COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

FRATERNAL ORDER OF POLICE, LODGE NO. 5	:	
v.	:	Case No. PF-C-07-158-E
CITY OF PHILADELPHIA	:	

FINAL ORDER

The Fraternal Order of Police, Lodge No. 5 (FOP) filed timely exceptions with the Pennsylvania Labor Relations Board (Board) on February 19, 2008. The FOP's exceptions challenge a January 30, 2008 decision of the Secretary of the Board declining to issue a complaint and dismissing the FOP's Charge of Unfair Labor Practices filed against the City of Philadelphia (City). The Secretary granted the FOP an extension of time to file a brief in support of the exceptions, which the FOP timely filed on March 20, 2008.

In its Charge filed on December 7, 2007, the FOP alleged that on September 24, 2007, it requested from the City the name and retirement date of every bargaining unit member who retired after July 1, 2004 and the dates the members were paid for their unused sick, holiday and vacation time. The FOP further alleged that it advised the City that it would allow thirty days for receipt of the information. The FOP finally alleged that the City failed to provide the requested information within thirty days of its September 24, 2007 request. The FOP contended that the City's failure to provide the requested information violated Act 111 of 1968 and Section 6(1)(a) and (e) of the Pennsylvania Labor Relations Act (PLRA). In response to the Secretary's request for more information, the FOP filed an Amended Charge, alleging that it made a second request on December 7, 2007 for the City to provide the information.

In dismissing the Charge, the Secretary stated that the FOP's Charge was untimely under Section 9(e) of the PLRA because the FOP did not file its Charge within six weeks of when it became aware of the City's refusal to provide the requested information, i.e. October 24, 2007. The Secretary further indicated that the FOP could not rely on its December 7, 2007 request in order to make its Charge timely, citing AFSCME, Council 13, AFL-CIO v. Chambersburg School District, 21 PPER ¶ 21128 (Final Order, 1990)(party cannot revive defunct cause of action by making subsequent requests beyond limitations period where employer has already taken action constituting an unfair practice) and Berton v. North Huntingdon Township, 19 PPER ¶ 19009 (Final Order, 1987)(same). Accordingly, the Secretary declined to issue a complaint.[1]

In its exceptions, the FOP argues that its Charge was timely because the duty to provide information is a continuing obligation that is not tied to a time sensitive event. Section 9(e) of the PLRA provides that no charge shall be entertained which relates to acts which occurred or statements which were made more than six weeks prior to the filing of the charge. A charge will be considered timely if it is filed within six weeks of when the charging party knew or should have known that an unfair practice was committed. See Community College of Beaver County Society of Faculty, PSEA/NEA v. Beaver County Community College, 35 PPER ¶ 24 (Final Order, 2004); Mount Joy Township Police Association v. Mount Joy Township, 29 PPER ¶ 29184 (Proposed Decision and Order, 1998).

The FOP's September 24, 2007 letter to the City stated that the FOP would file an unfair labor practice charge with the Board if the City failed to provide the requested information within thirty days. Thus, the FOP set a deadline for submission of the information and became aware of the City's refusal to provide the information with the expiration of the deadline on October 24, 2007. As such, the FOP's Charge needed to be

[1] In determining whether to issue a complaint, the Board assumes that all facts alleged are true. Issuance of a complaint on a charge of unfair labor practices is not a matter of right, but is within the sound discretion of the Board. Pennsylvania Social Services Union, Local 668 v. PLRB, 481 Pa. 81, 392 A.2d 256 (1978).

filed no later than December 5, 2007. The FOP's Charge was not filed until December 7, 2007 and, therefore, the Charge is untimely.

Further, the failure to provide particular information cannot be considered a continuing violation because any subsequent refusals to provide the very same information are inescapably grounded in the City's initial refusal. Philadelphia Fraternal Order of Correctional Officers v. City of Philadelphia, 30 PPER ¶ 30178 (Final Order, 1999)(no continuing violation where violation is inescapably grounded upon a prior occurrence); PLRB v. Borough of Frackville, 14 PPER ¶ 14139 (Final Order, 1983)(same). Indeed, the statute of limitations would never begin to run if the Board considered each subsequent request for information by the FOP to start a new period for computation of the statute of limitations. Therefore, the FOP's subsequent request for the same information on December 7, 2007 did not revive its defunct cause of action after the City had refused to provide the information on October 24, 2007. Chambersburg School District, supra; North Huntingdon Township, supra. Accordingly, the Secretary did not err in declining to issue a complaint and dismissing the Charge.

After a thorough review of the exceptions and all matters of record, the Board shall 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 filed by the Fraternal Order of Police, Lodge No. 5 are dismissed and the Secretary's January 30, 2008 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, Anne E. Covey, Member and James M. Darby, Member, this fifteenth day of July, 2008. 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.