

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

IN THE MATTER OF :
 :
 : PERA-M-24-171-E
THE PENNSYLVANIA STATE EDUCATION :
ASSOCIATION :

ORDER GRANTING MOTION TO DISMISS REPORT AS UNTIMELY FILED

On July 29, 2024, the Freedom Foundation (Foundation or Complainant) filed a report of illegal contributions, as amended on July 30, 2024, under the Public Employee Relations Act (PERA or Act) with the Pennsylvania Labor Relations Board (Board) against the Pennsylvania State Education Association (PSEA or Respondent). In the report, the Foundation specifically alleged that PSEA violated Section 1701 of PERA on May 16, 2022, and May 31, 2022, when PSEA illegally used an unregistered political committee, the Fund for Student Success (FSS), to make two contributions totaling \$1,475,000 to the Democratic Governors Association (DGA), which in turn, contributed the funds to Shapiro for Pennsylvania, the authorized political committee of then-gubernatorial candidate, Josh Shapiro. The Foundation further alleged in the report that PSEA also violated Section 1701 of PERA by failing to file a report with the Board disclosing the prohibited contributions by November 30, 2022, which was 90 days from the end of PSEA's fiscal year, which runs from September 1 through August 31. The Foundation also identified "certain officers and staff" of PSEA as responsible for the alleged illegal contributions and averred that the violations of Section 1701 were willful.¹

On August 7, 2024, the Secretary of the Board issued an Order and Notice of Hearing, directing a hearing on October 31, 2024, if necessary.² On October 15, 2024, the hearing was continued to January 23, 2025, at PSEA's request and without objection by the Foundation.

On November 20, 2024, PSEA filed a Motion to Dismiss, alleging that the report under Section 1701 was time-barred pursuant to PERA's four-month statute of limitations period, that the report fails to adequately allege a violation of Section 1701, and requesting, in the alternative, that the Board hold the matter in abeyance pending the resolution of a separate complaint by the Foundation involving the same operative facts before the Pennsylvania Department of State. On December 16, 2024, the Foundation filed a Response to the Motion to Dismiss, opposing the motion on all grounds.

On December 23, 2024, the Foundation filed "Application Letters," requesting subpoenas for ten witnesses, along with various documents. On January 9, 2025, PSEA filed an Objection and Motion to Quash, opposing the issuance of the subpoenas.

On January 13, 2025, PSEA filed a Reply in Support of its Motion to Dismiss and a Petition for Relief, alleging that the Foundation should not be afforded full party status to litigate an alleged violation of Section 1701. The Petition for Relief also requested that the Board clarify the investigative and adjudicative procedures for cases arising under that

¹ Those individuals were alleged to be Richard Askey, Aaron Chapin, Jeffrey Ney, James Vaughn, Joseph Howlett, Lahrsen Harper, and David Taylor.

² The Board Secretary also issued an Amended Order and Notice of Hearing, which also directed a hearing on October 31, 2024.

section. On the same date, I held a prehearing conference and directed the Foundation to file an Offer of Proof with regard to its Application Letters for subpoenas, as well as a sur-reply opposing PSEA's Motion to Dismiss, which the Board received on February 4, 2025, and February 12, 2025, respectively. The parties also agreed to another continuance of the January 23, 2025 hearing during the prehearing conference on January 13, 2025, after which the hearing was subsequently rescheduled for May 14 and 15, 2025.

On March 3, 2025, the parties filed a jointly agreed Stipulation to Authenticity of Certain Public Documents. On March 5, 2025, the Foundation filed an Amended Application for subpoenas.

The Report of Illegal Contributions Under Section 1701 of PERA is time-barred and must be dismissed

The parties have fully briefed the issue surrounding the timeliness of the Foundation's report under Section 1701 of PERA.³ PSEA contends that the report is untimely because Section 1505 of PERA establishes a strict limitations period for all complaints arising under the Act. More specifically, PSEA asserts that the four-month limitations period under Section 1505 precludes any review by the Board of the Foundation's report alleging violations of Section 1701 in May through November of 2022 since it was not filed until July 29, 2024. PSEA points out that the contributions from May 16, 2022, and May 31, 2022, were openly disclosed in public filings accessible on the IRS website in mid July 2022. Thus, PSEA concludes that the Foundation failed to file a complaint within four months of both the alleged unlawful contributions themselves and the point at which reasonable diligence would have uncovered the existence of the contributions once they were disclosed on the publicly available IRS website. PSEA applies the same reasoning to the allegations that it failed to file a timely report of the prohibited contributions, as such a report would have been due by November

³ Section 1701 of the Act provides that: "[n]o employe organization shall make any contribution out of the funds of the employe organization either directly or indirectly to any political party or organization or in support of any political candidate for public office.

