

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

WEST WHITELAND TOWNSHIP :
POLICE ASSOCIATION :
 :
 v. : Case No. PF-C-01-35-E
 :
WEST WHITELAND TOWNSHIP :

FINAL ORDER

On February 27, 2001, the West Whiteland Township Police Association (Complainant) filed a Charge of Unfair Labor Practices with the Pennsylvania Labor Relations Board (Board) against West Whiteland Township (Respondent). By letter dated March 23, 2001, the Secretary of the Board advised Complainant that the Board was unable to process the Charge because the Charge did not specify the subsection and clauses of the Pennsylvania Labor Relations Act (PLRA) alleged to have been violated. The Secretary allowed twenty days for Complainant to amend the Charge. Because no response was received by the Board, on May 2, 2001, the Secretary advised Complainant that the Charge was dismissed for failure to amend.

Complainant filed timely exceptions to the Secretary's May 2, 2001 dismissal of the Charge. In its exceptions, Complainant alleges that it had not received a copy of the March 23, 2001 letter. Further, Complainant contends that the dismissal of its Charge because it did not respond to a letter requesting it to withdraw one of its charges is unjust and extreme,¹ and that there is no prejudice to the Respondent where charges may be withdrawn after the issuance of the complaint.

Contrary to Complainant's contention that Respondent is not prejudiced, due process requires that an employer be notified of the alleged unlawful conduct upon which the claim is based in order to prepare an adequate defense. Pennsylvania Human Relations Commission v. United States Steel Corporation, 458 Pa. 559, 325 A.2d 910 (1974); Pennsylvania Labor Relations Board v. County of Lawrence, 12 PPER ¶12312 (Final Order, 1981). A reference to a specific section of the act is necessary for notice of the conduct that constitutes the violation of the law being charged. See Goldberg v. State Board of Pharmacy, 410 A.2d 413 (Pa. Cmwlth. 1980). Thus, it has been held that "an employer charged with an unfair labor practice is entitled to know which one of the six unfair labor practices enumerated in the act is

¹ Complainant's argument that because it did not receive the March 23, 2001 letter from the Board the Charge should not be dismissed for failure to respond to that letter is without merit. The failure to receive that letter was caused by Complainant who did not retrieve it from the post office box to which it was sent. The Board properly mailed the letter to the post office box address of record provided by the Complainant. There was no allegation of a breakdown in the Board's mailing procedures and any claim of prejudice caused by a failure to receive the letter is attributable solely to Complainant.

the basis for the complaint..." Lancaster Yellow Cab & Baggage, Inc. v. Pennsylvania Labor Relations Board, 371 Pa. 49, 88 A.2d 866, 868 (1952).

It is the obligation of the complainant in setting forth the charge to identify the alleged violation and the unlawful conduct in order to frame the issues to be presented to the Board. The charge form itself requires that the complainant "[c]ross out subsections and clauses inapplicable prior to filing with the Board." (emphasis on original Charge of Unfair Labor Practices, Form PLRB-15). A charge that does not eliminate any subsection or clause is ineffective to give notice of any violation of the act and does not raise a claim for issuance of a complaint by the Board.² The Secretary need not assist complainants by construing or amending the charge *sua sponte* to name the proper parties or identify the appropriate sections of the act in order to issue a complaint. Teamsters Local 771 v. Pennsylvania Labor Relations Board, 760 A.2d 496 (Pa. Cmwlth. 2000). A complainant's reference to a specific subsection anywhere in the Charge would be sufficient notice for the issuance of a complaint. Pennsylvania Labor Relations Board v. Commonwealth, Department of Education, 14 PPER ¶ 14135 (Final Order, 1983).

Here, however, Complainant's Charge of Unfair Labor Practices does not specifically identify any subsection or clause of PLRA alleged to have been violated.³ Furthermore, Complainant took no action to amend the Charge or otherwise identify the subsections and clauses of the act as requested in the Secretary's letter of March 23, 2001. Because there is no reference to a specific subsection in the Charge, the Secretary did not abuse her discretion in refusing to issue a complaint based on the Charge, which as filed would not have given adequate notice to the Respondent.

Moreover, even had Complainant perfected its claim, the Charge is untimely as to any subsection or clause under the act since the alleged conduct giving rise to the Charge occurred on January 9, 2001 and the Charge was not filed until February 27, 2001, beyond the six weeks limitation set forth in Section 9(e) of PLRA.⁴ 43 P.S. § 211.9(e). Accordingly because the Charge was based on conduct occurring more than six-weeks before filing, the Board would have been without jurisdiction to issue a complaint. McKeesport Police and Wage Policy Committee v. City of McKeesport, 19 PPER ¶ 19120 (Final Order, 1988).

² Under the Board Regulations governing charges filed under the Public Employe Relations Act, the charge must include a "reference to the specific provisions of the act alleged to have been violated." 34 Pa. Code §95.31(b)(3).

³ We reject the assertion that the Charge alleged violations of all sections of PLRA, since Complainant failed to even cross out the sections applying to unfair labor practices by unions.

⁴ Complainant alleged that on January 9, 2001, contrary to prior practice, Respondent advised detectives in the unit that they would no longer be permitted "take home" vehicles, and would have a full week of "on call" without extra compensation unless "called out" on duty.

Accordingly, after a thorough review of the exceptions to the Secretary's decision declining to issue a complaint, the Board shall dismiss the exceptions and affirm the Secretary's determination.

ORDER

In view of the foregoing and in order to effectuate the policies of the Pennsylvania Labor Relations Act, the Board

HEREBY ORDERS AND DIRECTS

that the exceptions are dismissed and the Secretary's decision not to issue a complaint be 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 nineteenth day of June, 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.