# COMMONWEALTH OF PENNSYLVANIA Pennsylvania Labor Relations Board

BRANDYWINE REGIONAL POLICE ASSOCIATION

LOIN

v. : Case No. PF-C-07-51-E

:

BRANDYWINE REGIONAL POLICE COMMISSION

EAST BRANDYWINE TOWNSHIP

WALLACE TOWNSHIP

### PROPOSED DECISION AND ORDER

On March 6, 2007, as amended on April 4, 2007, the Brandywine Regional Police Association (Association) filed with the Pennsylvania Labor Relations Board (Board) a charge of unfair labor practices alleging that the Brandywine Regional Police Commission¹ (Commission) violated Section 6(1)(a) and (e) of the Pennsylvania Labor Relations Act (PLRA), as read with Act 111.² On May 9, 2007, the Secretary of the Board issued a complaint and notice of hearing directing that a hearing be held on July 27, 2007, in Downingtown, Pennsylvania. On that date a hearing was held during which both parties were afforded a full opportunity to present evidence and to cross-examine witnesses. Both parties made closing arguments at the hearing's conclusion.

The hearing examiner, on the basis of the evidence presented at the hearing and from all other matters and documents of record, makes the following:

# FINDINGS OF FACT

- 1. The Townships are political subdivisions of the Commonwealth of Pennsylvania.
- 2. The Association is a labor organization.
- 3. In March of 2005 the Commission started reimbursing a unit member, who waived his right to be covered by the Commission's health insurance, an amount equal to the 2005 single rate otherwise paid by the Commission to the insurer. In 2006, the reimbursement rate was increased by the Commission to the amount it paid for the single rate in 2006. A second unit member, who also opted to waive health insurance coverage, started receiving reimbursement in March of 2006. (N.T. 12, 14, 36, 38; Association Exhibit 1, 2, 3, 6).
- 4. On January 25, 2007, at a Commission meeting, the Commission announced that it was freezing the reimbursement rate for those unit employes who opt-out of insurance coverage at \$500.00, regardless of the actual premium cost. The single rate premium in 2007 rose to \$575.73(N.T. 17, 18, 42; Association Exhibit 1, 2, 3, 6).
- 5. By letter dated February 13, 2007, the Association wrote the Commission, asserting that a past practice had arisen whereby the Commission agreed to pay opting-out unit members an annual amount equal to the amount the Commission paid to insure a single individual for health insurance. (N.T.22; Association Exhibit 4).
- 6. By letter dated February 19, 2007, the Commission responded to the Association's February 13<sup>th</sup> letter, taking the position that the Commission annually reviewed the amount of reimbursement for opting-out unit members, and that there was no agreement to automatically increase that amount by the Commission's annual premium cost. (Association Exhibit 5).

<sup>&</sup>lt;sup>1</sup> Agreements for regional police commissions are reached pursuant to the Intergovernmental Cooperation Act, Act of July 12, 1972, P.L. 762, No. 180, as amended, 53 P.S. §§ 481-490, repealed, Act of December 19, 1996, P.L. 1158, No. 177, 53 Pa.C.S.A. §§ 2301-2315.

<sup>&</sup>lt;sup>2</sup> The original charge named only the "Brandywine Police Commission" as the respondent. The amended charge also named "Brandywine Regional Police Commission," but added "East Brandywine Township and Wallace Township" (Townships) as respondents.

#### DISCUSSION

The Association initially charged the Commission with violating the PLRA, as read with Act 111, when the Commission allegedly made a unilateral change in the practice of reimbursing unit members, who opted out of medical insurance, an amount equal to the Commission's cost of single coverage. In its amended charge, the Association added two additional parties as respondents; East Brandywine Township and Wallace Township. These townships are the constituent parts of the Commission. Unfortunately for the Association, the record evidence shows that the initial charge was deficient in that it named a respondent which is not an Act 111 employer, and the amendment adding new parties was filed outside the six-week statute of limitations. Under the following analysis I am constrained to dismiss this charge.

