STATE OF ILLINOIS
ILLINOIS LABOR RELATIONS BOARD
LOCAL PANEL

Fraternal Order of Police, Lodge 7,	)	
	)	
Charging Party	)	
	)	
and	)	Case No. L-CA-13-052
	)	
City of Chicago,	)	
	)	
Respondent	)	

DECISION AND ORDER OF THE ILLINOIS LABOR RELATIONS BOARD
LOCAL PANEL

On August 22, 2013, the Illinois Labor Relations Board's Executive Director, Melissa Mlynski, dismissed the unfair labor practice charge filed on April 1, 2013 by the Fraternal Order of Police, Lodge No. 7 (Union or Charging Party) which alleged that the City of Chicago (City or Respondent) violated Sections 10(a)(4) and (1) of the Illinois Public Labor Relations Act, 5 ILCS 315 (2012), *as amended* (Act), when it "refused to bargain in good faith over contractual terms and conditions of the collective bargaining agreement to be effective July 1, 2012." The Executive Director reasoned that the charge was untimely filed because the Union had notice on March 27, 2012 of the City's position that the parties' 2007-2012 contract would continue through June 30, 2013. On October 10, 2013, we granted the Union's request for oral argument. For the reasons that follow, we affirm the Executive Director's dismissal.

1. Material Facts

The Union and the City were parties to a collective bargaining agreement with effective dates of July 1, 2007 through June 30, 2012. Section 28.1 of that agreement provided that the

contract continues from year to year unless either party gives written notice of termination between February 1, 2012 and March 1, 2012.[1]

On March 20, 2012, Union President Michael Shields sent a letter to Commander Donald O'Neill which sought to terminate the contract. The letter stated the following:

> This letter is being sent pursuant to 5 ILCS 315/7 of the Illinois Public Labor Relations Act. As you are no doubt aware, the current contract between the City and the FOP expires June 30, 2012. The Lodge is currently in the process of finalizing its selections for the negotiating committees and counsel that accompany us to negotiating sessions....the Lodge would like to commence negotiating on or about May 1, 2012.

On March 27, 2012, the Respondent's attorney, James Franczek, Jr., replied to Shields's letter stating that the Union "[had] not complied with the contractual prerequisites for terminating the agreement and commencing negotiations for a successor Agreement." Specifically, Franczek explained that (1) the Union's letter did not indicate whether the Union intended to terminate the existing labor agreement and instead merely stated that the Union "would like to commence negotiating," (2) the letter was untimely, pursuant to Section 28.1 of the contract, and (3) the Union did not provide notice to the proper individual(s).

Nevertheless, Franczek stated that "because of the City's deep respect for the men and women of the Police Department and recognizing...that the Lodge's current leadership is negotiating its first labor agreement, the City will not decline, at this time, to negotiate with the Lodge regarding a successor Agreement, as is its right under § 28.1; nor will the City publicize the Lodge's failure to comply with the notice requirements of the Agreement."

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[1] "[The Agreement] shall continue in effect from year to year...unless notice of termination is given, in writing by certified mail, by either party no earlier than February 1, 2012, and no later than March 1, 2012. The notices referred to shall be considered to have been given as of the date shown on the postmark. Written notice may be tendered in person, in which case the date of notice shall be the written date of receipt."

However, Franczek cautioned that "the City is compelled to advise [the Union] that by virtue of extending these courtesies...the City does not waive in any respect its prerogatives under § 28.1 or any other provision of the Agreement affected by the Lodge's failure to give timely and proper notice." He further stated that "specifically, the City does not waive the clear provision of § 28.1 that the Articles and Sections of the current Agreement continue in effect to June 30, 2013." Franczek concluded that "all other Unions representing sworn personnel...submitted timely and proper notices to the City" and that the City was therefore "legally obligated...to negotiate with all of these Unions first."

On July 31, 2012, the Union submitted 60 proposed changes to the Agreement. Some of them expressly stated that they should take effect on July 1, 2012. On October 3, 2012, the City responded to the Union's proposal with a document which included the following statement:

> Pursuant to the City's correspondence to the Lodge dated March 27, 2012, submission of these Responses to the FOP's proposals for a successor collective bargaining agreement is without prejudice to the City's legal position that the Lodge failed to effectuate a timely termination of the existing labor agreement. Accordingly, any changes to the provisions of the existing labor agreement are not to have an effective date of prior to July 1, 2013.

