

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

FRATERNAL ORDER OF POLICE, :
LODGE NO. 5 :
 :
v. : Case No. PF-C-21-35-E
 :
CITY OF PHILADELPHIA :

FINAL ORDER

The Fraternal Order of Police, Lodge No. 5 (FOP) filed a Charge of Unfair Labor Practices with the Pennsylvania Labor Relations Board (Board) on May 3, 2021, alleging that the City of Philadelphia (City) violated Section 6(1)(a) and (e) of the Pennsylvania Labor Relations Act (PLRA) as read in *pari materia* with Act 111 of 1968. The FOP alleged that the City had failed and refused to comply with four separate settlement agreements reached in unfair labor practice cases and grievances. Specifically, the FOP alleged that the City has not complied with the August 16, 2018 settlement agreement reached in a previously filed unfair labor practice charge at Case No. PF-C-18-25-E to enforce an arbitration award issued in favor of Adam O'Donnell, or the August 12, 2019 settlement reached in the unfair practice charge at Case No. PF-C-19-2-E involving the arbitration award in favor of Ernest Lawyer. In addition, the FOP alleges that the City has failed and refused to comply with a December 3, 2018 settlement agreement concerning a grievance filed on behalf of Martin Campbell, and an October 12, 2020 grievance settlement on behalf of Victoria Ayres.

By letter dated June 28, 2021, the Secretary of the Board declined to issue a complaint and dismissed the charge as untimely. Based on the allegations in the charge, the Secretary noted that the charge was not filed within six weeks of when the FOP knew or should have known that the City was refusing or failing to comply with the alleged settlement agreements. 43 P.S. §211.9(e). On July 16, 2021, the FOP filed timely exceptions with the Board challenging the Secretary's decision not to issue a complaint. Following an extension of time granted by the Secretary, the FOP filed a brief in support of the exceptions on August 17, 2021.

In specifically addressing the timeliness of charges of unfair labor practices filed with the Board alleging an employer's failure or refusal to comply with a settlement agreement in a grievance or unfair labor practice, the Board has held as follows:

The PLRA limits the time to file an unfair labor practice charge, under that statute, to six weeks from the date of the occurrence of the unfair labor practice. 43 P.S. §211.9(e). Accordingly, Section 9(e) provides that "[n]o petition or 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 petition or charge." *Id.* In Pennsylvania Labor Relations Board v. New Castle Area School District, 7 PPER 16 (Nisi Order, 1976), the Board addressed similar language in the Public Employee Relations Act, which provides a four-month limitations period. In the New Castle decision, the Board stated the following:

The mandatory language of the Act raises this issue to the level of jurisdiction. In order for the charging party to provide the Board with jurisdiction over the subject matter, it must appear that the subject matter of the Charge occurred within four months of the filing of the Charge or that the Charging party was prevented from filing due to duress or fraud of the Respondent.

Id. This Board, therefore, does not have jurisdiction to entertain unfair labor practice charges filed beyond the six-week limitations period mandated by Section 9(e) of the PLRA. However, the limitations period does not begin to run until the acts or statements complained of take place and the complainant had actual or constructive knowledge of those events. Id.

Fraternal Order of Police, Lodge No. 5 v. City of Philadelphia, 31 PPER ¶31036 (Final Order, 2000).

In its exceptions the FOP asserts that, because it had made numerous attempts over the years to follow-up with the City regarding each of these settlement agreements and the City never indicated it was refusing to comply with any of them, the FOP had no notice, or reason to believe, that the City was failing to comply with these settlement agreements. However, based on the allegations in the charge and on exceptions, it is entirely unreasonable to presume that the FOP would have had no reason to believe that the City was failing to comply with the settlement agreements until just six weeks before the filing of the instant charge. Indeed, the Board has repeatedly held that a failure to comply with a settlement agreement is not a continuing violation under the PLRA, and that after a reasonable period of time without compliance with the settlement, repeated unanswered inquiries regarding the status, will not revive the Board's jurisdiction under Section 9(e) of the PLRA. Fraternal Order of Police, Lodge No. 5 v. City of Philadelphia, 39 PPER 100 (Final Order, 2000). Accordingly, the Secretary did not err in stating that the May 4, 2021, Charge of Unfair Labor Practices was filed more than six weeks after the FOP should have known of the City's failure to comply with the four alleged settlement agreements, and thus the Board lacks jurisdiction to enforce the settlement agreements under Section 9(e) of the PLRA.

On exceptions the FOP also argues that the Board's application of Section 9(e) of the PLRA rewards the City for its failure to comply with the settlement agreements. While the Board's application of Section 9(e) of the PLRA in this case precludes the alleged enforcement of the terms of the settlement agreements, it does not address the viability of the underlying unfair labor practice charges or grievances. Indeed, the underlying unfair labor practice charge at Case No. PF-C-18-25-E involving Adam O'Donnell was timely filed with the Board on February 20, 2018, is being held in abeyance by the hearing examiner, and may be reopened at the request of either party. Similarly, the charge of unfair labor practices involving Ernest Lawyer filed at Case No. PF-C-19-2-E was timely filed on January 8, 2019, and remains open pending a tentative settlement, and can likewise be reopened upon request of either party. As for the grievance settlements involving Martin Campbell and Victoria Ayres, the continuing viability of the underlying grievances in those cases is a question of arbitrability that must, and can only be addressed by an arbitrator. See Township of Sugarloaf v. Bowling, 759 A.2d 913 (Pa. 2000) (whether a grievance is arbitrable must first be determined by an arbitrator).

After a thorough review of the exceptions and supporting brief, the Secretary did not err in declining to issue a complaint and dismissing the Charge of Unfair Labor Practices as untimely under Section 9(e) of the PLRA. Accordingly, the FOP's exceptions shall be dismissed, and the Secretary's June 28, 2021 decision will be sustained.

ORDER

In view of the foregoing and in order to effectuate the policies of the Pennsylvania Labor Relations Act and Act 111 of 1968, the Board

HEREBY ORDERS AND DIRECTS

that the exceptions filed by the Fraternal Order of Police, Lodge No. 5 are hereby dismissed, and the Secretary's June 28, 2021 decision declining to issue a Complaint and dismissing the Charge of Unfair Labor Practices, be and hereby is made absolute and final.

SEALED, DATED and MAILED at Harrisburg, Pennsylvania pursuant to conference call meeting of the Pennsylvania Labor Relations Board, James M. Darby, Chairman, Albert Mezzaroba, Member, and Gary Masino, Member, this sixteenth day of November, 2021. 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.