

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

FRATERNAL ORDER OF POLICE :
DELAWARE COUNTY LODGE #27 :
 :
 v. : Case No. PF-C-03-63-E
 :
NETHER PROVIDENCE TOWNSHIP :

FINAL ORDER

On June 9, 2003, the Fraternal Order of Police, Delaware County Lodge No. 27 (FOP) filed a Charge of Unfair Labor Practices with the Pennsylvania Labor Relations Board (Board) alleging that Nether Providence Township (Township) violated Act 111 of 1968 and Section 6(1)(a), (b), (c), (d) and (e) of the Pennsylvania Labor Relations Act (PLRA). In the Specification of Charges, the FOP alleged that on February 8, 2001 the Township failed and refused to promote a candidate to the rank of sergeant because of anti-union animus.

By letter dated July 16, 2003 the Secretary of the Board advised the FOP that no complaint would be issued because the charge was not filed within the six-week statute of limitations provided by Section 9(e) of the PLRA. On August 4, 2003, the FOP filed timely exceptions to the Secretary's decision.

The FOP argues that on September 12, 2001, it had filed a civil action in mandamus in the Court of Common Pleas of Delaware County raising, among other issues, the cause of action presented to the Board in the present charge. The FOP asserts that Court of Common Pleas dismissed the civil action without prejudice so that the FOP could exhaust its administrative remedies. On April 29, 2003, the Commonwealth Court affirmed the Court of Common Pleas' decision. The FOP argues in its exceptions that the Secretary's dismissal letter is contrary to the direction of the Commonwealth Court that it must proceed with its unfair labor practices claims before the Board.

The Court of Common Pleas order directed that the FOP's complaint be "dismissed WITHOUT prejudice to allow [the FOP] to seek a remedy with the proper administrative agency..." We do not construe the court's order as a mandate to the Board to disregard the statute of limitations for an unfair labor practice under Section 9(e) of the PLRA, and accept jurisdiction over the FOP's charge as filed.

Moreover, even if there was some attempt by the court to transfer the case to the Board, we believe that the Board is not a tribunal under 42 Pa. C.S.A. §5103 to which a court may transfer cases that have been erroneously filed with a court of law.¹ Cf. Smith v. Borough of Castle Shannon, 641 A.2d 671 (Pa. Cmwlth. 1994) (transferring a case to

¹ 42 Pa.C.S. § 5103 provides for the transfer of erroneously filed matters as follows:

the Board without discussion). In Pennsylvania State Police, Bureau of Liquor Control Enforcement v. Harry's Holiday Park Lodge, Inc., 799 A.2d 878 (Pa. Cmwlth. 2002), appeal dismissed, ___ Pa. ___, ___ A.2d ___ (No. 81 WAP 2002, January 13, 2003), the Commonwealth Court held that an administrative agency could be a tribunal under 42 Pa. C.S.A. §5103(d) if (1) it was a commonwealth agency with statewide jurisdiction; and (2) the agency's jurisdiction involved subjects traditionally identified with the judiciary. Although the Bureau of Liquor Control Enforcement had statewide jurisdiction, the Commonwealth Court noted that the Bureau was statutorily divested with original jurisdiction over matters under the Pennsylvania Liquor Code, and absent the Liquor Code no civil action at law would lie with the judiciary. Accordingly, the Commonwealth Court held that the Bureau of Liquor Control Enforcement did not satisfy the second criteria and thus was not a tribunal to which it could transfer cases under 42 Pa. C.S.A. §5103.

Similarly, here the Board is a statewide commonwealth agency having statutory exclusive jurisdiction over unfair labor practices involving public employers. See Hollinger v. Department of Public Welfare, 469 Pa. 358, 365 A.2d 1245 (1976). Absent the declaration of unfair labor practices established in Section 6 of the PLRA, no civil cause of action at law would exist for the conduct found unlawful under the PLRA. As such, just like the Bureau of Liquor Control Enforcement, the Board's subject matter jurisdiction is not traditionally a matter for the courts, and as such, the Board is not a tribunal under 42 Pa. C.S.A. §5103 to which courts in the unified judicial system can transfer cases.

(a) GENERAL RULE.-- If an appeal or other matter is taken to or brought in a court or magisterial district of this commonwealth which does not have jurisdiction of the appeal or other matter, the court or district justice shall not quash such appeal or dismiss the matter, but shall transfer the record thereof to the proper tribunal of this commonwealth, where the appeal or other matter shall be treated as if originally filed in the transferee tribunal on the date when the appeal or other matter was first filed in a court or magisterial district of this commonwealth. A matter which is within the exclusive jurisdiction of a court or district justice of this commonwealth but which is commenced in any other tribunal of this commonwealth shall be transferred by the other tribunal to the proper court or magisterial district of this commonwealth where it shall be treated as if originally filed in the transferee court or magisterial district of this commonwealth on the date when first filed in the other tribunal.

* * *

(d) DEFINITION.-- As used in this section "tribunal" means a court or district justice or other judicial officer of this commonwealth vested with the power to enter an order in a matter, the board of claims, the board of property, the office of administrator for arbitration panels for health care and any other similar agency.

Nonetheless, even if the Board could be declared a tribunal under 42 Pa.C.S. §5103, the FOP's cause of action is still untimely. Matters transferred under 42 Pa.C.S. §5103(a) are "treated as if originally filed in the transferee tribunal on the date when the appeal or other matter was first filed in a court or magisterial district of this commonwealth." A transfer under 42 Pa. C.S. §5103 does not operate to extend the applicable statute of limitations. Davis v. Commonwealth, 660 A.2d 157 (Pa. Cmwlth. 1995).

With regard to unfair labor practices under the PLRA, 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." Neither the Board nor the courts have the legal authority or ability to waive this statute of limitations. See Montgomery Township Police Officers v. Montgomery Township, 33 PPER ¶ 33151 (Final Order, 2002).

The FOP's civil complaint was filed with the Delaware County Court of Common Pleas on September 12, 2001, in which it alleged that on February 8, 2001, the Township unlawfully refused to promote Officer Brian Bonnes to sergeant. Clearly, the FOP's civil complaint was not filed with the Court of Common Pleas within six weeks of the alleged unlawful act. Any transfer by the Court of Common Pleas, or the Commonwealth Court, to the Board could not revive this expired cause of action. Accordingly, the FOP's civil complaint, and thus its charge, is untimely.

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 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 the same is hereby 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 Anne E. Covey, Member, this nineteenth day of August, 2003. 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.