

COMMONWEALTH OF PENNSYLVANIA  
Pennsylvania Labor Relations Board

OFFICERS OF THE UPPER GWYNEDD :  
TOWNSHIP POLICE DEPARTMENT :  
 : Case No. PF-C-00-78-E  
 v. :  
 :  
UPPER GWYNEDD TOWNSHIP :

**FINAL ORDER**

On February 12, 2001 the Officers of the Upper Gwynedd Township Police Department (Union) filed with the Pennsylvania Labor Relations Board (Board) timely exceptions and a supporting brief to a January 23, 2001 Proposed Decision and Order (PDO). In the PDO, the Hearing Examiner dismissed the Union's Charge of Unfair Labor Practices as untimely. Upper Gwynedd Township (Township) has not filed a response to the Union's exceptions.

The Union's Charge arises out of a January 13, 2000 staff meeting during which the Township's Chief of Police advised the sergeants who were present (Sergeant Gillen, a member of the Union's collective bargaining committee and Sergeants Poirier and Ford) that requests for consecutive personal days off must be submitted to the Chief for approval and that the use of consecutive personal days must be justified. The Chief's directive was memorialized in the staff meeting minutes and distributed to the squad commanders for distribution to and discussion with the Township's police officers. By January 19, 2000 Sergeants Gillen and Poirier, along with the police officers in their squads, had acknowledged in writing that they had received and discussed the matters addressed in the minutes. After returning from leave, Officer Kiely, the Union's bargaining committee chairman, acknowledged his receipt and discussion of the minutes on April 18, 2000.

On May 26, 2000 the Union filed its Charge and alleged that the Chief's directive represented a unilateral change in the Township's personal day policy in violation of the parties' Collective Bargaining Agreement (CBA), Rules and Regulations Manual and a long-standing past practice. The Union argued that the Township violated its Act 111 bargaining obligations by unilaterally changing the officers' working conditions in violation of Section 6(1)(a) and (e) of the Pennsylvania Labor Relations Act (PLRA). Section 9(e) of PLRA provides that "[n]o . . . 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 . . . charge." 43 P.S. § 211.9(e). The Hearing Examiner dismissed the Union's charge as untimely because it was filed more than six weeks after the January 13, 2000 staff meeting, where the Chief issued the personal day directive and allegedly changed the officers' working conditions. The Hearing Examiner concluded that because Sergeant Gillen was a member of the Union's bargaining committee and became aware of the directive on January 13, 2000, the Union was put on notice of the change on that same date. See South Fayette Township Police Wage and Policy Unit v. South Fayette Township, 28 PPER ¶ 28223 (Proposed Decision and Order, 1997), aff'd 29 PPER ¶ 29035 (Final Order, 1998).

In its first three exceptions, the Union merely paraphrases the facts of the case, but does not allege any errors in the findings of fact made by the Hearing Examiner in the PDO. These first three exceptions are therefore

dismissed. The Union's next four exceptions also do not allege any errors in the PDO, but rather resemble proposed findings of fact regarding the date upon which the Township actually implemented the alleged change to the personal day policy. To the extent that the Union is arguing in these exceptions that the Hearing Examiner failed to make particular findings of fact, the exceptions are dismissed for two reasons. First, even if there is record evidence to support these proposed findings, the Hearing Examiner's failure to set forth proposed findings of fact is not error. The Hearing Examiner is only required to set forth findings of fact necessary to support the conclusions required in the determination of the outcome of the charge. Page's Dep't Store v. Velardi, 464 Pa. 276, 346 A.2d 556 (1975); Birriel v. Workman's Compensation Appeal Bd., 435 A.2d 292 (Pa.Cmwlth. 1981); Philadelphia Fed'n of Teachers v. Philadelphia Sch. Dist, 29 PPER ¶ 29085 (Final Order, 1998). The findings set forth in the PDO fully support the conclusions made by the Hearing Examiner. Second, as discussed more fully *infra*, the date that the directive is actually applied to a particular officer is irrelevant to the Board's analysis of its jurisdiction in this case.

