emphasis added).

11. See Smith v. Pittsburgh Gage & Supply Co., 194 A.2d 181, 183-84 (Pa. 1963) (defining "purely internal union matters" as "relations between the individual plaintiff and the union not having to do directly with matters of employment, and . . . the principal relief sought [is] restoration of union membership rights.") (emphasis added) (internal quotes omitted).

B. APSCUF committed an unfair labor practice

For that very reason—that is, because APSCUF abused its power to make dues a condition of continued employment—APSCUF committed an unfair labor practice under section 1201(b)(1) of PERA. This Court should reverse the PLRB's determination to the contrary and remand for imposition of sanctions.

Again, PERA prohibits, as an unfair labor practice, public-sector unions from "restraining or coercing employes in the exercise of the rights guaranteed in Article IV." 43 P.S. § 1101.1201(b)(2). Article IV provides:

> It shall be lawful for public employes to organize, form, join or assist in employe 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.

43 P.S. § 1101.401 (emphasis added).

The language of Article IV is decidedly broader in scope than the language previously employed by the General Assembly to protect private workers covered by the Pennsylvania Labor Relations Act ("PLRA"). The PLRA analog merely protects an employees' rights to join, refrain from joining, and select a union:

> It shall be an unfair labor practice for a labor organization . . . [t]o 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 purposes of collective bargaining.

43 P.S. § 211.6(2).

Here, the PLRB recast the rights in Article IV as merely guaranteeing "the right to choose or become union members or to refrain from doing so," a gross oversimplification of the General Assembly's actual words. App'x, at p.1. And on that basis, it reasoned that Dr. Dailey exercised her rights fully when she joined APSCUF in 2006 and "consented" to paying dues, apparently even when the exaction ceases to be "dues" at all. Id. at p.2. Yet it also reasoned that the "option" APSCUF provided to employees to receive their "rebate" precluded a finding of an unfair labor practice. Id.

The PLRB's determination was misguided for at least three reasons. First, and most obviously, Dr. Dailey did not actually receive notice or the option of receiving her overpaid dues back, as the PLRB presupposed. Id. As Dr. Dailey alleged, she was never provided, in 2014 or 2015, with meaningful notice or an opportunity to request a refund after APSCUF's arbitrary April 1 deadline passed. (R. 3a-4a). The PLRB's conclusion is simply contrary to the facts alleged.

Second, the PLRB ignored the actual text of PERA, which does not merely guarantee the right to decline to join a union, as the PLRB concluded. Instead, PERA makes it an unfair labor practice to coerce employees into "assist[ing]" the union or into "engag[ing] in . . . activities for the purpose of . . . mutual aid and protection." 43 P.S. § 1101.401. Had the General Assembly intended only to protect employees' rights to join or decline to join a union, it would have employed the language it used 23 years before, in the PLRA. In fact, ASPCUF violated PERA because it used its power as the exclusive bargaining representative to force Dr. Dailey and other members to contribute financially, over and beyond payment of dues, in support of union activities. Because APSCUF has deftly tied the $25 contribution to the obligation to pay dues as a condition of employment, APSCUF members have no choice but to surrender their money to APSCUF or risk losing their jobs. But of course, APSCUF never intends for the extra $25 to serve as membership dues.

Finally, to hold that unions are free to set dues in any amount, even for purposes that have nothing to do with union administration, collective bargaining, or any other union service, would be to invite results even more absurd than the situation presented here. How much money could the union force from members under the guise of dues? Is there any principled limitation on that ability? Under

the PLRB's rationale, unions who wished to support our next presidential candidates could overcharge public employees by hundreds of dollars in "dues," present them with a flawed "opportunity" to reclaim those funds at a later date, and then shuttle those funds either to a PAC, with members' permission, or to an independent expenditure committee (or "SuperPAC")[12]—without the need for members' permission—in support of the candidate.

All a union would have to do to fundraise is to call the seizure of funds from members "dues." The General Assembly never intended that the unions' power to require dues payments from membership would become a tool to fundraise for politics.

CONCLUSION

Accordingly, this Court should reverse the determination of the PLRB that Dr. Dailey failed to state an unfair labor practice and remand for further proceedings. Additionally, this Court should clarify the extent of the PLRB's jurisdiction, which would include jurisdiction to address "internal union matters."

12. Although section 1701 of PERA clearly prohibits such a contribution, the PLRB has also disclaimed any enforcement responsibility in that context, an issue currently before this Court. See Trometter v. PLRB, No. 1484 CD 2015 (Aug. 19, 2015).

Respectfully submitted,

THE FAIRNESS CENTER

June 6, 2016

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APPENDIX A

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

MARY ANN DAILEY	:	
	:	
v.	:	Case No. PERA-C-15-131-E
	:	
ASSOCIATION OF PENNSYLVANIA STATE COLLEGE AND UNIVERSITY FACULTIES	:	

FINAL ORDER

Mary Ann Dailey (Complainant) filed timely exceptions and a supporting brief with the Pennsylvania Labor Relations Board (Board) on July 6, 2015. The Complainant's exceptions challenge a June 16, 2015 decision of the Secretary of the Board declining to issue a complaint and dismissing the Complainant's Charge of Unfair Practices filed against the Association of Pennsylvania State College and University Faculties (APSCUF).