Between July 31, 2012 and April 5, 2013, the Union and the City met in 26 bargaining sessions.

In March 2013, the parties agreed to ground rules for a grievance "Mediation Pilot Program." The rules stated that the parties would undertake three mediation sessions to resolve grievances and that "nothing herein shall require either party to continue the mediation pilot program after the three sessions." The parties' 2007-2012 contract states that the parties will mediate grievances if they do not resolve them at the second step. However, the contract contains no reference to a mediation pilot program.

2. Discussion and Analysis

We find that the Executive Director properly determined that the Union's charge was untimely filed because the Union reasonably should have known of the facts underlying the alleged unfair labor practice on March 27, 2012. Further, we find that the City's subsequent conduct did not toll the limitation period.

Pursuant to Section 11(a) of the Act, "no complaint shall issue based upon any unfair labor practice occurring more than six months prior to the filing of a charge with the Board...unless the person aggrieved thereby did not reasonably have knowledge of the alleged unfair labor practice." The six month limitations period begins to run when a charging party has knowledge of the alleged unlawful conduct or reasonably should have known of it. Moore v. Ill. State Labor Rel. Bd., 206 Ill. App. 3d 327, 335 (4th Dist. 1990); Serv. Empl. Int'l Union. Local 46 (Evans), 16 PERI ¶ 3020 (IL LLRB 2000).[2]

We have not yet articulated standards to help determine when a charging party knew or reasonably should have known of a respondent's alleged refusal to bargain a contract in good faith. To reach a determination on this issue, we draw guidance from National Labor Relations Board case law addressing timeliness, generally, and Board precedent addressing a charging party's knowledge of an alleged unilateral change in employees' terms and conditions of employment.

Under NLRB case law, the limitations period does not begin to run until the charging party has actual or constructive, clear and unequivocal notice of a violation of the Act. Ohio & Vicinity Regional Council of Carpenters (The Schaefer Group, Inc.), 344 NLRB 366, 367 (2005); Strick Corp., 241 NLRB 210 fn. 1 (1979). Adequate notice will be found where the

[2] The six-month period required for filing unfair labor practice charges is jurisdictional rather than procedural. Jones v. Ill. Educ. Labor Rel. Bd., 272 Ill. App. 3d 612, 618 (1st Dist. 1995)(interpreting identical language under the Illinois Educational Labor Relations Act, 115 ILCS 5 (2012)).

conduct was sufficiently "open and obvious to provide clear notice" to the charging party or where the charging party was "on notice of facts that reasonably engendered suspicion that an unfair labor practice had occurred," and where the charging party could have discovered the violation by exercising reasonable diligence. Broadway Volkswagen, 342 NLRB 1244, 1246 (2004), enfd. sub nom. East Bay Automotive Council v. NLRB, 483 F.3d 628 (9th Cir. 2007); Phoenix Transit System, 335 NLRB 1263 fn. 2 (2001). Conversely, the limitation period does not start where the employer has sent conflicting signals or engaged in ambiguous conduct. Concourse Nursing Home, 328 NLRB 692, 694 (1999), (citing A & L Underground, 302 NLRB 467, 469 (1991)).[3]

Consistent with that precedent, the Board has held that a charging party is deemed to know of a respondent's unilateral change when the change is unambiguously announced. Vill. of Richton Park, 21 PERI ¶ 158 (IL LRB-SP 2005); see also Chicago Transit Authority, 19 PERI 12 (IL LRB SP 2003). Similarly, an employer's statements and conduct may toll the limitation period when they lead the union to believe that there will be no change or when they otherwise evince a wavering of the intent to implement it. Chicago Transit Auth., 19 PERI ¶ 12 (IL LRB SP 2003)(limitation period did not begin when employer changed overtime calculations where the employer assured the Union that the calculations would remain the same); Cnty. of Woodford, 14 PERI ¶ 2015 (IL LRB-SP 1998)(Respondent's resolution which established new hours of operation—closure at 5 pm—did not start the limitation period where Respondent continued its practice of allowing bargaining unit members to leave at 4:30 and where the

