COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

SUSQUEHANNA REGIONAL POLICE ASSOCIATION	:	
v.	:	Case No. PF-C-99-77-E
SUSQUEHANNA REGIONAL POLICE DEPARTMENT	:	

FINAL ORDER

A charge of unfair labor practices was filed against the Susquehanna Regional Police Department (Department)[1] on June 23, 1999, by Anthony M. Caputo, Esquire (Caputo). The charge named the Susquehanna Regional Police Association (Association) as the Complainant, and alleged that the Department violated Act 111 and Section 6(1)(a) and (e) of the Pennsylvania Labor Relations Act (PLRA) when it failed to comply with a grievance arbitration award mandating the reinstatement of Sergeant Richard Boas (Boas).[2] On July 19, 1999, the Board received a letter from Michael A. Albert (Albert), the president of the Association, which stated as follows:

> On this date our department, The Susquehanna Regional Police Department received an ACKNOWLEDGEMENT AND NOTICE OF FILING from your office in reference to the above case number. While we, as the SUSQUEHANNA REGIONAL POLICE ASSOCIATION recognize the right of former Sergeant Boas to file such a complaint, we are hereby notifying your office that we, THE SUSQUEHANNA REGIONAL POLICE ASSOCIATION are not now the Complainant in this matter, nor do we intend to become the Complainant in this matter at a future date.
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> Furthermore, ANTHONY M. CAPUTO, ESQUIRE, whose signature appears on the complaint form, as the person filing the charge on our behalf, is not now, never has been, nor ever will be an agent of THE SUSQUEHANNA REGIONAL POLICE ASSOCIATION. Furthermore, ANTHONY M. CAPUTO, ESQUIRE, knows he is not now nor, ever was a soliciting agent for the SUSQUEHANNA REGIONAL POLICE ASSOCIATION and therefore has falsely represented himself as such.
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> We, THE SUSQUEHANNA REGIONAL POLICE ASSOCIATION, at this time wish to submit this letter of protest and complaint to THE PENNSYLVANIA LABOR RELATIONS BOARD to have our name stricken from the record as the Complainant in

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[1] The regional police department was formed on July 1, 1996, and is comprised of three previously existing police departments: Marietta Borough, Conoy Township and East Donnegal Township. Charge of Unfair Labor Practices, Exhibit B.

[2] The text of the award is as follows:

> On the basis of the record as a whole and for the reasons discussed, the Employer is directed to reinstate the Grievant. The discharge is to be modified to a thirty-day suspension.

this case. Furthermore, it is the contention of THE SUSQUEHANNA REGIONAL POLICE ASSOCIATION, in view of the signed documents relating to this case, that ANTHONY M. CAPUTO, ESQUIRE has intentionally misrepresented himself as an agent of THE SUSQUEHANNA REGIONAL POLICE ASSOCIATION and in doing so, has falsified an official document.

Thank you for your time and consideration in this matter. Feel free to contact me at any time at the above number.

/s/
Michael A. Albert
President
Susquehanna Regional Police Association

Thereafter, on August 6, 1999, Michael A. Moore (Moore), Esquire, filed an answer to the charge of unfair labor practices on behalf of the Department.

On October 28, 1999, the Secretary of the Labor Relations Board (Board) informed Caputo that no complaint would be issued on the charge of unfair labor practices for two reasons: (1) Caputo failed to set forth any facts which would support the timeliness of the charge under Section 9(e) of the PLRA;[3] and (2) the Susquehanna Regional Police Department is not a "political subdivision" or the "Commonwealth" and is therefore not an Act 111 employer. The Secretary further directed Caputo to address the correspondence from Albert in the event that exceptions would be filed to the dismissal of the charge.

On November 16, 1999, Caputo filed timely exceptions and a supporting brief with the Board. In the exceptions, Caputo argues that the Secretary erred in failing to find that: (1) the action complained of, i.e. the failure to implement a grievance arbitration award, constitutes a continuing violation and the Complainant's charge therefore is not time barred; (2) the affected individual, Sgt. Richard E. Boas was prohibited from filing the instant charge of unfair labor practices by the Association prior to June 28, 1999, and that such authorization was withheld by the Association due to unlawful interference by the Department and its counsel; (3) the individual political subdivisions which control the regional police department through board representation are joint employers for purposes of Act 111 and the PLRA and, as such, the political subdivisions are deemed to participate in legal proceedings in which the regional police department is involved. Regarding Albert's letter to the Board, Caputo asserts that Albert improperly acted on the advice of Moore, the Department's counsel, and that such advice was adverse to the interests of the Association members.[4] Further, Caputo argues that on or about June 28, 1999, the

[3] Section 9(e) provides that no 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).

