

COMMONWEALTH OF PENNSYLVANIA  
Pennsylvania Labor Relations Board

MORTON HARR :  
 :  
 v. : Case No. PERA-C-13-279-W  
 :  
 WESTMORELAND COUNTY COMMUNITY :  
 COLLEGE :

**FINAL ORDER**

Morton Harr (Complainant) filed timely<sup>1</sup> exceptions with the Pennsylvania Labor Relations Board (Board) on December 2, 2013. The Complainant's exceptions challenge a November 8, 2013 decision of the Secretary of the Board declining to issue a complaint and dismissing the Complainant's Charge of Unfair Practices filed against Westmoreland County Community College (College).<sup>2</sup>

The Complainant alleged in his Charge filed on October 23, 2013 that the College violated Section 1201(a)(3), (5), (6) and (9) of the Public Employee Relations Act (PERA) by failing to assign him overtime. The Secretary declined to issue a complaint and dismissed the Charge, stating that the Complainant's Charge was untimely because it was filed outside the four-month statute of limitations provided under Section 1505 of PERA. 43 P.S. § 1101.1505. The Secretary further stated that the Complainant lacked standing to allege violations of Section 1201(a)(5), (6) and (9) of PERA, citing **Case v. Hazleton Area School District**, 915 A.2d 1262 (Pa. Cmwlth. 2007) (individual employee lacks standing to allege a violation of employer's duty to bargain under Section 1201(a)(5) and its meet and discuss duty under Section 1201(a)(9)) and **Kissell v. Commonwealth of Pennsylvania, Department of Corrections**, 25 PPER ¶ 25072 (Final Order, 1994) (public employer's obligation to draft and execute a collective bargaining agreement pursuant to Section 1201(a)(6) is owed to the exclusive representative of the employees). The Secretary additionally indicated that the Complainant failed to allege sufficient facts to establish that the College violated Section 1201(a)(3) of PERA.

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 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 practice as defined by PERA. **Homer Center Education Association v. Homer Center School District**, 30 PPER ¶ 30024 (Final Order, 1998).

In his exceptions, the Complainant alleges that John Detisch, the College's Director of Facilities, stated that the College's Transportation Policy excluded the Complainant from being assigned overtime. The Complainant further alleges that he discovered, on June 20, 2013, that the College did not have a Transportation Policy.

Section 1505 of PERA provides that no 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 charge. 43 P.S. § 1101.1505. A charge will be considered timely if it is

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<sup>1</sup> The Complainant's exceptions are timely because the twentieth day following issuance of the Secretary's decision, Thursday, November 28, 2013, was a legal holiday (Thanksgiving Day), the Board's offices were closed on Friday, November 29, 2013, and Saturday and Sunday, November 30 and December 1, 2013, are excluded from computation of the twenty-day period for filing exceptions. 34 Pa. Code § 95.100(b).

<sup>2</sup> On October 23, 2013, the Complainant filed a separate Charge of Unfair Practices alleging that the Westmoreland County Community College Educational Support Personnel Association, PSEA/NEA (Association) violated Section 1201 of PERA by failing to properly represent him. That Charge was docketed at Case No. PERA-C-13-283-W. On November 8, 2013, the Secretary declined to issue a complaint and dismissed the Charge. Although the Complainant's exceptions reference the caption of the case involving his Charge against the Association, the Complainant's exceptions raise no issues with respect to the Secretary's decision in that case. Therefore, the Secretary's decision in Case No. PERA-C-13-283-W is final and binding.

filed within four months of when the charging party knew or should have known that an unfair practice was committed. **Community College of Beaver County Society of Faculty, PSEA/NEA v. Beaver County Community College**, 35 PPER 24 (Final Order, 2004). The complainant has the burden to show that the charge was filed within four months of the occurrence of the alleged unfair practice. **PLRB v. Commonwealth of Pennsylvania (Bureau of Employment Security)**, 9 PPER ¶ 9171 (Nisi Decision and Order, 1978); **PLRB v. Allegheny County Prison Employees Independent Union**, 11 PPER ¶ 11282 (Proposed Decision and Order, 1980).

The Charge alleged that the College failed to assign the Complainant overtime after Mr. Detisch became the Director of Facilities. The Charge further alleged that on May 6, 2008, Mr. Detisch explained that the College's Transportation Policy excluded the Complainant from being assigned overtime and that the Complainant did not believe that the College had a Transportation Policy. The allegations in the Charge show that the College failed to assign the Complainant overtime as early as 2008 and that the Complainant did not believe the College's reasons for its failure to assign him overtime. Therefore, the Complainant knew or should have known as early as May 6, 2008 that the College's failure to assign him overtime may be an unfair practice. Thus, the Charge is untimely because it was filed outside the four-month statute of limitations provided under Section 1505 of PERA. **Beaver County Community College, supra**.

Further, the College's failure to assign overtime to the Complainant cannot be considered a continuing violation because any subsequent refusals to assign the Complainant overtime are inescapably grounded in the College's initial refusal. **AFSCME, Council 83, AFL-CIO v. State College Borough**, 18 PPER ¶ 18119 (Final Order, 1987) (a complainant cannot revive a defunct cause of action by making subsequent requests and receiving the same response beyond the limitations period after the employer has already taken action which would constitute the unfair practice); **see also Berton v. North Huntingdon Township**, 19 PPER ¶ 19009 (Final Order, 1987) (same); **AFSCME, Council 13, AFL-CIO v. Chambersburg School District**, 21 PPER ¶ 21128 (Final Order, 1990) (same). Even if the Complainant did not become aware of the alleged unfair practice until June 20, 2013, the Charge would still be untimely because it was filed on October 23, 2013, more than four months after June 20, 2013. Accordingly, the Secretary did not err in declining to issue a complaint and dismissing the Charge as untimely.

After a thorough review of the exceptions and all matters of record, the Board shall dismiss the exceptions and affirm the Secretary's decision declining to issue a complaint.

#### ORDER

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

#### HEREBY ORDERS AND DIRECTS

that the exceptions filed by Morton Harr are dismissed and the Secretary's November 8, 2013 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, James M. Darby, Member, and Robert H. Shoop, Jr., Member, this twenty-first day of January, 2014. 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.