[3] The NLRB's limitation period is set forth in Section 10(b) of the National Labor Relations Act. 29 USCA § 160(b). It states, in relevant part, that "no complaint shall issue based upon any unfair labor practice occurring more than six months prior to the filing of the charge with the Board and the service of a copy thereof upon the person against whom such charge is made." Id. Unlike the Illinois Public Labor Relations Act's limitation period which is jurisdictional, the limitation period under the NLRA is an affirmative defense which the Respondent bears the burden of proving. St. Barnabas Medical Center, 343 NLRB No. 119 (2004).

resolution merely permitted department heads to arrange sufficient coverage until 5 pm); Long Beach Community College, 28 PERC 33 (CA PERB 2003)("Charging Party's actual or constructive notice of a Respondent's clear intent to implement a unilateral change in policy triggers the limitation period, provided that nothing subsequent to that date evinces a wavering of that intent").[4]

These precedents mandate the conclusion that a charging party should know of a respondent's alleged refusal to bargain a contract in good faith when a respondent clearly and unequivocally gives the charging party actual or constructive notice of its bargaining position to that effect. This approach renders analogous a respondent's clear assertion of its bad faith bargaining position and a respondent's unambiguous announcement of a change in employees' terms and conditions of employment. Both statements trigger the limitation period, even though neither announcement has a contemporaneous effect on unit members or substantive negotiations. See Vill. of Richton Park, 21 PERI ¶ 158 (IL LRB-SP 2005)(unambiguous announcement of change, not its implementation, triggers the start of the limitation period).

i. The Letter

The City's March 27, 2012 letter provided the Union with ample notice of the facts underlying the charge because it unambiguously conveyed the City's position that it had no obligation to bargain over the 2012-2013 contract year and that it could decline to bargain over any successor agreement prior to the Union's termination of the purportedly extended contract.

[4] Once the Charging Party is deemed to know of an employer's refusal to bargain an alleged unilateral change, the employer's repeated refusals to bargain over the same matter do not revive a defunct unfair labor practice nor do they constitute an independent unfair labor practice for the purpose of triggering a new six-month limitation period. Wapella Education Ass'n v. Ill. Educ. Labor Rel. Bd., 177 Ill. App. 3d 153 (4th Dist. 1988).

A union should know of the facts underlying a charge alleging a respondent's refusal to bargain in good faith over contract terms when the respondent clearly and unequivocally asserts the position that it will bargain only while reserving its right to assert that it has no obligation to bargain at all. The duty to bargain in good faith entails an obligation to participate actively in the deliberations so as to demonstrate a present intention to find a basis for an agreement. City of Springfield, 6 PERI ¶ 2051 (IL SLRB 1990); City of Burbank, 4 PERI ¶ 2048 (IL SLRB 1988) (citing NLRB v. Montgomery Ward and Co., 133 F.2d 676, 686 (9th Cir. 1943)). The duty implies both an open mind and a sincere desire and effort to reach an agreement and to find a common ground. City of Springfield, 6 PERI ¶ 2051 (IL SLRB 1990). A respondent does not bargain in good faith when it places preconditions on bargaining or when it bargains while reserving its right to renege on any agreement. City of Highwood, 17 PERI ¶ 2021 (IL LRB-SP 2001); Duro Fittings Co., 130 NLRB No. 71 at 12 (1961). Such preconditions or reservations of rights are the "antithesis of good-faith collective bargaining" because they show a "determination by the respondent to negotiate only on its own terms." Duro Fittings Co., 130 NLRB No. 71 at 12 (Respondent that argued that its agreement on a particular clause was always subject to a change of heart prior to full agreement on the terms of a contract did not bargain in good faith); see City of Highwood, 17 PERI ¶ 2021.

For example, in City of Highwood, the Respondent failed to exhibit good faith because it rendered bargaining an "exercise in futility" by reserving the right to claim it had no statutory obligation to abide by any agreement it reached with the Charging Party. City of Highwood, 17 PERI ¶ 2021. In that case, the Respondent initially refused to bargain with the Charging Party unless it agreed that the Respondent could challenge the Board's jurisdiction at any time during negotiations. Id. While the Respondent later agreed to negotiate with the Charging Party, it

continued to assert that it had no obligation to do so. Id. The ALJ found that both of the Respondent's positions constituted an unlawful attempt to obtain the Charging Party's agreement to a precondition on bargaining. Id. The Board affirmed. City of Highwood, 17 PERI ¶ 2021; but see City of Country Club Hills, 17 PERI ¶ 2043 (IL LRB-SP 2001)(no violation of the duty to bargain in good faith where the Respondent before an interest arbitrator, demonstrated a willingness to negotiate while asserting it had no duty to bargain over a particular topic, when the Respondent also availed itself of the Board's declaratory ruling process to ascertain its duty to bargain).

