Getting it Right the First Time:
Holding Unions Accountable to Contractual and Statutory Time Limits

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While many have stories about how unfair labor practices and grievances were decided *after* a hearing, we sometimes lose sight of the importance of framing a case correctly from the very start. Sometimes the easiest way to prevail is to spend time ensuring that the union has complied with the statutory and contractual time limits for the filing of grievances.

Consider a recent decision by the Pennsylvania Labor Relations Board (PLRB) in Bucks County. *Bucks County Detectives' Association v. County of Bucks, et al.*, 44 PPER ¶ 79 (Proposed Decision and Order, 2013). There, Bucks County implemented major medical health and prescription plan changes for non-union and management employees. The County also participated in interest arbitration with the detectives' association during which the health plan was an issue in dispute.

An interest arbitration panel subsequently issued an award that provided for health insurance coverage under three plans as well as an opt-out provision and the inclusion of vision, dental and prescription benefits for retirees. However, the interest award did not explicitly reference changes to the prescription plan for the detectives' bargaining unit.

The association filed a charge with the PLRB alleging that Bucks County failed and refused to fully implement all of the terms of the award. Citing Section 95.31(b) of the Regulations of the PLRB, Bucks County argued the charge should be dismissed because the text of the charge did not specifically reference a unilateral change to the prescription plan. Bucks County also contended the charge should be dismissed because it did not implement changes to prescription plan until after the charge was filed.

After reviewing the matter, a PLRB hearing examiner ruled in favor of Bucks County and dismissed the charge, concluding the Board lacked subject matter jurisdiction over the unilateral change allegations. Although the union argued the charge was filed as a "protective measure" to combat the six-week filing deadline and the future failure to implement some part of the award, the hearing examiner found that the specification of charges was inadequate to place Bucks County on notice of the unilateral change allegations regarding the prescription plan.

As the hearing officer indicated, Section 95.31(b) of the Board's regulations provides that a charge of unfair labor practices shall include, among other things, the following:

> (3) A clear and concise statement of the facts constituting the alleged unfair practice, including the names of the individuals involved in the alleged unfair practice, the time, place of occurrence and nature of each particular act alleged, and reference to the specific provisions of the act alleged to have been violated.
> [34 Pa. Code § 95.31(b)(3). *Bucks County, supra*.]

The hearing officer concluded that:

Charges must be sufficiently detailed so as to put a respondent on notice of the specific conduct alleged to have been in violation of the Act, thereby allowing adequate opportunity to prepare and present the defense. Accordingly, *a charging party is limited to the presentation of evidence as to the specific allegations contained in the charge as timely amended*. To properly place the County on notice, and thereby comply with fundamental principles of due process, the Union should have at least mentioned the unilateral changes to the prescription plan in a charge seeking redress of the same. The Union could not have been contemplating the January 2012 prescription plan changes when it filed the charge in December 2011. ***[Bucks County, supra.]***

The result in this matter implicates obligations with which unions are required to adhere but sometimes do not. Often, the best defense to a grievance or an unfair labor practice charge is to simply hold the union to these requirements.
First, as to timeliness, for units covered by the Pennsylvania Employee Relations Act (Act 195), Section 1505 of PERA provides in relevant part that " [n]o petition or [unfair labor practice] 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. For units covered by Act 111, Section 9(e) of the PLRA provides that no charge 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).

Further, subsequent amendment of charges that relate to an event that occurs after the expiration of the applicable statute of limitations will be disallowed by the Pennsylvania Labor Relations Board. *PSSU Local 668, AFL-CIO v. Commonwealth of Pennsylvania, Department of Labor and Industry*, 30 PPER ¶ 30090 (Final Order, 1999); *New Kensington Police Department Bargaining Unit v. City of New Kensington*, 29 PPER ¶ 29024 (Final Order, 1997); *McAuliffe v. West Norriton Township*, 28 PPER ¶ 28114 (Final Order, 1997). In fact, in *Bucks County*, the charge was ultimately dismissed because the Union failed to adequately raise it within the proper time period. Accordingly, if charges are filed outside the time limits of those respective statutes, an employer ought to raise the issue of timeliness either in a motion to dismiss the charge or at the hearing.

Similarly, many collective bargaining agreements contain time limits governing the filing of grievances. When a grievance is first received, employers should investigate to ensure that the grievance was timely filed in accordance with the time limits set forth in the collective bargaining agreement between the union and the county. To the extent that a grievance is untimely filed, it is good practice to raise the issue of untimeliness as early as possible in the grievance process.