The [B]oard shall establish such rules and regulations as it may find necessary to prevent the circumvention or evasion of the provisions of this section.

If an employe organization has made contributions in violation of this section it shall file with the [B]oard a report or affidavit evidencing such contributions within ninety days of the end of its fiscal year. Such report or affidavit shall be signed by its president and treasurer or corresponding principals.

Any employe organization which violates the provisions of this section or fails to file any required report or affidavit or files a false report or affidavit shall be subject to a fine of not more than two thousand dollars (\$2,000).

Any person who willfully violates this section, or who makes a false statement knowing it to be false, or who knowingly fails to disclose a material fact shall be fined not more than one thousand dollars (\$1,000) or imprisoned for not more than thirty days or both. Each individual required to sign affidavits or reports under this section shall be personally responsible for filing such report or affidavit and for any statement contained therein he knows to be false.

Nothing herein shall be deemed to prohibit voluntary contributions by individuals to political parties or candidates." 43 P.S. § 1101.1701.

30, 2022. PSEA submits that, by that time, a party exercising reasonable diligence would have already been aware of the underlying contributions at issue because they had been disclosed on the publicly available IRS website for more than five months. The alleged failure to file the report disclosing those contributions, PSEA argues, therefore would have been immediately apparent after the deadline had passed on November 30, 2022.

The Foundation, on the other hand, counters that the report is not time-barred under Section 1505 of PERA because that section only applies to charges of unfair practices, and does not govern reports alleging illegal contributions in violation of Section 1701. The Foundation emphasizes that the Board promulgated regulations at 34 Pa. Code § 95.112 that repeatedly describe documents filed alleging a violation under Section 1701 of PERA as "reports," which differentiates them from charges under Section 1505. The Foundation insists that the Board may pursue enforcement action against an employe organization for violations of Section 1701 without regard to any limitations period.⁴ The Foundation maintains that the Board's proceedings surrounding the report under Section 1701 are covered by the Administrative Agency Law, 2 Pa.C.S.A. § 101, which is not governed by any limitations period. The Foundation further posits that, under the common law doctrine of *nullus tempus occurrit regi*, or "time does not run against the king," any enforcement action by the Board against an employe organization on behalf of the Commonwealth is not subject to a statute of limitations. The Foundation's arguments are unavailing.

The Board's regulations authorize the filing of a motion to dismiss or preliminary objections challenging the jurisdiction of the Board. 34 Pa. Code § 95.91(e). In Metropolitan Regional Council of Carpenters v. Pennsylvania Convention Center Authority, 46 PPER 89 (Order Denying Motion to Dismiss, 2015), Hearing Examiner Jack Marino summarized the applicable law surrounding prehearing motions as follows:

A prehearing motion to dismiss is in the nature of a demurrer and all well-pleaded facts in the specification of charges and all reasonable inferences deduced therefrom must be accepted as true. City of Philadelphia v. Buck, 587 A.2d 875 (Pa. Cmwlth. 1991). Indeed, in determining whether to issue a complaint, the Secretary of the Board assumes that the allegations in the specification of charges are true. Pennsylvania Social Services Union, Local 668 v. PLRB, 481 Pa. 81, 392 A.2d 256 (1978). Legal conclusions, unjustified inferences, argumentative allegations and expressions of opinion are not deemed admitted. A demurrer

