

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

FRATERNAL ORDER OF POLICE, :
LODGE NO. 5 :
 :
 v. :
 : Case No. PF-C-99-119-E
CITY OF PHILADELPHIA :
 :

FINAL ORDER

On October 1, 1999, the Fraternal Order of Police, Lodge No. 5 (Union) filed a charge of unfair labor practices, on behalf of Sergeant Barbara Cahill, against the City of Philadelphia (City), in which it alleged a violation of Section 6(1)(a) of the Pennsylvania Labor Relations Act (PLRA) and Act 111. The Union essentially alleged that the City committed an unfair labor practice by failing to comply with certain terms and obligations mandated by the Settlement Agreement and Release (Agreement) that was properly and finally executed on April 19, 1999.¹ The Agreement settled the differences between the parties regarding a grievance that was filed on behalf of Sargent Cahill. Although the specific nature of the initial grievance is unclear, the purpose of the Agreement was to make Sergeant Cahill whole by defining the various rights and obligations of the parties regarding Sergeant Cahill's separation from City employment. Under the express terms of the Agreement, the City was obligated to perform its contractual duties within ninety (90) days from the date of the execution of the Agreement. Ninety (90) days from the execution date of April 19, 1999, is July 19, 1999. Sometime in June of 1999, counsel for the Union discussed the City's compliance, and the City indicated that it was in the process of calculating the sums owed to Sergeant Cahill. By letter dated July 26, 1999, counsel for the Union notified the City that, although the City did effectuate one of its obligations under the Agreement, by ceasing a recapture sick leave deduction from Sergeant Cahill's paycheck, the City failed to perform the remainder of its contractual obligations and confer certain benefits upon Sergeant Cahill within the ninety-day performance period. By letter dated November 22, 1999, the Secretary dismissed the charge as untimely.

On December 15, 1999, the Pennsylvania Labor Relations Board (Board) received exceptions, and a brief in support of those exceptions, to the Secretary's letter declining to issue a complaint. Accordingly, there are two issues presented for our consideration: (1) whether the Union properly filed exceptions within the prescribed time period; and (2) whether the Union timely filed its initial unfair labor practice charge within the six-week limitations period as prescribed by the PLRA.

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).

The rules governing the filing of exceptions to decisions of the Board are found in the Board's Regulations. Section 93.12 of the Board's regulations provides, in relevant part, the following:

When the acts, or this chapter or an order of the Board requires the filing of a motion, brief, exception or other paper in a proceeding, the document shall be received by the Board or the officer or agent designated by the Board to receive the document before the close of business of the last day of the time limit, if any, for the filing.

34 Pa. Code §93.12. When computing a prescribed period of time mandated by the Board's regulations or the applicable statutes, "the period in all cases will be so computed as to exclude the first and include the last day of the period." 34 Pa. Code §95.100(a). Additionally, "[w]henver the last day of a period falls on a Saturday or Sunday or on a day made a legal holiday, . . . the day will be omitted from the calculation." 34 Pa. Code §95.100(b). Moreover, Section 95.98 specifically addresses the filing of exceptions to Board decisions and provides that "[a] party may file with the Board within 20-calendar days of the date of issuance with the Board an original and four copies of a statement of exceptions and a supporting brief to a proposed decision." 34 Pa. Code §95.98(a)(1). This section further provides that "[e]xceptions will be deemed received upon actual receipt or on the date deposited in the United States mail, as shown on a United States Postal Form 3817 Certificate of Mailing enclosed with the statement of exceptions." Id.

In the instant matter, the Secretary issued the decision to dismiss the Union's unfair labor practice charge on November 22, 1999. Pursuant to the above-mentioned regulations, the Union's exceptions must have been filed or otherwise "deemed received" on Monday, December 13, 1999. However, for the reasons that follow, the Board concludes that the Union's exceptions were filed when they were actually received on Wednesday, December 15, 1999.

The regulations require a party filing exceptions via the United States Postal Service to utilize a United States Postal Form 3817 Certificate of Mailing to demonstrate the date on which the documents were deposited with the United States Postal Service. 34 Pa. Code §95.98(a)(1). The Board has determined that a filing party is in substantial compliance with Section 95.98 when the mailing envelope contains either a postmark or a cancellation postmark *from the United States Post Office*. International Union of Operating Engineers, Local 542 v. Delaware County Solid Waste Authority, 18 PPER ¶ 18027 (Final Order, 1986).

