

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

ROBERT A. HOMWAY :
 :
 v. : Case No. PERA-C-01-243-E
 :
 COMMONWEALTH OF PENNSYLVANIA :
 DEPARTMENT OF CORRECTIONS :
 CRESSON SCI :

FINAL ORDER

Robert A. Homway (Complainant) filed a Charge of Unfair Practices with the Pennsylvania Labor Relations Board (Board) on May 23, 2001 alleging that his employer, Department of Corrections SCI-Cresson (Respondent) violated Sections 1201(a)(1), (2) and (3) of the Public Employe Relations Act (PERA) by discriminatorily assigning him duties because he filed grievances under the collective bargaining agreement.

In his Charge, Complainant alleges that when he filed a grievance over a particular job assignment, Respondent retaliated against him in future job assignments. Specifically, he asserts that after filing a grievance for improperly being assigned to administer urine testing, Respondent placed him in an unsafe position of guarding inside a small yard, to which no other corrections officer has been assigned. On August 8, 2000, he filed a grievance over his assignment to the small yard. Thereafter, he was allegedly passed over for acting sergeant duties, and grieved that action on September 12, 2000. He contends that Respondent has assigned him to an undesirable cellblock despite that others choose their own cellblocks, and generally notes, without further specific alleged acts, that Respondent's conduct continues through the present.

On June 11, 2001, the Secretary of the Board advised Complainant that no complaint would be issued because he failed to set forth facts supporting the timeliness of the Charge. On June 29, 2001, Complainant filed with the Board a Supplemental Charge of Unfair Practices, which the Board construed as Exceptions to the Secretary's June 11, 2001 decision. In his Exceptions, Complainant incorporates his previous allegations and reiterates that the Respondent's discriminatory and retaliatory job assignments occurred within the past year and continue through the present. To support a showing of recent discriminatory treatment, he notes that while he was on vacation, his replacement was not treated the same as he had been.

Under Section 1505 of PERA, the Board lacks jurisdiction over conduct occurring more than four months prior to the filing of the charge. United Mine Workers, Region 1 v. Blair County, 32 PPER ¶ 32048 (Final Order, 2001). Untimely allegations of specific conduct coupled with unspecific allegations that unlawful conduct "continues through the present date" is insufficient to support timeliness. See Pennsylvania Human Relations Comm'n v. United States Steel, 458 Pa. 559, 325 A.2d 910 (1975). To be timely a complainant must allege at least one occurrence of unlawful conduct within the statute of

limitations. Washington Township Municipal Auth. v. International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local Union No. 32, 18 PPER ¶18223 (Final Order, 1987).

Based on the allegations in the Charge, the statute of limitations would have commenced running sometime after September 12, 2000 on the inference that Complainant would have received a discriminatory job assignment following the filing of his latest grievance. However, other than what is set forth in the attached grievance forms that were lodged in the year 2000, there is no indication as to when any of the alleged cellblock or small yard assignments in fact took place. Complainant's references to a co-worker's assignments during a "recent" vacation, while they may be relevant evidence of discriminatory treatment, do not raise a reasonable inference that Complainant received an unlawful assignment within four months of filing the Charge.

Accordingly, since there is no indication of an instance of a discriminatory assignment within four months of the filing of the Charge, there is no allegation supporting timeliness, Washington Township Municipal Auth., supra, and the Secretary did not err in refusing to issue a complaint. Because the Exceptions did not correct this deficiency, we affirm the Secretary's decision.

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 are dismissed and the Secretary's decision not to issue a complaint is made absolute and final.

SEALED, DATED and MAILED pursuant to conference call meeting of the Pennsylvania Labor Relations Board, John Markle Jr., Chairman, L. Dennis Martire, Member, and Edward G. Feehan, Member, this twenty-first day of August, 2001. 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.