

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

UNITED MINE WORKERS OF AMERICA, :
REGION 1 :
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 v. : Case No. PERA-C-00-242-W
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 BLAIR COUNTY :
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FINAL ORDER

On November 7, 2000, the United Mine Workers of America, Region 1 (Union) filed timely exceptions with the Pennsylvania Labor Relations Board (Board) to the letter issued by the Board's Secretary on October 30, 2000, dismissing the Union's charge of unfair practices against Blair County (County).¹

On June 15, 2000, the Union filed a charge of unfair practices against "Blair County" alleging that Torie Salyards was discharged for her Union organizing activities on April 26, 2000. The Union designated the County only as the respondent in the caption of the charge and again designated only the County in the body of the charge where the complaining party is required to designate the respondent. By letter dated July 28, 2000, the Secretary informed the Union that the Board was unable to process the charge because it failed to designate subsection (a) or (b) of Section 1201 of PERA. The Secretary granted the Union 20 days to amend its charge. On August 4, 2000, the Union filed a timely amended charge of unfair practices. The amended charge properly indicated the correct subsection of Section 1201 of PERA. By letter dated October 30, 2000, the Secretary informed the Union that its charge of unfair practices was dismissed because Ms. Salyards was within the appointive authority of the Blair County District Attorney (BCDA) and not the Blair County Commissioners (Commissioners) and, therefore, the charge, as amended, did not state a cause of action against the Commissioners.

The Union raises two exceptions. First, the Union argues that the Secretary's dismissal is in error because the Commissioners were the proper party to charge with the unfair practice. The Union contends that the final decision to terminate Ms. Salyards was made by the Commissioners. However, this argument does not present the relevant inquiry under Pennsylvania law, and these facts are not supported in the record.

In Teamsters Local 771 v. PLRB (Teamsters), 760 A.2d 496 (Pa. Cmwlth. 2000), the Commonwealth Court held that the Lancaster County Commissioners were not the proper respondents to be charged where an agent of the Lancaster County Court of Common Pleas allegedly engaged in the unlawful conduct and that conduct did not involve a representation matter or

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).

negotiating a collective bargaining agreement. The Teamsters Court espoused three reasons for its holding, which are relevant to the disposition of the present case. First, the county commissioners are unable to effectuate a Board order, where an unfair practice has been found, because they have no supervisory powers over the county court, other elected county officials or their employes, Id. at 501 n.8. Second, failing to properly charge the responsible employer violates fundamental due process, afforded in administrative proceedings, by depriving that employer of notice of the charges against it and an opportunity to defend and be heard, Id. at 502. Finally, as a matter of law, there must be a causal relationship between the allegedly unlawful conduct and the party charged with having engaged in or who is responsible for that conduct. Id. at 503. Therefore, under Section 1201(a) of PERA and Teamsters, a charge of unfair practices alleging discrimination fails to state a claim for which relief can be granted unless the employer entity or elected official named in the charge as the respondent is the employer or elected official that allegedly committed the unfair practice as set forth in the factual allegations presented in the charge.

In Lebanon County Detectives Ass'n v. Lebanon County (Lebanon County), 29 PPER ¶ 20005 (Final Order, 1997), the union filed charges against the county on behalf of detectives, who were hired, fired and directed by the elected district attorney, where the factual allegations in the charge stated that the sheriff refused to bargain over his conduct of unilaterally assuming duties previously performed by the detectives. The union alleged that because the county commissioners are the agent of the sheriff and other row officials for purposes of Act 115 of 1976 (relating to collective bargaining and representation proceedings before the Board), a refusal-to-bargain type unfair practice charge should be filed against the commissioners. However, the record showed that neither the commissioners nor the district attorney engaged in any of the conduct complained of in the charge of unfair practices, and therefore no cause of action was proved against the designated respondent (the county commissioners) or the other joint employer (the district attorney) of the employes in the bargaining unit. The Lebanon County Board also opined that "[i]t would be absurd to regard the county commissioners as the respondent in such an unfair practice setting." Id. Accordingly, the Board, in Lebanon County held that "it is necessary for a complainant to charge the public employer which allegedly committed the acts complained of, rather than the county commissioners." Id.

In the present case, Ms. Salyards was employed by the BCDA. The BCDA is an elected county official and an autonomous employer regarding hire, fire and direct matters. The Commissioners have no supervisory authority over the BCDA or its employes. Also, although the Union argues that the Commissioners made the final decision to terminate Ms. Salyards, the record materials presented by the Union fail to support that factual claim. Therefore, there is no legal or factual basis to support the Union's argument.

With its exceptions, the Union submitted a letter from Catherine Ann Dangel, Ms. Salyards' supervisor at the BCDA's office, to the members of the Blair County Salary Board. The express purpose of this letter was to request permission "TO REOPEN POSITION AND HIRE NEW ASSISTANT." Nowhere in this letter, or anywhere else in the record, is there any indication that the Commissioners made the final decision to terminate Ms. Salyards' employment at the office of the BCDA or that the decision to finalize Ms.