⁴ The Foundation initially suggested in page 25 of its report that its allegations under Section 1701 of PERA may be subject to a two-year statute of limitations period under 42 Pa.C.S.A. § 5524(5), which is Chapter 55 of the Judicial Code. In its Response to the Motion to Dismiss, the Foundation then argued that Chapter 55 of the Judicial Code does not apply to reports alleging illegal political contributions by an employe organization because such a report is not an "action, proceeding, or appeal," as used in that section. However, the Foundation went on to argue that, even if Chapter 55 is applicable to the instant matter, its report is timely under both the two-year period in 42 Pa.C.S.A. § 5524(5) for an action upon a statute for a civil penalty or forfeiture, as well as the six-year period under 42 Pa.C.S.A. § 5527(b) for any civil action or proceeding not subject to another limitation specified in this subchapter. Eventually, the Foundation agreed with PSEA on page 6 of its sur-reply opposing the Motion to Dismiss that Chapter 55 of the Judicial Code is inapplicable to the report.

will be sustained only when it appears with certainty that the law permits no recovery under the allegations pleaded. Buck, 587 A.2d at 877.

Section 1505 of PERA provides that "[n]o petition or charge shall be entertained which relates to acts which occurred or statements which were made more than four months prior to the filing of the petition or charge." 43 P.S. § 1101.1505. As Hearing Examiner Marino observed in Trometter v. PSEA & NEA, 50 PPER 22 (Proposed Order of Dismissal, 2018), the Statutory Construction Act requires that the words used in statutes must be given their plain meaning unless specifically given a technical meaning in the statute. (*citing* 1 Pa.C.S. § 1903). There is no definition in PERA for the term "charge," as used in Section 1505 or in any other provision of the Act, despite a lengthy definition section in Article III. The Act does provide a definition for the term "unfair practice" in Section 301(8); however, Section 1505 is notably devoid of the term "unfair practice" following the term "charge," or in any other clause.⁵ As such, the term "charge," as used in Section 1505 of PERA, is not modified or limited in any regard by the term "unfair practice," and must be given its plain meaning under the Statutory Construction Act.

The term "charge" is defined in both Black's Law Dictionary, Sixth Edition, 1990, and Webster's Encyclopedic Unabridged Dictionary of the English Language, 1996 Edition, as an "accusation." Thus, the term "charge," as used in Section 1505 of PERA, must also be defined as an accusation. Indeed, the Foundation's report, alleging a violation of Section 1701 of PERA, is undeniably an accusation that PSEA and its individual officers acted unlawfully. As a result, it must be concluded that the Foundation's report under Section 1701 of PERA is a "charge," as used in Section 1505, and is subject to the four-month limitations period contained in Section 1505. To conclude otherwise would be to disregard the plain meaning of the Act.

This is consistent with the Commonwealth Court's holding in Trometter v. PLRB, 147 A.3d 601 (Pa. Cmwlth. 2016), wherein the Court opined that the General Assembly vested the power to implement and enforce Section 1701 of PERA with the Board. In that case, the Board argued that Section 1701 necessitates investigatory action, but that Section 1601 explicitly restricts the Board's general power to investigate discrete matters. *Id.* at 607. The Court noted that Section 1601 of PERA provides, as follows:

For the purpose of all hearings and investigations which, in the opinion of the [B]oard, are necessary and proper for the exercise of the powers vested in it by **Article VI and Article XIII**, and for the purpose of investigating and considering disputes, other than a question concerning the representation of employees, which **it shall be the duty of the [B]oard to undertake whenever petitioned so to do by either an employe organization, an employer, or the representative of any unit of employes**, the [B]oard shall have the investigatory powers granted in this article.

43 P.S. § 1101.1601. (Emphasis added by the Court).

The Court emphasized how the Board asserted that this statutory language limited the Board's investigatory powers solely to matters involving union representation, unfair practices, and other disputes initiated by employe organizations, employers, and unit representatives. Trometter, 147

⁵ Section 301(8) of the Act provides that "'[u]nfair practice' means any practice prohibited by Article XII of this act." 43 P.S. § 1101.301(8).

