

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

ERIC J. TALLEY :
 :
 v. :
 : Case No. PERA-C-98-428-E
 SOUTHEASTERN PENNSYLVANIA :
 TRANSPORTATION AUTHORITY :

FINAL ORDER

On September 23, 1998, Eric J. Talley (Complainant) filed a charge of unfair practices alleging that the Southeastern Pennsylvania Transportation Authority (Respondent) violated Section 1201(a)(1), (2), (3), (5), (6), (7) and (8) of the Public Employe Relations Act (PERA). In support of the charge of unfair practices Complainant alleged that Respondent discharged him in 1992 and since that time Complainant has maintained various actions against Respondent under the federal Railway Labor Act (RLA) and in United States District Court. On November 2, 1998, Respondent filed a motion to dismiss the charge of unfair practices contending that jurisdiction under this dispute was preempted pursuant to the provisions of the RLA and that the Pennsylvania Labor Relations Board (PLRB) accordingly lacked jurisdiction over the dispute. On that same day Complainant filed a reply to SEPTA's motion to dismiss. Thereafter, on November 9, 1998, Complainant filed an amendment to the charge of unfair practices in the nature of argument in support of the facts alleged in the original filing.

By letter dated November 24, 1998, the Secretary dismissed the charge of unfair practices for several reasons. First, the Secretary determined that jurisdiction over the subject matter of the dispute was preempted by the RLA and that the PLRB does not have jurisdiction over this dispute under the provisions of PERA. Second, the Secretary determined that even if it were determined that the PLRB had jurisdiction over the dispute, the Complainant lacks standing to maintain a cause of action over allegations growing out of the duty to bargain collectively, including Complainant's allegation of violation of Section 1201(a)(5) regarding the obligation to bargain in good faith, 1201(a)(8) regarding the obligation to comply with a grievance arbitration award and Section 1201(a)(6) regarding the obligation of a PERA covered employer to execute a collective bargaining agreement. Third, the Secretary determined even if the PLRB had jurisdiction, any claims Complainant had were time barred pursuant to the four month limitations period set forth in Section 1505 of PERA. Complainant was allegedly dismissed by Respondent in 1992. The charge of unfair practices was filed on September 23, 1998, and accordingly, any events occurring prior to May 23, 1998, did not fall within the four month limitations period set forth in Section 1505 of PERA.

Thereafter, on December 14, 1998, Complainant filed exceptions and a brief in support of exceptions. Complainant raises three exceptions. First, Complainant alleges that the Secretary's dismissal of the charge on the basis of federal preemption was error. Complainant sets forth extensive citation to federal case law in support of his contention that federal preemption does not preempt state claims. The Board agrees that the enactment of collective bargaining laws by the federal government does not necessarily preempt all employment related claims

which are otherwise actionable in state tribunals. Complainant correctly states that the courts have consistently supported equal employment opportunity, discrimination claims, whistle blower claims, safe work place claims, protection for filing unemployment or workers compensation claims, etc. which have not been preempted by enactment of federal laws addressing the subject matter of collective bargaining.

Complainant acknowledges that the collective bargaining relationship between the Respondent and the United Transportation Union (UTU) is controlled by the RLA. However, Complainant contends that this does not result in preemption of application of PERA as alleged in the charge of unfair practices. However, our review of the law leads us to the conclusion that Complainant has overlooked the fact that enactment of federal labor laws addressing the subject matter at issue here (a statutory scheme for collective bargaining) effectively preempts state legislation dealing with the same subject matter. PERA sets forth a comprehensive scheme for collective bargaining which is very different than that set forth in the PERA. Compliance with federal collective bargaining mechanisms under the RLA is inconsistent with the statutory scheme for collective bargaining set forth in PERA. It is for this reason that federal preemption operates to preempt state government assertion of jurisdiction over the same subject matter while at the same time allowing state claims with regard to different subject matters (e.g., whistle blower, sex discrimination, race discrimination, gender discrimination, protection for unemployment or workers compensation filers, etc.).

In Hawaiian Airlines v. Norris, 114 S. Ct. 2239, 512 U.S. 246 (1994), the United States Supreme Court addressed the preemptual impact of the RLA. The Supreme Court relied on a case decided under the National Labor Relations Act in addressing a similar question involving preemption of state law. Lingle v. Norge Division of Magic Chef, Inc., 486 U.S. 399, 108 S. Ct. 1877 (1988). The Supreme Court quoted from Lingle to the effect that federal preemption extends to the subject matter of the law in question. Moreover, where both the federal and state laws address the same subject matter such as a comprehensive statutory scheme to govern collective bargaining, the assertion of federal jurisdiction operates to preempt inconsistent state law provisions over the same subject matter.

