

COMMONWEALTH OF PENNSYLVANIA

JOAN CICCHIELLO : BEFORE THE BOARD OF CLAIMS  
 :  
VS. :  
 :  
COMMONWEALTH OF PENNSYLVANIA, :  
DEPARTMENT OF CORRECTIONS : DOCKET NO. 4092

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**FINDINGS OF FACT**

1. Plaintiff Joan Cicchiello ("Plaintiff" or "Ms. Cicchiello") was employed by the Commonwealth of Pennsylvania, Department of Corrections ("Department") as a nurse at the State Correctional Institution at Muncy ("SCI-Muncy") and subsequently transferred to the State Correctional Institution at Frackville ("SCI-Frackville"). (N.T. 16-17, 64-65)

2. On November 6, 2006, Ms. Cicchiello's position at SCI-Frackville was terminated and she was escorted from the facility. (N.T. 18-19, 64-65)

3. While employed by the Department, Ms. Cicchiello was a member of the Service Employees International Union ("Union") District 1199P. (Ex. D-1; N.T. 18-19)

4. Subsequent to her termination, Ms. Cicchiello filed a grievance through the Union under the terms of the applicable Collective Bargaining Agreement ("CBA"). (Ex. D-1; N.T. 19, 27-28, 33-34, 52-53, 65-76, 87, 109-110)

5. At all times relevant to this action, Article 1, Section 1 of the CBA, captioned "RECOGNITION" provided as follows:

Section 1. The Union is recognized as the exclusive representative for collective bargaining purposes for employees within the classifications included under the certification of the Pennsylvania Labor Relations Board, dated October 23, 1997, more specifically referred to as PERA-R-97-233-E and any amendments thereto approved by the Pennsylvania Labor Relations Board.

(Exs. J-1, D-1; N.T. 73-76)

6. At the time of the filing of her grievance, Ms. Cicchiello's Union representative was Kevin Hyer. (N.T. 20)

7. The CBA in effect at the time of Ms. Cicchiello's termination provided a three-step process for the grievance procedure: Step 1 (filing the grievance and meeting); Step 2 (filing

with the Joint Pennsylvania State Committee); and Step 3 (arbitration). (Ex. D-1; N.T. 70-73, 109)

8. Ms. Cicchiello's grievance proceeded through Step 1 and Step 2 without resolution and was scheduled to proceed to Step 3 (arbitration). (Ex. D-1; N.T. 70-76, 83, 109)

9. Between the filing of her grievance shortly after her termination in 2006 and 2012, Ms. Cicchiello, Mr. Hyer and representatives of the Commonwealth met periodically in attempts to resolve the grievance. (N.T. 19-20, 68-69)

10. On December 20, 2012, Wilfredo Tellado (Ms. Cicchiello's Union representative who had replaced Kevin Hyer) and Timothy A. Holmes (an assistant counsel for the Department) signed a document captioned "Settlement Agreement" ("Settlement Agreement") to resolve "all issues encompassed" in Ms. Cicchiello's grievance. (Ex. C-1; N.T. 20-22)

11. On December 28, 2012, Ms. Cicchiello also signed the Settlement Agreement adding additional language in the margin of the Settlement Agreement stating: "No Discrimination for Employment Health Insurance + Pharmacy –As with All Retirees." (Ex. C-1; N.T. 22-23)

12. The Settlement Agreement included, *inter alia*, a provision that the Department would re-hire Ms. Cicchiello for one day to allow her to retire from the Department. It also provided that the "Department will award Ms. Cicchiello whatever time was necessary for her to attain twenty-five years of service with the Commonwealth." (Ex. C-1)

13. Subsequent to the signing of the Settlement Agreement by Mr. Holmes, Mr. Tellado and Ms. Cicchiello, Mr. Holmes sent the Settlement Agreement to the Department's Human Resources ("HR") office "for processing." (N.T. 98-99)

14. The Department's HR office thereafter informed Mr. Holmes that, under applicable law, neither the Department nor the State Employee Retirement System ("SERS") could credit Ms. Cicchiello with "service for which [she] did not contribute that time or money. . . ." (N.T. 98-99)

15. On February 4, 2013, the Department's Mr. Holmes sent the Union's Mr. Tellado an e-mail explaining that the Department would not comply with the provision of the signed Settlement Agreement crediting Ms. Cicchiello with twenty-five years of service because to do so would be contrary to statutes governing the accrual of state service for retirement and benefits (71 Pa.C.S. §§ 5302 and 5102). (Ex. C-3; N.T. 91-93)

16. In this same February 4, 2013 e-mail to Mr. Tellado, Mr. Holmes instead proposed providing Ms. Cicchiello one year's salary which he said would provide her with fifteen years of service and would allow her to qualify for healthcare insurance coverage in retirement. Included in the February 4, 2013 e-mail was a new proposed settlement agreement incorporating the terms he proposed (i.e. one year's salary and credit for fifteen years of service). (Exs. C-3, C-6; N.T. 91-97, 104)

17. Mr. Holmes testified that the reason why the original Settlement Agreement awarded Ms. Cicchiello credit for twenty-five years of service was his mistaken belief at the time the Settlement Agreement was negotiated that she needed twenty-five years of service in order to qualify for healthcare coverage in retirement, a benefit demanded by Ms. Cicchiello. When he subsequently determined that the Department could not (by law) simply credit Ms. Cicchiello with twenty-five years of service, Mr. Holmes also determined that Ms. Cicchiello only needed fifteen years of service to qualify for healthcare benefits in retirement. Thus, he proposed providing Ms. Cicchiello one year's salary at her last prevailing wage "...for the period of November 2006 through November 2007." Mr. Holmes added that the one year's salary would allow her to reach fifteen years of service in order to provide her with healthcare benefits in retirement. (Ex. C-3, C-6; N.T. 95, 102, 104)

18. Ms. Cicchiello testified that approximately one month after she signed the Settlement Agreement (approximately January 30, 2013), she made an appointment and met with a representative of SERS at their office in Williamsport to learn what her annual retirement compensation would be, but was informed by SERS at this meeting that they did not have a copy of the Settlement Agreement in their files. (N.T. 23-26)

19. Ms. Cicchiello further testified that she then called the Union to inquire as to why SERS did not have a copy of the Settlement Agreement and that the Union told her that "they would get back to [her] on that." (N.T. 25-26)