In <u>Susquehanna Regional Police Department</u>, 31 PPER ¶ 31064 at 155 (Final Order, 2000) our Board disallowed a complainant to proceed with a charge filed solely against a regional police commission, because such regional police commissions are not "political subdivisions" for purposes of employer status under Act 111. The Board found "no support for the argument that because municipalities control regional police departments, they are automatically parties to unfair labor practice proceedings in which they are not named." <u>Id.</u> The Board further reasoned that because the complainant "did not charge a political subdivision or the Commonwealth [it] therefore did not charge a public employer under Act 111. The Board does not have jurisdiction over regional police departments under Act 111." 31 PPER at 156. Simply put, the complainant is "required to charge the political subdivisions that comprise the... [r]egional [p]olice [d]epartment in order to proceed with the unfair labor practice charge before the Board." Id.

The conundrum here is that the Association filed its amended charge more than sixweeks after the actions complained about. And the Board has been consistently clear about timeliness vis-à-vis adding new parties: "Adding new respondents to a charge creates a new cause of action, and such cause of action is subject to the same Section 9(e)<sup>4</sup> sixweek statute of limitations for the filing of an unfair labor practice charge." 31 PPER at 156 (citation omitted). In order for the Board to retain jurisdiction the Association would have had to file "an amended charge naming the municipalities prior to the expiration of the six-week limitations period." Id. It simply did not do so.

Regardless of the operative date chosen to assert the unfair labor practice's occurrence, the amended charge is too late. On January 25, 2007, the Commission announced it was freezing reimbursements to officers at the 2006 amount: clearly, that date is more than six-weeks before the amended charge. On January 31, 2007, officers in the opt-out program received their first checks reflecting the continued 2006 rate: clearly, that date, too, is more than six-weeks before the amended charge. Finally, on February 19, 2007, the Commission issued a written answer denying what the Commission considered the Association's grievance letter of February 13, 2007, in which the Association complained about the unilateral decision to retain the 2006 reimbursement rate for 2007. Yet, even February 19, 2007, is more than six-weeks before the amendment. Although this charge is dismissed for timeliness, there is still an administrative bugbear that needs to be addressed.

Clearly, under applicable Board precedent, the Association's original charge should have been dismissed since it did not charge an Act 111 employer. In Susquehanna Regional Police Department, supra, that is just what happened. Here, however, instead of a letter of dismissal, the Association received a request to amend its charge and was told that the Board would, for purposes of that amendment, preserve the original filing date of March 6, 2007. Such a letter may well have left the impression with the Association that speed was not of the essence in filing its amended charge.

 $<sup>^{3}</sup>$  Even though the Board has ruled that regional police commissions, as a matter of law, are not Act 111 employers, the regional's name often remains as a party in the captions of Board cases.

<sup>&</sup>lt;sup>4</sup> Referring to 43 P.S. § 211.9(e); Act of June 1, 1937, P.L. 1168, No. 294, as amended, 43 P.S. §§ 211.1 to 211.13.

<sup>&</sup>lt;sup>5</sup> The Association, in its closing argument, addressing the issue of this charge's timeliness in the face of the <u>Susquehanna Regional Police Department</u> case, pointed to the request-to-amend letter, and its preservation-of-the-filing-date language, as a muniment that the instant charge is timely. (N.T. 93).

Under Board precedent, however, the timeliness clock continued to tick. Moreover, I am not bound by the offer to preserve the filing date for the amendment of this charge. That's because Board hearing examiners exercise independence in reviewing the conduct of other Board agents, See West Shore School District, 20 PPER ¶ 20073 (Proposed Decision and Order, 1989)(hearing examiner has authority to review conduct of other PLRB agents), and applicable Board law demands the dismissal of a charge that does not name a respondent over which the Board has jurisdiction. Susquehanna Regional Police Department, supra.

While at first blush the rationale of <u>Susquehanna Regional Police</u> <u>Department</u> may have logical appeal, it can lead to harsh results. In point of fact, the position espoused by the Secretary's request-to-amend letter in this case may make more policy sense than simply dismissing a charge that only names the regional authority as respondent. For the following reasons it might behoove the Board to temper the <u>Susquehanna Regional Police Department</u> decision, so this kind of charge may simply be clarified in the future with a preserved filing date.

