

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

MICHAEL T. GROVES :
 :
 v. : Case No. PF-C-01-54-E
 :
 CITY OF PHILADELPHIA :

FINAL ORDER

On April 5, 2001, Michael T. Groves filed a charge of unfair labor practices with the Pennsylvania Labor Relations Board (Board) against the City of Philadelphia (City). Mr. Groves alleged that during a meeting on February 20, 2001, the City violated Section 6(1)(a) and (c) of the Pennsylvania Labor Relations Act (PLRA) by disciplining him in a discriminatory fashion based on his status as steward for the International Association of Firefighters, Local Union 22 (Union). By letter dated April 30, 2001, the Secretary informed Mr. Groves that a complaint would not be issued because he had failed to set forth facts supporting the timeliness of the charge.

On May 14, 2001, Mr. Groves filed timely exceptions with the Board in which he alleged that the delay in filing his charge was caused by the Union. Mr. Groves stated that following the February 20, 2001 meeting where the alleged unlawful conduct occurred he turned the matter over to the Union and its legal counsel for filing of charges with the Board. He claims that he was repeatedly advised by the Union that counsel was reviewing the matter, until April 3, 2001, the last day to file charges with the Board, when he was told that no charges would be filed. Mr. Groves immediately mailed a charge of unfair labor practices to the Board by first class mail, postmarked April 3, 2001, which the Board received on April 5, 2001. Mr. Groves contends in his exceptions that his charge should be considered as having been timely filed because the delay was caused by the Union's alleged representation that it would be handling the charge on his behalf, and because he acted with due diligence immediately upon learning that the Union would not file the charge.

Section 9(e) of PLRA imposes a six-week limitation period in which to file a charge with the Board. Section 9(e) provides in relevant part that "[n]o petition or charge shall be entertained which relates to acts which occurred or statements which were made more than six weeks prior to the filing of the petition or charge." 43 P.S. § 211.9(e). The Board has neither the legal authority nor ability to waive this statute of limitations. United Mine Workers, Region 1 v. Blair County, 32 PPER ¶ 32048 (Final Order, 2001). The City's conduct giving rise to Mr. Groves' charge occurred on February 20, 2001 during an alleged disciplinary meeting with the City, and therefore since he was aware of the City's conduct on February 20, 2001, he had six weeks from that date in which to file a charge of unfair labor practices with the Board.

A charge is filed with the Board upon receipt, and is timely if received by the Board before the close of business on the last day of

the time limit. 34 Pa. Code § 93.12. Since Mr. Groves knew of the City's conduct giving rise to the charge as of February 20, 2001, his last day to file was April 3, 2001. Mr. Groves' mailing his charge to the Board on April 3, 2001 was ineffective to preserve a timely filing. Because the Board did not receive it until April 5, 2001, his charge was not filed timely within six weeks of February 20, 2001.

His assertion that the late filing is excusable since it was caused by the Union's failure to pursue the matter until it was too late is misplaced. While a misrepresentation by the respondent causing a delay in filing may be grounds for tolling the statute of limitations imposed by section 9(e) of PLRA, Fraternal Order of Police Haas Memorial Lodge #7 v. Pennsylvania Labor Relations Board, 696 A.2d 873 (Pa. Cmwlth. 1997), here there is no allegation that the City, as respondent, made any misrepresentation or engaged in fraudulent conduct that caused the late filing of the charge. Instead, Mr. Groves contends that it was the refusal to act by the Union, as his representative, which resulted in the late filing. However, the acts of a representative in either negligently or willfully failing to pursue a claim in a timely fashion are not grounds for excusing a late filing by a complainant beyond the statute of limitations. Hunsicker v. Connor, 465 A.2d 24 (Pa. Super. 1983).

Since Mr. Groves' charge alleging an unfair labor practice occurring on February 20, 2001 was not received by the Board until April 5, 2001 it was not filed within six weeks of the alleged conduct, and therefore the Board lacks jurisdiction to address the charge and issue a complaint. 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.