

**Via Hand Delivery**

October 24, 2018

Nathan Bortner, Secretary  
Pennsylvania Labor Relations Board  
651 Boas Street, Room 418  
Harrisburg, PA 17121-0750

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Dolores McCracken, *President*  
Richard W. Askey, *Vice President*  
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James G. Vaughan, *Executive Director*

**RE: Mary Trometter v. Pennsylvania State Education Association and  
National Education Association  
Case No. PERA-M-14-366-E**

Dear Secretary Bortner:

Enclosed for filing in the above-captioned matter, please find an original and five (5) copies of Exceptions to the Hearing Examiner's Decision dated October 4, 2018, filed on behalf of Respondents Pennsylvania State Education Association and National Education Association.

Kindly file the original and four (4) copies of the Exceptions and return a time-stamped copy with the messenger.

At this time, I am requesting a twenty (20) day extension of time for filing a Brief in Support of Exceptions, until November 12, 2018.

If you have any questions, please do not hesitate to contact me.

Very truly yours,



Katherine M. Voyer  
Assistant General Counsel

KMV/cls  
Enclosures

cc: Jack E. Marino, Hearing Examiner (*via hand delivery*)  
David R. Osborne, Esquire (*via first class mail*)  
Charles O. Beckley, II, Esquire (*via first class mail*)  
Jason Walta, Esquire

**COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF LABOR AND INDUSTRY  
PENNSYLVANIA LABOR RELATIONS BOARD**

<b>MARY TROMETTER,</b>	:	
	:	
<b>Complainant</b>	:	
	:	
v.	:	<b>Case No. PERA-M-14-366-E</b>
	:	
<b>PENNSYLVANIA STATE EDUCATION</b>	:	
<b>ASSOCIATION and NATIONAL</b>	:	
<b>EDUCATION ASSOCIATION,</b>	:	
	:	
<b>Respondents</b>	:	

**RESPONDENTS' EXCEPTIONS TO THE  
PROPOSED DECISION AND ORDER**

The Proposed Decision and Order issued in this matter on October 4, 2018 correctly concludes that the Respondents, Pennsylvania State Education Association (PSEA) and National Education Association (NEA), have not engaged in illegal contributions within the meaning of Section 1701 of the Public Employee Relations Act. (PD&O at 13).

In reaching this conclusion, the Hearing Examiner declined to address several arguments raised by the Respondents. (PD&O at 12 n.6). To preserve those arguments in future proceedings, Respondents respectfully submit the following Exceptions to the Proposed Decision and Order pursuant to 34 Pa. Code § 95.98:

**Exception Number 1:** Respondents except to the Hearing Examiner's failure to find that the terms "political party," "organization," and "candidate" in PERA § 1701 apply only in connection with local and state elections in Pennsylvania, and that any application of those terms in connection with federal or

out-of-state elections violates the basic constitutional principal that the laws of one State have no operation outside of its territory. Proposed Decision and Order (“PD&O”) at 12 n.6; Respondents’ Proposed Findings of Fact and Conclusions of Law (“Prop. FF & CL”) at 10–11; Respondents’ Post-Hearing Brief at 16–17; Respondents’ Sur-Reply Brief at 14–15.

**Exception Number 2:** Respondents except to the Hearing Examiner’s failure to find that the NEA Advocacy Fund is not a “political . . . organization” for the purposes of PERA § 1701 because any contrary finding would present a direct conflict with the express preemption provision of the Federal Election Campaign Act, 52 U.S.C. § 30143, and the regulation of the Federal Elections Commission that implements that provision, 11 C.F.R. § 108.7(b)(3). PD&O at 12 n.6; Resp’ts’ Prop. FF & CL at 10–11; Resp’ts’ Post-Hr’g Br. at 16–17; Resp’ts’ Sur-Reply Br. at 15–16; Hearing Stipulations at ¶ 15; Hearing Exhibit 1 at 63a-64a, 72a-77a; Hearing Exhibit 4.

**Exception Number 3:** Respondents except to the Hearing Examiner’s failure to find that PERA § 1701 is facially invalid under Article I, Section 7 of the Pennsylvania Constitution. PD&O at 12 n.6; Resp’ts’ Prop. FF & CL at 10–11; Resp’ts’ Post-Hr’g Br. at 16–17, 19–21; Resp’ts’ Sur-Reply Br. at 9–13.

**Exception Number 4:** Respondents except to the Hearing Examiner’s failure to explicitly find that NEA’s monetary transfers to the NEA Advocacy Fund are constitutionally protected political advocacy under the First Amendment of the United States Constitution and Article I, Section 7 of the Pennsylvania

Constitution. PD&O at 12 n.6; Resp'ts' Prop. FF & CL 13–14; Resp'ts' Post-Hr'g Br. at 23–24; Resp'ts' Sur-Reply Br. at 6–9; Hearing Stipulations at ¶ 15; Hearing Exhibit 1 at 63a-64a, 72a-77a; Hearing Exhibit 4.

**Exception Number 5:** Respondents except to the Hearing Examiner's failure to find that the Complainant's proffered definition of "contribution" is impermissibly vague and therefore conflicts with the Due Process Clause of the Fourteenth Amendment and Pennsylvania's lenity statute, 1 Pa. C.S. § 1928(b)(1). PD&O at 12 n.6; Resp'ts' Prop. FF & CL at 17–18; Resp'ts' Post-Hr'g Br. at 30–31; Resp'ts' Sur-Reply Br. at 2 n.1; Hearing Transcript at 85, 93, 96, 101–02.

WHEREFORE, Respondents respectfully request that the Board supplement the findings and conclusions of law in the Proposed Decision and Order in accordance with these exceptions, and affirm the Hearing Officer's dismissal of the report and closure of the investigation.

Respectfully submitted:



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Education Association*

Dated: October 24, 2018

**CERTIFICATE OF SERVICE**

I, Katherine M. Voye, Esquire, hereby certify that on this 24th day of October, 2018, true and correct copies of the foregoing Respondents' Exceptions to the Proposed Decision and Order were served on the following individuals in the manner set forth below:

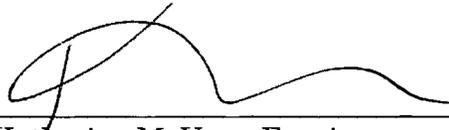
**Via Hand Delivery**

Jack E. Marino, Hearing Examiner  
Pennsylvania Labor Relations Board  
651 Boas Street, Room 418  
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**Via First Class Mail**

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