

COMMONWEALTH OF PENNSYLVANIA  
Pennsylvania Labor Relations Board

AARON CHAMBERS :  
 :  
 v. : Case No. PERA-C-04-425-E  
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 COMMONWEALTH OF Pennsylvania :  
 DEPARTMENT OF GENERAL SERVICES :

**FINAL ORDER**

On January 6, 2006, Aaron Chambers timely filed exceptions with the Pennsylvania Labor Relations Board (Board) to the Proposed Decision and Order (PDO), dated December 19, 2005. In the PDO, the Hearing Examiner concluded that the Commonwealth, Department of General Services (Commonwealth) did not discriminate against Mr. Chambers in violation of Section 1201(a)(3) and (4) of the Public Employe Relations Act (PERA).

In his charge as amended, Mr. Chambers alleged that the Commonwealth discriminated against him by refusing to select him for certain vacant positions because of his grievance activities as a union steward. The Examiner concluded the following: that the record established that the charge and the amended charge were untimely filed with respect to all but two of the positions placed at issue by Mr. Chambers; that, of those two positions, Mr. Chambers failed to prove the timeliness of the charge regarding one of those positions; and that, although the record sufficiently established timeliness for the amended charge regarding the remaining position, Mr. Chambers failed to establish a prima facie case of discrimination regarding that position. The Examiner, therefore, dismissed the charge.

In his exceptions, Mr. Chambers argues that the hearing transcript is inaccurate because it lacks the specific sequence of questions and answers during the testimony of Bill Myers, Bureau Director, Department of General Services and Charles Hodges, Labor Relations Chief. Section 95.91(c) of the Board's regulations provides as follows:

(c) The transcript of the testimony in hearings will become part of the record if no objections to the transcript are filed with the Board within 15 days after its deposit in the United States mail. The postmark shall be conclusive evidence of the date of mailing. Objections shall specify the matter objected to and the relief sought. The Board may, in its discretion, order a hearing on the objections. The Board will make an order that may be necessary to conform the transcript to the occurrences at the hearing; and the conformed transcript will then be certified by the official stenographer, will be filed of record in the case, will be treated as official and part of the record for purposes of review upon appeal, and will be considered as prima facie accurate whenever thereafter offered in evidence.

34 Pa. Code § 95.91(c). The hearing transcript was received by the Board on October 5, 2005. Accordingly, it was mailed sometime prior to that date. Mr. Chambers' exceptions complaining about the accuracy of the hearing transcript were filed on January 6, 2006, which is well beyond the 15-day time limit mandated by Section 95.91(c) of the Board's regulations for objecting to inaccuracies in a hearing transcript, even using the date received (rather than the mailing date). Accordingly, Mr. Chambers' exceptions complaining of omissions or inaccuracies in the hearing transcript must be dismissed as untimely. Moreover, the alleged inaccurate or "misplaced" (Exceptions ¶ 2) testimony does not provide relevant, substantial evidence that would satisfy the unproven elements of Mr. Chambers' discrimination claim. Therefore, even were the Board to accept Mr. Chambers' invitation to consider his proposed testimony in the manner presented by him, which the Board declines, the Examiner's conclusions would not be affected.

Mr. Chambers also avers that "all documentation regarding the above-captioned case was filed in a timely manner and therefore should be allowed." (Exceptions ¶ 3). Although the nature of this exception is unclear, Mr. Chambers seems to contest the Examiner's determination that Mr. Chambers failed to prove the timeliness of his charge regarding several positions denied to him because, although he attached to his charge and amended charge various letters relating to timeliness, he failed to introduce those documents at the hearing.

To the extent that Mr. Chambers is alleging that the certain documents attached to his charge and amended charge were disallowed, the Board dismisses any such claim. Mr. Chambers did not attempt to introduce the documents at the hearing or move for them to be made part of the record, as required. Accordingly, the Examiner did not have an opportunity to rule on the admissibility of, and therefore did not disallow, the documents in question.