20. Ms. Cicchiello also testified that she did not immediately receive a return call from the Union on this issue, but instead received in the mail a copy of a new proposed settlement agreement (crediting her with fifteen years of service rather than twenty-five). According to Ms. Cicchiello, she thereafter contacted the Union again and was told by Mr. Tellado that the Department could not credit her with twenty-five years of service as was provided for in the Settlement Agreement but was instead offering to credit her with fifteen years of service for retirement purposes. (N.T. 26-31)

21. Notwithstanding her foregoing testimony, Ms. Cicchiello also testified directly that she was aware, as of February 5, 2013, that the Department was taking the position that they would not credit her with twenty-five years of service as provided for in the Settlement Agreement. (N.T. 43-51)

22. To support this aspect of her testimony, Ms. Cicchiello testified that she sent an e-mail to the Union on February 5, 2013, in which she took issue with the Department's refusal to credit her with 25 years of service, stating, inter alia that "If they pay me for one year they can pay me for 25 or they can take me back to work." She further testified that Exhibit C-7 accurately represented this e-mail. (Ex. C-7; N.T. 43-51; 116-117)

23. Although we acknowledge some inconsistencies in Ms. Cicchiello's testimony (recited above) concerning the sequence of events leading up to her being told by her Union representative that the Department would not comply with the provision of the Settlement Agreement crediting her with twenty-five years of service, we find that Ms. Cicchiello was

personally aware that the Department was refusing to credit her with twenty-five years of service as provided for in the Settlement Agreement by no later than February 5, 2013.<sup>1</sup> (Exs. C-3, C-6, C-7; N.T. 26-51; Findings of Fact (“F.O.F.”) 18-22; Board Finding)

24. From the beginning of the grievance process through February 5, 2013 (and for a time thereafter) Mr. Hyer, and then Mr. Tellado, acted as Ms. Cicchiello’s representative in her dispute with the Department. (Exs. C-1, C-2, C-3, C-4, C-5, C-6, C-7, C-8, D-1, J-1; N.T. 19-23, 26-31, 33-39, 41-47, 51-76, 83-113)

25. Mr. Holmes’ February 4, 2013 e-mail, containing recitations from 71 Pa.C.S. §§ 5302 and 5102, was an unequivocal denial by the Department of any possibility that it would credit Ms. Cicchiello with twenty-five years of service under the terms of the Settlement Agreement here at issue. (Ex. C-3; Board Finding)

26. To the extent that the Plaintiff is asserting in this action a contract right under the Settlement Agreement to the monetary equivalent of retirement benefits based on twenty-five years of credited service, the amount which would be due Plaintiff under such claim was reasonably capable of calculation as of February 5, 2013, and the Plaintiff was therefore capable of preparing a concise and specific written statement detailing any claimed monetary damages from that date onward. (Ex. C-3; N.T. 91-97, 102-104; Board Finding)

27. Ms. Cicchiello refused to accept the Department’s denial of credit for 25 years of service or agree to the Department’s subsequent proposal and filed the instant Complaint with the Board on October 15, 2013. (N.T. 25-35, 43-51)

28. Plaintiff’s Complaint alleges causes of action for breach of contract based on the proposed Settlement Agreement and quantum meruit. (Plaintiff’s Complaint)

29. All communications regarding the Settlement Agreement were between the Department and Ms. Cicchiello’s Union representatives, Mr. Hyer and Mr. Tellado. The Department had no direct communications with Ms. Cicchiello. (N.T. 23, 28-30, 88-89, 93-96)

30. Ms. Cicchiello testified that she thought, but was not certain, that she had copied the Department’s Mr. Holmes on her February 5, 2013 e-mail to the Union. However, the document itself (Ex. C-7) does not indicate that a copy was sent to Mr. Holmes. Mr. Holmes testified credibly that he had no direct communications with Ms. Cicchiello and that all his

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<sup>1</sup> We have no doubt that the Union (through Mr. Tellado) first received the new proposed settlement agreement on February 4, 2013 when he was advised by Mr. Holmes that the Department could not and would not be crediting Ms. Cicchiello with 25 years of service. Accordingly, we find it highly unlikely that Ms. Cicchiello received a copy of the new proposed settlement agreement in the mail before Mr. Tellado orally advised her of the Department’s refusal to credit her with 25 years of service and the alternate offer of 15 years when Ms. Cicchiello e-mailed Mr. Tellado on February 5, 2013 acknowledging (and taking issue with) this refusal by the Department. We find the direct testimony and written documentation via the February 5, 2013 e-mail provided by Ms. Cicchiello confirming that she was personally aware of the Department’s refusal to credit her with 25 years service by February 5, 2013 to be more persuasive than her testimony regarding the specific sequence of events leading up to this awareness (particularly with regard to when she actually received a copy of the new proposed settlement agreement). (Exs. C-3, C-6, C-7; N.T. 23-36, 42-51, 61-63, 91-97, 104, 116-117; F.O.F. 15-22; Board Finding)

communications with Mr. Tellado subsequent to his February 5, 2013 e-mail (Ex. C-3) were by telephone. Accordingly, we find that Ms. Cicchiello's February 5, 2013 e-mail to the Union was never received by the Department. (Ex. C-7; N.T. 61-63, 93-96; Board Finding)

31. Ms. Cicchiello did not submit any administrative claim or other document to the Department relative to the Settlement Agreement between February 4, 2013 (the date by which her Union representative was advised that the Department would not credit her with twenty-five years of service as provided for in the Settlement Agreement) and her filing of the instant complaint with this Board on October 15, 2013.<sup>2</sup> (N.T. 61-64; F.O.F. 23-30)

32. Because the Settlement Agreement here at issue was entered into to resolve Ms. Cicchiello's dispute with the Department over her contract rights under the CBA, we find that the claim made here at the Board by Ms. Cicchiello for enforcement of the Settlement Agreement originated with, and arose from, her contract with the Department referred to herein as the CBA. (Exs. D-1, C-1; N.T. 18-20, 27-28, 33-34, 52-53, 65-67, 70-76, 83, 87, 109-110; F.O.F. 1-31; Board Finding)

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<sup>2</sup> Even if, as Ms. Cicchiello appears to suggest, her February 5, 2013 e-mail to the Union had been received by the Department and we were to somehow consider this e-mail to be an administrative claim (which we do not), Plaintiff's Complaint to the Board, filed more than eight months later, would still be late as it was filed well after the 135 day period set forth in 62 Pa.C.S. § 1712.1(e). (F.O.F. 27-31; Board Finding).

## CONCLUSIONS OF LAW

1. The Procurement Code at 62 Pa.C.S. § 1724(a)(1) provides, inter alia, that:

- (a) Exclusive jurisdiction.—The board shall have exclusive jurisdiction to arbitrate claims arising from all of the following:
  - (1) A contract entered into by a Commonwealth agency in accordance with [the Procurement Code] and filed with the board in accordance with section 1712.1 (relating to contract controversies).