[4] As support for this argument, Caputo submits the following memo without enclosures:

TO: All Officers
FROM: Officer Albert
REF: UPDATE ON ASSOCIATION BUSINESS

Association verbally authorized Boas to initiate the unfair labor practice charge and that such authorization was communicated in writing on June 29, 1999.[5] However, the unfair labor practice charge was filed on

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My apologies for not contacting everyone sooner, however on advise (sic) of counsel I had to act quickly on some things.

On June 29, 1999, OFFICER HAUGH wrote a letter, which I endorsed, to RICHARD E. BOAS in response to his request for us to assist him to file suit against the department and the township. (See enclosure #1)

However, prior to that letter being written, on June 23, 1999, the offices of LIGHTMAN & WELBY filed a Charge of Unfair Labor Practice against our department. This is all well and good and I recognize former sergeant BOAS' right to do so, as I'm sure all of you do, as well. However, as you can see by Enclosure # 2, that this was done by using THE SUSQUEHANNA REGIONAL POLICE ASSOCIATION as the Complainant in this matter against our own department and in doing so stated that BOAS'S attorney, ANTHONY M. CAPUTO, ESQUIRE was representing our association.

According to counsel, had this false statement not been caught and addressed, THE SUSQUEHANNA REGIONAL POLICE ASSOCIATION, would be liable for the legal bills incurred.

My response to this document after CHIEF SHIRK conferred with MICHAEL M. MOORE, ESQUIRE, counsel for the Police Commission, was to call the Pennsylvania Labor Relations Board and advise them we, as THE SUSQUEHANNA REGIONAL POLICE ASSOCIATION, had nothing to do with filing this case against our department with them. After my explanation and me answering questions for about thirty minutes, I was advised to immediately send a letter to the Labor Relations board outlining our position. Which I did after confering (sic) with OFFICER HAUGH, our Secretary/Treasurer. The result of that is Enclosure #3.

Should you have any questions or comments, fell (sic) free to contact me.

/s/
Michael A. Albert
President
SRPD Association

[5] The text of this unsigned letter is as follows:

Dear Rick [Sergeant Richard E. Boas]:

This is to advise you that the Susquehanna Regional Police Association, at this time, does not have adequate monies to entertain and defend an Unfair Labor Practice grievence (sic).
The Association understands that you may take this grievence (sic) before the Lancaster County F.O.P. Lodge for their assistance in this matter.
The Association feels that due to its infancy this may be the best course of action for you to follow.

Sincerely,

Michael A. Albert
President
SRPA

Charles E. Haugh
Secretary/Treasurer
SRPA

June 23, 1999, six days before the alleged written authorization. As added support for his argument that he was authorized to file the charge, Caputo submits a November 11, 1999, letter from Albert and Charles E. Haugh, Secretary/Treasurer of the Association (Haugh) to the Secretary of Red Rose Lodge #16 of the Fraternal Order of Police (FOP) deferring any and all further actions relating to former Sergeant Richard Boas' case to the FOP. [6] This letter may support the FOP's authorization to proceed with the unfair labor practices charge, however the charge was filed in the name of the Susquehanna Regional Police Association nearly five months earlier. Caputo has not submitted any documentation that he was authorized to file on behalf of the Association. In fact, the documents submitted support the proposition that such authorization was explicitly withheld. The documents that Caputo submitted do not establish that the Association is the Complainant. Absent a specific provision in the collective bargaining agreement, individual employes lack standing to challenge or enforce an arbitration award. Lee v. Municipality of Bethel Park, 626 A.2d 1260, 1263 n.3 (Pa. Cmwlth. Ct. 1993); Chambliss v. PLRB, 17 PPER ¶ 17204 (Court of Common Pleas of Phila. 1986). Because individual employes lack standing to challenge arbitration awards independent of their union, the instant charge could not have been filed by Boas. Regardless, the Board need not decide the issue of whether Caputo was authorized to proceed on behalf of the Association, because of the disposition of the remaining issues.

