

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

BENSALEM TOWNSHIP POLICE BENEVOLENT :
ASSOCIATION :
 :
v. : Case No. PF-C-15-11-E
 :
BENSALEM TOWNSHIP :

FINAL ORDER

On February 11, 2015, Bensalem Township Police Benevolent Association (Association) filed a Charge of Unfair Labor Practices with the Pennsylvania Labor Relations Board (Board) alleging that Bensalem Township (Township) violated Section 6(1)(a) and (e) of the Pennsylvania Labor Relations Act (PLRA) and Act 111 by unilaterally adopting a Heart and Lung Act¹ policy, which required disputes concerning entitlement to Heart and Lung Act benefits to be resolved through Local Agency Law² procedures. On February 24, 2015, the Secretary of the Board issued a Complaint and Notice of Hearing directing a hearing on October 2, 2015. After two continuances, a hearing was held before the Board's Hearing Examiner on March 15, 2016, during which all parties in interest were afforded a full opportunity to present testimony, cross-examine witnesses and introduce documentary evidence. Both parties filed post-hearing briefs in May 2016.

On May 18, 2016, the Hearing Examiner issued a Proposed Decision and Order (PDO), concluding that the Charge was untimely under Section 9(e) of the PLRA because the Association did not file the Charge within six weeks of when the Township implemented its Heart and Lung Act policy. Accordingly, the Hearing Examiner dismissed the Association's Charge and rescinded the Complaint.³

The Association filed timely exceptions with the Board on June 3, 2016, as amended on June 6, 2016, challenging the Hearing Examiner's PDO. Pursuant to an extension of time granted by the Secretary, the Association filed a brief in support of its exceptions on June 30, 2016. The Township filed a response to exceptions and supporting brief on July 27, 2016. After a thorough review of the exceptions and all matters of record, the Board makes the following:

AMENDED FINDING OF FACT

13. On December 18, 2014, Officer Samuel Karley submitted a claim with the Township for Heart and Lung Act benefits as a result of an alleged work injury on November 26, 2014. Township Director of Administration William Cmorey denied the claim by letter dated December 22, 2014, stating that the denial of benefits may be challenged "under the Local Agency law by filing an appeal to the Mayor of Bensalem Township and requesting a hearing..." The Association filed a grievance on January 16, 2015, protesting the denial. Township Director of Public Safety Frederick Harran initially scheduled a step one meeting in accordance with the CBA, but then cancelled the meeting, asserting that Heart and Lung Act claims are not part of the CBA and must proceed under the Local Agency Law. Karley's grievance was eventually resolved, and he received his Heart and Lung Act benefits for the November 2014 injury. (N.T. 24-34; Exhibit A-2 through A-6).

DISCUSSION

The facts of this case are summarized as follows. The Association is the exclusive bargaining representative for a unit of police officers employed by the Township. The

¹ Section 1 of the Act of June 28, 1935, P.L. 477, as amended, 53 P.S. §§ 637-638. The purpose of the Heart and Lung Act is to provide important safety personnel such as police officers and firefighters with full compensation while they are temporarily disabled with work-related injuries.

² Act of April 28, 1978, P.L. 202, No. 53, as amended, 2 Pa.C.S. §§ 551-555, 751-754.

³ Due to the disposition of this matter, the Hearing Examiner did not address the Association's allegations that the Township violated Section 6(1)(a) and (e) of the PLRA.

Association and Township were parties to a 2010-2013 collective bargaining agreement (CBA) that was extended by a subsequent agreement to December 31, 2017. The CBA incorporated the terms and conditions of all prior and existing agreements and interest arbitration awards. Article 18(A) of the CBA is entitled "Sick Leave and Sick Leave Incentive" and provides that police officers who "become temporarily disabled because of a job-related injury or illness or occupational disease qualifying under the Heart & Lung Act shall be entitled to full pay and benefits." Article 23 of the CBA provides for a three-step grievance procedure with the Director of Public Safety and the Mayor at steps one and two and arbitration at step three. The grievance procedure governs the process "[i]n the event of a dispute as to the interpretation of any of the Articles of this Agreement and any other justifiable complaint..."