Here, the Union should have known of the facts underlying its charge as of March 27, 2012 because the City's letter clearly and unambiguously expressed the City's position that it had no legal obligation to bargain over a successor contract. First, the City stated that it had a "right under § 28.1" to decline negotiations because the Union "ha[d] not complied with the contractual prerequisites for terminating the Agreement and commencing negotiations for a successor," and that the City accordingly did "not waive the clear provision of § 28.1 that the...current Agreement continue[d] in effect to June 30, 2013." Second, the City emphasized that it would bargain only out of "respect" and "courtes[y]" towards the Union's members. Finally, the City suggested that it could withdraw from negotiations at will because its agreement to bargain was effective only "at this time." See City of Highwood, 17 PERI ¶ 2021 (Respondent violated the Act when it bargained while maintaining it had no obligation to do so).

The Union's arguments, that the letter is unequivocal and, alternatively, that it is ambiguous, do not warrant a different outcome because they do not undermine the conclusion set forth above. Each argument is discussed in turn below.

First, contrary to the Union's assertion, the City's allegedly "unequivocal" agreement to bargain over a contract effective July 1, 2012 does not toll the limitation period because the City's reservations are evident from the letter, despite the City's agreement to bargain. Thus, the City's stated agreement to bargain over a successor contract, regardless of that contract's effective date, does not excuse the Union's failure to file a timely charge where the City simultaneously reserved its right to withdraw from bargaining at any time and thereby clearly announced its bargaining position. See City of Highwood, 17 PERI ¶ 2021.

Notably, the Union's own arguments demonstrate that it should have known of the facts underlying the charge based on the City's letter. Indeed, the Union understood that the City, in its letter, "tr[ied] to reserve the [City's] right to decline to bargain at a later time," and that the City sought to "take a position that could easily be reversed...whenever it thought it was strategically helpful."[5] Consequently, the City's letter triggers rather than tolls the limitation period.

Second, given the City's clear reservation of rights, the Union cannot reasonably assert that the City's letter is ambiguous such that the Union had inadequate notice of the facts underlying the alleged unfair labor practice. Here, the Union contends that the City's stated agreement to bargain over a successor contract creates an ambiguity because it is incompatible with the City's assertions (i) that the Union did not terminate the agreement and (ii) that the City is reserving its rights under Section 28.1 of the parties' contract. As noted above, it is precisely this tension that gives rise to the charge. Although the Union accurately notes that a reservation of rights is not the same as an affirmative declaration that the City would refuse to bargain over contract terms effective July 1, 2012, the Union fails to recognize that the legal effect of those

[5] The Union also states that the City tried to lull the Union into complacency by agreeing to bargain at a time when it knew it needed extensive police presence for the NATO conference. As noted above, the Union's complacency is unjustified because the City clearly asserted its reservation of rights.

statements is the same as it relates to timeliness of the instant charge. Here, the charge alleges a "refusal to bargain in good faith over terms effective July 1, 2012." The City's letter put the Union on notice of facts relevant to the charge because the letter reserves the City's right to assert that it has no obligation to bargain and suggests that the City can withdraw from negotiations at any time. Accordingly, the Union should have known of the alleged unfair labor practice when it received the City's March 27, 2012 letter, even though the letter expresses the City's agreement to bargain a successor contract.[6]

In short, the Union's interpretations of the City's letter demonstrate either a willful blindness towards its contents or a failure to recognize the legal import of the City's statements as they relate to the charge—neither extends the limitation period. See Moore, 206 Ill. App. 3d at 335 (limitation period is not extended merely because a charging party does not understand that those complained-of actions could constitute an unfair labor practice); Moeller Bros. Body Shop, 306 NLRB 191, 193 (1992)(A union "cannot with impunity ignore an employer...and then rely on its ignorance...to argue that it was not on notice" of the circumstances which served as the basis for filing a charge; applying this rationale in the unilateral change context).

