

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

QUENTIN SALEM :
 :
v. : Case No. PERA-C-16-233-E
 :
COMMONWEALTH OF PENNSYLVANIA, :
PENNSYLVANIA HIGHER EDUCATION :
ASSISTANCE AGENCY :

FINAL ORDER

On August 31, 2016, Quentin Salem (Complainant) filed timely exceptions with the Pennsylvania Labor Relations Board (Board) challenging an August 26, 2016 decision of the Secretary of the Board (Secretary) declining to issue a complaint on his Charge of Unfair Practices filed on August 9, 2016, against the Commonwealth of Pennsylvania, Pennsylvania Higher Education Assistance Agency (PHEAA). In the August 9, 2016 Charge of Unfair Practices, Complainant alleged that PHEAA violated Section 1201(a)(1) and (3) of the Public Employe Relations Act (PERA) when it terminated his employment on July 2, 2015. In declining to issue a complaint, the Secretary stated that the Charge was not filed within the four-month statute of limitations under Section 1505 of PERA, and therefore dismissed the charge.

Section 1505 of PERA provides, in relevant part, that "[n]o petition or 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 petition or charge." 43 P.S. §1101.1505. Section 1505 of PERA is jurisdictional, as the Board lacks statutory authority to act on a charge of unfair practices that pertains to events occurring more than four months prior to the filing of the charge. **Nemec v. Commonwealth of Pennsylvania, Office of Administration**, 17 PPER ¶17073 (Final Order, 1986). Under Board case law, the statute of limitations may be tolled if the complainant did not know, nor should have known, of the acts giving rise to the unfair practice. See **FOP, Haas Memorial Lodge #7 v. PLRB**, 696 A.2d 873 (Pa. Cmwlth. 1997).

On exceptions, Complainant argues that he did not know PHEAA committed an unfair practice until April 2016, because "it took until April 2016 to exhaust administrative remedies (the grievance process) and it was only in the aforementioned meeting that [he] learned of the allegations, and thus the violation." (Charge of Unfair Practices at 5). It is well-settled that processing of a grievance under the contractual grievance procedure does not toll the statute of limitations for unfair practice charges under Section 1505 of PERA. **Pennsylvania Department of Transportation**, 13 PPER ¶13154 (Final Order, 1982); **Pennsylvania Social Services Union**, 14 PPER ¶14015 (Final Order, 1982), *affirmed*, 15 PPER ¶15076 (Pa. Cmwlth. 1984); **Pennsylvania Department of Transportation**, 15 PPER ¶15137 (Final Order, 1984). Further, the Commonwealth Court has held that "[w]hile the statute of limitations may be tolled on the basis of later-discovered evidence [during the grievance process], a charge cannot be based on evidence which has been in [complainant's] possession for more than four months. See **Nyo v. Pennsylvania Labor Relations Board**, 53 Pa. Commonwealth Ct. 646, 419 A.2d 244 (1980)... The fact that [complainant] was not aware of the significance of the testimony until she later received the arbitrator's adverse decision does not make the testimony 'later discovered.' Such a fact is therefore irrelevant for purposes of computing the four-month period." **Thomas v. APSCUF**, 485 A.2d 903, 905 (Pa. Cmwlth. 1985).

The Complainant's assertion that it was not until the April 2016 grievance meeting that he learned of PHEAA's alleged reason for terminating his employment is not supported by the allegations in Complainant's Charge of Unfair Practices. In his specification of charges, Complainant alleges that "[o]n July 2nd, 2015, Employee was called to a meeting with Brett Schreyer and another, which Employee eventually found was a fact-finding mission ... Specifically, because he searched online for 'Rachel Gojmerac' and viewed images of guns within the month of June, he was automatically flagged as threatening...

Later on July 2nd, 2015, at the end of the work day, Employee was escorted to a meeting with Stephanie Galloway, Department Director, and Rachel Gojmerac and informed he was terminated due to a violation of the *Acceptable Use* policy, 'Specifically, you have used PHEAA internet resources for personal use in an inappropriate manner, which violates the Acceptable Use Policy.'" (Charge of Unfair Practices at 4). Accordingly, as alleged in the Charge of Unfair Practices, and supported by the attached exhibits to the Charge, the Complainant was aware of PHEAA's asserted reason for terminating his employment as of July 2, 2015. See **Thomas**, *supra*.

Moreover, the employer's asserted non-discriminatory reasons for an adverse employment action is a defense to an unfair practice alleging discrimination. See **Wright Line, Inc.**, 251 NLRB 1083 (1980). As for the material facts necessary for purposes of asserting a cause of action under Section 1201(a)(1) and (3) of PERA, Complainant alleges that he was aware of his alleged protected activity in March of 2015 regarding his challenge to the denial of his promotion to Customer Service Representative 1 as violating the collective bargaining agreement. Further, Complainant also alleges in the charge that subsequently in July 2015, he was terminated from employment. Regardless of PHEAA's asserted non-discriminatory reason for terminating Complainant's employment, based on the allegations in the Charge, including the timing of events following the alleged protected activity, the Complainant had sufficient knowledge of the material facts necessary for filing of an unfair practice charge with the Board as of July 2, 2015.

Complainant also argues on exceptions that equitable estoppel tolls the statute of limitations because PHEAA refused to provide a proper explanation or even any details, and misrepresented the cause of action. (Exceptions at 2). The allegations of the Charge of Unfair Practices do not support a claim that following his termination from employment on July 2, 2015, the Complainant was induced by PHEAA through an affirmative act of fraud, deception, or concealment of material fact, to not file a charge of unfair practices with the Board. See **FOP, Haas Memorial Lodge #7**, *supra*. Indeed, as noted above, as of July 2015, the Complainant should have known of his cause of action under Section 1201(a)(1) and (3) of PERA as he was admittedly aware that he was terminated from employment on July 2, 2015, following his alleged protected activity of asserting his contractual rights in March 2015.

After a thorough review of the exceptions and all matters of record, the Complainant's August 9, 2016 Charge of Unfair Practice was untimely filed more than four months from when the Complainant knew or should have known of his alleged protected activity and subsequent termination of his employment on July 2, 2015. 43 P.S. §1101.1505. Accordingly, the Secretary did not err in declining to issue a complaint, and dismissing the Charge of Unfair Practices. Therefore, the exceptions filed by Complainant shall be dismissed, and the August 26, 2016 decision of the Secretary shall be made absolute and final.

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 Quentin Salem are hereby dismissed, and the August 26, 2016 decision of the Secretary, be and hereby is 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 fifteenth day of November, 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.