Salyards' termination came after a meeting with the President Commissioner, the County Controller and the County Personnel Director, as argued by the Union. Conversely, the letter states that Ms. Salyards resigned after a closed-door meeting with the following individuals in the office of the BCDA on Wednesday, April 26, 2000: District Attorney David C. Gorman, Director of the Victim-Witness Program, Douglas J. Keating, Esquire, First Assistant ADA/Office Manager, Catherine Ann Dangel, Victim/Witness Program Supervisor, and the Program's two assistants, Torie Salyards and Beth Salyards. Immediately thereafter, Ms. Salyards resigned, cleared out her office cubicle, removed all private possessions including picture hangings and plants, and submitted a final expense sheet for approval. The letter continues to state the following:

After discussion with President Commissioner John Ebersole, Controller Rick Peo, Assistant Controller Terry Boyd, The County Auditors John Myers and Paul Will, and most importantly the County Personnel Director W.T. Williams, the following was suggested and decided. As a result of Torie's resignation, the Position of Victim/Witness Assistant is declared open immediately and that opening will be reestablished by the Salary Board at their next meeting, May 8, 2000.

Other than the allegations in the charge, the only account of what transpired regarding Ms. Salyards' separation from employment is the content of this letter, which was submitted by the Union and which the Board must accept as accurate for purposes of issuing a complaint. PSSU Local 668, supra. An examination of this letter reveals that the meeting with the President Commissioner, the controllers, the auditors and the Personnel Director occurred after Ms. Salyards separated from her employment notwithstanding whether or not she resigned or she was involuntarily discharged. Moreover, the plain meaning of the above-quoted language reveals that the meeting with the County officials did not involve deciding or finalizing Ms. Salyards' termination. Rather this language states that the result of that meeting was that Ms. Salyards' position "is declared open immediately and that opening will be reestablished by the Salary Board." Accordingly, the meeting with the various elected County officials did not finalize or determine Ms. Salyards' separation from employment; it established that the position needed to be filled by a new hiree.

The County Code provides that the BCDA has complete and sole authority to hire, fire and direct the employes in his office, not the Commissioners. 16 P.S. §§ 1420-1440. Therefore the BCDA made the decision to terminate Ms. Salyards' employment, or accept her resignation, not the Commissioners, the County Controller, the County Personnel Director or the County auditors. Accordingly, accepting the factual allegations in the charge and the related documents as true, the Union failed to state a claim for which relief could be granted by the Board because it improperly charged the County for the alleged unfair practices of the BCDA. Consequently, the named respondent cannot be guilty of any unfair practice as a matter of law; the BCDA has not been afforded fundamental due process; and the Board would be unable to effectuate an appropriate remedy if an unfair practice were to be found.

In its second exception, the Union alternatively asserts that the Board should allow the Union to file a charge against the BCDA, even though the statute of limitations has expired. In support of this argument, the

Union simply expresses the fact that the Board dismissed the charge after the limitation period expired, when it was too late for the Union to rectify any errors in the charge. The Board, however, 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. Fraternal Order of Police, Lodge No. 5 v. City of Philadelphia (FOP), 31 PPER ¶ 31036 (Final Order, 2000). In FOP, the Board stated the following:

"The mandatory language of the Act raises this issue to the level of jurisdiction. In order for the charging party to provide the Board with jurisdiction over the subject matter, it must appear that the subject matter of the Charge occurred within four months of the filing of the Charge or that the Charging party was prevented from filing due to duress or fraud of the Respondent."

Id. at 88 (quoting PLRB v. New Castle Area Sch. Dist., 7 PPER 16 (Nisi Order, 1976)). A tribunal cannot 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). The record reveals, and the Union concedes, that the four-month statute of limitations has expired. In Section 1505 of PERA, the General Assembly expressly limited the jurisdiction of the Board, and mandated 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 simply lacks the legal power or authority to entertain a charge from the Union alleging an unfair practice predicated upon the same factual allegations. The General Assembly has emphatically prohibited the Board from entertaining this claim at this time.²

In Teamsters, the union similarly contended that the Board should have acted to preserve the union's interest in the matter, despite the union's failure to charge the appropriate respondent in its filings. However, as the Teamsters Court correctly observed, "[u]nlike the National Labor Relations Board, the Board neither independently investigates pre-complaint charges, nor does it prosecute those complaints. The institution of unfair practice charges is fueled entirely by complainants, with the Board providing a forum for the filing, prosecution, and defense of those charges by the parties." Teamsters, 760 A.2d at 502 (emphasis original). The Board is a neutral and independent adjudicative forum serving the parties before it. Therefore, the complainant, in this case the Union, not the Board, has the burden and obligation to properly file and prosecute its claims. The Board's administrative processing time is not relevant to the fact that the Union's charge was dismissed because the Union failed to properly prosecute its claim by filing a legally invalid and unsustainable charge, within the meaning of Pennsylvania law. The mere fact that the Union could have cured any defects in its charge, if the Board dismissed

² Broad equitable powers have not been conferred upon the Board. The Board is strictly limited to those powers conferred by PERA and PLRA, which do not include such broad powers. However, even if the Board did possess such powers, "[t]he well-settled rule in Pennsylvania is that 'where the legislature provides a statutory remedy, which is mandatory and exclusive, equity is without power to act.'" Lashe, 417 A.2d at 263 (quoting DeLuca v. Buckeye Coal Co., 463 Pa. 513, 519, 345 A.2d 637, 640 (1975)). In the present case, the Union failed to properly avail itself to the adequate statutory remedies provided.

its charge within the limitations period, does not change the fact the burden is on the Union to properly file and prosecute legally sustainable charges and claims. The notion that the Board should somehow make an effort to aid complaints to cure any infirmities in their filings and provide them with a second chance to preserve their claims "would cast the Board in the role of coach or assistant to complainants." Id. This position was expressly dismissed and criticized in Teamsters. Id.

After a thorough review of the exceptions and supporting brief 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 Employes 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 Members L. Dennis Martire and Edward G. Feehan, this thirteenth day of February, 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.