62 Pa.C.S. § 1724(a)(1).

2. Section 103 of the Procurement Code defines “contract” as follows:

**“Contract.”** A type of written agreement, regardless of what it may be called, for the procurement or disposal of supplies, services or construction and executed by all the parties in accordance with the Act of October 15, 1980 (P.L. 950, No. 164) known as the Commonwealth Attorneys Act.

62 Pa.C.S. § 103.

3. Section 103 of the Procurement Code defines “services” as follows:

**“Services.”** The furnishing of labor, time or effort by a contractor not involving the delivery of a specific end product other than drawings, specifications or reports which were merely incidental to the required performance. The term shall include the routine operation or maintenance of existing structures, buildings or real property. The term does not include employment agreements or collective bargaining agreements. The term includes utility services and those services formerly provided by public utilities such as electrical, telephone, water and sewage service.

Id. (emphasis added).

4. It is well-established that the purpose of the Board is to provide citizens who contract with agencies of the Commonwealth (and who would otherwise be barred by sovereign immunity) a method to redress disputes arising from such contracts. It is equally well-established that, in recognition of this remedial purpose, and in furtherance of this public policy,

which benefits the Commonwealth by encouraging and facilitating such contracts for goods, services, and numerous other operational purposes, the Board's jurisdictional provisions are to be given a broad and liberal construction. Lowry v. Commonwealth, 76 A.2d 363, 365-66 (Pa. 1950); Shovel Transfer & Storage, Inc. v. Simpson, 565 A.2d 1153, 1155-1156 (Pa. 1989); Employers Insurance of Wausau v. Department of Transportation, 865 A.2d 825, 832-833 (Pa. 2005); Department of Health v. Data-Quest, Inc., 972 A.2d 74, 76-81 (Pa. Cmwlth. 2009); Hanover Insurance Company v. State Workers' Insurance Fund, 35 A.3d 849, 852-856 (Pa. Cmwlth. 2012).

5. It is appropriate for the Board to take as broad a view of its jurisdiction as allowed by the literal language of its enabling provisions in order to minimize the circumstances where those who contract with the Commonwealth are left entirely without recourse. Lowry v. Commonwealth, 76 A.2d 363, 365-66 (Pa. 1950); Shovel Transfer & Storage, Inc. v. Simpson, 565 A.2d 1153, 1155-1156 (Pa. 1989); Employers Insurance of Wausau v. Department of Transportation, 865 A.2d 825, 832-833 (Pa. 2005); Department of Health v. Data-Quest, Inc., 972 A.2d 74, 76-81 (Pa. Cmwlth. 2009); Hanover Insurance Company v. State Workers' Insurance Fund, 35 A.3d 849, 852-856 (Pa. Cmwlth. 2012).

6. Pursuant to the literal language of the Board's enabling provisions, the Board retains jurisdiction over claims "arising" from both Procurement Code contracts and other contracts entered into "in accordance with" the Procurement Code (i.e. in harmony with, but not expressly excluded by, relevant Procurement Code provisions). 62 Pa.C.S. §1724(a); Scientific Games International, Inc. v. Department of Revenue, 66 A.3d 740, 752-753 fn. 16 (Pa. 2013); Employers Insurance of Wausau v. Department of Transportation, 865 A.2d 825, 832-833 (Pa. 2005); Shovel Transfer & Storage, Inc. v. Simpson, 565 A.2d 1153, 1155-1156 (Pa. 1989); Hanover Insurance Company v. State Workers' Insurance Fund, 35 A.3d 849, 852-856 (Pa. Cmwlth. 2012); Department of Health v. Data-Quest, Inc., 972 A.2d 74, 76-81 (Pa. Cmwlth. 2009). See also Sordoni Construction Services, Inc. v. Department of Transportation, B.O.C. Docket No. 3992, (Opinion and Order, March 14, 2014); Telwell, Inc. v. Public School Employees' Retirement System, B.O.C. Docket No. 4030, (Opinion and Order, September 11, 2013)(recognizing additional reasons for a broad reading of the Board's jurisdictional provisions).

7. Pennsylvania's appellate courts have recognized the Board's continued jurisdiction over some non-Procurement Code contracts. See e.g. Hanover Insurance Company v. State Workers' Insurance Fund, 35 A.3d 849, 852-856 (Pa. Cmwlth. 2012)(Board retains jurisdiction over SWIF contract disputes). See also Scientific Games, 66 A.3d at 753, footnote 16 (Pennsylvania Supreme Court's notes in particular that Hanover remains controlling authority unless and until overruled).

8. The Board's assertion of jurisdiction over non-Procurement Code contracts made "in accordance with" (i.e. in harmony with and not expressly excluded by) Procurement Code

provisions is consistent with Hanover and other appellate case law acknowledging the propriety of a broad reading of the Board's jurisdictional provisions to encompass disputes arising from contracts not expressly excluded from its jurisdiction. 62 Pa.C.S. § 1724(a); Hanover Insurance Company, 35 A.3d at 852-856; see also, Conclusions of Law ("C.O.L.") 1-7.

9. Applying the foregoing principles and caselaw to the Board's current enabling provisions, we conclude that the Board retains jurisdiction to address claims made on settlement agreements which resolve disputes arising from both Procurement Code contracts and contracts made "in accordance with" (but not expressly excluded from) the Procurement Code. 62 Pa.C.S. §§ 103, 1724(a); C.O.L. 1-8.

10. In contrast, the Board has found that it does not have jurisdiction over claims arising from contracts which are explicitly excluded from Board coverage by relevant Procurement Code provisions, such as employment agreements. See Dubaskas v. Department of Corrections, B.O.C. Docket No. 4062 (Opinion and Order, March 15, 2013); Armenti v. State System of Higher Education, B.O.C. Docket No. 4091 (Opinion and Order, January 10, 2014).

11. In affirming our dismissal of the claim in Dubaskas due to lack of jurisdiction for the reasons noted in Paragraph 10 above, the Commonwealth Court held as follows:

[W]e conclude that with respect to Section 1724(a)(1) of the Code, the Code's definitions of "contract" and "services" in Section 103 of the Code function as components of the "jurisdictional prerequisites" that bar from the exclusive jurisdiction of the Board claims arising from employment contracts entered into by the Commonwealth [emphasis added].

Dubaskas v. Department of Corrections, 81 A.3d 167, 177 (Pa. Cmwlth. 2013).

