

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

TEAMSTERS LOCAL #764 :
 :
 v. : Case No. PF-C-03-144-E
 :
 LYCOMING COUNTY :

ORDER

On November 28, 2005, Teamsters, Local 764 (Union) filed exceptions and a supporting brief with the Pennsylvania Labor Relations Board (Board) to a Proposed Decision and Order (PDO), issued November 2, 2005. In the PDO, the Examiner concluded that Lycoming County (County) did not engage in unlawful, coercive communications during an "off the record" conversation with an employe who supported the Union, which won an election over incumbent AFSCME, in violation of Section 6(1)(a), (b) or (c) of the Pennsylvania Labor Relations Act (PLRA) and Act 111. On December 13, 2005, the County timely filed its response to exceptions and a supporting brief.

The Union's exceptions are untimely and must be dismissed. The Board's regulations provide as follows:

A party may file with the Board within 20-calendar days of the date of issuance with the Board an original and four copies of a statement of exceptions and a supporting brief to a proposed decision Exceptions will be deemed received upon actual receipt or on the date deposited in the United States mail, as shown on a United States Postal Form 3817 Certificate of Mailing enclosed with the statement of exceptions.

34 Pa. Code § 95.98(a)(1)(emphasis added). When determining the timeliness of exceptions, the Board accepts substantial compliance with Section 95.98(a)(1). Wilkes-Barre Police Benevolent Association v. City of Wilkes-Barre, 32 PPER ¶32137 (Final Order, 2001). In Wilkes-Barre, the Board opined as follows:

The Board, therefore, has consistently interpreted Section 95.98(a)(1) of its regulations to permit filing parties to effectuate filing on the date deposited with both private, commercial couriers and the United States Postal Service, with or without a U.S. Postal form 3817 Certificate of mailing, as long as there is sufficient, independent evidence that the documents were deposited with the private courier or the U.S. Postal Service within the twenty-day filing period and that independent third-party evidence of timely deposit was provided (either by the United States Postal Service or by the private courier).

Id. at 336. This independent evidence must appear on the face of the mailing. Id.; AFSCME, Council 13 v. Commonwealth of Pennsylvania, Department of Transportation, 33 PPER ¶ 33027 (Final Order, 2001), affirmed unreported, No. 138 C.D. 2002 (Pa. Cmwlth. 2002). Accordingly, the Board has adopted Lin v. Unemployment Compensation Board of Review, 558 Pa. 94, 735 A.2d 697 (1999), and held that the date on a private postage meter stamp is unreliable to establish the date that exceptions were actually deposited in the United States mail. Fraternal Order of Police, Lodge 5 v. City of Philadelphia, 31 PPER ¶31036 (Final Order, 2002). Section 95.98(a)(1) of the Board's regulations makes every U.S. post office a convenient, local filing office. The Board's liberal rules regarding substantial compliance further allows the filing party's place of business to serve as a more convenient filing office where the private courier's shipping documentation sets forth a date of deposit with the courier.

The Union's exceptions were mailed via the United States Postal Service. The exceptions were received on November 28, 2005, twenty-six days after issuance of the PDO

on November 2, 2005, bearing only a private postage meter stamp. The documents and the envelopes in which they were submitted did not contain a United States Postal Form 3817 Certificate of Mailing, a U.S. Postal Service postmark or cancellation stamp. The exceptions were filed six days beyond the filing deadline and are untimely. Section 95.98(b) of the Board's Rules provides that "[w]here no exceptions are filed to a proposed decision, it will become final upon the expiration of 20-calendar days from the date of issuance." 34 Pa. Code § 95.98(b).

The Union filed an affidavit with the Board on January 30, 2006 attesting that it deposited the exceptions with the U.S. Postal Service on November 21, 2005. However, the Board has previously held that it will not rely on affidavits attesting to a timely filing. AFSCME, supra. As the Board stated in AFSCME, "we do not contend with the veracity of the affidavits supplied by Complainant alleging that the Exceptions were mailed on [time], however they are not the type of independent, third-party evidence appearing on the face of the mailing that is required by City of Wilkes-Barre, supra." AFSCME, 33 PPER at 59.

Also, the Supreme Court's holding in Miller v. Unemployment Compensation Bd. of Review, 505 Pa. 8, 476 A.2d 364 (1984), which the Board has consistently followed, Wilkes-Barre, supra; AFSCME, supra, is unavailing to the Union. Under the Miller rule, the Board will accept a filing of exceptions as timely where the Board receives the filing one day after the expiration of the 20-day period by way of mail or private courier, without any third-party verification, where it is readily apparent that the exceptions were of necessity placed with the U.S. Postal Service or the third-party courier at least one day earlier, within the time for filing. However, the Union's exceptions in this case would have to have been actually received by the Board on Wednesday, November 23, 2005 for the Union to be in substantial compliance under Miller, not November 28, 2005 when they were received. The November 2, 2005 PDO had become final at the close of business on November 22, 2005, in the absence of timely filed exceptions. Accordingly, the Union's exceptions are dismissed.¹

ORDER

In view of the foregoing and in order to effectuate the policies of the Pennsylvania Labor Relations Act and Act 111 of 1968, the Board

HEREBY ORDERS AND DIRECTS

that the exceptions filed to the Proposed Decision and Order are hereby dismissed as untimely.

SEALED, DATED and MAILED pursuant to conference call meeting of the Pennsylvania Labor Relations Board, L. Dennis Martire, Chairman, Anne E. Covey, Member, and James M. Darby, Member, this twenty-first day of February, 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.

¹ Although the Board does not reach the merits of the Union's exceptions, we note that even accepting the Union witness's testimony, the Hearing Examiner concluded that the statements were not coercive, threatening or discriminatory and did not constitute a violation of PLRA.