

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

MARY BETH HEYNOSKI :
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 :
 v. : Case No. PERA-C-01-49-W
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 PLEASANT RIDGE MANOR WEST :

FINAL ORDER

On January 29, 2001, Mary Beth Heynoski filed a charge of unfair practices with the Pennsylvania Labor Relations Board (Board) against Pleasant Ridge Manor West (Manor). The charge alleged that the Manor discharged Ms. Heynoski for unauthorized absences from work. Although Ms. Heynoski did not specifically allege the date of her discharge, she attached her treating physician's office notes, dated August 24, 2000, to the charge, which indicate that she had been discharged already. By letter dated March 19, 2001, the Secretary informed Ms. Heynoski that no complaint would be issued on her charge because she neglected to designate a subsection or clause of Section 1201 of the Public Employee Relations Act (PERA); she neglected to allege facts that would support the timeliness of her charge; she failed to set forth allegations that would constitute an unfair practice under PERA; and the allegations in the specification of charges did not constitute the requisite sworn statement because it was not notarized.¹

On April 5, 2001, Ms. Heynoski filed timely exceptions with the Board in which she provided a detailed sworn statement of allegations. In her additional specification of charges, Ms. Heynoski stated that the Manor terminated her employment on August 10, 2000 for calling off work when she suffered a recurrence of a workers' compensation injury. In her exceptions, Ms. Heynoski urges the Board to excuse the late filing of her charge because she was pro se when she filed the charge and was unaware of the proper procedures; she believed that the grievance procedure had to be exhausted before filing a claim with the Board; and she believed that her union was representing her regarding her termination, but it did not assist her.

In United Mine Workers, Region 1 v. Blair County, 32 PPER ¶ 32048 (Final Order, 2001), the Board stated that it "does not have the legal authority or ability to waive the statute of limitations. When the statute of limitations has expired, the Board no longer has subject matter jurisdiction." Id. at 133. A tribunal may not confer jurisdiction upon itself that has not been granted by operation of law. Lashe v. Northern York County Sch. Dist., 417 A.2d 260 (Pa. Cmwlth. 1980). Also, our Supreme

¹ For purposes of issuing a complaint, the factual allegations in the charge of unfair practices are accepted as accurate. PSSU Local 668 v. PLRB, 481 Pa. 81, 392 A.2d 256 (1978).

Court has stated that, regarding untimely appeals, the time for filing "cannot be extended as a matter of grace or mere indulgence." Bass v. Commonwealth, 485 Pa. 256, 401 A.2d 1133, 1135 (1979). The negligence of a party or his counsel is not an excuse for an untimely filing. Id. Similarly, the negligence of complainants or their counsel cannot excuse a late filing of a charge or exceptions before the Board. Section 1505 of PERA provides that "[n]o petition or charge shall be entertained which relates to acts which occurred or statements which were made more than four months prior to the filing of the petition or charge." The Board, therefore, cannot assume jurisdiction in contravention to the mandate of the legislature, in Section 1505 of PERA, to be sympathetic to the negligent or unskilled complainant.

Here, Ms. Heynoski filed charges alleging that the Manor engaged in unfair practices by terminating her employment. Ms. Heynoski had notice of her discharge on August 10, 2000. She did not file a charge until January 29, 2001, which is more than four months beyond the date that she received notice of her discharge, i.e., the event that she believes gave rise to a cause of action under PERA. Therefore, the Board does not have jurisdiction to entertain the charge.²

After a thorough review of the exceptions to the decision of the Secretary 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 Public Employee Relations Act, the Board

HEREBY ORDERS AND DIRECTS

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

SEALED, DATED and MAILED pursuant to conference call meeting of the Pennsylvania Labor Relations Board, John Markle Jr., Chairman, and Edward G. Feehan, Member, this twenty-second day of May, 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.

² Ms. Heynoski also failed to allege facts that would support a cognizable claim under PERA, even if her charge were timely filed. Although any claimed violation of PERA would be barred by the statute of limitations, Ms. Heynoski neglected to charge the Manor with a specific subsection and clause of Section 1201 of PERA and, therefore, failed to place the Manor on notice of the nature of the claim against it. Although the Board has recognized that strict rules of pleading do not apply in administrative proceedings, the Board has held that fundamental due process requires that an employer be given notice of the specific charge(s) so it has an opportunity to prepare a defense to the testimony and the issues raised at the hearing. Independent Refuse, Local 609 v. Teamsters, Local 249, 19 PPER ¶ 19070 (Final Order, 1988).