

COMMONWEALTH OF PENNSYLVANIA  
Pennsylvania Labor Relations Board

DAVID J. SWEITZER :  
 :  
 v. : Case No. PF-C-13-21-E  
 :  
 MIDDLETOWN BOROUGH :

**FINAL ORDER**

David J. Sweitzer (Complainant) filed timely exceptions with the Pennsylvania Labor Relations Board (Board) on February 28, 2013.<sup>1</sup> The Complainant's exceptions challenge a February 25, 2013 decision of the Secretary of the Board declining to issue a complaint and dismissing the Complainant's Charge of Unfair Labor Practices filed against Middletown Borough (Borough).

In his Charge filed on February 15, 2013, the Complainant alleged that the Borough violated Section 6(1)(c) of the Pennsylvania Labor Relations Act (PLRA) by removing him from the Detective position in retaliation for his engaging in activity protected under the PLRA. The Secretary declined to issue a complaint stating that the Complainant's Charge was untimely under Section 9(e) of the PLRA because the Complainant did not file the Charge within six weeks of when the Borough removed him from the Detective position, i.e. October 22, 2012. Therefore, the Secretary dismissed the Charge.

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 an unfair labor practice as defined by the PLRA. **Hamburg Police Officers Association v. Borough of Hamburg**, 37 PPER 121 (Final Order, 2006).

The Complainant alleges in his exceptions that the Middletown Borough Police Officers Association (Association) and his attorney failed to notify him of his right to file a Charge of Unfair Labor Practices with the Board and that he did not become aware of this right until February 2013. 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. 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 labor 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).

According to the Complainant's own allegations in his exceptions, he was aware of the Borough's alleged retaliation on October 22, 2012, the date on which he was removed from the Detective position. Indeed, the Complainant asserts that on October 22, 2012, he informed the Association's president of his intent to file a grievance, and that on October 31, 2012, a grievance was filed on his behalf alleging retaliation based on his support of the Association. Therefore, the Complainant's Charge filed on February 15, 2013 is untimely because it was filed more than six weeks after the occurrence of the alleged unfair labor practice. Section 9(e) of the PLRA specifically limits the Board's jurisdiction over charges of unfair labor practices to six weeks. The Complainant also alleges that he was not aware of his right to file a Charge with the Board until February 2013, when he became aware of the Board's jurisdiction over claims of retaliation based on union activity. The Complainant's lack of knowledge of his rights under the law does not toll the statute of limitations. **Maliski v. Amalgamated Transit Union, Local #1595**, 16 PPER ¶ 16168 (Final Order, 1985); **PLRB v. Laurel Crest Manor**, 11 PPER ¶ 11343 (Final Order, 1980); **PLRB v. Youngsville Borough**, 11 PPER ¶ 11344 (Final Order, 1980).

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<sup>1</sup> The Complainant also requested oral argument, which is denied as the exceptions raise no novel issue of law or fact.

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 Pennsylvania Labor Relations Act, the Board

**HEREBY ORDERS AND DIRECTS**

that the exceptions filed by David J. Sweitzer are dismissed and the Secretary's February 25, 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 nineteenth day of March, 2013. 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.