

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

BRISTOL BOROUGH :
: :
: :
v. : Case No. PF-C-02-127-E
: :
BRISTOL BOROUGH POLICE :
BENEVOLENT ASSOCIATION :

FINAL ORDER

On December 16, 2002, Bristol Borough (Borough) filed timely exceptions with the Pennsylvania Labor Relations Board (Board) to the letter issued by the Board's Secretary on December 3, 2002 dismissing as untimely the Borough's charge of unfair labor practices against the Bristol Borough Police Benevolent Association (Union).¹

On October 21, 2002, the Borough filed a charge of unfair labor practices against the Union alleging that, on or about July 1, 2002, the Union representatives engaged in disruptive behavior by distributing flyers and attending Borough Council meetings where they interrupted and shouted at Council members. On October 31, 2002, the Union filed a response to the charge claiming that the charge was untimely because the acts or events complained of were outside the six-week statute of limitations applicable to claims brought pursuant to the Pennsylvania Labor Relations Act (PLRA). The Board Secretary agreed and dismissed the charge for failing to set forth any facts which would support the timeliness of the charge, i.e., the Borough failed to allege that any of the acts complained of occurred within the six-week limitation period.

Section 9(e) of PLRA 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." 43 P.S. § 211.9(e). In PSSU v. Commonwealth Dep't of Pub. Welfare, 31 PPER ¶ 31060 (Final Order, 2000), where the four-month statute of limitations under the Public Employee Relations Act was at issue, the Board stated that "the mandatory language of Section 1505² raises the question of whether a charge was properly filed within the four-month limitation period to one of jurisdiction." Id. at 16. In United Mine Workers, Region 1 v. Blair County, 32 PPER ¶ 32048 (Final Order, 2001), the Board stated that it "does not have the legal authority or ability to waive the statute of limitations. When the statute of limitations has expired, the Board no longer has subject matter jurisdiction." Id. at 133.

¹ For purposes of issuing a complaint, the factual allegations in the charge of unfair labor practices are accepted as accurate. PSSU Local 668 v. PLRB, 481 Pa. 81, 392 A.2d 256 (1978).

² 43 P.S. § 1101.1505.

In its exceptions, the Borough does not dispute the Secretary's conclusion that the acts or events that may have occurred on or about July 1, 2002 would be outside the six-week limitation under PLRA for a charge filed on October 21, 2002, thereby prohibiting the Board from entertaining the charge. Blair County, supra. The Board's regulations provide that "[a]n exception not specifically raised shall be waived." 34 Pa. Code § 95.98(a)(3). Rather the Borough implicitly accepts the Secretary's determination regarding the July 1, 2002 date and offers additional, subsequent dates on which the Union also allegedly engaged in the conduct of which the Borough originally complained. Accordingly, the Borough has waived any challenge to the Secretary's determination.

The Borough, in its exceptions, alleges that, on September 9, 2002 and October 15, 2002, Union representatives again disrupted public council meetings by distributing flyers and in other ways as indicated in the original complaint, which provides that Union representatives "shouted down" council members as they tried to speak. The complained of occurrences on the additional dates provided in the exceptions are facts that were not originally alleged and must be treated as amendments to the charge.³ Although the charge is timely as supported by these additional allegations of fact, the allegedly offensive conduct complained of on the dates in question does not support the causes of action designated by the Borough. A review of the flyers provided with the charge and the allegations in the Specification of Charges reveals that the Borough did not allege sufficient facts to support a cause of action under either Section 6(2)(c) or (d) as charged. Section 6(2)(c) requires that the agents of the Union "intimidate, restrain or coerce any employer by threats of force or violence or harm to the person of said employer or members of his family." 43 P.S. § 211.6(2)(c). The Borough has simply failed to set forth allegations or provide documents having any tendency to show that employes or Union agents threatened physical harm to the person of any of the council members or their agents. In such a case, the charge is properly dismissed. City of Philadelphia v. FOP, Lodge No. 5, 22 PPER ¶ 22072 (Final Order, 1991). Also, the Borough failed to set forth any allegations either in the original charge or the exceptions that could support a cause of action under Section 6(2)(d), which prohibits Union agents or employes from picketing a place of employment other than their own. 43 P.S. § 211.6(2)(d). Regardless of whether the complained of activity constitutes picketing, the Borough did not allege that any of the activity complained of occurred on the premises of another employer. Accordingly, the allegations set forth by the Borough, even if accepted as true, did not support the charges lodged against the Union, as a matter of law, and the Secretary properly dismissed the charge.

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.

³ The Borough failed to have the exceptions notarized, which was required by the Board's regulations because the exceptions contained additional allegations and amendments to the charge. 34 Pa. Code § 95.31(a). Accordingly, the Board Secretary, by letter dated December 19, 2002, requested that the Borough file a notarized affidavit within twenty days. On January 2, 2003, the Borough timely filed the requested affidavit.

ORDER

In view of the foregoing and in order to effectuate the policies of the Pennsylvania Labor 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.

SEALED, DATED and MAILED at Harrisburg, Pennsylvania 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 twenty-eighth day of January, 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.