The Union's remaining exceptions concern whether its Charge was untimely or premature. In Pennsylvania Nurses Ass'n v. Commonwealth Dep't of Public Welfare, 24 PPER ¶ 24083 (Final Order, 1993), the Board explained that "[w]here policies are effectuated for unlawful reasons on a date certain, a charge of unfair practices must be filed within four months<sup>1</sup> of that occurrence once a complainant knows or should have known of the activity." Id., at 214. In its Charge, the Union alleges that the directive itself represents an unlawful change to the personal day policy, a working condition protected by Section 1 of Act 111. The record reveals that the directive was issued on January 13, 2000 and that the Union knew of the alleged change on or about that date. Because the Charge was filed well outside the six-week statute of limitations on May 26, 2000, it was dismissed as untimely.

Contrary to the factual allegations set forth in its Charge, the Union now argues that its Charge was not filed too late, but rather, that it was filed too soon. It asserts that there is no evidence in the record that the new policy has been "implemented," so no unfair labor practice as yet occurred. (Union's Exceptions at 2-3.) In support of its argument, the Union asserts that the policy has not been applied to any police officer or impacted any police officer's use of personal days. The Union argues that the Hearing Examiner erred by dismissing its Charge as untimely because "the pertinent date for determination of the timeliness issue is not the date of the Staff Meeting or the Minutes issued as a result thereof, but is the date a new policy of this nature is implemented." (Union, Exceptions at 3).

As a general matter, the nature of the unfair practice claim alleged frames the limitations period for that cause of action. For example, a charge of unfair practice for refusal to arbitrate need not be filed when a public employer earlier announces its intent to subsequently refuse to arbitrate, although such activity when it occurs might be regarded as a refusal to bargain in good faith. Lancaster County v. PLRB, 761 A.2d 1250 (Pa. Cmwlth. 2000). The timeliness of the specific refusal to arbitrate the disputed claim is measured from when the arbitration duty arose and the employer refused a demand to arbitrate. Mere statement of future intent to

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<sup>1</sup> Pennsylvania Nurses Ass'n was decided under the Public Employee Relations Act (PERA), where the statute of limitations for filing an unfair practice charge is four months. 43 P.S. § 1101.1505.

engage in activity (which arguably would constitute an unfair practice) does not constitute an unfair practice for engaging in that activity.

Accordingly, the Board normally looks to the date of implementation of a unilateral change in evaluating timeliness of a claim that a policy was unlawfully, unilaterally implemented. In FOP Lodge 9 v. City of Reading, 30 PPER ¶ 30013 (Proposed Decision and Order, 1998), the employer passed an ordinance unknown to the union, the effect of which was the subsequent removal of bargaining union work and transfer of employees but the union could not reasonably have been on notice until the employer actually "implemented" the policy and transferred the employees. See also County of Lebanon 27 PPER ¶ 27122 (Proposed Decision and Order, 1996), 27 PPER ¶ 27260 (Final Order, 1996), where a no-smoking policy was adopted but not implemented until a later date, the Board held that the later implementation date triggers the statute of limitations because that is the date the unfair practice occurred and the union was on notice. Unlike these cases, there was no delay between the date the alleged change in personal day policy was adopted and the date it was "implemented" or put into effect. There is no evidence that the Township intended to "implement" or require the police officers to start abiding by the policy at some future date that has not yet occurred. Implementation accordingly is the date when the directive becomes operational and serves to guide the conduct of employees, even though no employees may have been disciplined or corrected for failure to abide by the directive.