A.3d at 607. In essence, the Board was making an argument very similar to the Foundation here, i.e. that its power to investigate and prevent unfair practices, which emanates from Articles XIII and XVI of PERA, are not applicable to Section 1701, which relates to allegations of a different nature, unlike those found in the unfair practice provisions delineated in Article XII. But the Commonwealth Court rejected that argument and concluded that Section 1601 should not be read as a limitation on the Board's duty to police compliance with Section 1701. Trometter, 147 A.3d at 608. In the same vein, Section 1505 of PERA cannot be read as being inapplicable to reports, alleging a violation of Section 1701, simply because Section 1505 is purportedly somehow limited to the Board's jurisdiction to entertain unfair practice charges. This is especially true where the clear language and plain meaning of Section 1505 contains no limitation on the term "charge" and unequivocally includes "accusations" under that section. Accordingly, it must be concluded that the Board is without jurisdiction to entertain any allegations, accusations, or charges of unlawful conduct, which relate to acts or statements that occurred more than four months prior to the filing of the same.

As detailed above, the Foundation's report alleges that PSEA violated Section 1701 of PERA on May 16, 2022, and May 31, 2022, when PSEA illegally used an unregistered political committee, the Fund for Student Success (FSS), to make two contributions totaling \$1,475,000 to the Democratic Governors Association (DGA), which in turn, contributed the funds to Shapiro for Pennsylvania, the authorized political committee of then-gubernatorial candidate, Josh Shapiro. The Foundation further alleged in the report that PSEA also violated Section 1701 of PERA by failing to file a report with the Board disclosing the prohibited contributions by November 30, 2022, which was 90 days from the end of PSEA's fiscal year, which runs from September 1 through August 31.

As PSEA persuasively notes, however, the alleged unlawful contributions from May 16, 2022, and May 31, 2022, were openly disclosed in public filings accessible on the IRS website in mid July 2022. In fact, the Foundation admits, in its report at page 9, that the 8872 forms are publicly available and provided specific links to the same. The Foundation specifically takes issue with two alleged unlawful contributions, the first of which occurred on May 16, 2022, which was for \$925,000 from the FSS to the DGA, while the second occurred on May 31, 2022, which was for \$550,000 from the FSS to the DGA. Unfortunately for the Foundation, however, a simple click through the links it unilaterally provided on page 11 of its report reveals that the FSS form 8872 reporting those contributions to DGA were posted on the IRS website on July 14, 2022. To be sure, the parties stipulated to the authenticity of this form in Exhibit A, section (ii), of their duly executed Stipulation to the Authenticity of Certain Public Documents filed on March 3, 2025. What is more, a simple click through of the links that the Foundation provided, on page 12 of its report, indicates that DGA's receipt of those contributions from FSS was posted on July 15, 2022.

The Foundation has offered no explanation for why it was forced to wait for more than two years before filing the instant report, other than to suggest on a page-25 footnote of its report, that the limitations period could be tolled due to "fraudulent concealment."⁶ The Foundation indicated

⁶ This suggestion by the Foundation related to its claim that the report is subject to a two-year statute of limitations period under Chapter 55 of the Judicial Code. As PSEA persuasively notes, the Foundation has not made any

that PSEA's alleged failure to disclose the contributions to the Board, together with its alleged efforts to conceal the contributions by routing them through an unregistered political committee, along with its alleged repeated public assurances that it does not use general treasury funds for political contributions, *may* toll the statute of limitations. (Emphasis in original). However, the Foundation admitted on page 8 of its report that the PSEA annual forms LM-2 filed with the United States Department of Labor (DOL) disclose a number of transfers from PSEA to FSS covering the period of 2018 through 2023. Once again, the parties stipulated to the authenticity of these documents, which revealed that the "contributions" were set forth in Section 16 of the forms, which is entitled "Political Activities and Lobbying," and which clearly identify the FSS as an "Affiliated Entity" of PSEA. (Stipulation to the Authenticity of Certain Public Documents, Exhibit A, sections (y), (z), (aa), (bb), (cc), and (dd)). As a result, the Foundation should have been on notice of both the existence of FSS and the alleged connection between PSEA and FSS, as far back as 2018, and the Foundation's claim that the statute of limitations should be tolled, is simply without merit. Indeed, as PSEA correctly notes, the Commonwealth Court has rejected claims of fraudulent concealment to toll the limitations period under PERA where the respondent has publicly disclosed the relevant information long before the filing of any charge. FOP Lodge No. 7 v. PLRB, 696 A.2d 873, 876 (Pa. Cmwlth. 1997).