12. Because the Procurement Code explicitly and unambiguously excludes "employment agreements" from what constitutes "services" under the Code at Section 103, it follows that "employment agreements" are not "services" that can be subject of a "contract" that falls within the scope of the Board's jurisdiction as outlined in Section 1724(a)(1). 62 Pa.C.S. §§103, 1724(a); Dubaskas, 81 A.3d at 177. See also Armenti v. State System of Higher Education, 100 A.3d 772, 777 (Pa. Cmwlth. 2014).

13. Because the Procurement Code also explicitly and unambiguously excludes "collective bargaining agreements" from what constitutes "services" under the Code at Section 103, it follows that "collective bargaining agreements" are not "services" that can be subject of a "contract" that falls within the scope of the Board's jurisdiction as outlined in Section 1724(a)(1). 62 Pa.C.S. §§103, 1724(a); Dubaskas, 81 A.3d at 177; Armenti, 100 A.3d at 777; C.O.L. 10-12.

14. Applying the foregoing principles and caselaw to the Board's current enabling provisions, we conclude that the Board's jurisdiction does not extend to claims made on settlement agreements which resolve disputes arising from employment agreements or collective bargaining agreements because these two types of contracts are expressly excluded from the Board's jurisdiction. 62 Pa.C.S. §§103, 1724(a); C.O.L. 10-13. In accord, see Tome v. Department of Public Welfare, B.O.C. Docket No. 3918 (Opinion and Order, February 29, 2008), aff'd, Tome v. Department of Public Welfare, No. 557 C.D. 2008 (Opinion and Order of July 20, 2009), 2009 Pa. Commw. Unpub. LEXIS 488.

15. In determining whether the Board has subject matter jurisdiction over a settlement agreement dispute, a distinction must be made between claims made on settlement agreements which resolve disputes arising from Procurement Code contracts and claims made on settlement agreements arising from the type of contracts which are expressly excluded from coverage by related Procurement Code provisions. 62 Pa.C.S. § 1724(a)(1); C.O.L. 1-14.

16. Because we have found that the Settlement Agreement upon which Ms. Cicchiello's claim is based resolved a dispute arising from the CBA, and because the Procurement Code expressly and unambiguously excludes from the Board's exclusive jurisdiction claims arising from collective bargaining agreements (as well as employment agreements) by its definition of "contract" at Section 103, the Board has no jurisdiction over Ms. Cicchiello's claim made on the Settlement Agreement in this case. 62 Pa.C.S. §§ 103, 1724(a)(1); Exs. D-1, C-1; C.O.L 1-15.

17. Section 1712.1 of the Procurement Code states as follows:

**§ 1712.1. Contract controversies**

**(a) Right to claim.** - A contractor may file a claim with the contracting officer in writing for controversies arising from a contract entered into by the Commonwealth.

**(b) Filing of a claim.** - A claim shall be filed with the contracting officer within six months of the date the claim accrues. If a contractor fails to file a claim or files an untimely claim, the contractor is deemed to have waived its right to assert a claim in any forum. Untimely filed claims shall be disregarded by the contracting officer.

**(c) Contents of claim.** - A claim shall state all grounds upon which the contractor asserts a controversy exists.

**(d) Determination.** - The contracting officer shall review and issue a final determination in writing regarding the claim within 120 days of the receipt of the

claim unless extended by consent of the contracting officer and the contractor. If the contracting officer fails to issue a final determination within the 120 days unless extended by consent of the parties, the claim shall be deemed denied. The determination of the contracting officer shall be the final order of the purchasing agency.

**(e) Statement of claim.** - Within 15 days of the mailing date of a final determination denying a claim or within 135 days of filing a claim if no extension is agreed to by the parties, whichever occurs first, the contractor may file a statement of claim with the board.

**(f) Applicability.** - The provisions of 2 Pa.C.S. (relating to administrative law and procedure) shall not apply to this section.

62 Pa.C.S. § 1712.1(a)-(f).

18. Section 1712.1(b) requires, as a prerequisite to filing a claim with the Board, that a contractor initially file an administrative claim with the agency's contracting officer "within six months of the date the claim accrues ("administrative claim"). Id.

19. Section 1712.1(d) provides that the agency's contracting officer is to review the administrative claim and issue a written determination within 120 days. If the claim is denied by the agency, the claimant then has fifteen days to file her complaint with the Board. 62 Pa.C.S. § 1712.1(d) and (e).

20. If the contracting officer takes no action, the claim is deemed denied and the claimant has 135 days from the date of the filing of her administrative claim to file with the Board of Claims. Id.

21. The Pennsylvania Supreme Court has adopted a two part test for determining when a contract claim accrues. That test provides:

[A] claim accrues when 1) a claimant is first able to litigate his or her claim, e.g., when the amount due under the claim is known and the claimant is capable of preparing a concise and specific written statement detailing the injury, and 2) the claimant is affirmatively notified that he or she will not be paid by the Commonwealth.

Darien Capital Management, Inc. v. Public School Employees' Retirement Systems, 700 A.2d 395, 397 (Pa. 1997) (emphasis in original).

22. The agency's denial of a claim must be unequivocal for a claim to accrue. Id.

23. Both prongs must be satisfied for a claim to be considered to have accrued, and only then will the limitation period commence. Wayne Knorr, Inc. v. Department of Transportation, 973 A.2d 1061, 1088 (Pa. Cmwlth. 2009); Ferguson Electric Company v. Department of General Services, 3 A.3d 681, 686 (Pa. Cmwlth. 2010).

24. As the finder of fact, the Board is charged with the duty of determining the credibility of evidence and resolving conflicting testimony. It may believe all, or part, or none of the testimony of any witness. The Board's findings need not be supported by uncontradicted evidence, so long as they are supported by substantial evidence. Wayne Knorr, Inc. v. Department of Transportation, 973 A.2d 1061, 1078 (Pa. Cmwlth. 2009); Department of General Services v. Pittsburgh Building Company, 920 A.2d 973, 989 (Pa. Cmwlth. 2007); A.G. Cullen Construction, Inc. v. State System of Higher Education, 898 A.2d 1145, 1155 (Pa. Cmwlth. 2006); Commonwealth v. Holtzapfel, 895 A.2d 1284, 1249 (Pa. Cmwlth. 2006); Miller v. C.P. Centers, Inc., 483 A.2d 912, 915 (Pa. Super. 1984).