Thus, we find that the Union knew or should have known of the facts underlying the unfair labor practice charge on March 27, 2012.

ii. The City's Subsequent Conduct (March 27, 2012 – April 1, 2013)

Further, we find that the City did not send conflicting signals or engage in ambiguous conduct which would toll the limitation period because the City never withdrew from its initial

[6] Notably, the Union's assertion that the letter is ambiguous is also belied by the fact that the Union never asked for clarification from the City as to its meaning. See People ex rel. City of Chicago v. Le Mirage, Inc., 2013 IL 113482 ¶ 69 (holding that court order violated by defendant was not ambiguous; using defendant's failure to ask his attorney to clarify any ambiguities to support that conclusion).

position, never implemented changes to contractual terms, and never demonstrated an intent to formalize alleged tentative agreements into a contract effective July 1, 2012.

First, and most importantly, the City never withdrew from its position that it had no duty to bargain with the Union over a contract effective July 1, 2012. Rather, the City consistently asserted that the Union failed to terminate the 2007-2012 contract, that the contract extended, and that "any changes to the existing labor agreement [were] not to have an effective date of prior to July 1, 2013."

Second, the City did not implement changes to contractual terms and conditions of employment before July 1, 2013 when it instituted the Mediation Pilot Program because that program is novel. The program is not referenced in the parties' existing contract and the program's ground rules provide that the parties may abandon it altogether after completing three trial mediation sessions. Accordingly, this pre-July 1, 2013 change in terms and conditions of employment is an extra-contractual one rather than a modification of the existing contract's terms and does not indicate the City's withdrawal from its position that it had no obligation to bargain a contract effective July 1, 2012.

Third, contrary to the Union's contention, there is no evidence that the City intended to formalize any alleged tentative agreements into a contract with a July 1, 2012 effective date. Rather, the City's letter and its subsequent conduct indicates that the City, at best, intended to pre-bargain a successor agreement effective July 1, 2013, and at worst, reserved the right to renege on any and all agreements reached with the Union between the date of the City's letter and the Union's successful termination of the extended contract.

Thus, we find that the Union's April 1, 2013 charge is untimely filed because the Union knew or should have known on March 27, 2012 of the facts underlying the unfair labor practice charge, and the City's subsequent conduct does not toll the limitation period.

BY THE LOCAL PANEL OF THE ILLINOIS LABOR RELATIONS BOARD

/s/ Robert M. Gierut
Robert M. Gierut, Chairman

/s/ Charles E. Anderson
Charles E. Anderson, Member

/s/ Richard A. Lewis
Richard A. Lewis, Member

Decision made at the Local Panel's public meeting in Chicago, Illinois on November 5, 2013, written decision issued in Chicago, Illinois on November 15, 2013.

1289

STATE OF ILLINOIS
ILLINOIS LABOR RELATIONS BOARD
LOCAL PANEL

Fraternal Order of Police, Lodge No. 7,	)	
	)	
Charging Party	)	
	)	
and	)	Case No. L-CA-13-052
	)	
City of Chicago,	)	
	)	
Respondent	)	

DISMISSAL

On April 1, 2013, the Fraternal Order of Police, Lodge No. 7 (Union or Charging Party) filed a charge with the Local Panel of the Illinois Labor Relations Board (Board), in Case No. L-CA-13-052, alleging that the City of Chicago (Employer or Respondent) engaged in unfair labor practices within the meaning of Section 10(a) of the Illinois Public Labor Relations Act, 5 ILCS 315 (2010), *as amended* (Act). After an investigation conducted in accordance with Section 11 of the Act, I determine that the charge fails to raise an issue of law or fact sufficient to warrant a hearing and hereby issue this dismissal for the reasons stated below.

I. INVESTIGATORY FACTS

The Charging Party represents a bargaining unit of the Respondent's employees. The most recent collective bargaining agreement (Agreement) between the parties was effective from July 1, 2007 through June 30, 2012. This Agreement and the nine previous collective bargaining agreements had an "evergreen clause" at Section 28.1. Section 28.1 of the Agreement stated:

> This Agreement shall be effective from July 1, 2007 and shall remain in full force and effect until June 30, 2012. It shall continue in effect from year to year thereafter unless notice of termination is given, in writing, by certified mail, by either party no earlier than February 1, 2012 and no later than March 1, 2012.

