COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

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| MONTGOMERY TOWNSHIP POLICE OFFICERS | : | |
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| v. | : | Case No. PF-C-02-98-E |
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| MONTGOMERY TOWNSHIP | : | |
| RICHARD BRADY | : | |

**FINAL ORDER**

On July 15, 2002, the Montgomery Township Police Officers (Complainant) filed a Charge of Unfair Labor Practices with the Pennsylvania Labor Relations Board (Board) alleging that Montgomery Township and the Chief of Police (collectively Respondent) violated Act 111 of 1968 and Section 6(1)(a) and (e) of the Pennsylvania Labor Relations Act (PLRA). The Complainant alleged that on May 30, 2002, the Respondent unilaterally altered the process for a promotion to Lieutenant by no longer utilizing an examination and instead made promotions discretionary based on the recommendation of the Chief of Police.

The Secretary of the Board noted that the Complainant failed to establish that the charge was filed within six weeks of the alleged unfair labor practice as required by Section 9(e) of the PLRA. Accordingly, by letter dated July 19, 2002, the Secretary advised the Complainant that no complaint would be issued. On August 6, 2002, the Complainant filed timely exceptions to the Secretary's determination.

Section 9(e) of PLRA provides in relevant part 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." 43 P.S. § 211.9(e). The Board has neither the legal authority nor ability to waive the statute of limitations under Section 9(e) of the PLRA. See United Mine Workers, Region 1 v. Blair County, 32 PPER ¶ 32048 (Final Order, 2001).

The Complainant first argues that under the Statutory Construction Act, 1 Pa. C.S.A. §1908, the first day is excluded from the computation of time and therefore, the six weeks limitation period commenced on Friday, May 31, 2002. Counting six weeks from May 31, 2001 would be Friday, July 12, 2001. The Complainant contends that under this construction, its deposit of the charge with an overnight courier on July 12, 2002 for delivery to the Board on Saturday, July 13, 2002, was timely.

A similar argument regarding the computation of time under Section 9(e) of the PLRA was made in Gary S. Berton v. North Huntingdon Township, 19 PPER ¶19009 (Final Order, 1987) where the Board set forth the correct method of computing the six weeks limitations period. The Board held that:

> First, it should be pointed out that when weeks or months are computed rather than days, time is computed from the

> same day of the week to day of the week or day of the month to day of the month. Accordingly, for a cause of action which occurs on a Friday, the statute of limitations expires on that cause of action on the sixth Friday following the day of occurrence. Complainant misconstrues the Act and the Board's rules in his computation of time to require an eight-day elapsed period rather than a seven-day elapsed period from the date and day of the occurrence. Under the method provided in the Board's rules for computation of time in Section 95.100, the day of occurrence shall not be computed, the first day of computation is the next day and the seventh day from such computation shall be included in the computation. Accordingly, the first day to compute the first week is Saturday, July 25, 1987, and the seventh elapsed day from that time is Friday, July 31, 1987. Thus, July 31, 1987, is accordingly the last day of the first week and by this computation the last day of the sixth week is Friday, September 4, 1987.

North Huntingdon Township, 19 PPER at 31. Stated differently, the period begins the day after the alleged occurrence and expires on the forty-second day (7 days per week x 6 weeks) thereafter. Teamsters Local 205 v. Homestead Borough, 27 PPER ¶27011 (Proposed Decision and Order, 1995).

Accordingly, since the Complainant alleged that the unfair labor practice occurred May 30, 2002, starting the computation of time under Section 9(e) of the PLRA as the first day beginning on May 31, 2002, seven days thereafter, and the end of the first week, would be June 6, 2002. Thus, the end of the sixth week, and the last day to file the charge, would have been July 11, 2002.

Furthermore, Section 93.12 of the Board's Rules and Regulations require that charges be received by the Board before the close of business on the last day of the time limit for the filing. 34 Pa. Code §93.12; Michael T. Groves v. City of Philadelphia, 32 PPER ¶32128 (Final Order 2001). The Board's Rules do not allow tolling of the limitations period by deposit of the charge in the mail or with a private courier. Despite that the Complainant sent the charge by overnight courier on July 12, 2002 for delivery to the Board on Saturday, July 13, 2002, the charge was not filed until actually received by the Board on July 15, 2002. City of Philadelphia, supra. Therefore, because the statute of limitations expired on July 11, 2002, the Complainant's charge filed July 15, 2002 is untimely under Section 9(e) of the PLRA.[1]

The Complainant also requests that the Board accept the late filing in accordance with its discretionary authority under Section 93.12 of the Board's Rules and Regulations.[2] Section 93.12 does provide

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[1] Moreover, we note that even the Complainant's alleged date of filing of July 12, 2002 is untimely.

[2] The Complainant cites to Section 95.42 of the Board's Rules and Regulations which deal with charges falling under the Public Employe

the Board with discretion to grant exceptions to the requirement that documents be received by the Board by close of business on the last day of the time limit. 34 Pa. Code §93.12. However, as for the filing of charges, the Board will exercise this discretion only in those cases where a nunc pro tunc filing would be permitted. Accordingly, late filings may be accepted where there is a breakdown in the Board's processes, see Sewickley Valley Hospital v. Department of Public Welfare, 550 A.2d 1351 (Pa. Cmwlth. 1988), petition for allowance of appeal denied, 524 Pa. 614, 569 A.2d 1372 (1989), or where the delay is caused by non-negligent conduct. Cook v. Unemployment Compensation Board of Review, 543 Pa. 381, 671 A.2d 1130 (1996); Bass v. Bureau of Corrections, 485 Pa. 256, 401 A.2d 1133 (1979).

In an affidavit supplied with the exceptions, the Complainant's counsel asserts that the reason for the late filing was that he was originally led to believe that the Complainant did not want to file a charge, however, on July 12, 2002 the Complainant requested that he do so. We reject the Complainant's argument that these circumstances warrant the filing of the charge nunc pro tunc. There is no alleged breakdown in the Board's processes, and the Complainant's untimely decision to file a charge does not amount to non-negligent conduct justifying the late filing. Accordingly, the Board declines to exercise its discretion under Section 93.12 of the Board's Rules to permit the filing of the charge nunc pro tunc.

After a thorough review of the exceptions and all matters of record there are no facts alleged to support the timely filing of the charge under Section 9(e) of the PLRA, and accordingly the Board will dismiss the exceptions and sustain the Secretary's decision declining to issue a complaint.

ORDER

In view of the foregoing and in order to effectuate the policies of Act 111 of 1968 and the Pennsylvania Labor Relations Act, the Board

HEREBY ORDERS AND DIRECTS

that the exceptions are dismissed and the Secretary's decision not to issue a complaint be and hereby 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 L. Dennis Martire, Member, this twentieth day of August, 2002. 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.

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Relations Act, however, the same language appears in Section 93.12 as it applies to filings under the PLRA.