25. "It is well settled law of this jurisdiction that knowledge of an agent, acting within the scope of his authority, real or apparent, may be imputed to the principal." Workmen's Compensation Appeal Board (Katz) v. Evening Bulletin, 445 A.2d 1190, 1192 (Pa. 1982); Nationwide Mutual Insurance Company v. Lehman, 743 A.2d 933, 939 (Pa. Super. 1999).

26. A principal is charged with his or her agent's actual or constructive notice. Kalmutz v. Northern Mutual Insurance Co., 40 A. 816, 817 (Pa. 1898); Bridgewater v. Pennsylvania Public Utility Commission, 124 A.2d 165, 171 (Pa. Super. 1956); 38 P.L.E. Process § 51.

27. Notice to an agent is generally binding on his or her principal. Fidelity Bank v. Pierson, 264 A.2d 682, 684 (Pa. 1970); Sisney v. Diffenderffer, 185 A. 830, 834 (Pa. 1936); Buchaman v. Reliance Insurance Co. (In re Color Tile, Inc.), 457 F.3d 508, 513 (3d Cir. 2007); 1 P.L.E. Agency § 78.

28. Because we have found that: Mr. Holmes' February 4, 2013 e-mail to Ms. Cicchiello's Union representative, containing recitations from 71 Pa.C.S. §§ 5302 and 5102, was an unequivocal statement by the Department that it would not credit Ms. Cicchiello with twenty-five years of service as provided for in the Settlement Agreement here at issue; Ms. Cicchiello was personally aware, as of February 5, 2013, that the Department was taking the position that it would not credit her with twenty-five years of service as provided for in the Settlement Agreement; the amount which would be due Plaintiff under such claim was reasonably capable of calculation as of February 5, 2013; and the Plaintiff was therefore capable of preparing a concise and specific written statement detailing any claimed monetary damages as of that date, we conclude that any claim against the Department which Ms. Cicchiello may have asserted based on the Settlement Agreement provision which called for the Department to credit Ms. Cicchiello with twenty-five years of service accrued no later than February 5, 2013. Exs. C-3, C-7; C.O.L. 21-27.

29. Because we have found that the Plaintiff did not submit any administrative claim or document with the Department regarding her current claim on the Settlement Agreement between her filing with the Board and February 5, 2013 (the date by which she was personally aware that the Department was taking the position that it would not credit her with twenty-five years of service as provided for in the Settlement Agreement), which administrative claim is a prerequisite to the Board's jurisdiction under 62 Pa.C.S. § 1724(a)(1) and (c), the Board lacks jurisdiction for this reason as well. 62 Pa.C.S. § 1724(a)(1) and (c); Buchart Horn, Inc. v. Department of Transportation, 1 A.3d 960, 965 (Pa. Cmwlth. 2010); C.O.L. 17-28.

## **OPINION**

On October 15, 2013, Plaintiff Joan Cicchiello ("Plaintiff" or "Ms. Cicchiello") filed a pro se Complaint against the Commonwealth of Pennsylvania, Department of Corrections ("Defendant" or "Department") alleging counts for breach of contract and quantum meruit. Richard J. Orloski, Esquire entered his appearance on behalf of the Plaintiff on October 28, 2013.

On November 13, 2013, the Department filed preliminary objections which, among other things, challenged the Board's jurisdiction over Ms. Cicchiello's claims. Plaintiff filed an answer with new matter to these preliminary objections on December 19, 2013. The Department filed a response to new matter on January 28, 2014.

On March 21, 2014, the Board issued an order scheduling "an evidentiary hearing to determine all factual issues pertinent to the Board's jurisdiction" over Ms. Cicchiello's claims. The evidentiary hearing was held on April 11, 2014. Plaintiff and Defendant filed proposed findings of fact and conclusions of law on June 12, 2014 and July 8, 2014, respectively.

### **Background**

Plaintiff was employed for several years by the Department as a nurse at the State Correctional Institution at Muncy ("SCI-Muncy") and subsequently transferred to the State Correctional Institution at Frackville ("SCI-Frackville"). On November 6, 2006, Ms. Cicchiello's position was terminated, and she was escorted from the facility. While employed by the Department, Ms. Cicchiello was a member of the Service Employees International Union ("Union") District 1199P.

Subsequent to her termination, Ms. Cicchiello filed a grievance through the Union under the terms of the applicable Collective Bargaining Agreement ("CBA"). The CBA in effect at the

time of Ms. Cicchiello's termination provided a three-step process for the grievance procedure: Step 1 (filing the grievance and meeting); Step 2 (filing with the Joint Pennsylvania State Committee; and Step 3 (arbitration). Ms. Cicchiello's grievance proceeded through Step 1 and Step 2 without resolution and was scheduled to proceed to Step 3 (arbitration).

Before the grievance was submitted to arbitration, Ms. Cicchiello's Union representative and Timothy A. Holmes, Assistant Counsel for the Department, held negotiations to resolve the grievance by way of a settlement agreement. On December 20, 2012, Ms. Cicchiello's Union representative and the Department's Mr. Holmes signed a document captioned "Settlement Agreement" to resolve "all issues encompassed" in the grievance. Ms. Cicchiello also signed the Settlement Agreement on December 28, 2012, adding additional language in the margin stating: "No Discrimination for Employment Health Insurance + Pharmacy – As with All Retirees." The Settlement Agreement included, *inter alia*, a provision that the Department would re-hire Ms. Cicchiello for one day to allow her to retire from the Department, and also that the "Department will award Ms. Cicchiello whatever time was necessary for her to attain twenty-five years of service with the Commonwealth."

On February 4, 2013, Mr. Holmes sent Ms. Cicchiello's Union representative an e-mail explaining that the Department would not be able to comply with the provision of the signed Settlement Agreement crediting Ms. Cicchiello with twenty-five years of service because that provision was unlawful under statutes applicable to accrual of state service for retirement and benefits. Instead, Mr. Holmes proposed providing Ms. Cicchiello one year's additional salary which he said would provide her with fifteen years of service.<sup>3</sup> Ms. Cicchiello's Union

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<sup>3</sup> Mr. Holmes testified that the reason why the original Settlement Agreement awarded Ms. Cicchiello credit for 25 years of service was his mistaken belief (at the time the Settlement Agreement was negotiated) that she needed 25 years of service in order to qualify for healthcare coverage in retirement, a benefit demanded by Ms. Cicchiello. When he subsequently determined that the Department could not (by law) credit Ms. Cicchiello with 25 years of

representative advised her of the Department's position and recommended that she accept the new proposal outlined by Mr. Holmes in his February 4, 2013 e-mail. Ms. Cicchiello refused to agree to the Department's subsequent proposal and filed the instant Complaint with the Board on October 15, 2013.