The parties first discussed a successor agreement at a meeting held on August 24, 2011. This meeting was attended by Charging Party's President Michael Shields and 1st Vice President Bill Dougherty, as well as Respondent's Deputy Mayor Mark Angelson, Director of Inter-governmental Affairs Matt Hynes, Ted Theophilos, a consultant hired by the Respondent to develop its wellness program, and Respondent's attorney James Franczek. The parties expressed their mutual intentions to expedite negotiations for the next collective bargaining agreement to avoid interest arbitration and also discussed whether the Charging Party's employees would join the Respondent's wellness program. On August 31, 2011, Dougherty and Theophilos met and discussed the wellness program. On September 19, 2011, the parties were present at a grievance arbitration hearing where they agreed to bargain over their disputes regarding employee details and assignments. As a result, this arbitration hearing was postponed.

On March 20, 2012, Shields sent a letter to Commander O'Neill stating that the Union would like to commence negotiations on May 1, 2012 for a successor collective bargaining agreement to the Agreement, which was due to expire on June 30, 2012. The Charging Party's letter stated it was sent pursuant to 5 ILCS 315/7 or Section 7 of the Act. This is presumably a reference to the Act's requirement that one party wishing to terminate or modify a collective bargaining agreement provide notice to the other party. Under the Act, the party that wishes to modify or terminate a collective bargaining agreement must notify the other party 60 days prior to the expiration date of the collective bargaining agreement or the date they will propose modifications or termination of the collective bargaining agreement.

On March 27, 2012, Franczek sent a letter to Shields stating that the March 20, 2012 letter did not indicate whether the Charging Party wished to terminate the Agreement but rather merely states they would like to commence negotiating. Franczek also stated that the March 20, 2012 letter failed to comply with the requirements of Section 28.1 of the Agreement that require

notice of intent to terminate be given in writing between February 1, 2012 and March 1, 2012. Finally, Franczek noted that Shield's letter was sent to Commander O'Neill who is not a party to the Agreement and notice must be sent to the City of Chicago. Therefore, Franczek concluded that the Charging Party did not comply with the notice requirements of the Agreement. The letter indicated that the Respondent would agree to negotiate with the Charging Party but they would not waive any of their rights resulting from the Charging Party's failure to give timely notice under Section 28.1 of the Agreement. Franczek stated that it was the Respondent's position that the terms of the Agreement continued in effect until June 30, 2013.

On July 31, 2012, the Charging Party submitted 60 proposed changes to the Agreement. On October 3, 2012, the Respondent submitted a response to all of the Charging Party's 60 proposed changes to the Agreement. In a cover letter for their responses, the Respondent referenced Franczek's March 27, 2012 letter to Shields and asserted that they submitted their responses to the Charging Party's proposed changes without prejudice to their position, taken in the March 27, 2012 letter, that the Charging Party failed to give timely notice. The Respondent stated that any proposed changes to the Agreement would not take effect prior to July 1, 2013. On November 15, 2012, the Respondent submitted their own proposed changes to the Agreement and again asserted their position that the Charging Party did not give timely notice and any proposed changes would not take effect prior to July 1, 2013.

From July 31, 2012 through April 5, 2013, the Charging Party and Respondent met in 26 formal bargaining sessions. Four of these sessions included the parties' entire bargaining teams, 12 of these sessions included the parties' core bargaining groups and 10 of these sessions included the parties' subject matter committees. Additionally, the Charging Party and Respondent reached a tentative agreement for an expedited grievance procedure set to begin May 1, 2013.

II. POSITIONS OF THE PARTIES

The Charging Party claims that they gave timely notice of their intent to terminate the Agreement prior to March 1, 2012, even though they did not do so in writing, because the Respondent was aware of the Charging Party's intent long before March 1, 2012. The Charging Party also alleges that the Respondent waived its objection to the timeliness of their notice to terminate the Agreement by their conduct. The Charging Party claims that the Union intended to modify the Agreement since August 24, 2011, and that the Charging Party reiterated their intent to modify the Agreement again on September 19, 2011, during the grievance arbitration hearing. In support of their position, the Charging Party cited County of Jackson, 9 PERI ¶2036 (IL SLRB 1993), where an Employer negotiated with a Union for 8 months without objecting to faulty notice.