The Board finds no support for Caputo's ability to proceed against a regional police department. As the Secretary noted in her letter declining to issue a complaint, Under Section 1 of Act 111, employers consist of "political subdivisions" and the "Commonwealth of Pennsylvania." The Secretary relied on Lewistown Borough, 26 PPER ¶ 26137 (Final Order, 1995); rev'd on other grounds, 672 A.2d 379 (Pa. Cmwlth. Ct. 1996). Caputo

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[6] The text of this letter is as follows:

> Secretary Groff,
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> This letter is to inform you and Red Rose Lodge #16 of the Fraternal Order of Police, that the Susquehanna Regional Police Association do hereby defer any and all further actions relating to former Sergeant Richard Boas's case to you.
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> While we recognize Richard Boas's right to appeal any actions against him, we, the Susquehanna Regional Police Association do not have adequate monies to entertain and defend an appeal to the Pennsylvania Labor Relations Board's letter of denial dated October 28, 1999.
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> Should you have any further questions or comments, please feel free to call me at (717) 426-1164. Thank you for your consideration in this matter.
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> Sincerely,
>
> /s/ Michael A. Albert, President, SRPA
> /s/ Charles E. Haugh, Secretary/Treasurer, SRPA

asserts that the Secretary failed to consider the decision of the Supreme Court in that case. The Board has thoroughly reviewed the Supreme Court's decision at Borough of Lewistown v. PLRB, 546 Pa. 669, 735 A.2d 1240 (1999), and finds no support for the argument that because municipalities control regional police departments, they are automatically parties to unfair labor practice proceedings in which they are not named.

In Borough of Lewistown, the unfair labor practice charge was brought against the Borough directly, a political subdivision under Act 111, in addition to a regional police department. The Supreme Court reinstated the Board's final order, in which it found that the regional police department was not a political subdivision or the Commonwealth, and therefore was not a public employer in and of itself for purposes of Act 111. Id., 735 A.2d at 1244-1245. The Supreme Court opined that "[T]he municipalities are joint employers that act through their designated representative on the [regional police department] board for purposes of Act 111." Id. at 1245. Further, the Supreme Court held that the individual municipalities are the joint employers under Act 111, not the regional police departments, as "the PLRB determined in its order that the [regional police department] is not a 'political subdivision' within the meaning of Act 111." Id. The Supreme Court noted that if the [municipalities] were not the employer, "then the officers would not be employed by a 'political subdivision' as required for applicability of Act 111." Id. The Supreme Court decision supports the Secretary's decision not to issue a complaint in this unfair labor practices charge. Caputo did not charge a political subdivision or the Commonwealth, and therefore did not charge a public employer under Act 111. The Board does not have jurisdiction over regional police departments under Act 111. Caputo was required to charge the political subdivisions that comprise the Susquehanna Regional Police Department in order to proceed with the unfair labor practice charge before the Board.

Borough of Lewistown is consistent with the Supreme Court's earlier decision in Philadelphia Housing Authority, 508 Pa. 576, 499 A.2d 294 (1985), wherein the Court held that the PHA does not fall within the definitions of political subdivision or the Commonwealth, and is thus not an employer under the terms of Act 111. In that case, the Supreme Court utilized the Statutory Construction Act, 1 Pa. C.S. § 1991, to define "political subdivision" as "[a]ny county, city, borough, incorporated town, township, school district, vocational school district and county institution district." The regional police department does not fit into any category within this definition, and therefore, the Board has no jurisdiction over it. The Supreme Court opined that the use of the restrictive language in Section 1 of Act 111 was by design – "clear legislative intent to restrict the applicability of Section 1 not only based upon the service being delivered by the employee but also predicated upon the employer supplying that service." Id. at 301 (emphasis added). The Supreme Court also noted that political subdivisions have the ability to fund Act 111 arbitration awards because they have the ability to levy taxes. The regional police department in this case has no such legislative powers.