Plaintiff's Complaint alleges causes of action for breach of contract based on the Settlement Agreement and, nominally, for quantum meruit relief.<sup>4</sup> She alleges that the Department breached the Settlement Agreement by failing to perform as promised (i.e. it failed to credit her with twenty-five years of service, to provide additional salary as promised, and to provide benefits including seniority and pension as promised). Plaintiff asks for the Board to order the Commonwealth to perform under the Settlement Agreement and/or for damages.

The Department has filed the following four preliminary objections to the Complaint. It asserts that:

1) The Complaint was not filed within six months of the date of the claim's accrual in accordance with 62 Pa.C.S. § 1712.1(b);

2) The Board lacks subject matter jurisdiction under 62 Pa.C.S. § 1724(a);

3) The Plaintiff failed to attach a copy of the written agreement to the complaint as required by Pa. R.C.P 1019(i); and

4) The Complaint was insufficiently specific as required by Pa. R.C.P. 1019(f).

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service, Mr. Holmes also determined that Ms. Cicchiello only needed 15 years of service to qualify for healthcare benefits in retirement. Thus, he proposed providing Ms. Cicchiello one year's salary at her last prevailing wage "...for the period of November 2006 through November 2007." Mr. Holmes added that the one year's salary would allow her to reach 15 years of service in order to provide her with healthcare benefits in retirement. (Ex. C-3; N.T. 95, 102, 104)

<sup>4</sup> Although the Plaintiff captions Count Two of her Complaint as a count in quantum meruit, a close reading of the factual averments of Count Two reveals that it is merely a reiteration of the breach of contract claim made in Count One. Accordingly, we hereinafter refer to both counts in Plaintiff's Complaint as her claim (singular) in this opinion.

The Plaintiff responds that the Department “mischaracterized” her appeal procedure and, itself, failed to comply with 62 Pa.C.S. § 1712.1. Plaintiff then relies on Scientific Games International, Inc. v. Department of Revenue, 66 A.3d 740 (Pa. 2013), for her proposed conclusion that the Board “has authority to enforce a signed written contract settling an underlying claim.”<sup>5</sup>

**The Board lacks subject matter jurisdiction under 62 Pa.C.S. § 1724(a)**

The Department’s second preliminary objection asserts that the Board lacks subject matter jurisdiction over the Plaintiff’s claim under 62 Pa.C.S. § 1724(a) because the Settlement Agreement “does not fit the Procurement Code’s definition of a contract.” Specifically, the Department argues that the proposed Settlement Agreement does not fit the definition of “contract” at 62 Pa.C.S. § 103 because it does not involve “the procurement or disposal of supplies, services or construction.”

As noted above, Plaintiff relies on Scientific Games International, Inc. v. Department of Revenue, 66 A.3d 740 (Pa. 2013), for her proposed conclusion that the Board “has authority to enforce a signed written contract settling an underlying claim.” However, Plaintiff offers little explanation as to how Scientific Games applies to the case at hand. Apparently aware of the recent holding in Dubaskas v. Department of Corrections, 81 A.3d 167 (Pa. Cmwlth. 2013), Plaintiff acknowledges the definitions of “contract” and “services” in Section 103 of the Procurement Code and concedes that the Board does not have authority to resolve a breach of contract claim based on an employment contract or a collective bargaining agreement. However, the Plaintiff argues that the Board nevertheless has jurisdiction here because the Settlement

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<sup>5</sup> Plaintiff’s Proposed Conclusions of Law at Para. 5.

Agreement is not an employment contract or collective bargaining agreement but is, instead, a “written contract settling an underlying claim” concerning a breach of the CBA.<sup>6</sup>

The fundamental issue presented by the Department in its second preliminary objection is whether the claim made here by Plaintiff stemming from the Department’s failure to perform the Settlement Agreement, entered into in resolution of the Plaintiff’s grievance initiated under the Union’s CBA, presents a controversy “arising from . . . a contract entered into by a Commonwealth agency in accordance with [the Procurement Code].” 62 Pa.C.S. § 1724(a)(1).

We acknowledge, of course, that it is the Board’s long-established function to provide citizens who contract with agencies of the Commonwealth (and who would otherwise be barred by sovereign immunity) a method to redress disputes arising from such contracts. It is equally well-established that, in recognition of this remedial purpose, and in furtherance of this public policy, which benefits the Commonwealth by encouraging and facilitating such contracts for goods, services, and numerous other operational purposes, the Board’s jurisdictional provisions are to be given a broad and liberal construction. Lowry v. Commonwealth, 76 A.2d 363, 365-66 (Pa. 1950); Shovel Transfer & Storage, Inc. v. Simpson, 565 A.2d 1153, 1155-1156 (Pa. 1989); Employers Insurance of Wausau v. Department of Transportation, 865 A.2d 825, 832-833 (Pa. 2005); Department of Health v. Data-Quest, Inc., 972 A.2d 74, 76-81 (Pa. Cmwlth. 2009); Hanover Insurance Company v. State Workers’ Insurance Fund, 35 A.3d 849, 852-856 (Pa. Cmwlth. 2012). Pennsylvania’s appellate courts have also recognized this historical purpose and affirmed the Board’s continued jurisdiction over some non-Procurement Code contracts. See e.g. Hanover, 35 A.3d at 852-56 (Board retains jurisdiction over SWIF contract disputes). See also the Pennsylvania Supreme Court’s comments in Scientific Games where it notes, in

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<sup>6</sup> Plaintiff’s Proposed Conclusions of Law at Paras. 3, 4, 5.

particular, that Hanover remains controlling authority unless and until overruled. Scientific Games, 66 A.3d at 753, footnote 16.

The Board, as well, has found it appropriate to take as broad a view of its jurisdiction as allowed by the literal language of its enabling provisions in order to minimize the circumstances where those who contract with the Commonwealth are left entirely without recourse. We have, therefore, taken the approach that we retain jurisdiction over claims “arising” from both Procurement Code contracts and other contracts entered into “in accordance with” the Procurement Code (i.e. in harmony with, but not expressly excluded by, the relevant Procurement Code provisions). See e.g. Sordoni Construction Services, Inc. v. Department of Transportation, B.O.C. Docket No. 3992 (Opinion and Order, March 14, 2014); Telwell, Inc. v. Public School Employees’ Retirement System, B.O.C. Docket No. 4030, (Opinion and Order, September 11, 2013)(explaining some of the reasoning behind the Board’s approach to its jurisdictional provisions). Cf. Dubaskas v. Department of Corrections, B.O.C. Docket No. 4062 (Opinion and Order, March 15, 2013) (holding no jurisdiction over employment contract disputes); Armenti v. State System of Higher Education, B.O.C. Docket No. 4091 (Opinion and Order, January 10, 2014) (following Dubaskas).