A dispute over whether or not an untimely grievance must be processed will generally be reserved to the arbitrator as a function of

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whether or not he or she possesses jurisdiction. Timeliness should be raised at any arbitration hearing and, although arbitrators will often hold that grievances are arbitrable, it is important to hold a union to that which they bargained.

Finally, employers should hold unions responsible for the proper framing of their grievances and charges. Arbitrators may only hear those issues which are properly framed and placed before them in a timely fashion.

Some unions are deliberately obtuse regarding the basis of their claims in an effort to provide a strategic advantage at hearing. That advantage arises either in failing to provide facts that will later become important or by failing to identify the articles of the collective bargaining agreement that have allegedly been violated.

The longer one practices in a unionized environment the clearer it becomes that, to win a case, you must frame it properly from the outset. To that end, it is in the interest of all public employers to insist on conformance with statutory and contractual time limits. Further, the proper policing and framing of charges and grievances early in the process may lead to either an early dismissal or a determination that a matter can be resolved short of hearing. ❖

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Wellness Initiatives Can Ease the Pain of Rising Benefits Costs

By Nash Skiles, Colonial Life

As health benefits costs continue to rise, employers are looking for ways to save money while still providing quality benefits to attract employees. Many employers are turning to wellness initiatives to control costs and keep employees healthier.

AN AILING COUNTRY

Wellness programs offer many advantages to employers, including reduced health care costs, improved employee health and increased productivity. The reasons for America's staggering health care costs are many, but these statistics provide some insight:

- The U.S. spends $147 billion in direct health care costs associated with poor diet and physical inactivity.
- Obesity continues to rise, with nearly 28 percent of U.S. adults now considered overweight.
- Diabetes cases in America have increased nearly 43 percent since 2001. Nearly nine percent of the population has diabetes.

COMPANIES SUFFER THE CONSEQUENCES

These health issues spill over directly into the workplace, as an unhealthy workforce hits employers squarely in the pocketbook:

- Obese employees with three or more chronic health conditions miss an average of 3.5 days of work per month, or 42 days per year.
- Obese Americans spend approximately 36 percent more on health care costs and 77 percent more on medications than those with a healthy weight.

WELLNESS INITIATIVES AS A COST CONTROL STRATEGY

Wellness initiatives are among the top cost control strategies implemented by employers. The Society for Human Resource Management's (SHRM) June 2011 *Employee Benefits* report shows that 75 percent of employers supply their workforce with wellness resources and information.

The return on investment for employers that offer wellness programs looks compelling, regardless of size. For every dollar invested in wellness programs, companies can save up to six dollars on health insurance costs, according to the University of Michigan's Health Management Resource Center's 2010 "Cost-Benefit Analysis and Report."

EMPLOYEES LIKE WELLNESS PROGRAMS, TOO

Employees respond positively to wellness programs and are motivated by them. The Principal Financial Group's fourth-quarter 2011 survey of employees who work at small- and mid-sized businesses provides validation:

- 40 percent of employees agreed that having an employer-sponsored wellness program would encourage them to stay in their current job.
- 41 percent agreed that wellness benefits encouraged them to work harder and perform better.

COMMUNICATION BOOSTS PARTICIPATION

For wellness programs to be effective, employees must know about the offerings. According to a report by consultancy Towers Watson, 58 percent of employers said low engagement was the greatest obstacle to their wellness initiatives.

Fine-tuning a company's benefits communication efforts can motivate employees to get involved in a wellness program or other wellness initiatives. Some employers adopt wellness champions or ambassadors who help spread enthusiasm about the program throughout the organization. Others turn to outside resources for communications support.

Some benefits carriers offer one-to-one benefits counseling services as part of their enrollment package. This individual, personalized communication can provide consistent messages that help employees understand the wellness services available and the benefits of participation.

A *Colonial Life survey* of employees who meet individually with benefits counselors during enrollment indicated the effectiveness of the one-to-one method. The majority (96 percent) of employees surveyed said personal benefits counseling improved their understanding of their benefits and that this type of communication was important (98 percent).

Adding wellness initiatives—or maximizing the ones the organization offers—can help lower benefits costs. At the same time, employee morale can improve as workers begin to feel better about themselves and their employers. ❖

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