

**STATE OF ILLINOIS  
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF: )

LENE WASHINGTON, )

Complainant, )

and )

BOARD OF EDUCATION OF THE CITY )  
OF CHICAGO and CHICAGO TEACHER'S )  
UNION, )

Respondent. )

CHARGE NO(S): 2007CN3841  
EEOC NO(S): N/A  
ALS NO(S): 08-0357

**NOTICE**

You are hereby notified that the Illinois Human Rights Commission has not received timely exceptions to the Recommended Order and Decision in the above named case. Accordingly, pursuant to Section 8A-103(A) and/or 8b-103(A) of the Illinois Human Rights Act and Section 5300.910 of the Commission's Procedural Rules, that Recommended Order and Decision has now become the Order and Decision of the Commission.

STATE OF ILLINOIS )  
HUMAN RIGHTS COMMISSION )

Entered this 23<sup>rd</sup> day of August 2010

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N. KEITH CHAMBERS  
EXECUTIVE DIRECTOR

**STATE OF ILLINOIS  
HUMAN RIGHTS COMMISSION**

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LENE WASHINGTON,	)		
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Complainant,	)	Charge No.	2007CN3841
	)	EEOC No.	N/A
and	)	ALS No.	08-0357
	)		
BOARD OF EDUCATION OF THE	)		
CITY OF CHICAGO and	)		
CHICAGO TEACHER'S UNION,	)		
	)		
Respondent.	)		Judge Reva S. Bauch

**RECOMMENDED ORDER AND DECISION**

This matter comes before me on Respondent Board of Education's (Board) Motion to Dismiss the Complaint for Lack of Jurisdiction or in the Alternative to Dismiss the Retaliation Claim and Respondent Chicago Teacher's Union's (Union) Motion to Dismiss for Lack of Jurisdiction. Complainant has filed a Response to Respondents' Motions to Dismiss for Lack of Jurisdiction. Respondents Board and Union have filed replies. The Commission also ordered the Department to submit a response. The Department's response states that it has no opinion or position as to the issues presented. This matter is now ready for disposition.

The Illinois Department of Human Rights ("Department") is an additional statutory agency that has issued state actions in this matter. Therefore, the Department is an additional party of record.

### Findings of Fact

The following findings of fact were derived from the record file in this case. The findings did not require, and were not the result of, credibility determinations. Facts not contained herein were not deemed material for purposes of the pending Motions to Dismiss:

1. On March 1, 2007, Complainant filed a Charge of Discrimination with the U.S. Equal Employment Opportunity Commission (EEOC) against Respondent Board.
2. The EEOC Charge did not name Respondent Union.
3. On March 22, 2007, the EEOC dismissed the Charge as untimely.
4. The EEOC's Dismissal and Notice of Rights stated: "Your charge was not timely filed with the EEOC; in other words, you waited too long after the date(s) of the alleged discrimination to file your charge."
5. Complainant's Charge was dually filed with the Department.
6. In January 2008, the Charge was transferred to the Department for investigation.
7. On February 14, 2008, the Department dismissed the Charge for lack of jurisdiction.
8. On or around March 15, 2008, Complainant filed a timely request for review of the Department's dismissal.
9. On June 30, 2008, the Department's Chief Legal Counsel issued an order vacating the Department's dismissal of Complainant's Charge and remanded the matter for further investigation.
10. On July 16, 2008, the Department notified Complainant that its 365 day investigation period had expired, and that Complainant could file a complaint with the Commission from July 16, 2008 through August 14, 2008.

11. The Department did not complete its investigation or make a final determination regarding the timeliness of Complainant's Charge.
12. On August 13, 2008, Complainant filed the Complaint with the Commission.
13. The August 13, 2008 Complaint sought to add the Union as a Respondent.
14. The Complaint alleges that on or about September 26, 2005, the Board denied Complainant's request for reinstatement because of her age and/or her disability, and in retaliation for reporting in 1992 that "a Principal knowingly allowed the LSC President's son to molest children."
15. Complainant suffered a work-related injury on August 26, 1999.
16. Complainant filed a worker's compensation claim that was settled in 2005.
17. The Board paid Complainant \$244,153.78 to settle her worker's compensation claim.
18. The Illinois Worker's Compensation Commission's (IWCC) arbitrator awarded Complainant 75% loss of a person for her work-related injury.
19. In or around September 26, 2005, the Board denied Complainant's request to be reinstated to work with medical restrictions.
20. Complainant is a member of the Union.
21. In or around October 2005, Complainant filed a grievance regarding the Board's denial of her reinstatement request.
22. On October 26, 2006, an arbitration hearing was held on Complainant's grievance.
23. On May 29, 2007, the arbitrator issued a decision regarding the grievance.
24. On May 9, 2008, a second arbitration hearing regarding the same grievance was held.

25. At the second arbitration hearing, the Board allegedly agreed to supplement its original settlement of Complainant's worker's compensation claim and settle her union grievance.

26. Pursuant to the supplemental settlement, the Board allegedly agreed to pay Complainant an additional \$65,000. In exchange, Complainant allegedly agreed to withdraw her claim filed with IWCC and the grievance arbitration, as well as to resign from her employment with the Board.