In the instant matter, the Union mailed its exceptions and its brief in support in an envelope that has a private postal meter stamp, dated December 13, 1999. There is no cancellation stamp from the United States Postal Service that can adequately demonstrate the date that the documents were deposited for filing. Although the Board has relaxed the requirement of providing a Form 3817, there must be independent evidence that the documents were timely deposited with the United States Postal Service other than the date set by the filing party's meter. The Pennsylvania Supreme Court recently addressed this issue in Lin v. Unemployment Compensation Board of Review, ___ Pa. ___, 735 A.2d 697 (1999). In upholding a series of Commonwealth Court decisions, the Supreme Court opined that "[t]he date

on a private postage meter can be readily changed to any date by the user; therefore it lacks the inherent reliability of the official United States postmark." Id. at ___, 735 A.2d at 700. Accordingly, the Court held that an appeal bearing a private postage meter mark should be considered filed when received. Id. Although there is no suggestion here that the Union has, in fact, manipulated the date on its private postal meter, we are satisfied that the rule adopted by the Supreme Court in Lin and previously followed by the Commonwealth Court is the fair and sound rule to be followed by the Board. The Board provides ample opportunity in its rules and decisional law for the timely filing of documents. It is unwarranted and unnecessary to conduct further inquiry into the use of private postal meters that would be required by not following Lin. Therefore, the Board concludes that the Union's exceptions were filed on December 15, 1999, the date they were received, which was two days beyond the filing deadline. Thus, the Board will not consider the Union's exceptions.

The second issue presented for our review is whether the Union filed its initial unfair labor practice charge within the applicable limitations period. The PLRA limits the time to file an unfair labor practice charge, under that statute, to six weeks from the date of the occurrence of the unfair labor practice. 43 P.S. §211.9(e). Accordingly, Section 9(e) provides 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." Id. In Pennsylvania Labor Relations Board v. New Castle Area School District, 7 PPER 16 (Nisi Order, 1976), the Board addressed similar language in the Public Employe Relations Act, which provides a four-month limitations period. In the New Castle decision, 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. This Board, therefore, does not have jurisdiction to entertain unfair labor practice charges filed beyond the six-week limitations period mandated by Section 9(e) of the PLRA. However, the limitations period does not begin to run until the acts or statements complained of take place and the complainant had actual or constructive knowledge of those events. Id. The Union's brief cites to Fraternal Order of Police Lodge #9 v. City of Reading, 30 PPER ¶ 30013 (Proposed Decision and Order, 1998) and PLRB v. North Wales Borough, 13 PPER ¶ 13243 (Final Order, 1982), for the proposition that the statute of limitations begins to run when it is known or should be known that the employer will not comply with an arbitration award or settlement agreement. However, the cases cited by the Union are inapposite.

In its brief, the Union argues that, because the City performed one of its many contractual obligations within the ninety-day performance period, it was reasonable for the Union to assume that the City was attempting to and would eventually attain full compliance. Therefore, reasons the Union, it did not have any reason to know or should not have known that the City failed to comply with the terms of the Agreement until it filed its unfair labor practice charge on October 1, 1999. However,

this reasoning is flawed. Unlike the arbitration awards and the other circumstances in the cases cited by the Union, the Agreement in the instant matter contained an express time period, i.e., ninety (90) days, in which the City was contractually obligated to perform all of its contractual duties owed to Sergeant Cahill. At the close of business on July 19, 1999, the City was in breach of the Agreement and the Union had actual notice that the City committed an unfair labor practice by failing to timely perform. Although the Union was entitled to assume that the City's partial performance yielded the inference that the City was attempting to attain compliance with the Agreement, that state of partial performance at the end of the contractually mandated performance period was the basis of the Union's unfair labor practice charge. Accordingly, the Union had actual notice of the City's unfair labor practice when the cause of action ripened at the close of business on July 19, 1999. Therefore, the Board's ability to entertain the Union's unfair labor practice charge in this case expired on August 30, 1999, six weeks from July 19, 1999.

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 Pennsylvania Labor Relations Act and Act 111, 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 eighteenth day of January, 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.