

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

MARY TROMETTER,

Petitioner,

v.

**NATIONAL EDUCATION ASSOCIATION;
and PENNSYLVANIA STATE EDUCATION
ASSOCIATION,**

Respondents.

**Appeal from a Final
Determination of the
Pennsylvania Labor
Relations Board (Case No.
PERA-M-14-366-E)**

___ CD 2015

PETITION FOR REVIEW

Petitioner Mary Trometter (“Ms. Trometter”), by and through undersigned counsel, files this petition, pursuant to Pennsylvania Rule of Appellate Procedure 1511, to vindicate her rights as a public employee and the public’s right to enforcement of the law.

JURISDICTION

1. Ms. Trometter appeals from a determination of the Pennsylvania Labor Relations Board (“PLRB”). Specifically, Ms. Trometter seeks reversal of the PLRB’s “Order Referring Report to Attorney General Pursuant to 34 Pa. Code § 95.112” (“Order”), in Case No. PERA-M-14-366-E, entered on July 21, 2015. A true

and correct copy of the Order is attached hereto as Exhibit A and incorporated herein by reference.

2. Jurisdiction is proper in this Court pursuant to the Judicial Code, 42 Pa.C.S. § 763(a).

PARTIES

3. Petitioner Ms. Trometter is an assistant professor of culinary arts at the Pennsylvania College of Technology, and she has been a member of the National Education Association (“NEA”) and Pennsylvania State Education Association (“PSEA”) for over 23 years.

4. Respondent NEA is a federally chartered corporation, incorporated in the District of Columbia by act of Congress, 36 U.S.C. §§ 151101-151108, and an “employe organization” as defined by section 301(3) of the Public Employe Relations Act (“PERA”), 43 P.S. § 1101.301. The NEA is the largest teachers’ union in the nation and maintains a separate segregated fund called the “NEA Advocacy Fund,” one of the country’s largest SuperPACs.

5. Respondent PSEA is an unincorporated association registered under the laws of Pennsylvania and an “employe organization” as defined by section 301(3) of PERA. The PSEA is the Pennsylvania statewide affiliate of the NEA.

6. Respondent PLRB is an administrative agency of Pennsylvania and charged with enforcement of, among other statutes, PERA. See 43 P.S. § 1101.501 (“The board shall exercise those powers and perform those duties which are specifically provided for in this act.”). Among other duties, the PLRB is required to “prevent the circumvention or evasion of the provisions of” and is empowered to levy sanctions for violations of section 1701.

BACKGROUND

7. On October 31, 2014, Ms. Trometter’s husband received a letter jointly signed by the NEA and PSEA presidents and paid for by the NEA Advocacy Fund, which is itself entirely funded by contributions from the NEA using membership dues. The letter urged Ms. Trometter’s husband to “join Mary in voting for Tom Wolf for Governor on November 4th.”

8. In November 2014, the PSEA’s magazine, PSEA Voice, was used to support Tom Wolf for Governor. Now-Governor Wolf received substantial promotional space in the magazine, which is funded by PSEA member dues.

9. Section 1701 provides, in full:

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.

The [PLRB] shall establish such rules and regulations as it may find necessary to prevent the circumvention or evasion of the provisions of this section.

If an employe organization has made contributions in violation of this section it shall file with the board a report or affidavit evidencing such contributions within ninety days of the end of its fiscal year. Such report or affidavit shall be signed by its president and treasurer or corresponding principals.

Any employe organization which violates the provisions of this section or fails to file any required report or affidavit or files a false report or affidavit shall be subject to a fine of not more than two thousand dollars (\$2,000).

Any person who wilfully violates this section, or who makes a false statement knowing it to be false, or who knowingly fails to disclose a material fact shall be fined not more than one thousand dollars (\$1,000) or imprisoned for not more than thirty days or both. Each individual required to sign affidavits or reports under this section shall be personally responsible for filing such report or affidavit and for any statement contained therein he knows to be false.

Nothing herein shall be deemed to prohibit voluntary contributions by individuals to political parties or candidates.

10. Title 34, section 95.112 of the Pennsylvania Code sets forth a reporting mechanism for violations of section 1701. But it provides that

[u]pon receipt of the report, if it appears to the [PLRB] that an investigation in respect to the charge should be instituted, the [PLRB] shall refer the report to the Attorney General of the Commonwealth for proceedings under applicable statutes.

11. On November 18, 2014, Ms. Trometter filed a Charge of Illegal Contributions (“Charge”) pursuant to section 1701 of the PLRB and as directed by section 95.112 of the PLRB’s rules. The petition alleged that, in using membership dues to fund the letter and the magazine, the NEA and PSEA illegally made “any contribution out of the funds of the employe organization either directly or indirectly . . . in support of any political candidate for public office.” 43 P.S. § 1101.1701.

12. In the proceedings before the PLRB, it became apparent that the facts underlying Ms. Trometter’s Charge were not in dispute. The NEA and PSEA admitted to the conduct alleged by Ms. Trometter and merely argued that section 1701 should be construed, despite its plain meaning, so as to permit the charged conduct. The NEA and PSEA urged the PLRB to dismiss Trometter’s Charge.

13. Ultimately, the PLRB declined to dismiss the Charge. Nevertheless—and contrary to its statutory duty to enforce section 1701—the PLRB punted to the Attorney General’s Office for enforcement, remarking in its Order that “the Office of Attorney General can make the constitutional and statutory determinations for which it is better suited than the [PLRB].” Order, at p. 2.

14. In entering its Order, the PLRB sidestepped the underlying issue and abdicated its own statutory duty to enforce section 1701.

GROUND FOR REVERSAL

15. This Court should reverse the PLRB's Order, decide that the PLRB was presented with sufficient evidence of a violation of section 1701, and remand to the PLRB for imposition of sanctions.

16. The Order should be reversed on at least two grounds. First, the PLRB erred in determining that it was precluded from enforcing the law. The PLRB's determination that the Attorney General's Office "is better suited than the [PLRB]" to enforce the law is not only unsupported by the evidence, it is contrary to the law. Section 1701 plainly gives the PLRB authority—indeed, a duty—to enforce the law with respect to illegal contributions and to impose sanctions for illegal conduct. And to the extent that the PLRB's rules or decisions limit or prohibit the PLRB from enforcing section 1701, those rules or decisions are invalid as inconsistent with section 1701.

17. Second, the PLRB erred in failing to determine that the NEA and PSEA violated section 1701 in the first place. As the record demonstrates, the NEA and PSEA made "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.

WHEREFORE, Ms. Trometter respectfully requests that this Court reverse the PLRB’s July 21, 2015, “Order Referring Report to Attorney General Pursuant to 34 Pa. Code § 95.112.”

Respectfully submitted,

THE FAIRNESS CENTER



August 19, 2015

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EXHIBIT A

COMMONWEALTH OF PENNSYLVANIA

July 21, 2015

Mary Trometter
C/O David R. Osborne, General Counsel
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Harrisburg, PA 17101

Pennsylvania State Education Association
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PO Box 1724
Harrisburg, PA 17101

National Education Association
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Washington, DC 20005

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

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COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

MARY TROMETTER :
 :
 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 §95.112,¹ 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

¹Section 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.² 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.

²As 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.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of this Petition for Review and referenced exhibit, filed on behalf of Petitioner Mary Trometter, has on this date been served on Defendants by mail, addressed as follows:

Jason Walta, Senior Staff Counsel (*first-class mail*)
Office of General Counsel
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Attorney General Kathleen Kane (*certified mail*)
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August 19, 2015



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