The Commonwealth Court followed the Supreme Court's reasoning in Conference of Pennsylvania College Police Officers, FOP v. PLRB, 537 A.2d 108 (Pa. Cmwlth. Ct. 1988). In that case, the Commonwealth Court rejected an argument similar to that which Caputo makes in this case. The Commonwealth Court held that the State System of Higher Education (SSHE) was not a public employer for purposes of Act 111. The Court opined that

SSHE could not be regarded as "the Commonwealth" despite the fact that SSHE's board is composed of the Governor, the Secretary of Education and fourteen members appointed by the Governor. Similarly, although the municipalities in this case are political subdivisions that control the regional police department through board representation, the regional police department is not a "political subdivision" under Act 111. See also International Union, United Plant Guard Workers of America v. PLRB (University of Pittsburgh Campus Police) 436 A.2d 496 (Pa. Cmwlth. Ct. 1983).

If Caputo were authorized to bring this unfair labor practice charge on behalf of the Association, he should have proceeded against the municipalities. In the alternative, Caputo could have added the municipalities as additional respondents by filing a timely amended charge. Adding new respondents to a charge creates a new cause of action, and such cause of action is subject to the same Section 9(e) six-week statute of limitations for the filing of an unfair labor practices charge. AFSCME (INGRAM), 26 PPER ¶ 26050 (Final Order, 1995)(complaint may not be amended to name additional parties as respondents after PERA's limitations period had expired). If Caputo were indeed authorized by the Association to act on its behalf, he would have had to have filed an amended charge naming the municipalities prior to the expiration of the six-week limitations period. No such amended charge was filed.

Relying on Borough of Frackville, 14 PPER ¶ 14139 (Final Order, 1983), Caputo argues that the charge was timely because the employer's motive at the time of its refusal to implement the arbitration award gave rise to a continuing violation which tolled the statute of limitations. Caputo misconstrues the Board's holding in that case. Contrary to Caputo's contention that "this Honorable Board found a continuing violation occurred" in that case, (Caputo, Br. at 8) the Board explicitly stated that it did not find a continuing violation. In Borough of Frackville, the union argued that the borough's abolishment of a meterman position was a continuing violation of the Public Employe Relations Act (PERA), and that every day the former meterman was out of work due to the borough's unilateral action constituted an independent unfair practice. The Board rejected that argument. Contrary to Caputo's contention, the continuing violation argument does not lengthen the time period for filing an unfair labor practice charge because the initial refusal to comply with the grievance arbitration award began the six week limitations period. Like the meterman in Frackville, Boas' time period for filing his charge was not extended because of his employer's continuing failure to implement the award. Accordingly, even had the Association properly designated the respondent in the charge originally filed, we find that the charge would have been untimely because alleged failure to comply with a grievance arbitration award is not a continuing violation.

In this case, the unappealed arbitration award was issued on February 5, 1999. "A grievance arbitration award is binding 'as so on as that decision becomes final in the sense that it is no longer appealable.'" City of Philadelphia, 22 PPER ¶ 22228 (Final Order, 1991)(citing PLRB v. Commonwealth, 478 Pa. 582, 387 A.2d 475 (1978)). The unappealed award became final and binding thirty days after the award was issued, on March 7, 1999. The unfair labor practice charge was not filed until June 23, 1999, nearly sixteen weeks later. Caputo does not set forth any allegations to explain the time lapse. In Crawford Central School District, 618 A.2d 1202 (Pa. Cmwlth. Ct. 1992), the Commonwealth Court

