

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

WES L. BROWN :
 :
 v. : Case No. PERA-C-14-196-E
 :
 ELEGANT ARRIVALS LIMOUSINE SERVICE :
 STEVE MIGA :

FINAL ORDER

On June 23, 2014, Wes L. Brown (Complainant) filed a Charge of Unfair Practices with the Pennsylvania Labor Relations Board (Board) alleging that Elegant Arrivals Limousine Service (Employer) and Steve Miga violated Section 1201 of the Public Employee Relations Act (PERA). Although the Complainant failed to specify any factual allegations in his Specification of Charges to indicate how the Employer or Mr. Miga had violated PERA, a Civil Complaint attached to the Charge indicated that the Complainant was seeking wages for services performed for the Employer. On June 26, 2014, the Acting Secretary of the Board (Secretary) declined to issue a complaint and dismissed the Complainant's Charge, stating that the Board did not have jurisdiction over the Complainant's claim under PERA. The Secretary further directed the Complainant to contact the Bureau of Labor Law Compliance concerning the Employer's alleged failure to pay him.¹ On July 29, 2014, the Complainant filed exceptions with the Board to the Secretary's decision declining to issue a complaint.

Initially, the Board notes that the Complainant's exceptions are untimely. The Secretary's letter stated that "[a]ny exceptions to this decision not to issue a complaint may be filed with the Board within twenty (20) calendar days of the date of this letter in accordance with the procedure set forth in the Board's Rules and Regulations at 34 Pa. Code Section 95.98(a)(1), (2) and (3)." Section 95.98(a)(1) of the Board's Rules and Regulations provides in relevant part as follows:

A party may file with the Board within 20-calendar days of the date of issuance with the Board an original and four copies of a statement of exceptions and a supporting brief to a proposed decision issued under § 95.91(k)(1)(relating to hearings) or a nisi order issued under § 95.96(b)(relating to exceptions) certifying a representative or the results of an election. Exceptions will be deemed received upon actual receipt or on the date deposited in the United States mail, as shown on a United States Postal Form 3817 Certificate of Mailing enclosed with the statement of exceptions.

34 Pa. Code § 95.98(a)(1).

The Secretary's letter was issued on June 26, 2014. Therefore, the Complainant's exceptions were due on or before July 16, 2014. However, the Board did not receive the Complainant's exceptions until July 29, 2014. Thus, the Complainant's exceptions are clearly untimely. Accordingly, the Secretary's decision became final and binding on July 16, 2014, and the Complainant has waived all issues on appeal.² AFSCME Council 13 v.

¹ The Secretary also noted that the Complainant had failed to specify the subsection and clauses of PERA that had allegedly been violated.

² The Board notes that the Secretary's decision was mailed to the Complainant by certified mail on June 26, 2014, but was returned to the Board on July 22, 2014 as unclaimed. On that same day, the Board mailed another copy of the Secretary's decision to the Complainant by regular mail. Because the Complainant failed to claim the mail containing the initial copy of the Secretary's decision, the Complainant cannot rely on the Board's July 22, 2014 mailing in computing the twenty day period for filing of exceptions. Keightly v. Commonwealth of Pennsylvania, Department of Transportation, Bureau of Driver

Commonwealth of Pennsylvania, Department of Transportation, 33 PPER ¶ 33027 (Final Order, 2001), aff'd, No. 138 C.D. 2002 (Pa. Cmwlth. 2002)(opinion not reported).

Indeed, even if the Complainant's exceptions had been timely, the Charge and exceptions fail to allege sufficient facts warranting the issuance of a complaint under Section 1201 of PERA. In the exceptions, the Complainant challenges the Secretary's decision declining to issue a complaint. 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).

As stated by the Secretary, the Board does not have jurisdiction to issue a complaint against the Employer under PERA for its alleged failure to pay the Complainant. Rather, the Pennsylvania Bureau of Labor Law Compliance has authority through the Wage Payment and Collection Law³ to remedy matters involving the collection of wages owed to an employee. Further, the provisions of PERA only apply to public employers such as the Commonwealth and its political subdivisions. 43 P.S. § 1101.301(1). Therefore, the Board lacks jurisdiction to entertain a claim against the Employer under PERA because it is a private employer. Accordingly, the Secretary did not err in declining to issue a complaint and dismissing the Charge.

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 Employee Relations Act, the Board

HEREBY ORDERS AND DIRECTS

that the exceptions filed by Wes L. Brown are dismissed and the Secretary's June 26, 2014 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, Robert H. Shoop, Jr., Member, and Albert Mezzaroba, Member, this sixteenth day of September, 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.

Licensing, 31 A.3d 993 (Pa. Cmwlth. 2011)(an appeal nunc pro tunc may only be allowed where delay in filing appeal was caused by extraordinary circumstances involving fraud or a breakdown in the administrative process, or non-negligent conduct of the party seeking the appeal).

³ Act of July 14, 1961, P.L. 637, as amended, 43 P.S. §§ 260.1-260.12.