For reasons noted in the aforementioned case law and the potential effect on the Commonwealth’s ability to settle claims made against it, we find it not only appropriate but necessary to analyze the claim before us today in the manner we do. Specifically, we view the claim made here before the Board for enforcement of the Settlement Agreement as arising from the underlying contract dispute to which the settlement pertains. We do so because we believe the literal language of our enabling provisions allow us to do so and out of practical necessity. That is to say, a claim based on a settlement agreement literally “arises” not only from the

settlement agreement but also from the dispute over the original contract. Moreover, were we not to view a claim to enforce a settlement agreement as arising from the underlying contract in dispute, what rational claimant or attorney would forego a claim made on an underlying Procurement Code contract (where Board jurisdiction is certain) for a settlement agreement that is arguably not a Procurement Code contract and may therefore be enforceable only by the Commonwealth.

Noting, *inter alia*, that the circumstances presented to the Board here raise an issue of first impression, we hold today that the Board's jurisdiction over claims made on settlement agreements are appropriately viewed as "arising" from the underlying contract dispute which was resolved by the settlement agreement. Thus, in determining whether the Board has subject matter jurisdiction over a settlement agreement dispute, a distinction must be made between claims on settlement agreements which resolve disputes arising from contracts entered into in accordance with the Procurement Code and claims made on settlement agreements arising from contracts which are expressly excluded from Procurement Code coverage. In accord, see Tome v. Department of Public Welfare, B.O.C. Docket No. 3918 (Opinion and Order, February 29, 2008), *aff'd*, Tome v. Department of Public Welfare, No. 557 C.D. 2008 (Opinion and Order of July 20, 2009), 2009 Pa. Commw. Unpub. LEXIS 488.

In the case at hand, it is clear that the Settlement Agreement, upon which the Plaintiff bases her claim, arose from (and was in settlement of) her grievance brought under the CBA. Accordingly, because the CBA is a collective bargaining agreement and a type of contract expressly excluded from Board jurisdiction we believe we lack subject matter jurisdiction over the Complaint before us. Id.; 62 Pa.C.S. §§103, 1724(a).

As both parties have recognized, the Commonwealth Court recently addressed the question of whether the Procurement Code's restrictive definition of "services" would prohibit the Board from exercising jurisdiction over employment contracts in Dubaskas.<sup>7</sup> There, the Commonwealth Court agreed with our dismissal of the claim for lack of jurisdiction, holding as follows:

[W]e conclude that with respect to Section 1724(a)(1) of the Code, the Code's definitions of "contract" and "services" in Section 103 of the Code function as components of the "jurisdictional prerequisites" that bar from the exclusive jurisdiction of the Board claims arising from employment contracts entered into by the Commonwealth [emphasis added].

Id., 81 A.3d at 177. See also Armenti v. State System of Higher Education, 100 A.3d 772, 777 (Pa. Cmwlth. 2014). We believe the same reasoning applied in Dubaskas and Armenti would also apply to preclude the Board's jurisdiction over a claim arising from a collective bargaining agreement.

Because the Procurement Code expressly and unambiguously excludes from the Board's exclusive jurisdiction claims arising from collective bargaining agreements (as well as employment agreements) by its definition of "contract" at Section 103, the Board has no jurisdiction over the dispute underlying the Settlement Agreement in this case. 62 Pa.C.S. §§103, 1724(a). We therefore conclude further that the Board has no subject matter jurisdiction over the claim(s) made here on the Settlement Agreement as this claim cannot be said to "arise" from an underlying contract entered into in accordance with the Procurement Code. The

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<sup>7</sup> In Dubaskas, the plaintiff was employed as a manager for the Department of Corrections and he alleged that he was hired under contractual terms including that he would be credited for four years of seniority plus raises and benefits. The Commonwealth subsequently implemented a revised pay scale which modified these raises and benefits and Dubaskas alleged that this act breached his agreement.

Department's second preliminary objection based upon lack of Board jurisdiction under 62 Pa.C.S. § 1724(a) is therefore sustained.

**Plaintiff's failure to comply with 62 Pa.C.S. § 1712.1(b) also precludes our jurisdiction**

In support of its first preliminary objection, the Department argues that Plaintiff failed to comply with the requirements of 62 Pa.C.S. § 1712.1(b), which the Department characterizes as a “six-month statute of limitations” for filing a claim. It argues that (viewed most favorably to Plaintiff) the Plaintiff’s claim accrued on February 4, 2013 (the date of Mr. Holmes’ e-mail to Plaintiff’s Union representative informing him that the Department would not be able to comply with the provision of the signed Settlement Agreement crediting Ms. Cicchiello with twenty-five years of service). It further notes that the Plaintiff “failed to file anything” until the instant complaint was filed with the Board on October 15, 2013, more than eight months later.

In response, the Plaintiff asserts that a copy of the Settlement Agreement which was e-mailed by the Union representative to Mr. Holmes on January 2, 2013, “represents a formal written claim with the contracting officer.” (Claimant’s Brief in Opposition to Respondent’s Preliminary Objections at p. 1) The Plaintiff further asserts that the Department itself did not comply with the requirements of 62 Pa.C.S. Sec. 1712.1.

Section 1712.1 sets forth not only the pre-litigation procedure for resolving disputes between a contractor and a Commonwealth agency, but also the prerequisites for the assertion of the Board’s jurisdiction over said disputes. It states:

**§ 1712.1. Contract controversies**

**(a) Right to claim.** - A contractor may file a claim with the contracting officer in writing for controversies arising from a contract entered into by the Commonwealth.

**(b) Filing of a claim.** - A claim shall be filed with the contracting officer within six months of the date the claim accrues. If a contractor fails to file a claim or files an untimely claim, the contractor is deemed to have waived its right to assert a claim in any forum. Untimely filed claims shall be disregarded by the contracting officer.

**(c) Contents of claim.** - A claim shall state all grounds upon which the contractor asserts a controversy exists.

**(d) Determination.** - The contracting officer shall review and issue a final determination in writing regarding the claim within 120 days of the receipt of the claim unless extended by consent of the contracting officer and the contractor. If the contracting officer fails to issue a final determination within the 120 days unless extended by consent of the parties, the claim shall be deemed denied. The determination of the contracting officer shall be the final order of the purchasing agency.