Moreover, as properly recognized by the Examiner, the law is clear that "[d]ocuments attached to the charge but not offered and admitted at the hearing are not part of the record, and therefore cannot support a finding of timeliness." (PDO at 5)(quoting Wadas v. Bucks County Community College, 36 PPER 84, at 247 (Final Order, 2005)). A claimant prosecuting an unfair practice claim before the Board does not meet his burden of producing competent substantial evidence, necessary to support findings of fact and conclusions of law regarding the requisite elements of a cause of action, and therefore cannot meet his burden of proof, simply by attaching documents to the charge. Documents attached to a charge of unfair practices are relevant to the decision to issue a complaint and conduct further proceedings but are not competent evidence to support findings of fact when not subsequently made part of the factual record. Mr. Chambers' failure to produce necessary documents at the hearing deprived the Commonwealth of an opportunity to challenge the authenticity of those documents, the truth of the matters allegedly contained therein or the context in which the documents were allegedly produced. Accordingly, the Examiner properly concluded that Mr. Chambers did not establish the timeliness of his charge and amended charge as a result of his failure to introduce into the hearing record certain letters attached to his charge.

Mr. Chambers also claims that counsel for the Commonwealth introduced into evidence at the hearing a counseling report that was purportedly part of a stolen file and "was never a part of Mr. Chambers' personnel file but was nevertheless allowed into evidence." (Exceptions ¶ 4).<sup>1</sup> Mr. Chambers seems to argue that the counseling report should not be permitted to support the Commonwealth's business reason defense because, if it was not part of Mr. Chambers' personnel file, the Commonwealth did not rely on the information contained therein to deny him the positions at issue.

However, the Examiner concluded that Mr. Chambers failed to establish a prima facie case of discrimination with regard to the one position rejection over which the Examiner accepted jurisdiction. Therefore, in his legal analysis, the Examiner did not consider the Commonwealth's business reasons or defenses. Accordingly, the admissibility of C-8 is not relevant to the Examiner's analysis or his conclusions and excluding it would not change the result herein.

Moreover, Mr. Chambers waived his right to challenge the introduction of the counseling report because he failed to object to its admissibility during the hearing. The Board's regulations require that "[n]o reference may be made in the statement of exceptions to any matter not contained in the record of the case." 34 Pa. Code § 95.98(a)(2). Moreover, "objections to the introduction of evidence, shall be stated orally and shall be included in the stenographic report of the hearing." 34 Pa. Code § 95.91(d). There is no record that Mr. Chambers preserved his objection to the admissibility of C-8 at the hearing. Indeed, Mr. Chambers' representative at the hearing was specifically asked by the Examiner if she had any objections to Commonwealth Exhibits

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<sup>1</sup> There is no document in the record titled "counseling report" and Mr. Chambers has neglected to cite to a specific exhibit. However, Commonwealth Exhibit 8 (C-8) is titled "Supervisor's Review Report". The Board assumes that C-8 is the "counseling report" referred to by Mr. Chambers, because it is the only report of a counseling nature that does not also contain discipline. Also, Mr. Hodge's testimony characterized the C-8 supervisor's report as "a counseling". (N.T. 111).

one through nine, and she expressly responded that she did not object. (N.T. 172). It is impermissible for Mr. Chambers to raise an objection to C-8 for the first time on exceptions before the Board. 34 Pa. Code § 95.98(a)(2). Accordingly, this exception is also dismissed.

After a thorough review of the exceptions and all matters of record, the Board shall dismiss the exceptions and sustain the Proposed Decision and Order of the Hearing Examiner.

**ORDER**

In view of the foregoing and in order to effectuate the policies of the Public Employee Relations Act, the Board

**HEREBY ORDERS AND DIRECTS**

that the exceptions filed by Mr. Chambers to the Proposed Decision and Order in the above-captioned matter be and the same are hereby dismissed; and that the Proposed Decision and Order is hereby made absolute and final.

SIGNED, SEALED, DATED and MAILED this Seventeenth day of October, 2006.

PENNSYLVANIA LABOR RELATIONS BOARD

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L. DENNIS MARTIRE, CHAIRMAN

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ANNE E. COVEY, MEMBER

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JAMES M. DARBY, MEMBER