

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

INTERMEDIATE UNIT #6 EDUCATION :
ASSOCIATION, PSEA/NEA :
v. : Case No. PERA-C-16-115-W
RIVERVIEW INTERMEDIATE UNIT #6 :

FINAL ORDER

Intermediate Unit #6 Education Association, PSEA/NEA (Association) filed timely exceptions and a supporting brief with the Pennsylvania Labor Relations Board (Board) on June 2, 2016. The Association's exceptions challenge a May 17, 2016 decision of the Secretary of the Board declining to issue a complaint and dismissing the Association's Charge of Unfair Practices filed against Riverview Intermediate Unit #6 (Employer).

In its Charge filed on April 25, 2016, the Association alleged that the Employer violated its duty to bargain under Section 1201(a)(1) and (5) of the Public Employee Relations Act (PERA) by unilaterally transferring the work of bargaining unit psychologists to a non-bargaining unit employe. The Association further alleged that it became aware of the Employer's use of a non-bargaining unit employe to perform the work at issue on or about December 22, 2015. The Secretary declined to issue a complaint, stating that the Association's Charge was untimely under Section 1505 of PERA because it was not filed within four months of when the Association became aware of the Employer's alleged unilateral transfer of bargaining unit work. Accordingly, the Secretary dismissed the Charge as untimely.

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 timely filed. 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).

The Association alleged in its Charge that it became aware of the Employer's transfer of the bargaining unit work to a non-unit employe on December 22, 2015. Therefore, the Association was required to file its Charge on or before April 22, 2016. However, the Board did not receive the Association's Charge until April 25, 2016. In its exceptions, the Association alleges that its Charge was timely because it was deposited in the mail on April 21, 2016 and "available for pickup" at a United States Post Office in Harrisburg on April 22, 2016, as evidenced on the United States Postal Service Tracking form attached to the exceptions. The Board has consistently held pursuant to Section 95.42(a) and (b) of the Board's duly promulgated and published Rules and Regulations that charges of unfair practices are deemed filed on the date of receipt in the offices of the Board, rather than on the date of deposit in the mail. 34 Pa. Code

§ 95.42(a) and (b)¹; PLRB v. SEPTA, 13 PPER ¶ 13268 (Final Order, 1982); Kasel v. Harrisburg Area Community College, 16 PPER ¶ 16183 (Final Order, 1985); Groves v. City of Philadelphia, 32 PPER ¶ 32128 (Final Order, 2001); Hazleton Area Education Support Professionals v. Hazleton Area School District, 45 PPER 20 (Final Order, 2013). As such, the Association's Charge was filed when received by the Board on April 25, 2016, and not when delivered to the Post Office facility in Harrisburg. Accordingly, the Association's Charge is untimely under Section 1505 of PERA and Section 95.42(a) of the Board's Rules and Regulations. 43 P.S. § 1505; 34 Pa. Code § 95.42(a); SEPTA, supra; Kasel, supra; Hazleton Area School District, supra.

The Association further requests that the Board make an exception in this matter in accordance with its discretionary authority under Section 95.42(a) of the Board's Rules and Regulations and permit it to file the Charge nunc pro tunc.² Specifically, the Association alleges that the delay in receipt of its Charge was due to a breakdown in the Board's administrative processes, and not because of any action by the Association. An appeal nunc pro tunc may only be allowed where a delay in filing was caused by extraordinary circumstances involving fraud or a breakdown in the administrative process, or non-negligent conduct of the party seeking the appeal. Montgomery Township Police Officers v. Montgomery Township, 33 PPER ¶ 33151 (Final Order, 2002); City of Philadelphia, supra.

A review of the United States Postal Service Priority Mail Express mailing slip attached to the exceptions shows that the delay in the Board's receipt of the Association's Charge was not due to a breakdown in the administrative processes of the Board, but the result of the manner in which the Association mailed the Charge to the Board, which included the requirement of a signature before its Charge could be delivered to the Board. Therefore, the delay in filing the Association's Charge was not due to an administrative breakdown caused by the Board and does not meet the criteria for an appeal nunc pro tunc.

Because the Association failed to demonstrate that its Charge was timely filed, the Board lacks jurisdiction to address the Charge and issue a complaint. SEPTA, supra; Kasel, supra; City of Philadelphia, supra; Hazleton Area School District, supra. 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 sustain 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

¹ Pursuant to Section 95.42(a), charges of unfair practices "shall be received by the Board ... before the close of business of the last day of the time limit ... for the filing." Section 95.42(b) provides, in pertinent part, that "[c]harges and petitions may be filed with the principal office of the Board in Harrisburg, or with the regional office of the Board in ... Pittsburgh."

² Section 95.42(a) further provides that "[e]xceptions to this requirement will be at the discretion of the Board."

HEREBY ORDERS AND DIRECTS

that the exceptions filed by Intermediate Unit #6 Education Association, PSEA/NEA are dismissed and the Secretary's May 17, 2016 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, Robert H. Shoop, Jr., Member, and Albert Mezzaroba, Member, this twentieth day of September, 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.