COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

ALLENTOWN EDUCATION ASSOCIATION, PSEA/NEA	:	
v.	:	Case No. PERA-C-14-406-E
ALLENTOWN CITY SCHOOL DISTRICT	:	

FINAL ORDER

The Allentown Education Association, PSEA/NEA (Association) filed timely exceptions and a supporting brief with the Pennsylvania Labor Relations Board (Board) on February 4, 2015. The Association's exceptions challenge a January 15, 2015 decision of the Secretary of the Board declining to issue a complaint and dismissing the Association's Charge of Unfair Practices filed against Allentown City School District (District).

In its Charge filed on December 19, 2014, the Association alleged that the District violated Section 1201(a)(1), (2) and (5) of the Public Employe Relations Act (PERA) by unilaterally implementing a leave policy for the APLI Program,[1] which permits bargaining unit members to attend internships for one school year with full pay in lieu of performing their regular teaching duties. The Association further alleged that the new leave policy was contrary to the sabbatical leave provision in the parties' collective bargaining agreement (CBA), which provided that bargaining unit members on professional development leave receive only one-half their annual salary. The Secretary declined to issue a complaint and dismissed the Association's Charge, stating that the Charge was untimely under Section 1505 of PERA because, by its own admission, the Association became aware of implementation of the leave policy for the APLI Program and its details no later than July 2014.

The Association alleges in the exceptions that its Charge is timely because the District did not unequivocally refuse to bargain over the leave policy until September 12, 2014, citing **Commonwealth of Pennsylvania v. PLRB**, 438 A.2d 1061 (Pa. Cmwlth. 1982). 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 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). An employer commits an unfair practice when it makes a unilateral change in a mandatory subject of bargaining. **Appeal of Cumberland Valley School District**, 483 Pa. 134, 394 A.2d 946 (1978); **see also Westmoreland Intermediate Unit Education Association, PSEA/NEA v. Westmoreland Intermediate Unit #7**, 29 PPER ¶ 29227 (Proposed Decision and Order, 1998)(employer violated its duty to bargain under Section 1201(a)(5) of PERA when it unilaterally changed its sabbatical leave policy); **Bristol Township Education Association v. Bristol Township School District**, 33 PPER ¶ 33097 (Proposed Decision and Order, 2002)(same).

The Association alleged in its Charge that it requested information regarding the District's leave policy for the APLI Program on June 11, 2014. The Association further alleged that it became aware of the details of the leave policy during the parties' July 2014 meeting. Therefore, the Association knew of the District's implementation of the leave policy as early as June 11, 2014, and thereafter determined that the policy was allegedly contrary to the sabbatical leave provision in the parties' CBA in July 2014. Even if the Board looks to the July 2014 meeting as the date the Association became aware

[1] The APLI Program is an administrative certificate program at Lehigh University.

of the alleged unfair practice, the Charge needed to be filed with the Board within four months of that meeting, i.e. in or before November 2014. However, the Association's Charge was not filed until December 19, 2014, which is beyond the four month statute of limitations under Section 1505 of PERA.

Further, the Association's reliance on **Commonwealth of Pennsylvania** is misplaced. In that case, the Board determined that the union's charge of unfair practices was timely because the Commonwealth had made assurances that it would attempt to comply with the salary increases in an arbitration award and subsequently refused to do so. The Association alleges that the District gave no indication at the July 2014 meeting that it was unwilling to bargain over the leave policy for the APLI Program and that the Association only became aware of the District's refusal to bargain over the policy on September 12, 2014. However, the District was obligated to bargain with the Association **before** it implemented the policy and any alleged assurances made thereafter do not toll the statute of limitations under Section 1505 of PERA. **Cumberland Valley School District, supra; Westmoreland Intermediate Unit #7, supra; Bristol Township School District, supra.**

The Association additionally alleges that its Charge was filed within four months of the occurrence of the alleged unfair practice because the District continues to apply the leave policy for the APLI Program, citing **Teamsters Local Union 771 v. Lancaster County,** 30 PPER ¶ 30221 (Final Order, 1999), **aff'd sub nom., Lancaster County v. PLRB,** 761 A.2d 1250 (Pa. Cmwlth. 2000). However, the District's continued application of its leave policy is not a continuing violation of PERA because it is inescapably grounded in the District's initial decision to implement the policy. **See PLRB v. Borough of Frackville,** 14 PPER ¶ 14139 (Final Order, 1983)(no continuing violation where alleged violation is inescapably grounded upon a prior occurrence); **Uhring v. Springdale Borough,** 26 PPER ¶ 26215 (Final Order, 1995)(same); **Fraternal Order of Police, Lodge No. 5 v. City of Philadelphia,** 39 PPER 100 (Final Order, 2008)(same); **Hazleton Area Education Support Professionals v. Hazleton Area School District,** 45 PPER 20 (Final Order, 2013)(same). The fact that the District continues to apply its leave policy does not constitute a separate and distinct unfair practice. If that were the case, the statute of limitations would never begin to run. **Id.** Further, the District's subsequent failure to bargain over its leave policy is not an independent unfair practice because the District was obligated to bargain with the Association **before** it implemented the policy. **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).

Therefore, any subsequent failure to bargain by the District is inescapably grounded upon the District's initial failure to bargain over implementation of the leave policy for the APLI Program, which the Association became aware of in or before July 2014. **Borough of Frackville, supra; Springdale Borough, supra; City of Philadelphia, supra; Hazleton Area School District, supra.** Further, the facts of **Lancaster County** are distinguishable because the charge of unfair practices in that case concerned an unfair practice (refusal to strike an arbitrator) that was separate and distinct from the alleged refusal of the employer to bargain with the union that occurred eight months prior to the filing of the charge. Therefore, the Board found that the charge had been timely filed within four months of when the employer refused to strike an arbitrator. That simply is not the case here, where the District's initial unilateral implementation of its leave policy and its subsequent failure to bargain over the leave policy for the APLI Program is the same unfair practice under PERA. Thus, the Association failed to demonstrate that its Charge was timely filed. 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 the Allentown Education Association, PSEA/NEA are dismissed and the Secretary's January 15, 2015 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 seventeenth day of February, 2015. 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.