In June 2011, the Township approached the Association concerning a proposed Injury on Duty policy, which specifically addressed the Heart and Lung Act procedures. The proposed policy stated, in relevant part, as follows:

An employee whose claim for **Heart and Lung Act** benefits has been denied shall have the right to appeal the decision by filing a Local Agency Appeal in writing within thirty (30) days of the Township's denial of the claim.

- a. A Local Agency appeal will be heard by Mayor of Bensalem Township or his designee ("Mayor").
- b. An officer can be represented by counsel, call witnesses and introduce documents at the Local Agency appeal hearing before the Mayor.
- c. A transcript of the appeal hearing will be made.
- d. The hearing will be conducted in accordance with the Local Agency Law.

(Emphasis in original). Frederick Harran, the Township's Director of Public Safety, provided a copy of the proposed policy to Detective Glenn Vandegrift, the Association President, for review. The Association did not agree to the policy.

On May 15, 2012, William Cmorey, the Township's Director of Administration, forwarded a letter to Detective Vandegrift which provided as follows:

Dear Detective Vandegrift:

If you will kindly recall, it has been almost one year since the Township had a meet and discuss session with the [Association] to receive its input on the **Heart and Lung Act Policy** the Township planned on implementing. After our meeting in June, 2011, the [Association] notified the Township that its attorney had reviewed the policy and found it generally acceptable with a few minor changes. You were going to provide the Township with your attorney's changes for consideration. However, the Township has not received any requested changes or comments from the [Association].

Since the [Association] has not provided any requested changes or comments, the Township will now move forward and implement the attached Heart and Lung Act policy effective immediately.

(Emphasis in original). Enclosed with his May 15, 2012 letter, Mr. Cmorey included a copy of the June 2011 Injury on Duty policy containing the requirement to utilize Local Agency Law procedures for Heart and Lung Act benefits. Following receipt of the May 15, 2012 letter, Detective Vandegrift contacted Mr. Harran in an effort to negotiate the policy.

Although the parties had numerous discussions, Mr. Cmorey never revoked, rescinded or modified the June 2011 policy.

On January 30, 2013, the Association filed a grievance on behalf of Officer John Reheil alleging a violation of Section 18(A) of the CBA due to the termination of Officer Reheil's Heart and Lung Act benefits prior to a hearing before a neutral third party labor arbitrator. The grievance proceeded through step one and two of the grievance procedure. The Township maintained throughout the grievance procedure that the grievance did not fall under the CBA and was not arbitrable. The grievance was ultimately resolved and Officer Reheil received his Heart and Lung Act benefits.

On December 18, 2014, Officer Samuel Karley submitted a claim with the Township for Heart and Lung Act benefits as a result of an alleged work injury that occurred on November 26, 2014. Mr. Cmorey denied the claim by letter dated December 22, 2014, stating that the denial of benefits may be challenged "under the Local Agency law by filing an appeal to the Mayor of Bensalem Township and requesting a hearing..." The Association filed a grievance on January 16, 2015, protesting the denial of benefits. Mr. Harran initially scheduled a step one meeting in accordance with the CBA, but cancelled the meeting. In cancelling the meeting, Mr. Harran asserted that Heart and Lung Act claims are not part of the CBA and must proceed under the Local Agency Law. Officer Karley's grievance was eventually resolved and he received Heart and Lung Act benefits.

Section 9(e) of the PLRA provides that no charge of unfair labor practices 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. 43 P.S. § 211.9(e). The Board looks to the date that the unilateral change was implemented in order to determine the timeliness of the charge. **Upper Gwynedd Township Police Department v. Upper Gwynedd Township**, 32 PPER ¶ 32101 (Final Order, 2001). Implementation occurs when "the directive becomes operational and serves to guide the conduct of employees." *Id.* at 264. The complainant has the burden to show that the charge was filed within six weeks of when the charging party knew or should have known of the respondent's implementation of the alleged unilateral change. **FOP, Lodge No. 5 v. City of Philadelphia**, 39 PPER 100 (Final Order, 2008); **Northeastern Regional Police Patrolman's Association v. Northeastern Regional Police Board**, 21 PPER ¶ 21041 (Final Order, 1990); **Mount Joy Township Police Association v. Mount Joy Township**, 29 PPER ¶ 29184 (Proposed Decision and Order, 1998).