The Respondent claims that the instant charge is untimely filed. Respondent asserts that on March 27, 2012, they told the Charging Party that their notice of intent to terminate or modify the Agreement was defective under Section 28.1 of the Agreement. Respondent also asserts that they consistently re-stated and held that position, yet the Charging Party did not file the instant charge until April 1, 2013. The Respondent claims that they stated and re-stated their position in letters and orally during bargaining sessions. The Respondent also claims that they have no duty to bargain over changes retroactive to July 1, 2012 because the Agreement automatically renewed until June 30, 2013. The Respondent alleges that "evergreen clauses" like Section 28.1 of the Agreement are strictly construed in the private sector. The Respondent claims that once the Agreement renewed, they had no duty to bargain over changes retroactive to July 1, 2012. The Respondent also claims that they did not waive the notice requirement of Section 28.1 of the Agreement. Respondent asserts that because the parties did not bargain before February 1, 2012, they did not waive their objection to timely notice by bargaining before the renewal notice

window of the Agreement. The Respondent cited NLRB case law holding that a party waives notice by bargaining before the contractual renewal notice window begins. However, the Respondent alleges they did not do so here and, therefore, cannot be held to have waived their objection to the Charging Party's untimely notice by such conduct.

III. DISCUSSION AND ANALYSIS

The instant charge is untimely filed. At the heart of this charge is the Union's belief that the Employer is obligated to negotiate changes to the CBA to be effective July 1, 2012. However, as early as March of 2012, the Union was on notice that it was the Employer's position that the terms of the contract would continue until June 30, 2013. The Union did not file this charge until April of 2013.

Pursuant to Section 11(a) of the Act, "no complaint shall issue based upon any unfair labor practice occurring more than six months prior to the filing of a charge with the Board... unless the person aggrieved thereby did not reasonably have knowledge of the alleged unfair labor practice." The six month limitations period begins to run when an employee or exclusive representative has knowledge of the alleged unlawful conduct or reasonably should have known of it. Moore v. ISLRB, 206 Ill. App. 3d 327, 564 N.E.2d 213, 7 PERI ¶4007 (1990); Service Employees International Union, Local 46 (Evans), 16 PERI ¶3020 (IL LLRB 2000); Teamsters (Zaccaro), 14 PERI ¶3014 (IL LLRB 1998), aff'd by unpub. order, Docket Nos. 1-98-2382 and 1-98-3014, 16 PERI ¶4003 (1st Dist. 1999).

In a letter dated March 27, 2012, Franczek clearly stated the Employer's position that the Charging Party did not give timely notice of their intent to terminate or modify the Agreement and, therefore, the Respondent believed the Agreement renewed until June 30, 2013. The Respondent expressed this position in writing again on October 3, 2012 and November 15, 2012.

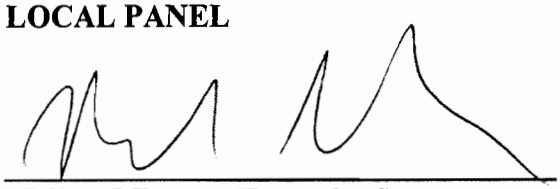
Although the Respondent met with the Charging Party after March 27, 2012, received a list of proposed changes to the Agreement from the Charging Party and submitted their own proposed changes, there is no evidence that the Respondent ever altered the position it adopted on March 27, 2012. Even though the Charging Party was aware of the Respondent's position upon receipt of the March 27, 2012 letter, Charging Party did not file the instant charge until April 1, 2013, well outside of the six month limitation period in the Act.

IV. ORDER

Accordingly, the instant charge is dismissed. The Charging Party may appeal this dismissal to the Board any time within 10 days of service hereof. Such appeal must be in writing, contain the case caption and number, and must be addressed to the General Counsel of the Illinois Labor Relations Board, 160 North LaSalle Street, Suite S-400, Chicago, Illinois, 60601-3103. The appeal must contain detailed reasons in support thereof, and the Charging Party must provide it to all other persons or organizations involved in this case at the same time it is served on the Board. The appeal sent to the Board must contain a statement listing the other parties to the case and verifying that the appeal has been provided to them. The appeal will not be considered without this statement. If no appeal is received within the time specified, this dismissal will be final.

Issued in Springfield, Illinois, this 22nd day of August, 2013.

STATE OF ILLINOIS
ILLINOIS LABOR RELATIONS BOARD
LOCAL PANEL



Melissa Mlynski, Executive Director