The specific question raised here regarding preemption of state collective bargaining laws was addressed by the United States Supreme Court in Guss v. Utah Labor Relations Board, 353 U.S. 1, 77 S. Ct. 598 (1957). In Guss the United States Supreme Court determined that the federal collective bargaining scheme set forth in the National Labor Relations Act preempted assertion of jurisdiction by a state labor relations board pursuant to state collective bargaining laws. Indeed, attached to Complainant's exceptions is an order from the United States District Court pursuant to a civil action filed by complainant against SEPTA. In that action, Complainant requested leave from the court to file unfair labor practice charges with the PLRB in 1996 which was expressly denied by the court in which it noted as follows:

"This Court lacks jurisdiction over the defendant because the relationship between Southern[sic] Pennsylvania Transportation Authority and United Transportation Union is governed by the Railway Labor Act. McQuestion v. New Jersey Transit Rail Operations, 30 F.3d 388, 392 (3d Cir. 1994). Consequently, disagreements about whether a discharge from employment was proper and whether the employee's claim is within the ambit of the relevant agreement are matters within the jurisdiction of the Railway

Adjustment Board and not the Pennsylvania Labor Relations Board."

(Attachment, brief in support of exceptions). Accordingly, we find that the Secretary properly determined that the RLA preempts jurisdiction over Complainant's claims.

Complainant next excepts to the Secretary's determination that Complainant lacks standing even were it determined that the PLRB's jurisdiction was not preempted by the RLA. Complainant supports this exception in his brief with citation to provisions of the RLA and contends that the PLRB may base assertion of jurisdiction for pro se processing of grievances on provisions of the RLA. After review of the extensive argument set forth by Complainant we find that the Secretary properly applied Pennsylvania law which consistently states that individual bargaining unit members lack standing to assert collective bargaining rights growing out of the collective bargaining duty. Maggs v. PLRB, 50 Pa. Commonwealth Ct. 549, 413 A.2d 453 (1980). Accordingly, the Secretary properly determined that even in the absence of federal preemption, the PLRB lacks jurisdiction over Complainant's charge alleging violation of Section 1201(a)(5), (6) and (8) of PERA. The PLRB also lacks jurisdiction to enforce any provision of RLA contrary to Complainant's argument (brief at 9). The PLRB has authority only over those unfair practice provisions of PERA and must be guided by Pennsylvania statutory and common law regarding state law question. The Complainant has cited no persuasive authority which would support his contention that the PLRB has authority to enforce provisions of RLA or RLA based rights.

Third, the Complainant asserts that the Board is estopped from invoking the four month limitations period set forth in Section 1505 of PERA. First, estoppel is a defense to the action of a "party" to a proceeding and does not apply to the adjudicative role of the forum in which the action is filed. Rather, estoppel may be invoked against a party where another party to litigation has been induced to relax its vigilance by an affirmative act of fraud, deception or concealment of fact. Nyo v. PLRB, 419 A.2d 244 (Pa. Cmwlth. 1980); Walters v. Ditzler, 424 Pa. 445, 227 A.2d 833 (1967).

In Nyo, the Commonwealth Court stated the statute of limitations may be tolled through fraud, concealment of fact or misinformation. To this end Complainant attaches an affidavit in which he contends that in October 1992 he contacted the Board by telephone and inquired regarding the potential filing of a charge of unfair practices regarding his termination. He further alleges in his affidavit that the "PLRB refused or failed to act in sending me forms for filing unfair practice charge" (affidavit at 2). Initially, to the extent that Complainant made telephone contact with an agent of the PLRB in October 1992 and was advised that the Board lacked jurisdiction over his claim, such information was correct and does not constitute any grounds for the tolling of the four month limitations period set forth in Section 1505. Further, to the extent that Complainant thereafter did not file charges which the Board, regardless of that alleged information, because the PLRB allegedly did not mail forms to Complainant, does not excuse Complainant's obligation to timely protect his purported rights in the matter. If Complainant believed he had a cause of action it was his obligation all times to protect his rights by filing appropriate charges of unfair practices regardless of the availability of "forms" for that purpose. That Complainant did not receive forms from the PLRB as a result of an alleged conversation with PLRB staff did not relieve him of his obligation to timely file any charge of unfair practices. The PLRB entertains timely filed charges of unfair practices regardless of whether they are filed on forms prepared by the Board.

Accordingly, after a thorough review of the exceptions, supporting brief and the charge of unfair practices as originally filed, the PLRB shall dismiss the exceptions and affirm the decision of the Secretary declining to issue a complaint.

ORDER

In view of the foregoing and in order to effectuate the policies of the Public Employe 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.

SIGNED, SEALED, DATED and MAILED this twenty-fifth day of May, 1999.

PENNSYLVANIA LABOR RELATIONS BOARD

L. DENNIS MARTIRE, MEMBER

EDWARD G. FEEHAN, MEMBER

CHAIRMAN JOHN MARKLE JR. DID NOT PARTICIPATE IN THE CONSIDERATION OR DECISION OF THIS CASE