

**STATE OF ILLINOIS
ILLINOIS LABOR RELATIONS BOARD
LOCAL PANEL**

Kenneth Sawyer,)	
)	
Charging Party,)	
)	
and)	Case No. L-CA-16-005
)	
City of Chicago (Streets and Sanitation),)	
)	
Respondent.)	

**DECISION AND ORDER OF THE ILLINOIS LABOR RELATIONS BOARD
LOCAL PANEL**

On October 27, 2015, Executive Director Melissa Mlynski dismissed a charge filed by Charging Party Kenneth Sawyer (Charging Party) in the above-captioned case.¹ In his charge, the Charging Party alleged Respondent City of Chicago, Department of Streets and Sanitation (Respondent) violated Section 10(a) of the Illinois Public Labor Relations Act, 5 ILCS 315/10(a) (2014). The Executive Director dismissed the charge finding the Charging Party had failed to raise an issue of fact or law warranting a hearing. In a document dated November 10, 2015, and notarized November 11, 2015, the Charging Party appealed the Dismissal. The Respondent filed a response.

Section 1200.135 of the Board’s Rules and Regulations provides “[n]otice of appeal and all supporting materials shall be filed . . . no later than 10 days after service of the Executive Director’s order.” Here, pursuant to Board Rule 1200.30 regarding the computation and extension of time, the Charging Party’s appeal was due on or before November 9, 2015. Given that he filed his appeal after November 9, the Charging Party’s appeal is untimely.

¹ The Executive Director also dismissed the Charging Party’s charge in Case No. L-CA-16-018 on October 27, 2015. The Charging Party appealed that dismissal as well.

The Charging Party noted in his appeal that he received the Dismissal late. However, he did not provide evidence or otherwise explain when he received the Dismissal. Additionally, the Charging Party did not request a variance pursuant to Section 1200.160 of the Board's Rules, and we decline to grant a variance on our own motion. As such, we will not consider his appeal, and the Executive Director's dismissal stands as non-precedential.

BY THE ILLINOIS LABOR RELATIONS BOARD, LOCAL PANEL

/s/ Robert Gierut
Robert Gierut, Chairman

/s/ Charles Anderson
Charles Anderson

Board Member Lewis, dissenting:

Although I find that the Charging Party's appeal is meritless and concur with the Executive Director's Dismissal, I would have granted a variance regarding the timeliness of the Charging Party's appeal.

Decision made at the Local Panel's public meeting in Chicago, Illinois on January 12, 2016, written decision issued in Chicago, Illinois on January 22, 2016.

**STATE OF ILLINOIS
ILLINOIS LABOR RELATIONS BOARD
LOCAL PANEL**

Kenneth Sawyer,

Charging Party

and

City of Chicago (Streets & Sanitation),

Respondent

Case No. L-CA-16-005

DISMISSAL

On July 28, 2015, Kenneth Sawyer (Charging Party) filed an unfair labor practice charge with the Local Panel of the Illinois Labor Relations Board (Board), in Case No. L-CA-16-005, alleging that the City of Chicago (Streets & Sanitation) (Respondent) violated Section 10(a) of the Illinois Public Labor Relations Act (Act), 5 ILCS 315 (2014), *as amended*. After an investigation conducted in accordance with Section 11 of the Act, I determined 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. INVESTIGATION

The Respondent is a public employer within the meaning of Section 3(o) of the Act. The Charging Party is a public employee within the meaning of Section 3(n) of the Act and is employed by the Respondent in the title of Motor Truck Driver. Charging Party asserts that the Respondent violated the Act in two ways. First, Charging Party asserts that Foreman George Gooch failed to respond within five working days to two grievances Charging Party filed on June 4, 2015, and June 16, 2015. Second, Charging Party asserts that he was subjected to a

disciplinary hearing for what he claims were false allegations made by George Gooch. Charging Party was issued an 18 day suspension on or about June 15, 2015, for insubordinate action. Charging Party believes that the hearing officer retaliated against him by issuing such a severe disciplinary action because he sued one of her colleagues for discipline issued previously. According to the Charging Party, that case is pending in the Circuit Court.

By letter dated August 5, 2015, the Board agent assigned to the case advised Charging Party of the elements necessary to establish a 10(a) violation. The Board agent requested Charging Party provide any and all evidence to support his charge and explanations for the written statements submitted with the charge forms by August 19, 2015. To date, Charging Party has not filed a response.

II. DISCUSSION AND ANALYSIS

Section 1220.40(a)(1) of the Illinois Labor Relations Board's Rules and Regulations, 80 Ill. Admin. Code, Sections 1200 through 1300, provides that "[t]he Charging Party shall submit to the Board or its agent all evidence relevant to or in support of the charge." This rule has been interpreted to allow the Executive Director to dismiss a case where a charging party has not complied with a request for evidence in support of a charge, or has not responded to a request for a written withdrawal. SEIU Local 880 (Kirk, et al.), 12 PERI ¶2006 (IL SLRB 1995), aff'd by unpub. order, 13 PERI ¶4008 (1996); State of Illinois, Department of Central Management Services (Department of Rehabilitation Services), 12 PERI ¶2005 (IL SLRB 1995), aff'd by unpub. order, 13 PERI ¶4008 (1996).

In the instant case, Charging Party has failed to provide any evidence responsive to the Board agent's inquiry into the matter. As the available evidence is not sufficient to raise an issue

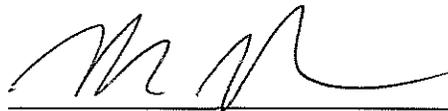
for hearing, Charging Party's failure to respond makes it unnecessary for the Board to process this case further.

III. ORDER

Accordingly, the instant charge is hereby dismissed. The Charging Party may appeal this dismissal to the Board any time within 10 calendar days of service hereof. Such appeal must be in writing, contain the case caption and numbers 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 at Springfield, Illinois, this 27th day of October, 2015.

**STATE OF ILLINOIS
ILLINOIS LABOR RELATIONS BOARD
LOCAL PANEL**



**Melissa Mlynski
Executive Director**