reinstated the Board's final order which concluded that under PERA's four month statute of limitations, a charge was timely filed two months after the employer made known its intent not to implement an arbitration award. In that case, the charge was timely filed seven months after the arbitration award was issued because during the five months following the issuance of the award, the parties communicated about implementation and calculations, requested a remedial award, and the employer acknowledged its responsibility to implement the award. Unlike Crawford Central School District, Caputo's charge indicates that the employer did nothing to indicate that it would comply. There are no allegations that the parties communicated about the award, or that the employer withheld its decision not to implement the award. Unlike Crawford Central School District, Caputo offered no explanation for the delay in filing the charge. The Secretary properly determined that Caputo failed to set forth any facts that would support the timeliness of the charge. Caputo did not set forth any facts indicating that an unfair labor practice occurred in the six weeks prior to June 23, 1999, as required by Section 9(e) of Act 111. "[T]he unfair practice, if any, occurs when the Respondent refuses to comply with a binding arbitration award." Commonwealth of Pennsylvania, 8 PPER 233 (Nisi Decision and Order, 1977). "A violation, if any, will occur after exhaustion of appellate rights and a reasonable or expressly provided time thereafter."[7] Id. The arbitrator did not express a time frame within which the employer had to comply. Therefore, after the appeal period expired, the employer had a "reasonable" time in which to comply.[8] In this case, the award mandated reinstatement and the modification of a discharge into a thirty-day suspension. In the charge, Caputo asserts that the Department has taken no affirmative steps to comply with the grievance arbitration Award. However, it is the obligation of a complainant to file charges of unfair practices within six weeks of the time when the complainant becomes aware of the respondent's actions which constitute the unfair practice." State College Borough, 18 PPER ¶ 18119 (Final Order, 1987). The award was issued February 4, 1999. The award became binding on March 7, 1999. Yet, the charge indicates that the Complainant was not aware of the alleged unfair labor practice until May 12 at the earliest, more than 2 months after the award became final and binding. The Board

[7] The Board notes that the under the Federal Service Labor-Management Relations Statute, 5 U.S.C. § 7101 et seq., the statute of limitations period for filing an unfair labor practice charge begins to run on the date an arbitration award becomes final and binding. The Federal Labor Relations Authority does not allow the appeal period and "a reasonable time" to elapse before failure to implement the award becomes an unfair labor practice. Dep't of the Air Force v. FLRA, 775 F.2d 727 (6th Cir. 1985). Pennsylvania law grants complainants more time to file unfair labor practice charges than does federal law, because the statute of limitations does not begin to run on the date the award becomes final and binding. Rather, a violation occurs after exhaustion of appellate rights, and a reasonable time thereafter.

[8] In determining reasonableness, the Board will consider such factors as: (1) the nature and complexity of the compliance required under the award, (2) the length of time before compliance occurred, (3) the employer's ability to comply with the award including legitimate obstacles to compliance, (4) steps taken by the employer toward compliance, and (5) the employer's explanation or lack thereof for the delay. City of Philadelphia, 27 PPER ¶ 27202 (Final Order, 1996).

will not extend the six-week limitations period by an additional two months.

In his exceptions, Caputo asserts that the charge was not timely filed because "the Association refused to permit Boas to file the unfair labor practice within six-weeks of the initial occurrence . . . because the Association was receiving legal advice from Mr. Moore, the attorney for the Department." First, as discussed above, an individual employe does not have standing to enforce an arbitration award. Lee v. Municipality of Bethel Park, supra; Delaware County, 28 PPER ¶ 28142 (Final Order, 1997) Pennsylvania Office of the Attorney General, 14 PPER ¶ 14272 (Final Order, 1983). Second, even if the Association withheld permission to file the charge, the Board has no authority to extend the six-week statute of limitations. If permission to file the charge was wrongfully withheld by the Association, Boas' cause of action would be against the Association in an action for breach of the duty of fair representation, not an unfair labor practice charge. Since the Supreme Court held in Ziccardi v. Commonwealth, 500 Pa. 326, 456 A.2d 979 (1982), that the state courts are the appropriate forum for duty of fair representation actions by public employes, the Board has consistently declined to exercise jurisdiction over such actions. See, e.g., AFSCME, District Council 47, Local 2187, 28 PPER ¶ 28096 (Final Order, 1997). Further, even if Caputo could proceed, any charge of interference by the Department into the Association's affairs would arise under Section 6(1)(b)[9] of the PLRA, and that section was not charged.

After a thorough review of all matters of record, the Board shall affirm the Secretary's decision not to issue a complaint.

ORDER

In view of the foregoing and in order to effectuate the policies of Act 111 and the Pennsylvania Labor 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 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 fifteenth day of February, 2000. 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.

[9] Section 6(1)(b) provides in pertinent part:

(1)It shall be an unfair labor practice for an employer –

(b) To dominate or interfere with the . . . administration of any labor organization or contribute . . . material support to it . . .