The Association alleges in its exceptions that its Charge was timely because the Township's Heart and Lung Act policy was not implemented until January 23, 2015, when the Township rejected Officer Karley's grievance and indicated that all Heart and Lung Act claims must be filed with the Mayor in accordance with Local Agency Law. However, as found by the Hearing Examiner, the May 15, 2012 letter from Mr. Cmorey to Detective Vandegrift expressly states that the Township's Heart and Lung Act policy, requiring proceedings before the Mayor under the Local Agency Law, was effective immediately.

The Association asserts that the Township's Heart and Lung Act policy was not implemented on May 15, 2012 because the Township did not notify the officers of the policy and the parties continued to negotiate over the policy. However, because the bargaining obligation is between the employer and the labor organization, the Hearing Examiner properly stated that the date of notice to the Association of the policy triggers the statute of limitations for purposes of determining timeliness of a Charge under Section 6(1)(e) of the PLRA. **Upper Gwynedd Township, supra**. Therefore, it is irrelevant whether individual employees have been notified of the policy. *Id.*; **Harmar Township Police Wage and Policy Committee v. Harmar Township**, 33 PPER ¶ 33025 (Final Order, 2001). Further, the parties' subsequent discussions toward an amicable resolution after implementation of a policy does not negate a finding that the policy was implemented or toll the statute of limitations. **North Pocono Educational Support Personnel Association, PSEA/NEA v. North Pocono School District**, 32 PPER ¶ 32117 (Final Order, 2001); **Archbald Police Department Employees Association v. Archbald Borough**, 26 PPER ¶ 26141 (Final Order, 1995).

The Association additionally alleges that the present case is analogous to the facts in **PLRB v. West Chester State College**, 11 PPER ¶ 11052 (Nisi Decision and Order,

1980) and **FOP, Washington Lodge, No. 17 v. City of Easton**, 20 PPER ¶ 20048 (Order Directing Remand to Hearing Examiner for Further Proceedings, 1989) and, therefore, the Board should find its Charge to be timely. However, the Association's reliance on these cases is misplaced.

In **West Chester**, the Board found that the college announced that "[e]ffective September 1, 1978, all [parking] decals will be issued in accordance with the parking committee's recommended fee." 11 PPER at 98. Thus, the charge filed in that case in December 1978 was timely filed within four months of when the college's parking fees were made effective in September 1978.⁴ Here, the Township's May 15, 2012 letter to the Association indicated that the Heart and Lung Act policy was effective immediately thereby requiring officers, as of that date, to follow Local Agency Law when challenging a denial of Heart and Lung Act benefits.

In **City of Easton**, the employer ceased enforcement of its physical fitness standards policy and then reinstated the policy at a later date. The Board concluded that the charge was timely filed because the date of implementation occurred when the employer reinstated the policy. In this case, the record indicates that since its implementation on May 15, 2012, the Township did not revoke, rescind or modify its Heart and Lung Act policy. Further, the Township has consistently maintained in January 2013 and January 2015 that grievances filed concerning Heart and Lung Act benefits are not arbitrable and do not fall under the parties' CBA. Indeed, Mr. Cmorey's December 22, 2014 letter denying Heart and Lung Act benefits to Officer Karley specifically states that he "may challenge [the denial of benefits] under the Local Agency law by filing an appeal to the Mayor of Bensalem Township and requesting a hearing."

Because the Association is alleging that the selection of a forum to adjudicate Heart and Lung Act benefits is a mandatory subject of bargaining, **see New Britain Township Police Benevolent Association v. New Britain Township**, 33 PPER ¶ 33069 (Final Order, 2002), its Charge was required to be filed within six weeks of May 15, 2012, when the Township implemented its policy requiring officers to proceed under the Local Agency Law. **Upper Gwynedd Township, supra**. Therefore, the Hearing Examiner properly dismissed the Association's February 11, 2015 Charge as untimely. Accordingly, after a thorough review of the exceptions and all matters of record, the Board shall dismiss the exceptions and make the Proposed Decision and Order final.

ORDER

In view of the foregoing and in order to effectuate the policies of the Pennsylvania Labor Relations Act and Act 111, the Board

HEREBY ORDERS AND DIRECTS

that the exceptions filed by Bensalem Township Police Benevolent Association are dismissed and the May 18, 2016 Proposed Decision and Order 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 eighteenth day of October, 2016. 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.

⁴ 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.