

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

BRANDYWINE REGIONAL POLICE ASSOCIATION :
 :
 v. : Case No. PF-C-07-51-E
 :
 BRANDYWINE REGIONAL POLICE COMMISSION :
 EAST BRANDYWINE TOWNSHIP :
 WALLACE TOWNSHIP :

FINAL ORDER

The Brandywine Regional Police Association (Association) filed timely exceptions with the Pennsylvania Labor Relations Board (Board) on September 13, 2007, challenging an August 31, 2007 Proposed Decision and Order (PDO). In the PDO, the Board's Hearing Examiner dismissed the Association's Charge of Unfair Labor Practices as untimely. On October 18, 2007, Brandywine Regional Police Department, East Brandywine Township, and Wallace Township filed a response to the exceptions. The Hearing Examiner did not address the merits of the Association's charge alleging violations of Act 111 and Section 6(1)(a) and (e) of the Pennsylvania Labor Relations Act (PLRA). Accordingly, for purposes of the Association's exceptions, we will review only the procedural history leading to dismissal of the charge.

On March 6, 2007, the Association filed a Charge of Unfair Labor Practices naming the Brandywine Regional Police Commission as the Respondent. The charge claimed that the Respondent had violated Section 6(1)(a) and (e) of the PLRA and Act 111 by unilaterally changing the police officers' contractual health insurance benefits. By letter dated March 22, 2007, the Secretary of the Board noted that complaints involving Act 111 employes may not be issued against a regional police department, which is neither the Commonwealth nor a political subdivision. Lewistown Borough v. PLRB, 558 Pa. 141, 735 A.2d 1240 (1999). The Secretary explained that in accordance with Susquehanna Regional Police Department, 31 PPER ¶131064 (Final Order, 2000), charges involving a regional police department must identify the municipalities as the joint-employer respondents. In the March 22, 2007 letter, the Secretary directed that an amended charge be filed within twenty days, and stated that the original filing date of March 6, 2007 would be preserved. On April 4, 2007, the Association filed its amended charge identifying East Brandywine Township and Wallace Township as Respondent employers. On May 9, 2007, the Secretary issued a Complaint and Notice of Hearing on the Amended Charge.

Following a hearing, the Hearing Examiner concluded that in accordance with Susquehanna Regional Police Department, supra, charges of unfair labor practices involving regional police departments must be filed against the municipalities as the joint employers. The Hearing Examiner noted that subsequently naming the political subdivisions in an amended charge is the equivalent of adding new parties and new causes of action. Accordingly, the Hearing Examiner found that the Association's amended charge, wherein it specifically named East Brandywine Township and Wallace Township as respondents, was filed beyond the six-week statute of limitations set forth in Section 9(e) of the PLRA, and therefore the Board was without jurisdiction to hear the claims.

As the Supreme Court held in Lewistown Borough, supra, a regional police department is neither the Commonwealth nor a political subdivision for purposes of the Board's unfair labor practice jurisdiction over Act 111 employers and employes. Unless the Act 111 employer is named in the charge, the Board is without jurisdiction, and is powerless, to direct the political subdivision (the unnamed Act 111 employer) to cease in a refusal to bargain, to compel a municipal employe's reinstatement, or for that matter, to issue any remedy against a political subdivision for the conduct of the regional. Indeed, as recognized by the Board in Susquehanna Regional Police Department, supra:

The Board finds no support for [Complainant's] ability to proceed against a regional police department. As the Secretary noted in her letter declining to issue a complaint, [u]nder Section 1 of Act 111, employers consist of

"political subdivisions" and the "Commonwealth of Pennsylvania." The Secretary relied on Lewistown Borough, 26 PPER ¶ 26137 (Final Order, 1995); rev'd on other grounds, 672 A.2d 379 (Pa. Cmwlth. Ct. 1996).... The Board has thoroughly reviewed the Supreme Court's decision at Borough of Lewistown v. PLRB, 546 Pa. 669, 735 A.2d 1240 (1999), and finds 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.

In Borough of Lewistown, the unfair labor practice charge was brought against the Borough directly, a political subdivision under Act 111, in addition to a regional police department. The Supreme Court reinstated the Board's final order, in which it found that the regional police department was not a political subdivision or the Commonwealth, and therefore was not a public employer in and of itself for purposes of Act 111. Id., 735 A.2d at 1244-1245. The Supreme Court opined that "[T]he municipalities are joint employers that act through their designated representative on the [regional police department] board for purposes of Act 111." Id. at 1245. Further, the Supreme Court held that the individual municipalities are the joint employers under Act 111, not the regional police departments, as "the PLRB determined in its order that the [regional police department] is not a 'political subdivision' within the meaning of Act 111." Id. The Supreme Court noted that if the [municipalities] were not the employer, "then the officers would not be employed by a 'political subdivision' as required for applicability of Act 111." Id. The Supreme Court decision supports the Secretary's decision not to issue a complaint in this unfair labor practices charge. [Complainant] did not charge a political subdivision or the Commonwealth, and therefore did not charge a public employer under Act 111. The Board does not have jurisdiction over regional police departments under Act 111. [Complainant] was required to charge the political subdivisions that comprise the Susquehanna Regional Police Department in order to proceed with the unfair labor practice charge before the Board.