While it is current legal precedent that the Board has no jurisdiction over regional police commissions, every regional police commission is comprised solely of at least two Act 111 employers. Indeed, a regional police commission, by its very definition is wholly and exclusively an aggregate of Act 111 employers. To name the regional police commission is, a fortiori, to distinguish its constituent Act 111 employers. <sup>6</sup>

The <u>Susquehanna Regional Police Department</u> case, essentially, exalts form over substance, highlights a distinction without a difference and is based on logomachy. If the public policy of both the PLRA and Act 111 is to prevent unfair labor practices "and to provide a procedure for such cases, including the issuance of a complaint..." then the harm sought to be remediated by the <u>Susquehanna Regional Police Department</u> decision can be remediated by means less harsh than dismissal. Under current precedent, when a complainant files a charge naming only the regional police commission, and later adds the names of the component municipalities, the Board treats that as the addition of new parties to the charge. A more realistic analytical framework might be that the addition of the regional police commission's component municipalities is treated as a simple clarification.

If the Board allowed just what the Secretary offered in this case, that is, invite the charging party who simply names the regional police commission to clarify the charge to enumerate the constituent Act 111 employers, while preserving the original filing date of the complaint, more cases would reach the merits. When warring parties' disputes can be resolved on the merits, rather than dismissed for what lay observers often call "technicalities," those parties reach closure on the decided issue, and other parties facing similar circumstances have the benefit of that Board order for guidance. When cases such as this one are dismissed on procedural grounds, when they need not be, the merits of the charge are never reached and the underlying issue festers, unresolved.

This is not to say that procedural requirements are unimportant in the law. Rather, it is to face the fact that at times procedural requirements may result in unwanted consequences that outweigh the harm sought to be prevented. The brevity of the PLRA's limitations period militates against the dismissal of the instant charge, as required under current Board law, when the less onerous path of allowing the charge's clarification, while preserving the original filing date, would prevent the same problems yet allow the parties the benefit of having the Board decide the merits of the underlying charge.

As the Board noted in its Final Order in <u>Mifflin County Regional</u> <u>Police Department</u>, 26 PPER ¶ 26137 at 325, n 4, regional police commissions are "clearly only a vehicle through which municipalities jointly exercise the powers that demonstrate an employe-employer relationship...."

<sup>&</sup>lt;sup>7</sup> Preamble to Pennsylvania Labor Relations Act, 43 P.S. Sections 211.1 to 211.13

<sup>&</sup>lt;sup>8</sup> If the charging party were allowed to simply clarify its charge with the names of the regional's constituent Act 111 employers, then the Board could serve each with the complaint, thereby alleviating any due process or notice problems.

Nevertheless, because under current Board law this charge is untimely, it must be, and is, dismissed.

# CONCLUSIONS

The examiner, therefore, after due consideration of the foregoing and the record as a whole, concludes and finds:

- 1. East Brandywine and Wallace Townships are employers within the meaning of Section 3(c) of the PLRA as read with Act 111.
- 2. The Association is a labor organization within the meaning of Section 3(f) of the PLRA.
  - 3. The Board has jurisdiction over the parties hereto.
- 4. The Townships have not committed unfair labor practices in violation of Section 6(1)(a) and (e) of the PLRA as read with Act 111.

### ORDER

In view of the foregoing and in order to effectuate the policies of the PLRA and  $Act\ 111$ , the examiner

# HEREBY ORDERS AND DIRECTS

that the charge of unfair labor practices filed to the above case number is dismissed and the complaint is rescinded.

### IT IS HEREBY FURTHER ORDERED AND DIRECTED

that in the absence of any exceptions filed pursuant to 34 Pa. Code § 95.98 within twenty (20) days of the date hereof, this decision and order shall become and be absolute and final.

SIGNED, DATED and MAILED at Harrisburg, Pennsylvania this thirty-first day of August, 2007.

PENNSYLVANIA LABOR RELATIONS BOARD

TIMOTHY TIETZE, Hearing Examiner