27. On May 12, 2008, Complainant allegedly attempted to decline or rescind the May 9, 2008 settlement.

28. Complainant's worker's compensation claim and union grievance arbitration are still pending.

29. Complainant's claims in the Charge and Complaint are based on the Board's September 2005 denial of her request for reinstatement.

#### **Conclusions of Law**

1. Complainant is an "aggrieved party" and Respondent is an "employer" as those terms are defined in the Illinois Human Rights Act (Act), 775 ILCS 5/1-103(B) and 5/2-101(B).

2. The Commission has no jurisdiction over the subject matter of this action; the Charge is untimely.

#### **Discussion**

##### **No Subject Matter Jurisdiction: Charge is Untimely**

Complainant's assertion that the aggrieved conduct took place at the October 26, 2006 hearing is not supported by the record. The EEOC Charge (that was duly filed with the Department) and the Complaint filed with the Commission indicate otherwise. In fact, the Complaint does not even mention the October 26, 2006 hearing. The Complaint indicates that the union grievance filed on October 20, 2005, was a remedial

measure to make Complainant whole as it related to her return to work. Specifically, Complainant states in her Complaint: "This grievance was filed to make me whole as far as my return to work, put money into my pension, sick days (hardship case)." In addition, one of the opening statements at the October 26, 2006, arbitration hearing indicated that the hearing arose from Complainant's October 20, 2005 grievance.

Complaint's argument that the grievance arbitration hearing essentially tolls the running of the statutory 180-day limitation period under the Act is unconvincing. The grievance arbitration hearing does not constitute an independent act of discrimination under these circumstances. The aggrieved conduct was the Board's failure to return Complainant to work in September 2005. The October 26, 2006, arbitration hearing was not a separate action. Rather, it was the final stage of the grievance process initiated by Complainant and the Union on October 20, 2005. Grievance hearings, or their resultant decisions, do not constitute continuation of the alleged human rights violations and cannot be considered independent acts of discrimination. **Delaware State College v. Ricks, 449 US 250 (1980)** (the pendency of a grievance, or some other method of collateral review of an employment decision, does not toll the running of the limitations period); See also **Lee v. Ill Human Rights Comm'n, 126 Ill App3d 666 (1984)**.<sup>1</sup>

Under the Act, Complainant had 180 days to file a charge after the Board's September 2005 failure to return Complainant to work. **775 ILCS 5/7A-102(A)(1)**. The 180-day filing requirement is jurisdictional. It is mandatory, not permissive. See **Bd. of Governors v. Rothbardt, 98 Ill App3d 423 (1981)**. Thus, the Commission is not at liberty to relax the filing requirement. And although it is true that Illinois courts have held that estoppel is a narrow exception of the jurisdictional provisions of the Act, **Weatherly v. Ill. Human Rights Comm'n, 338 Ill App3d 433 (2003)**, the facts here do not support

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<sup>1</sup> I agree with Respondent Board that the **Lee** case is similar to the instant case. Thus, its holding is persuasive.

an estoppel exception. The record is devoid of facts that would support that the Respondent Board engaged in misleading or fraudulent conduct that prevented Complainant from filing a timely charge.

The Complainant did not file her Charge until March 13, 2008. This is beyond the statutory 180 days in which a charge must be filed to be considered timely. Clearly, the Complainant was aware of the alleged aggrieved conduct; she filed a grievance against the Board challenging its failure to reinstate her to work. In fact, during the grievance arbitration hearing, Complainant testified that on approximately September 26, 2005, she spoke with a Board representative who told her that the Board would not rehire her because they had paid her pursuant to the worker's compensation action.

The applicable date is September 2005 when the Board failed to reinstate Complainant to work. Complainant's Charge was filed well beyond the statutory 180-day period. Her Charge is untimely. Thus, the Complaint, and the underlying Charge, should be dismissed.<sup>2</sup>

*No Jurisdiction over the Union*

Even if the Charge was timely, the Complaint should be dismissed as to the Union. Complainant did not name the Union in her original Charge with the EEOC. In August 13, 2008, almost five months after the original Charge was filed, Complainant sought to add the Union. In addition, there is nothing in the record that indicates the Union was involved in the Board's refusal to allow Complainant to be reinstated.

Further, although the Union has fully briefed and argued its Motion to Dismiss, Complainant's response fails to address any of the Union's arguments. The Commission will not search the record to find reasons to deny a motion. If a motion

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<sup>2</sup> Another concern in this case is that Complainant appears to be "dragging" the Commission into her pending IWCC and grievance cases. The Commission should not, and cannot, make decisions under the Illinois Worker's Compensation Act in the guise of deciding a discrimination case.

appears valid on its face, and if the other side cannot tell the Commission why the motion should not be granted, the Commission will grant the motion. **Jones and Burlington Northern Railroad, 25 Ill HRC Rep 101 (1989).**

In sum, the Complaint is untimely filed. The Commission has no subject matter jurisdiction over this case. The Complaint, and the underlying Charge, should be dismissed.

**Recommendation**

It is recommended the Commission dismiss the Complaint, and the underlying Charge.

**HUMAN RIGHTS COMMISSION**

BY: \_\_\_\_\_  
**REVA S. BAUCH  
DEPUTY CHIEF ADMINISTRATIVE LAW JUDGE  
ADMINISTRATIVE LAW SECTION**

**ENTERED: March 27, 2009**