The Foundation simply cannot avoid the conclusion that it should have been on notice of the alleged unlawful conduct by PSEA in July 2022. Similarly, the Foundation should have been immediately aware that PSEA allegedly failed to file a report with the Board concerning that conduct by November 30, 2022, which was the 90-day point after the end of PSEA's fiscal year. The Foundation, however, did not file its report until July 29, 2024, which was well beyond the four-month limitations period provided for in Section 1505 of the Act. As such, the Board is without jurisdiction to entertain the allegations contained in the Foundation's report.

Nor can the Foundation's report be revived by its citations to the doctrine of *nullum tempus occurrit regi* or the Administrative Agency Law. In Commonwealth, Dept. of Transportation v. J.W. Bishop & Co., 439 A.2d 101 (Pa. 1981), the Pennsylvania Supreme Court recognized the ancient English common law doctrine of *nullum tempus* and held that the statute of limitations did not apply to actions brought by the Commonwealth in trespass related to two collapsed bridges. In doing so, the Court recognized that, whenever the Commonwealth invokes the doctrine of *nullum tempus*, it is seeking as a plaintiff to vindicate public rights and protect public property. *Id.* at 104. Indeed, every case relied on by the Foundation in its Response to the Motion to Dismiss, for the applicability of the doctrine, is limited to an action at law by the Commonwealth as a plaintiff. See J.W. Bishop & Co., supra; Commonwealth, Dept. of Transportation v. Rockland Construction Co., 448 A.2d 1047 Pa. 1982); See also United States v. State of California, 332 U.S. 19, 67 S.Ct. 1658 (1947) (action in equity by government of the United States). However, as conceded by the Foundation in its Response to the Motion to Dismiss, this is an administrative matter, and not an action at law or in equity. Furthermore, the Commonwealth is not a party to this matter and has not invoked the doctrine of *nullum tempus*, as delineated above. The Foundation relies on the Board's status as a Commonwealth agency and urges the Board to assert the doctrine in the instant matter, under the Administrative Agency Law, which the Foundation alleges has no statute of

attempt, in all of its lengthy filings, to argue that its report is timely under the four-month limitations period in Section 1505.

limitations, as a way to enforce the provisions of Section 1701 of PERA. But the Board does not enforce the provisions of PERA, as a party, pursuant to the Administrative Agency Law or any other statute. Instead, the Board enforces the provisions of PERA by conducting hearings and serving as a neutral forum for the parties to prosecute their cases and/or present their defenses in support thereof. The Foundation has simply not presented a persuasive argument for the applicability of the doctrine of *nullum tempus* here. In fact, if the Foundation's argument regarding the doctrine of *nullum tempus* were taken to its logical extreme, then the four-month limitations period of Section 1505 would be completely written out of the Act, in that the Board would have the authority to invoke the doctrine in every case going back many years to the original drafting of PERA, under the auspices of the Board's duty to prevent unfair practices and to guarantee the health, safety, and welfare of the Commonwealth. Such a position is untenable and clearly stands in stark contrast to the plain meaning of Section 1505 of the Act.

Based on the foregoing, PSEA's Motion to Dismiss the Foundation's report, alleging multiple violations of Section 1701 of PERA, must be granted, and the report must be dismissed in its entirety, as a matter of law. The report was untimely filed outside the four-month limitations period under Section 1505 of the Act. In light of this disposition, it is not necessary to address the remaining motions, objections, and petitions, which remain outstanding. The hearings scheduled for May 14, 2025, and May 15, 2025, will be cancelled.

ORDER

In view of the foregoing and in order to effectuate the policies of the Public Employe Relations Act, the Hearing Examiner

HEREBY ORDERS AND DIRECTS

that the report is dismissed in its entirety, and the hearings scheduled for May 14, 2025, and May 15, 2025, are hereby cancelled.

IT IS HEREBY FURTHER ORDERED AND DIRECTED

that in the absence of any exceptions filed with the Board pursuant to 34 Pa. Code § 95.98(a) within twenty days of the date hereof, this order shall be final.

SIGNED, DATED AND MAILED at Harrisburg, Pennsylvania, this 26th day of March, 2025.

PENNSYLVANIA LABOR RELATIONS BOARD

/s/ John Pozniak
John Pozniak, Hearing Examiner