Further, the date of notice to the union (i.e. the time the union knew or should have known of the employer's alleged unfair labor practice) triggers the statute of limitations, Warminster Township Police Benevolent Ass'n, Inc. v. Warminster Township, 31 PPER ¶ 31097 (Proposed Decision and Order 2000)(citing Throop Borough, 25 PPER ¶ 25063 (Final Order, 1994)(FOP, Haas Memorial Lodge #7 v. PLRB, 696 A.2d 873 (Pa.Cmwlth. 1997), appeal denied, 553 Pa. 693, 717 A.2d 1030 (1998)) and because the Union had actual notice on January 13, 2000, there is no support for delaying until a police officer is actually impacted by the change to file a charge. The date a union receives notice of a policy change begins the statute of limitations. Pennsylvania State Troopers Ass'n v. Pennsylvania State Police, 28 PPER ¶ 28155 (Proposed Decision and Order, 1997). The policy was implemented on January 13, 2000. The Union had notice on January 13, 2000. Thus, the Charge was required to have been filed within six weeks of January 13, 2000 in order for the Board to assert jurisdiction.

The Union has seized upon the "implementation" language from FOP Lodge 17 v. City of Easton, 20 PPER ¶ 20048 (Final Order, 1989) and FOP Lodge 10 v. City of Allentown, 19 PPER ¶ 19190 (1988), the only cases it cites in its brief. However these cases fully support the conclusions of the Hearing Examiner and the Board. In City of Easton, the employer unilaterally enacted and then formally suspended an ordinance and the union filed an unfair labor practice charge after the employer issued a memorandum to all police officers implementing the ordinance. The Board found the Charge to be timely because the ordinance had been formally suspended and the subsequent resumption of the alleged unilateral activity constituted a unilateral change in employment conditions and therefore, an unfair practice. It was that date of implementation that the Board utilized for the tolling of the statute of limitations (not the first time the ordinance resulted in discipline of a police officer, as the Union urges the Board to do here). In City of Allentown, the Board found that the employer adopted a resolution that authorized a change in staffing procedures. The Board dismissed that charge as premature for three reasons: (1) the resolution had not yet been made

effective, or "implemented" and was therefore subject to modification or total reconsideration; (2) no actual change in working conditions was made; and (3) there was no evidence that the resolution was even binding on the employer. See also APSCUF v. State System of Higher Education, 25 PPER ¶ 25078 (Proposed Decision and Order, 1991)(citing Emmaus Borough, 23 PPER ¶ 23011 (Proposed Decision and Order, 1991)). However, in this case, the Union's Charge alleges that the directive itself constituted a change regarding a mandatory bargaining subject. As discussed above, the directive was immediately effective, and thus "implemented" on January 13, 2000. The fact that no officer had a personal leave request disapproved or had been disciplined for failure to abide by the directive does not change the result that the directive guided the conduct of the officers since its implementation in January 2000.

There is no support for the Union's argument to the contrary. The Board rejected the same or similar argument in Pennsylvania Nurses Ass'n, *supra*, where the Union argued that the subsequent impact of a policy on an individual member of the bargaining unit constituted an unfair practice. The Board held that "[o]nce [the statute of limitations] elapses from the time when that policy is initiated, a cause of action based on the continued existence and application of that policy expires." *Id.*, at 214. The personal day policy was initiated on January 13, 2000 and the statute of limitations elapsed six weeks later, on February 24, 2000. The Charge was not filed until May 26, 2000, more than three months after the statute of limitations expired.

After a thorough review of the Exceptions and all matters of record, the Board shall dismiss the Exceptions and make the Proposed Decision and Order final.

In view of the foregoing and in order to effectuate the policies of the Pennsylvania Labor Relations Act and Act 111, the Board

HEREBY ORDERS AND DIRECTS

that the Exceptions filed to the Proposed Decision and Order in the above-captioned matter be and the same are hereby dismissed, and the Proposed Decision and Order be and the same is hereby made absolute and final.

SEALED, DATED and MAILED at Harrisburg, Pennsylvania, pursuant to Conference Call Meeting of the Pennsylvania Labor Relations Board, John Markle, Jr., Chairman, and Members L. Dennis Martire and Edward G. Feehan, this seventeenth day of April, 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.