

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

PENNSYLVANIA STATE TROOPERS :
ASSOCIATION :
 :
v. : Case No. PF-C-19-13-E
 :
COMMONWEALTH OF PENNSYLVANIA :
PENNSYLVANIA STATE POLICE :

FINAL ORDER

The Pennsylvania State Troopers Association (PSTA) filed timely exceptions with the Pennsylvania Labor Relations Board (Board) on April 4, 2019. PSTA's exceptions challenge a March 19, 2019 decision of the Secretary of the Board declining to issue a complaint and dismissing PSTA's Charge of Unfair Labor Practices filed against the Commonwealth of Pennsylvania, Pennsylvania State Police (PSP).

In its Charge filed on February 28, 2019, PSTA alleged that on January 17, 2019, the PSP violated Section 6(1)(a) and (c) of the Pennsylvania Labor Relations Act (PLRA) and Act 111 of 1968 by refusing to bargain over the impact of its decision to change the job description for bargaining unit officers assigned to licensed casinos. The Secretary declined to issue a complaint and dismissed the Charge, stating that PSTA failed to state a cause of action under Section 6(1)(c) because it did not allege that the PSP's action was in retaliation for protected activity by the bargaining unit officers. The Secretary further stated that PSTA failed to allege sufficient facts to support a finding of a violation of Section 6(1)(a) of the PLRA.

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 the unfair labor practice alleged under the PLRA. Hamburg Police Officers Association v. Borough of Hamburg, 37 PPER ¶ 121 (Final Order, 2006). A complaint may not allege one charge and prosecute another. Shoemakersville Borough Police Association v. Shoemakersville Borough, 38 PPER 126 (Final Order, 2007).

PSTA alleges in its exceptions that it inadvertently checked the box for clause (c) instead of clause (e). PSTA argues that the specification of charges alleging a refusal to bargain over the impact of the change in the job description was sufficient to put the PSP on notice that it was asserting a violation of the PSP's duty to bargain under Section 6(1)(e) of the PLRA.¹

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). Further,

¹ PSTA does not challenge the Secretary's dismissal of the Charge under Section 6(1)(c) of the PLRA.

the Board's Rules and Regulations provide 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 § 93.14(b); 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. Greater York Professional Fire Fighters and EMTs v. Spring Garden Township, 41 PPER 5 (Final Order, 2010); 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 (Proposed Decision and Order, 2003).

Here, PSTA's Charge did not specify a violation of Section 6(1)(e) of the PLRA, only a violation of Section 6(1)(a) and (c). Further, PSTA's allegation in its specification of charges that the PSP violated its duty to bargain over the impact of its decision to change the bargaining unit officers' job description is insufficient to adequately charge a violation of Section 6(1)(e) of the PLRA where PSTA did not select a violation of Section 6(1)(e) on the face of the charge form, and failed to reference Section 6(1)(e) in its recitation of the specification of charges. See Spring Garden Township, supra (attempt to amend charge to allege violation of Section 6(1)(e) of the PLRA was untimely even though complainant alleged refusal to bargain in its specification of charges); Department of Labor and Industry, supra (request to amend charge to allege violation of Section 1201(a)(3) of Public Employe Relations Act was denied as untimely even though complainant had alleged acts of 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); see also Teamsters Local 771 v. PLRB, 760 A.2d 496 (Pa. Cmwlth. 2000) (the Board is not required to amend a charge *sua sponte* to issue a complaint).

PSTA alleged in its Charge that the unfair labor practice under Section 6(1)(a) and (c) occurred on January 17, 2019. PSTA's allegation in its exceptions filed on April 4, 2019 that the PSP violated its duty to bargain under Section 6(1)(e) of the PLRA is untimely because the exceptions were received more than six weeks after the PSP's alleged refusal to bargain.

Additionally, PSTA has not made any new timely factual allegations of an independent violation of Section 6(1)(a) in its exceptions. Furthermore, no derivative violation of Section 6(1)(a) may be found based on the PSP's alleged refusal to bargain because PSTA failed to timely charge a violation of Section 6(1)(e). Spring Garden Township; supra; City of New Kensington; supra.

After a thorough review of the exceptions and all matters of record, the Secretary did not err in declining to issue a complaint and dismissing the Charge. Accordingly, 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 Pennsylvania State Troopers Association are dismissed and the Secretary's March 19, 2019 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, Robert H. Shoop, Jr., Member, and Albert Mezzaroba, Member, this twenty-first day of May, 2019. 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.