

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

GREATER YORK PROFESSIONAL FIRE :
FIGHTERS AND EMTS :
 :
 v. : Case No. PF-C-09-66-E
 :
 SPRING GARDEN TOWNSHIP :
 YORK AREA UNITED FIRE AND RESCUE :
 DEPARTMENT¹ :

FINAL ORDER

The Greater York Professional Fire Fighters and EMTs (Union) filed timely exceptions with the Pennsylvania Labor Relations Board (Board) on May 29, 2009. The Union's exceptions challenge a May 20, 2009 decision of the Secretary of the Board declining to issue a complaint and dismissing the Union's Charge of Unfair Labor Practices filed against Spring Garden Township and York Area United Fire and Rescue Department (collectively Employer).

The Union alleged in its Charge filed on May 8, 2009 that the Employer violated Section 6(1)(a) and (f) of the Pennsylvania Labor Relations Act (PLRA) and Act 111 of 1968 by unilaterally changing the sick leave policy. The Secretary declined to issue a complaint on the Charge, indicating that the Union failed to allege sufficient facts to state causes of action under Section 6(1)(a) and (f) of the PLRA. Therefore, the Secretary dismissed the Union's Charge.

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). A complaint will not be issued if the facts alleged in the charge could not support a cause of action for an unfair labor practice as defined by the PLRA. Hamburg Police Officers Association v. Borough of Hamburg, 37 PPER 121 (Final Order, 2006).

In its exceptions, the Union argues that the specification of charges alleging a unilateral change in the Employer's sick leave policy was sufficient to put the Employer on notice that it was asserting a violation of the Employer's duty to bargain under Section 6, paragraph (1), clause (e) of the PLRA. The Union further alleges that it inadvertently checked the box for clause (f) instead of clause (e).

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. 43 P.S. § 211.9(e). Section 95.32(a) of the Board's Rules and Regulations provides that a complaint may be amended at any time before the issuance of a final decision and order if no new cause of action is added after the statute of limitations has run. 34 Pa. Code § 95.32(a). The Board has consistently determined that amending a charge of unfair labor practices to include additional clauses adds new causes of action and, therefore, such an amendment must be made prior to the expiration of the statutory limitations period. PSSU Local 668, AFL-CIO v. Commonwealth of Pennsylvania, Department of Labor and Industry, 30 PPER ¶ 30090 (Final Order, 1999); New Kensington Police Department Bargaining Unit v. City of New Kensington, 29 PPER ¶ 29024 (Final Order, 1997); McAuliffe v. West Norriton Township, 28 PPER ¶ 28114 (Final Order, 1997); Pennsylvania State Corrections Officers Association v. Commonwealth of Pennsylvania, 34 PPER 32 n.2 (Proposed Decision and Order, 2003).

¹ The York Area United Fire and Rescue Department is a regional firefighting commission formed by Spring Garden and Springettsbury Townships under the Intergovernmental Cooperation Act, Act of December 19, 1996, P.L. 1158, No. 177, 53 Pa. C.S.A. § 2301-2315.

The Union's Charge filed on May 8, 2009 did not allege a violation of Section 6(1)(e) of the PLRA. Although the Union's exceptions do allege a violation of Section 6(1)(e), they were received by the Board on May 29, 2009, which is more than six weeks after the alleged unilateral change in the sick leave policy. As such, the Union cannot amend its Charge to allege a violation of Section 6(1)(e) of the PLRA as that allegation is untimely. Moreover, the Union's allegation of a failure to bargain in the specification of charges is insufficient to effectively charge a violation of Section 6(1)(e) of the PLRA where the Union neither checked off a violation of Section 6(1)(e) on the charge form, nor referenced that provision in its specification of charges. See Department of Labor and Industry, supra (request to amend charge to allege violation of Section 1201(a)(3) of Public Employe Relations Act (PERA) was denied as untimely even though complainant had alleged discrimination in its specification of charges); Pennsylvania State Corrections Officers Association, supra (same); PLRB v. West View Borough Municipal Authority, 6 PPER 131 (Nisi Decision and Order, 1975)(charge dismissed as insufficient where specification of charges alleged failure to meet and discuss, but complainant did not check off appropriate clause for such a violation on charge form).

The Union has not made any further factual allegations in its exceptions concerning its Charge under Section 6(1)(a) of the PLRA. Absent new factual allegations, the Union has failed to state an independent violation of Section 6(1)(a). Although a violation of Section 6(1)(e) of the PLRA would also be a derivative violation of Section 6(1)(a), no derivative violation of Section 6(1)(a) may be found for the Employer's alleged refusal to bargain due to the Union's failure to timely charge a violation of Section 6(1)(e). 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 and Act 111, the Board

HEREBY ORDERS AND DIRECTS

that the exceptions filed by the Greater York Professional Fire Fighters and EMTs are dismissed and the Secretary's May 20, 2009 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 nineteenth day of January, 2010. 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 inasmuch as the Charge clearly alleges a unilateral change in the sick leave policy and a failure to negotiate with the Union about the changes.