

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

INTERNATIONAL UNION OF PAINTERS & :
ALLIED TRADES, LOCAL 1968 :
 :
v. : Case No. PERA-C-05-538-W
 :
ERIE CITY SCHOOL DISTRICT :

ORDER DIRECTING REMAND TO SECRETARY FOR FURTHER PROCEEDINGS

On November 21, 2005 the International Union of Painters & Allied Trades, Local 1968 (Complainant) filed a Charge of Unfair Practices with the Pennsylvania Labor Relations Board (Board) alleging that the Erie City School District (Employer) violated the Public Employe Relations Act (PERA) when, on November 7, 2005, Employer prevented Complainant's counsel from being present at an investigatory interview despite the fact that Employer's counsel was present at the interview and actually conducted the interview.¹

By letter dated January 6, 2006, the Secretary of the Board informed the Complainant that the Board was unable to process the Charge and directed Complainant to amend the Charge to specify the exact subsection ((a) or (b)) of the PERA which it believes was violated. The letter further informed the Complainant that failure to amend the Charge within twenty (20) days may result in dismissal of the Charge. The Secretary also stated that "[w]e shall preserve your earlier filing date of November 21, 2005." The Board did not receive an amended Charge within twenty days. Therefore, by letter dated February 8, 2006, the Secretary of the Board informed Complainant that the Charge has been dismissed.

On February 14, 2006, the Complainant filed Exceptions to the Secretary's February 8, 2006 letter dismissing the Charge. In its Brief in support of the Exceptions, Complainant's counsel asserts that he inadvertently did not respond to the Secretary's January 6, 2006 letter and did not discover this until after receipt of the Secretary's February 8, 2006 letter. An Amended Charge was filed with the Exceptions alleging a violation of Section 1201(a)(1), (2), (3), (5) and (9) of the PERA. Complainant's attorney further asserts that no prejudice has occurred to either party as a result of the delay in returning the Amended Charge two weeks past its due date.

Section 1505 of the PERA, 43 P.S. §1101.1505, requires that charges be filed within four months of when the party filing the charge knew or should have known of the actions constituting the alleged unfair practice. In this case, the charge was perfected within four months of the alleged occurrence of the unfair labor practice when Complainant filed Exceptions containing an Amended Charge within the four month limitation period. Accordingly, we are hereby remanding this matter to the Secretary with direction to issue a complaint.²

¹ In NLRB v. J. Weingarten, Inc., 420 U.S. 251 (1975), the United States Supreme Court recognized a right, rooted in the concerted activities language of the National Labor Relations Act (NLRA), for employes to request representation at investigatory interviews as a condition of their participation, where the employe reasonably believes the investigation may result in disciplinary action. The Board adopted the Weingarten rule in PLRB v. Conneaut School District, 10 PPER ¶ 10092 (Nisi Decision and Order, 1979), aff'd, 12 PPER ¶ 12155 (Final Order, 1981) and PLRB v. Shaler Township, 11 PPER ¶ 11347 (Nisi Decision and Order, 1980).

² It is important to note that originally filed charges which do not specify a subsection and clauses allegedly violated must be amended within the limitation period either by timely response to a Board issued request to amend the charge or amendment in Exceptions where the charge is initially dismissed for failure to respond to a letter requesting amendment. Failure to perfect such a charge within the applicable limitation period will result in dismissal of the charge with prejudice. AFSCME, Local 1637 v. City of Philadelphia, 34 PPER 162 (Final Order, 2003); West Whiteland Township Police Association v. West Whiteland Township, 32 PPER 127 (Final Order, 2001).

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 this matter be remanded to the Secretary of the Pennsylvania Labor Relations Board with direction to issue a complaint.

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 21st day of March, 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.