The Complainant alleged in the Charge that APSCUF holds an annual dues rebate campaign in which union members may elect to donate $25 of their already collected dues to APSCUF's political action committee, allow the $25 to remain in APSCUF's dues fund or receive a rebate of $25. The Complainant asserted that APSCUF's dues rebate campaign violates Section 1201(b)(1) of the Public Employe Relations Act (PERA) and that APSCUF's willingness to offer the dues rebate demonstrates that it is overcharging the union members $25 a year in dues.

In declining to issue a complaint, the Secretary stated that the Complainant's allegations did not rise to the level of an unfair practice under Section 1201(b)(1) of PERA. The Secretary further stated that the Board lacks jurisdiction over the Complainant's allegations because they involve internal union matters and APSCUF's duty of fair representation to its members. Therefore, the Secretary dismissed the Complainant's Charge.

In determining whether to issue a complaint, the Board assumes that all facts alleged are true. Issuance of a complaint on a charge of unfair practices is not a matter of right, but is within the sound discretion of the Board. Pennsylvania Social Services Union, Local 668 v. PLRB, 481 Pa. 81, 392 A.2d 256 (1978). A complaint will not be issued if the facts alleged in the charge could not support a cause of action for an unfair practice as defined by PERA. Homer Center Education Association v. Homer Center School District, 30 PPER ¶ 30024 (Final Order, 1998).

The Complainant alleges in the exceptions that the Secretary erred in dismissing the Charge because the dues rebate campaign coerces her into financially assisting APSCUF beyond what is required under the maintenance of membership provision in the parties' collective bargaining agreement. In this regard, the Complainant asserts that the $25 remains in APSCUF's dues fund if the members do not respond within the deadline for the dues rebate. The Complainant further asserts that she did not receive the dues rebate election form in 2015 until after the deadline, and thus her dues remained in APSCUF's dues fund.

Pursuant to Section 401 of PERA, public sector employes have the right to choose to become union members or to refrain from doing so. 43 P.S.

§ 1101.401. Section 1201(b)(1) of PERA provides that an employe organization is prohibited from "[r]estraining or coercing employes in the exercise of the rights guaranteed in Article IV of [PERA]." 43 P.S. § 1101.1201(b)(1). Nothing in the Complainant's Charge supports the notion of restraint or coercion for the stated purpose that would give rise to a violation of Section 1201(b)(1) of PERA.

The Complainant alleges that the dues rebate campaign coerces her into financially assisting APSCUF. However, the payment of membership dues is a corollary to an employe's decision to become a union member and the Complainant alleged that she has been a member of APSCUF since 2006 thereby consenting to the payment of membership dues. Further, the Complainant alleged that APSCUF's dues rebate campaign provides the employes with the option of either donating the $25 to APSCUF's political action committee, allowing the $25 to remain in APSCUF's dues fund, receiving a rebate or choosing not to fill out the dues rebate form altogether. Since at least 2012, the employes' rebate election made by April 1 of any given year was effective "during the current fiscal year and on any subsequent occasion." (Exhibit F). Because APSCUF's dues rebate campaign does not affect membership rights and provides the employes with options regarding disposition of the rebate, the Complainant has failed to state a cause of action under Section 1201(b)(1) of PERA.

With regard to the Complainant's allegation that APSCUF is overcharging its members $25 in dues in order to offer the rebate, the amount of dues charged union members is an internal union matter over which the Board does not have jurisdiction. See Rudnick v. AFSCME District Council 47, 29 PPER ¶ 29144 (Final Order, 1998)(employe's claim involving union's denial of access to names and addresses of members who overpaid dues was an internal union matter not within the Board's jurisdiction). Further, the Complainant's allegations make clear that only voluntary contributions are forwarded to APSCUF's political action committee, and the Complainant's general allegation that APSCUF is utilizing membership dues for an unauthorized purpose does not fall within the scope of unfair practices set forth in Article XII of PERA. See Borough of Ambridge v. Local Union 1051, AFSCME, 17 PPER ¶ 17075 (Final Order, 1986)(Board has authority to remedy only those acts that constitute a violation of Article XII); see also PLRB v. Mangino, 3 PPER 330 (Nisi Order of Dismissal, 1973)(same). Accordingly, the Secretary did not err in declining to issue a complaint and dismissing the Charge.

After a thorough review of the exceptions and all matters of record, the Board shall dismiss the exceptions and affirm the Secretary's decision declining to issue a complaint.

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 Mary Ann Dailey are dismissed and the Secretary's June 16, 2015 decision not to issue a complaint 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, L. Dennis Martire, Chairman, Robert H. Shoop, Jr., Member, and Albert Mezzaroba, Member, this sixteenth day of February, 2016. 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.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing Brief filed on behalf of Petitioner Dr. Mary Ann Dailey has on this date been served on the following:

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June 6, 2016

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