Susquehanna Regional Police Department, 31 PPER at 155-156.

Since Susquehanna Regional Police Department, charges filed with the Board involving regional police departments have routinely named the participating municipalities as respondent employers. This generally accepted requirement, that charges under Act 111 and the PLRA involving regional police forces must be filed against the political subdivisions, has proven itself efficient and effective for both the Board and practitioners in prosecuting and remedying unfair labor practices. Indeed, it is a generally accepted principle of Board law and policy that the Board cannot find or remedy unfair labor practice charges involving police officers or firefighters where the charge is not filed against the Act 111 employer (the Commonwealth or a political subdivision).

Moreover, requiring the complainant to charge the municipalities as the respondents/employers in an unfair labor practice charge is consistent with the Board's practice with regard to representation matters involving Act 111 employes working in a regional police department. Since Lewistown Borough, in certifying the exclusive representative for a bargaining unit of police officers working in a regional police department, the Board identifies the employers as the political subdivisions "acting by and through" the regional police department. In the Board's experience, this practice and procedure, to specifically name the political subdivisions as the joint employers (not the regional police department), has proven to be efficient, functional, and in furtherance of the policies of Act 111 and the PLRA. Sections 6 (unfair labor practices) and 7 (representation) of the PLRA should be applied consistently with respect to Act 111. Accordingly, where political subdivisions jointly act by and through a regional police department, there should not be a separate, contrary practice to name just the regional police department in unfair labor practice charges, as urged by the Association in its exceptions.

Accordingly, the Board will continue to apply the holding in Susquehanna Regional Police Department, supra, that charges of unfair labor practices filed solely against the regional police department do not allege a cause of action against an Act 111 employer, and therefore must be dismissed. In this regard, we acknowledge that the Secretary of the Board allowed the Association twenty days to amend the charge to name the political subdivisions, and stated that she was preserving the original filing date. However, Section 9(e) of the PLRA expressly precludes the Board from exercising jurisdiction over a charge relating to acts which occurred or statements that were made more than six weeks prior to the filing of the charge. Neither the Board nor the Secretary of the Board can extend the statute of limitations for filing of a charge under Section 9(e) of the PLRA. Susquehanna Regional Police Department, supra; Aivazoglou v. Drever Furnaces, 613 A.2d 595 (Pa. Super. 1992).¹

It is a fundamental principle of due process that raising new claims or adding additional parties to a cause of action must be effectuated within the applicable statute of limitations. Burger v. Borough of Ingram, 697 A.2d 1037 (Pa. Cmwlth. 1997). Consistent with Lewistown Borough, supra, and Susquehanna Regional Police Department, supra, adding an Act 111 employer to a charge that had originally named only a regional police department adds a new respondent and a new cause of action and thus must be filed within six weeks of the alleged unfair labor practice. Here, the Association's amended charge filed on April 4, 2007, adding East Brandywine Township and Wallace Township as respondents, alleged a new cause of action against the Act 111 employers that was filed more than six weeks from the alleged unfair labor practice.

After a thorough review of the exceptions and all matters of record, the Board concludes that the Hearing Examiner did not err in dismissing the Association's Charge of Unfair Labor Practices as untimely. Accordingly, the Board shall dismiss the Association's exceptions and make the Proposed Decision and Order final.

ORDER

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

HEREBY ORDERS AND DIRECTS

that the exceptions filed by the Brandywine Regional Police Association are hereby dismissed, and the August 31, 2007 Proposed Decision and Order, be and hereby is made absolute and final.

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 nineteenth day of February, 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.

BOARD MEMBER JAMES M. DARBY DISSENTS.

¹ Contrary to the Association's contention, the Association could not have relied upon the Secretary's March 22, 2007 letter to its detriment with respect to the ultimate timeliness of its charge. The testimony reveals that at a January 25, 2007 meeting of the Brandywine Regional Police Commission, the union was made aware that employe health care reimbursements for 2007 would remain at the 2006 rate. The first payment under the alleged changed health care reimbursement was made January 31, 2007. If the six-week statute of limitations began to run on that date, any charge appropriately filed against the Act 111 employers would have been untimely on or after March 9, 2007, nearly two weeks before the Secretary's letter. Accordingly, as of March 22, 2007, any unfair labor practice allegations against the Act 111 employers were already untimely. Therefore, the Secretary's letter could not have lulled the Association into filing an untimely amendment naming the political subdivisions as respondents.