

COMMONWEALTH OF PENNSYLVANIA  
Pennsylvania Labor Relations Board

NORTHERN BERKS REGIONAL :  
POLICE ASSOCIATION :  
 : Case No. PF-C-06-75-E  
v. :  
 :  
LEESPORT BOROUGH, :  
MAIDENCREEK TOWNSHIP AND :  
ONTELAUNEE TOWNSHIP :

**FINAL ORDER**

The Northern Berks Regional Police Association (Complainant) filed Exceptions and a supporting Affidavit with the Pennsylvania Labor Relations Board (Board) on June 26, 2006 challenging a June 8, 2006 decision of the Secretary of the Board (Secretary) declining to issue a complaint and dismissing its Charge of Unfair Practices filed on May 15, 2006, against Leesport Borough, Maidencreek Township and Ontelaunee Township (Employer), which collectively form the Northern Berks Regional Police Department. In its charge, the Complainant alleged that the Employer violated Section 6(1)(e) of the Pennsylvania Labor Relations Act (PLRA), by instituting a policy whereby one officer, Sergeant David Reichlein, was required to work weekends when he had not previously been required to work weekends. The Complainant further alleged that this change may have been in retaliation for past union activity. The Secretary dismissed the charge on the basis that, although an overall shift framework is a mandatory subject of bargaining, a public employer has the managerial prerogative to assign and direct individual employees to work the particular shifts that have been bargained. With regard to the claim of retaliation for union activity, the Secretary noted that the Complainant failed to allege a violation of Section 6(1)(c) and also failed to allege, as required by St. Joseph's Hospital v. PLRB, 473 Pa. 101, 373 A.2d 1069 (1977), the nature of Sergeant Reichlein's union activity, that the Employer was aware of this activity and the nexus between his union activity and the imposition of the schedule change.

In its exceptions, the Complainant explains that it inadvertently failed to allege a violation of Section 6(1)(c) and requests that it be permitted to amend the charge to specifically allege a violation of Section 6(1)(c). Complainant argues that it should be allowed to amend the Charge to include Section 6(1)(c) because the original Charge clearly states that it believes that the change in Sergeant Reichlein's schedule was retaliation for union activity. The Affidavit of Sergeant Reichlein, which was submitted with the Exceptions, further sets forth the nature of his union activity, states that the Employer was aware of this activity and alleges a nexus between that activity and the schedule change as required by St. Joseph's Hospital.

Section 9(e) of the Pennsylvania Labor Relations Act (PLRA) sets forth a six-week statute of limitations period. Any charge must be filed within six weeks of the act or occurrence alleged to constitute the unfair labor practice. Furthermore, the Board and the Commonwealth Court have held that the failure to identify the subsection or clauses allegedly violated does not provide the required timely notice of the conduct alleged to constitute the unfair labor practice within the statutory limitation period. See AFSCME v. PLRB, 514 A.2d 255 (Pa. Cmwlth. 1996). Absent a timely amendment of the charge to identify the subsection and clauses of the act violated, dismissal of the charge is appropriate. West Whiteland Township Police Association v. West Whiteland Township, 32 PPER 32127 (Final Order, 2001). Further, Section 93.14(b) of the Board's Rules and Regulations provides that a complaint cannot be amended to add a new cause of action after the statute of limitations has run. Additionally, in Lehigh Valley International Airport, 26 PPER ¶ 26,140 (Final Order, 1995), the Board held that:

The Board and the courts of this Commonwealth have held that amendments to charges of unfair practices are untimely where accomplished after

expiration of the appropriate limitations period ... The Board has long held that a charge of unfair practices may not be amended to allege additional clauses not set forth in the original specification of charges following expiration of the limitations period. PLRB v. Lehigh County, 5 PPER 111 (Nisi Decision and Order, 1974).

In this case, the Charge filed on May 15, 2006 alleges that an unfair practice occurred on April 10, 2006. However, the Charge does not indicate a violation of Section 6(1)(c). In its Exceptions filed on June 26, 2006, the Complainant alleges for the first time a violation of Section 6(1)(c). However, June 26, 2006 is 77 days after the alleged unfair practice that occurred on April 10, 2006 and the allegation of a violation of Section 6(1)(c) is therefore untimely pursuant to Section 9(e) of the PLRA.

With regard to the Complainant's charge of a violation of Section 6(1)(e), our review indicates that the Secretary correctly determined that no cause of action was stated. The general framework and creation of shifts that apply to all employees in a bargaining unit is a mandatory subject of bargaining. See Indiana Borough v. Pennsylvania Labor Relations Board, 695 A.2d 470 (Pa. Cmwlth. 1997). However Complainant alleges that the shift assignment only affected one officer, Sergeant Reichlein. In Ambridge Police Officers and Policy Unit v. Ambridge Borough, 30 PPER ¶ 30218 (Final Order, 1999), the Board stated that:

An appropriate balance must be struck between the employees' right to negotiate over an overall shift scheduling and compensation system ... and the public employer's managerial prerogative to direct the workforce including the right to assign and direct individual employees to particular shifts within the negotiated and established contractual framework for the establishment and compensation of shifts ... The public employer's duty to negotiate a framework for the establishment of shifts, compensation, overtime, etc. does not extend to negotiating with the union over every assignment of an employee to work a shift or overtime once the framework is established ... once the framework is negotiated and established, the public employer possesses the managerial right to direct its workforce, including the assignment of employees to work a particular shift or perform overtime in response to the needs of the public employer in performing the public function at issue.

Id. at 469 (emphasis added). Complainant's Charge does not allege a schedule change that has affected all bargaining unit members. Therefore, Complainant has failed to state a claim under Section 6(1)(e). Accordingly, the Secretary did not err by refusing to issue a complaint on Complainant's allegation of a violation of Section 6(1)(e).

After a thorough review of the exceptions and all matters of record, there are no facts alleged to support the Union's charge under Section 6(1)(e) of the PLRA or Act 111. Further, the allegation of a violation of Section 6(1)(c) is 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 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 at Harrisburg, Pennsylvania, pursuant to Conference Call Meeting of the Pennsylvania Labor Relations Board, L. Dennis Martire, Chairman, and Members Anne E. Covey and James M. Darby, this fifteenth day of August, 2006. 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.