STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION

IN THE MATTER OF:	)	
	)	
JOHN BROOKS,	)	
	)	
	)	
Complainant,	)	CHARGE NO(S): 2009CN1298
	)	EEOC NO(S): 21BA90277
and	)	ALS NO(S): 10-0094
	)	
TEAMSTERS UNION LOCAL 714,	)	
	)	
	)	
Respondent.	)	

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 16th day of June 2011

N. KEITH CHAMBERS
EXECUTIVE DIRECTOR

STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION

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JOHN BROOKS,	)	
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Complainant,	)	
	)	**Charge No.: 2009CN1298**
	)	**EEOC No.: 21BA90277**
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TEAMSTERS UNION LOCAL 714,	)	
	)	**Judge William J. Borah**
Respondent.	)	

RECOMMENDED ORDER AND DECISION

This matter comes to be heard on Respondent's Motion to Dismiss filed on May 12, 2010. On August 3, 2010, Complainant filed his written response, and on August 13, 2010, Respondent filed its reply. The matter is ready for decision.

The Illinois Department of Human Rights ("Department") is an additional statutory agency that has issued state actions in this matter. The Department is therefore named herein as an additional party of record.

FINDINGS OF FACT

The following facts were derived from uncontested sections of the pleadings. The findings did not require, and were not the result of, credibility determinations.

1. Complainant, John Brooks, was a member of Teamsters Union Local 714, Respondent.

2. On April 16, 2008, Respondent allegedly "failed to represent" Complainant before the Cook County Sheriff's Merit Board during his disciplinary proceeding with his employer.

3. On April 16, 2008, the Cook County Sheriff's Merit Board terminated Complainant's employment.

4. On October 31, 2008, Complainant filed a charge of discrimination against

Respondent with the Department.

CONCLUSIONS OF LAW

1. Complainant is an individual claiming to be aggrieved by a violation of the Illinois Human Rights Act ("Act").

2. The Illinois Human Rights Commission ("Commission") has authority to determine whether it has jurisdiction over the instant complaint.

3. Section 7A-102(A)(1) of the Act requires a charge of unlawful discrimination be filed within 180 days from the civil rights violation.

4. The filing of a charge within 180 days of the alleged discriminatory event is a jurisdictional prerequisite.

5. The Commission lacks jurisdiction to proceed on the instant complaint because it was not timely filed pursuant to the statutory time frames set under the Act.

DISCUSSION

Because of the untimely filing of Complainant's charge with the Department, the recommendation must result in dismissal of his complaint. Thus, the other two arguments advanced by Respondent in its motion to dismiss need not be discussed or resolved here.

At all times relevant hereto, Section 7A-102(A)(1) of the Act has required that a charge of unlawful discrimination be filed within 180 days from the date a civil rights violation allegedly has been committed. The filling of a charge within 180 days of the alleged discriminatory event is a jurisdictional prerequisite. Robinson and Mervis Industries, IHRC, ALS No. S-9882, August 18, 1998, quoting Pickering v. Illinois Human Rights Commission, 146 Ill.App.3d 340, 496 N.E.2d 746 (2nd Dist. 1986). As the 180 day limitation is jurisdictional, it is not subject to equitable doctrines such as waiver, tolling and equitable estoppel. Upton and De Paul University, IHRC, ALS No. 07-402, December 7, 2007, quoting Pickering, supra.

The question is how to recognize the appropriate date to begin running the 180 day filing period. The Commission has previously held that "if a potential complainant has enough

information to suspect discrimination has occurred at the time of the discriminatory event, the filing period begins to run from the date of the event. The complainant need not have all the information about the relevant events, nor direct confirmation that discrimination has taken place in order to file a charge." Prochotsky and Baker & McKenzie, IHRC, ALS No. 4643, February 27, 1995. In fact, "a discriminatory event will be complete and will be considered actionable at the first instant in which a complainant receives notice of the allegedly discriminatory conduct." Stewart and Color Image, Inc., IHRC, ALS No. 7555, May 27, 1994, quoting Cano v. Village of Dolton, 250 Ill.App.3d 130, 620 N.E.2d 1200 (1st Dist. 1993).

