## COMMONWEALTH OF PENNSYLVANIA Pennsylvania Labor Relations Board

ALLEGHENY COUNTY DEPUTY
SHERIFFS' ASSOCIATION

.

v. : Case No. PERA-C-04-144-W

:

ALLEGHENY COUNTY, and ALLEGHENY : COUNTY SHERIFF :

## FINAL ORDER

Allegheny County Deputy Sheriffs' Association (Union) filed exceptions and brief in support with the Pennsylvania Labor Relations Board (Board) on May 17, 2004. The Union's exceptions challenge a April 26, 2004 decision of the Secretary of the Board (Secretary) declining to issue a complaint and dismissing its Charge of Unfair Practices filed on March 17, 2004, against the Sheriff of Allegheny County and Allegheny County (County) alleging that the County violated Section 1202(a)(5) of the Public Employe Relations Act (PERA).

First, it is necessary to note that there is no Section "1202" of PERA. Charges against employers lie under Section 1201 of PERA. The Union has failed to remedy this error through an amended complaint, despite the Secretary identifying the Union's mistake in her letter refusing to issue a complaint. However, assuming <code>arguendo</code>, that the Union properly perfected its charge, the Board is still unable to issue a complaint based on the allegations set forth in the Union's charge.

In determining whether to issue a complaint, we assume that all facts alleged are true. Generally, a complaint will be issued unless the facts alleged in the charge could not support a cause of action for an unfair practice as defined by PERA. Homer Center Education Association v. Homer Center School District, 30 PPER ¶ 30024 (Final Order, 1998). The Union alleges that on February 26, 2004, the County terminated the employment of Deputy Quintin Greer based on an alleged violation of the County's "Drug-Free Workplace Policy," a policy over which the parties failed to bargain. The Union attached the County's Procedural Order outlining the "Drug-Free Workplace Policy" to the Charge of Unfair Practices as "Exhibit 2." The Procedural Order explicitly indicates that the policy became effective on February 1, 2000. The Union fails to contradict this effective date in its Specification of Charges, other attached exhibits or exceptions. In accordance with the Board's above stated policy, we accept this effective date as factually accurate. Consequently, the limitations period in which to challenge an alleged unfair practice regarding the implementation of this policy has expired, and this charge must be dismissed as untimely.

The law is well established that with regard to timeliness, the statute of limitations starts to run from the date of implementation. See Athens School District v. PLRB, 23 PPER ¶ 32060 (Final Order, 1992), aff'd sub nom. Athens Area School District v. PLRB, 23 PPER ¶ 23183 (Court of Common Pleas of Bradford County, 1992)(timeliness runs from implementation of subcontracts); FOP, Queen City Lodge v. City of Allentown 19 PPER ¶ 19123 (Final Order, 1988)(charge premature when filed after resolution but before implementation); Lebanon County Detectives Association v. Lebanon County, 27 PPER ¶ 27122 (Proposed Order and Decision, 1996)(statute of limitations starts to run from the date of implementation); Emmaus Police Officers Association v. Borough of Emmaus, 23 PPER ¶ 23011 (Proposed Decision and Order, 1991) (timeliness runs from implementation of subcontracts). As previously noted, the Drug-Free Workplace Policy was implemented on February 1, 2000, and therefore, that is the date in which the statute of limitations commences. The limitations period for filing an Charge of Unfair Practices under PERA is four (4) months. See 43 P.S. § 1101.1505 (2003). Consequently, the Union's window to file a timely claim expired on June 1, 2000.

In its exceptions, the Union asserts that the February 6, 2004 dismissal of Deputy Greer marked the first instance since February 1, 2000, where the County imposed

discipline on an employe pursuant to the Drug-Free Workplace Policy, making the March 17, 2004 filing of the charge timely. However, as stated above, the date of implementation, and not the date of the first instance of discipline under the policy, is determinative in establishing when the statute of limitations commences. As the Board has previously stated, "Implementation accordingly is the date when the directive becomes operational and serves to guide the conduct of employes, even though no employes may have been disciplined or corrected for failure to abide by the directive." Officer of the Upper Gwynedd Township Police Department v. Upper Gwynedd Township, 32 PPER ¶ 32101 (Final Order, 2001). Therefore, this exception is dismissed.

The Union further asserts in its exceptions that since there is no statutory authority for the County to unilaterally promulgate procedural orders, the purported effective date of the Drug-Free Workplace Policy is illusory. This circular argument that an illegal policy can never be implemented because it is illegal is unconvincing. The illegal nature of a policy does not void its existence or implementation, but rather allows the Board to order its revocation and remedy any consequential damages. Furthermore, if the Board accepted the Union's assertion, then the limitations period outlined in PERA would itself become illusory as to allegations of unilateral implementations of policies regarding mandatory subjects of bargaining. PERA's language, underlying policies and statutory construction principles in general do not permit the Board to interpret the fourmonth limitations period out of PERA. Therefore, this exception is dismissed.

Finally, the Union asserts that the adjudication and fact-finding of a Department of Labor and Industry agency, the Unemployment Compensation Board of Review found that "The employer does not maintain a policy which would require that the claimant submit to random drug tests." The Union contends that the "adjudication, involving the same parties, by a sister agency within the Department of Labor and Industry, is entitled to collateral estoppel weight." This exception is unconvincing, however, since the Board is not bound by decisions of the Unemployment Compensation Board. See Odgers v. Unemployment Compensation Board of Review, 514 Pa. 378, 525 A.2d 359 (1987) (decision that strike existed under PERA has no preclusive affect in subsequent proceeding to determine whether work stoppage was a strike or lockout under Unemployment Compensation Law); Kaolin Workers Union v. Kaolin Mushroom Farms, Inc., Case Nos. PLRA-C-93-7-E, PLRA-C-93-8-E, PLRA-C-93-11-E (Final Order, 1996) (decisions of Unemployment Compensation Board of Review not binding upon Board in the context of determining cause for discharge). Therefore, this exception is dismissed.

After a thorough review of the exceptions and all matters of record, Complainant failed to perfect the charge to allege the proper Section of PERA, despite notice by the Secretary in her letter of April 26, 2004. Additionally, even if Complainant's charge was properly stated under Section 1201(a)(5) of PERA, it would be untimely. 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 the 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 the same is hereby made absolute and final.

SEALED, DATED and MAILED at Harrisburg, Pennsylvania pursuant to conference call meeting of the Pennsylvania Labor Relations Board, L. Dennis Martire, Member, and Anne E. Covey, Member, this twenty-second day of June, 2004. 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.

<sup>&</sup>lt;sup>1</sup> Since the charge is not timely filed, the Board will not address the remaining Union exceptions concerning whether Deputy Greer voluntarily admitted to using marijuana or whether the drug-testing policy compelled this admission.