

COMMONWEALTH OF PENNSYLVANIA  
Pennsylvania Labor Relations Board

INTERNATIONAL BROTHERHOOD OF :  
ELECTRICAL WORKERS, LOCAL NO. 81 :  
 :  
v. : Case No. PERA-C-02-220-E  
 :  
SCRANTON HOUSING AUTHORITY :

**FINAL ORDER**

On May 2, 2002, the International Brotherhood of Electrical Workers, Local No. 81 (Complainant) filed a Charge of Unfair Practices with the Pennsylvania Labor Relations Board (Board) alleging that the Scranton Housing Authority (Respondent) failed to comply with a grievance arbitration award in violation of Section 1201(a)(1), (3) and (8) of the Public Employe Relations Act (PERA). The Complainant alleged that the award directed that an employe be made whole for any lost wages and benefits, but the Respondent has failed to compensate the employe for lost overtime.

By letter dated May 17, 2002 the Secretary of the Board advised the Complainant that no complainant would be issued on the charge. The Secretary noted that the Complainant had failed to set forth facts establishing that the charge was filed within four-months of the alleged unfair labor practice as required under Section 1505 of PERA.

On June 5, 2002, the Complainant filed timely exceptions to the Secretary's determination, together with a supporting brief, arguing that the Secretary erred in dismissing the charge as untimely. The Complainant alleged that since the issuance of the arbitration award on July 27, 2001, the parties were negotiating compliance and attempting to have the arbitrator clarify the award as it pertained to lost overtime.

Under Section 1201(a)(8) of PERA, it is an unfair practice for an employer to refuse to comply with a binding grievance arbitration award. A refusal to comply with a grievance arbitration award does not necessarily accrue immediately when the award is issued, but only after the union knows, or should have known, of the employer's noncompliance with the award. Pennsylvania Labor Relations Board v. United School District, 13 PPER ¶13170 (Final Order, 1982). Section 1505 of PERA requires that a charge of unfair practices be filed within four months of the date the complainant knew or should have known of the acts alleged to constitute the unfair practice. See Officers of the Upper Gwynedd Township Police Department v. Upper Gwynedd Township, 32 PPER ¶132101 (Final Order, 2001).

Relying on Crawford Central School District v. Pennsylvania Labor Relations Board, 618 A.2d 1202 (Pa. Cmwlth. 1992), the Complainant argues that its charge was filed timely since the parties had been negotiating compliance and seeking clarification after the arbitration award was issued. In Crawford Central School District, the arbitrator granted the union's grievances, and retained jurisdiction over the

issue of compensation. Following discussions over the implementation of the award, the parties returned to the arbitrator, who issued a remedial award. Because the employer had not complied with the remedial award, the union filed its charge with the Board within two months thereafter. The Commonwealth Court held that it was not until after the arbitrator's remedial award that the union became aware that the employer would not comply.

Moreover, in Commonwealth of Pennsylvania v. Pennsylvania Labor Relations Board (APSCUF), 438 A.2d 1061 (Pa. Cmwlth. 1982) the Commonwealth Court affirmed the Board's holding that where the employer gives assurances to the union that it would attempt to comply with an arbitration award the time for filing a charge under Section 1201(a)(8) of PERA may be tolled during the period of negotiations. The union's charge in APSCUF was, nonetheless, untimely because the employer had definitively notified the union that it would not comply with the award more than four months before the filing of the unfair practice charge.

Here, like in APSCUF, and even under Crawford Central School District, the Complainant's charge is untimely. Complainant alleged in its exceptions that it was negotiating the overtime compensation with the Respondent following issuance of the arbitration award. The Complainant alleged that on August 2, 2001 it wrote to Respondent requesting that the employe be compensated for 84.5 hours of overtime, and that the Respondent had failed to respond to this correspondence. The Complainant thereafter wrote to the arbitrator on September 20, 2001, requesting that he resume jurisdiction to clarify the award. By letter dated October 5, 2001, the Respondent objected to the need for the arbitrator to clarify the award. According to the Complainant, thereafter the parties attempted to agree on a stipulation of facts to be presented to the arbitrator. However, when the parties were unable to agree to a stipulation, the Complainant wrote the arbitrator on December 6, 2001 requesting a hearing. By letter dated December 14, 2001, the arbitrator advised the parties that he would not accept jurisdiction over their dispute.

The Complainant asserted in its brief that the Respondent's "violation of 1201(a)(8) ... of the Act occurred only after the Arbitrator declined to resume jurisdiction. Only at that point did it become clear that Respondent would refuse to abide by the award." (Complainant's Brief pg. 3).

Under the facts alleged in the charge and exceptions, the Complainant obviously became aware that Respondent violated Section 1201(a)(8) of PERA, by not complying with the arbitration award, no later than December 14, 2001, when the arbitrator refused to reassert jurisdiction. The Complainant, however, did not file its charge until May 2, 2002, more than four months from the date it alleged that it had become aware of this unfair practice.

The Complainant argues, however, that because a refusal to comply with an award does not occur until after the expiration of appellate rights,<sup>1</sup> then the four-month time period under Section 1505 did not

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<sup>1</sup> Pennsylvania Rule of Appellate Procedure 1736(b) does not support the notion that a supersedeas of an award in favor of a political subdivision automatically attaches where a common pleas court has

commence to run until late January 2002, thirty days after the arbitrator's decision declining to exercise jurisdiction. Here, however, tolling of the limitations period pending an appeal is not warranted, because no appeal was filed from the award of July 27, 2001 that is the subject of the disputed compliance.<sup>2</sup> Any issue concerning a stay of compliance pending an appeal had long since expired with the expiration of the appeal period from the July 27, 2001 award, and ceased to be an issue as of the time of the Respondent's continued and definitive non-compliance with the award in December of 2001.

Even under Complainant's allegations that it was made aware of Respondent's non-compliance on December 14, 2001, the cause of action under Section 1201(a)(8) of PERA arose at that time and the limitations period expired four months from that date. As such, the Complainant's charge filed May 2, 2002 is untimely as a matter of law.

Since the charge was filed more than four months after December 14, 2001, on May 2, 2002, the Secretary did not err in dismissing the charge as untimely. Accordingly, the exceptions are dismissed and the Secretary's decision declining to issue a complainant is sustained.

#### **ORDER**

In view of the foregoing and in order to effectuate the policies of Public Employe 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, L. Dennis Martire, Member, and Edward G. Feehan, Member, this sixteenth day of July, 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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sustained an award which is subsequently appealed to the Commonwealth Court. See Fraternal Order of Police, Lodge No. 5 v. City of Philadelphia, 32 PPER ¶32102 (Final Order, 2001).

<sup>2</sup> The July 27, 2001 award was issued approximately nine months prior to the filing of the unfair practice charge.