There is consistent precedent with the Commission that the alleged discrimination occurs when the complainant is notified of a change in employment status, not when the change has consequences. Stewart and Color Image, Inc., IHRC, ALS No. 7555, May 27, 1994.

For example, in Kress and Milani Foods, IHRC, ALS No. 1091(Y), November 19, 1984, the employer notified the complainant that his employment would be terminated as soon as it found a replacement for him, but had not given him a date for his dismissal. The Commission held that notice had occurred when the employer told the employee his employment was to be terminated despite the absence of a date certain. Because this notice had occurred more than 180 days before the complainant filed his charge, the Commission found that it lacked jurisdiction and dismissed the complaint.

In Cano, supra, the discriminatory event occurred before the complainant's 40th birthday. Mr. Cano had been orally notified that he would not receive a position at a time when he was 39 years old. A formal, written notification of the discharge was not mailed out and received by Mr. Cano until after his 40th birthday. The Appellate Court found that the discriminatory event occurred when the complainant was notified of what would occur.

In Faulkner-King v. Department of Human Rights, 225 Ill.App.3d 784, 790, 587 N.E.2d 599 (4th Dist. 1992), the discriminatory event took place when the plaintiff had notice that she would not be tenured by the University of Illinois and received her terminal contract from the

board of trustees. Although plaintiff tried different means to overturn the prior ruling of the university during the final year of the terminal contract, "any action by the petitioner would not affect the finality of the decision or toll the charge." Thus, the discriminatory event was the notice and not the end of the following year as plaintiff argued.

Also, in Bd. of Governors of State Colleges and Universities for Northeastern Illinois University v. Rothbardt, 98 Ill.App.3d 423, 424 N.E.2d 742 (4th Dist. 1981), the plaintiff sought to have the school reconsider its previously decided employment decision. The 180 day period began to run on the date when the state university president offered a final 10 month contract to a female faculty member. The time to file was not extended by plaintiff's request for reconsideration.

The alleged discrimination date in this case is clear. Complainant's charge was filed with the Department on October 31, 2008. The charge was incorporated as part of Complainant's complaint with the Commission and cited April 16, 2008, as the "Date of Discrimination." Complainant did not check the "Continuing Action" box on the charge. Also, in the body of the charge, Complainant alleged, "On April 16, 2008, Respondent failed to represent me in that they did not provide and/or refused to authorize legal representation for me during the course of my dismissal proceedings with my employer." Complainant repeated this allegation under his religion and national origin discrimination claims. Complainant finally alleged that "On April 16, 2008, Respondent knowingly and intentionally provided false testimony to my former employer Cook County Sheriff, which consequently led to me being discharged." The event date again is April 16, 2008, for Complainant's claim of "aiding and abetting retaliation."

If there is any doubt about the discrimination event date of April 16, 2008, Complainant in his written response stated, " ...on April 16, 2008, the date the Cook County Sheriff's Merit Board terminated complainant's employment."

Complainant submitted as an argument, "... in discharge cases, the act of discrimination occurs when the charging party is unequivocally informed of a final decision to terminate the

employment relationship. While the decision of the Merit board was a final administrative decision, it was appealable and subject to review. Therefore, the decision was not final, but was subject of reversal and or remand." Based on the above discussion, Complainant's argument is without merit.

A reasonable person in the Complainant's position would have been put on notice to determine whether actionable conduct was involved when the Respondent notified him that it was not going to represent him at the disciplinary hearing on April 16, 2008. If Respondent's statement to Complainant was not clear enough, it should have been apparent at the hearing. Complainant's subsequent appeal was an attempt to overturn a prior employment decision by the Merit Board. However, Respondent was not Complainant's employer and did not decide to discharge him. Complainant filed his charge with the Department on October 31, 2008, 198 days after the event.

Therefore, the Commission does not have subject matter jurisdiction.

RECOMMENDATION

Based upon the foregoing, it is recommended that the complaint in the matter and the underlying charge be dismissed in their entirety, with prejudice.

HUMAN RIGHTS COMMISSION

BY:_____

WILLIAM J. BORAH
ADMINISTRATIVE LAW JUDGE
ADMINISTRATIVE LAW SECTION

ENTERED: September 9, 2010