



COMMONWEALTH OF PENNSYLVANIA

July 21, 2015

Mary Trometter  
C/O David R. Osborne, General Counsel  
225 State Street, Suite 303  
Harrisburg, PA 17101

Pennsylvania State Education Association  
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PO Box 1724  
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PENNSYLVANIA STATE EDUCATION ASSOCIATION AND  
NATIONAL EDUCATION ASSOCIATION  
Case No. PERA-M-14-366-E

Enclosed is a copy of the Order issued by the Board in the above-captioned matter. A copy of this Order is being forwarded to the Pennsylvania Office of Attorney General, along with a copy of the original filing in this case.

Sincerely,

A handwritten signature in black ink, appearing to read "Larry D. Cheskawich".

Larry D. Cheskawich  
Board Secretary

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Enclosures

cc: PA Office of Attorney General

Pennsylvania Labor Relations Board  
651 Boas Street, Room 418 | Harrisburg, PA 17121-0750 | 717.787.1091 | F 717.783.2974 | [www.dli.state.pa.us](http://www.dli.state.pa.us)

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COMMONWEALTH OF PENNSYLVANIA  
Pennsylvania Labor Relations Board

MARY TROMETTER :  
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 v. : Case No. PERA-M-14-366-E  
 :  
 PENNSYLVANIA STATE EDUCATION :  
 ASSOCIATION AND NATIONAL EDUCATION :  
 ASSOCIATION :

**ORDER REFERRING REPORT TO ATTORNEY GENERAL PURSUANT TO 34 PA. CODE §95.112**

On November 18, 2014, Mary Trometter (Complainant) filed a report with the Pennsylvania Labor Relations Board (Board), as permitted by Section 95.112 of the Board's Rules and Regulations, 34 Pa. Code §95.112,<sup>1</sup> alleging that the Pennsylvania State Education Association (PSEA) and the National Education Association (NEA) made contributions to then-candidate Tom Wolf's 2014 campaign for governor in violation of Section 1701 of the Public Employee Relations Act (PERA). Section 1701 provides in part as follows:

No employe organization shall make any contribution out of the funds of the employe organization either directly or indirectly to any political party or organization or in support of any political candidate for public office.

43 P.S. §1101.1701. On December 19, 2014, PSEA and NEA filed an Answer denying the Complainant's allegations that they violated Section 1701. Thereafter, on January 14, 2015, the Complainant filed a response to the Answer of PSEA and NEA, and on January 21, 2015, PSEA and NEA filed a reply to the response of the Complainant.

In her report filed with the Board, the Complainant alleges that she is a dues-paying member of PSEA and NEA, and that union members' dues were used to fund (1) an October 31, 2014 letter from PSEA and NEA urging family members of educators to vote for Tom Wolf for governor, and (2) the November 2014 Edition of the PSEA Voice magazine, which also expressed support for the Wolf campaign. The Complainant alleges that such purported use of union dues constitutes a direct or indirect contribution in support of a political candidate in violation of Section 1701 of PERA. The Complainant asserts that under PERA, the Board is charged with enforcement of Section 1701 and

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<sup>1</sup>Section 95.112 of the Board's Rules and Regulations states that "[a]n individual who has knowledge of a political contribution or other activity by an employe organization thought to be in violation of section 1701 of the act . . . may file a report with the Board . . . Upon receipt of such report, if it appears to the Board that an investigation in respect to the charge should be instituted, the Board shall refer the report to the Attorney General of the Commonwealth for proceedings under applicable statutes. 34 Pa. Code §95.112(a) and (c).

requests that the Board impose the statutory penalties for violations of Section 1701, including fines, imprisonment or both.

In response to the Complainant's allegations, PSEA and NEA argue that the term "contribution" is undefined in PERA and should be accorded its common and approved usage, which is a gift of money or some other thing of value to another person or entity for a specified purpose. PSEA and NEA assert that they did not contribute money or any other thing of value to the Wolf campaign, and did not violate Section 1701 of PERA by issuing the aforementioned communications to union members and their families. PSEA and NEA further argue that the Complainant's construction of Section 1701 should be rejected to avoid conflict with the Pennsylvania Election Code, which indicates that no provision of the laws of the Commonwealth shall be deemed to prohibit direct private communications between a labor organization and its members and their families, 25 P.S. §3253(c), and so as not to raise serious concerns about Section 1701's constitutionality under the First Amendment to the United States Constitution, citing, *inter alia*, the United States Supreme Court's decision in Citizens United v. Federal Election Commission, 558 U.S. 310 (2010). Indeed, as noted by PSEA and NEA, constitutional concerns were raised by the Supreme Court in holding in United States v. Congress of Industrial Organizations, 335 U.S. 106 (1948) that a federal statute prohibiting labor organizations from making contributions or expenditures in connection with elections did not bar use of union funds to publish a weekly periodical expressing views on candidates or political proposals.

The Complainant misconstrues the Board's role in the application of Section 1701 of PERA by requesting that the Board impose the statutory penalties of fines, imprisonment or both. 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 of PERA). In PLRB v. Pittsburgh Federation of Teachers, Local 400, AFT, AFL-CIO, 7 PPER 198, the Board held that its function under Section 1701 is not to decide whether there has been a violation of that provision, which is not one of the specified unfair practices set forth in Article XII of PERA. Rather, the Board held that its role with regard to Section 1701 is to establish rules and regulations concerning disposition of reports of alleged violations. Section 95.112 of the Board's Rules and Regulations provides for referral of reports of alleged illegal political contributions under Section 1701 of PERA to the Attorney General of the Commonwealth of Pennsylvania for investigation and application of prosecutorial discretion. In doing so, the Office of Attorney General can make the constitutional and statutory determinations for which it is better suited than the Board.<sup>2</sup> Thus, in accordance with its Rules and Regulations, the Board shall refer the Complainant's report to the Attorney General without consideration of the underlying merits of the report.

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<sup>2</sup>As an administrative agency, the Board must presume the constitutionality of legislative enactments unless and until the statute is found to be unconstitutional by a court. Haverford Township Education Association v. Haverford Township School District, 16 PPER ¶16115 (Final Order, 1985), *aff'd*, 16 PPER ¶16205 (Court of Common Pleas of Delaware County, 1985).

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 this matter is referred to the Attorney General of the Commonwealth of Pennsylvania for proceedings under applicable statutes.

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 twenty-first day of July, 2015. 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.

