

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

SHAMOKIN POLICE OFFICERS' ASSOCIATION :
 :
v. : Case No. PF-C-17-35-E
 :
CITY OF SHAMOKIN :

FINAL ORDER

The Shamokin Police Officers' Association (Association) filed timely exceptions and a supporting brief with the Pennsylvania Labor Relations Board (Board) on May 23, 2017. The Association's exceptions challenge a May 4, 2017 decision of the Secretary of the Board declining to issue a complaint and dismissing the Association's Charge of Unfair Labor Practices filed against the City of Shamokin (City).

In its Charge filed on April 20, 2017, the Association alleged that the City unilaterally changed Officer William Miner's pension benefits and informed Mr. Miner that it intended to change his health insurance contribution. The Association asserted that the City's actions violated Section 6(1)(c) and (e) of the Pennsylvania Labor Relations Act (PLRA) and Act 111 of 1968. The Secretary declined to issue a complaint and dismissed the Charge, stating that the Board lacked jurisdiction over the Association's claim because retirees, such as Mr. Miner, do not fall within the definition of "employee" under Section 3(d) of the PLRA, citing **Township of Wilkins v. Wage and Policy Committee of Wilkins Township Police Department**, 696 A.2d 917 (Pa. Cmwlth. 1997).

In determining whether to issue a complaint, the Board assumes that all facts alleged are true. **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 Association alleges that the City unilaterally changed Mr. Miner's pension benefits on February 13, 2017, prior to his retirement on February 17, 2017. However, the Association's Charge of Unfair Labor Practices was filed with the Board on April 20, 2017. 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).

The failure to file a charge of unfair labor practices within the statutorily-prescribed limitations period is not a mere procedural defect or affirmative defense, but deprives the Board of jurisdiction over the subject matter of the charge. **South Fayette Township Police Wage and Policy Unit v. South Fayette Township**, 29 PPER ¶ 29035 (Final Order, 1998). Therefore, the Board must consider whether a charge is timely filed **sua sponte**.¹ **Id.** 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. **Fraternal Order of Police, Lodge No. 5 v. City of Philadelphia**, 39 PPER 100 (Final Order, 2008); **Mount Joy Township Police Association v. Mount Joy Township**, 29 PPER ¶ 29184 (Proposed Decision and Order, 1998). The complainant has the burden of establishing that the charge was filed within six weeks of the occurrence of the alleged unfair labor practice. **Northeastern Regional Police Patrolman's Association v. Northeastern Regional Police Board**, 21 PPER ¶ 21041 (Final Order, 1990). The nature of the unfair labor practice claim alleged frames the limitations period for that cause of action. **Officer of Upper Gwynedd Township Police Department v. Upper Gwynedd Township**, 32 PPER ¶ 32101 (Final Order, 2001).

¹ Because the timeliness of the Charge has been raised **sua sponte**, it is noted that Section 95.98(g)(2) of the Board's duly promulgated and published Rules and Regulations provides, in relevant part, that "[a] party to a decision of the Board may, because of extraordinary circumstances, file a request to reconsider the decision with the Board within 7-calendar days following the date of service of the decision." 34 Pa. Code § 95.98(g)(2).

The Association alleges that the unfair labor practice occurred on February 13, 2017, when the City unilaterally changed Mr. Miner's pension benefits. Therefore, the Association's Charge filed on April 20, 2017 is untimely because it was filed more than six weeks after the occurrence of the alleged unfair labor practice.² Accordingly, after a thorough review of the Charge, the exceptions and all matters of record, the Board shall dismiss the exceptions and sustain the Secretary's decision declining to issue a complaint albeit on other grounds.

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 Shamokin Police Officers' Association are dismissed and the Secretary's May 4, 2017 decision not to issue a complaint be and the same is hereby made absolute and final, as modified herein.

SEALED, DATED and MAILED at Harrisburg, Pennsylvania pursuant to conference call meeting of the Pennsylvania Labor Relations Board, L. Dennis Martire, Chairman, Robert H. Shoop, Jr., Member, and Albert Mezzaroba, Member, this twentieth day of June, 2017. The Board hereby authorizes the Acting Secretary of the Board, pursuant to 34 Pa. Code 95.81(a), to issue and serve upon the parties hereto the within Order.

² Concerning the City's alleged intent to change Mr. Miner's health insurance contribution, this allegation is premature because there is no allegation that the City has unilaterally implemented its decision to change the health insurance contribution. **APSCUF v. PLRB**, 661 A.2d 898 (Pa. Cmwlth. 1995), **appeal denied**, 542 Pa. 649, 666 A.2d 1058 (1995); **see also FOP, Queen City Lodge No. 10 v. City of Allentown**, 19 PPER ¶ 19190 (Final Order, 1988) (Board will dismiss unfair labor practice charge as premature where employer's alleged announced actions have not yet become operational and affected the employees' wages, hours or working conditions).