**(e) Statement of claim.** - Within 15 days of the mailing date of a final determination denying a claim or within 135 days of filing a claim if no extension is agreed to by the parties, whichever occurs first, the contractor may file a statement of claim with the board.

**(f) Applicability.** - The provisions of 2 Pa.C.S. (relating to administrative law and procedure) shall not apply to this section.

62 Pa.C.S. § 1712.1(a)-(f).

Section 1712.1(b) requires, as a prerequisite to filing a claim with the Board, that a contractor initially file an administrative claim with the agency's contracting officer "within six months of the date the claim accrues". Id. Section 1712.1(d) provides that the agency's contracting officer is to review the administrative claim and issue a written determination within 120 days. If the claim is denied by the agency, the claimant then has fifteen days to file a complaint with the Board. 62 Pa.C.S. § 1712.1(d) and (e). If the contracting officer takes no action, the claim is deemed denied, and the claimant has 135 days from the date of the filing of the administrative claim to file with the Board of Claims. Id. Compliance by the contractor/claimant with each step

is necessary in order for the Board to assert jurisdiction over the claim. 62 Pa.C.S. § 1724(a)(1) and (c).

As noted above, the Department asserts that Plaintiff's claim accrued on February 4, 2013, the date of Mr. Holmes' e-mail to Plaintiff's Union representative informing him that the Department would not be able to comply with the provision of the signed Settlement Agreement crediting Ms. Cicchiello with twenty-five years of service. The Pennsylvania Supreme Court has adopted a two part test for determining when a contract claim accrues. That test provides:

[A] claim accrues when 1) a claimant is first able to litigate his or her claim, e.g., when the amount due under the claim is known and the claimant is capable of preparing a concise and specific written statement detailing the injury, and 2) the claimant is affirmatively notified that he or she will not be paid by the Commonwealth.

Darien Capital Management, Inc. v. Public School Employees' Retirement System, 700 A.2d 395, 397 (Pa. 1997) (emphasis in original). The Department's denial of a claim must be unequivocal for a claim to accrue. Id. Both prongs must be satisfied for a claim to be considered to have accrued, and only then will the limitation period commence. Wayne Knorr, Inc. v. Department of Transportation, 973 A.2d 1061, 1088 (Pa. Cmwlth. 2009); Ferguson Electric Company v. Department of General Services, 3 A.3d 681, 686 (Pa. Cmwlth. 2010).

In his February 4, 2013 e-mail, Mr. Holmes communicated to the Plaintiff's Union representative that the Department would not be able to comply with the provision of the signed Settlement Agreement crediting Ms. Cicchiello with twenty-five years of service because to do so would be contrary to statutes governing the accrual of state service for retirement and benefits (71 Pa.C.S. §§ 5302 and 5102). Mr. Holmes included recitations of these statutory provisions within the February 4, 2013 e-mail. Mr. Holmes continued in his February 4, 2013 e-mail to propose a period of paid leave which would result in Plaintiff accruing fifteen years service

(rather than twenty-five) and would entitle the Plaintiff to medical benefits upon her retirement but would change the formula for calculating her monetary retirement benefits based on fifteen years of service instead of twenty-five.

To the extent that the Plaintiff is asserting in this action a contract right under the Settlement Agreement to the monetary equivalent of retirement benefits based on twenty-five years of credited service, we find that the February 4, 2013 e-mail (containing recitations from 71 Pa.C.S. §§ 5302 and 5102) was an unequivocal denial by the Department of that claim. We have also found that Ms. Cicchiello was personally aware of this denial by February 5, 2013. Moreover, the amount which would be due Plaintiff under such claim was reasonably capable of actuarial calculation as of February 5, 2013, and the Plaintiff was therefore capable of preparing a concise and specific written statement detailing any claimed monetary damages as of that date. The claim made here by Plaintiff on the Settlement Agreement accrued by no later than February 5, 2013.

Having found that the Plaintiff's asserted claim against the Department accrued no later than February 5, 2013, the record shows that Plaintiff did not file an administrative claim with the Department's contracting officer within six months, as required under Section 1712.1(b). In fact, the Plaintiff made no claim whatsoever to the Department but instead filed her complaint with the Board on October 15, 2013.

The Plaintiff's assertion that her Union representative's January 2, 2013 e-mail transmitting the signed proposed Settlement Agreement to the Department's Mr. Holmes "represents a formal written claim with the contracting officer" is wholly without merit. Section 1712.1(c) states that a claim "shall state all grounds upon which the contractor asserts a controversy exists." Nothing in this January 2, 2013 e-mail or attached Settlement Agreement

asserts that a controversy existed and, in fact, no controversy concerning the proposed Settlement Agreement arose until the Department informed the Union that it could not credit the Plaintiff with twenty-five years service more than a month later. Additionally, the Plaintiff's argument that the Department did not comply with Section 1712.1(c) is likewise without merit since that provision (defining the contents of a claim) places no duty on the Department to act on a claim never made to it.

Because the Plaintiff never filed an administrative claim under 62 Pa.C.S. § 1712.1, which is a prerequisite to the Board's jurisdiction under 62 Pa.C.S. § 1724(a)(1) and (c), the Board lacks jurisdiction for this reason as well. Buchart Horn, Inc. v. Department of Transportation, 1 A.3d 960, 965 (Pa. Cmwlth. 2010). For both reasons noted above, this claim must be dismissed.<sup>8</sup>

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<sup>8</sup> Even if Plaintiff had actually pled a claim in quantum meruit and somehow distinguished it from her claim for breach of the Settlement Agreement, Plaintiff's failure to make a timely claim with the Department (for quantum meruit or otherwise) before filing with the Board, as required by 62 Pa.C.S. § 1712.1(b) as a prerequisite to the Board's jurisdiction applies equally to both Counts One and Two of the Complaint.

**ORDER**

**AND NOW**, this 29<sup>th</sup> day of December, 2014, upon consideration of preliminary objections of the Department of Corrections to the Complaint filed by Joan Cicchiello, her response to the preliminary objections, and the evidence provided by the parties, **IT IS ORDERED** that the Department's First and Second Preliminary Objections based on the lack of Board jurisdiction are **SUSTAINED**. The Complaint is **DISMISSED** in its entirety with prejudice.

BOARD OF CLAIMS

**OPINION SIGNED**

\_\_\_\_\_  
Jeffrey F. Smith  
Chief Administrative Judge

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Harry G. Gamble, P.E.  
Engineer Member

\_\_\_\_\_  
Andrew Sislo  
Citizen Member