

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

Salvatore T. Zicarelli,	)	
	)	
Charging Party	)	
	)	
and	)	Case No. L-CB-13-020
	)	
International Brotherhood of Teamsters,	)	
Local 700	)	
Respondent	)	

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

On March 28, 2013, Executive Director Melissa Mlynski dismissed a charge filed by Salvatore T. Zicarelli (Charging Party) on November 26, 2012, which alleged that the International Brotherhood of Teamsters, Local 700 (Respondent or Local 700), engaged in unfair labor practices within the meaning of Section 10(b) of the Illinois Public Labor Relations Act, 5 ILCS 315 (2010), as amended (Act).<sup>1</sup> The charge states that the Respondent and the Charging Party's employer conspired to deny the Charging Party the opportunity to testify at a grievance hearing on May 22, 2012.

The Executive Director dismissed the charge on the basis that it was untimely filed. Specifically, the Executive Director found that the Charging Party knew of the alleged misconduct on May 22, 2012, but filed his charge on November 26, 2012, more than six months

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<sup>1</sup> In relevant part, Sections 10(b) of the Act provides as follows:

Sec. 10. Unfair labor practices.

(b) It shall be an unfair labor practice for a labor organization or its agents:

(1) to restrain or coerce public employees in the exercise of the rights guaranteed in this Act, provided,

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iii. that a labor organization or its agents shall commit an unfair labor practice under this paragraph in duty of fair representation cases only by intentional misconduct in representing employees under this Act.

later. In a footnote, the Executive Director remarked that the Charging Party did not adhere to the Board's rules regarding filing and service because he failed to send the Board a fax confirmation receipt, failed to mail or deliver to the Board his original charge form on the same day he sent his fax, and failed to produce proof of service on the Respondent.<sup>2</sup>

On May 9, 2013, the Charging Party filed exceptions to the Executive Director's Dismissal arguing that the Executive Director erred when she determined that the Charging Party should have filed his charge no later than November 22, 2012. In support, the Charging Party notes that November 22, 2012 was Thanksgiving, a state holiday, and that the limitation period thus automatically extended to November 26, 2012, the first business day after Thanksgiving. While the Charging Party admits that he did not prepare a Certificate of Service, he explains that "the instructions he had available to him did not indicate that one should be provided." The Charging Party further asserts that he mailed his original charge to the Board and mailed a copy to the Respondent on November 21 or 23, 2012.<sup>3</sup> Finally, the Charging Party states that he provided the Respondent with notice of filing when he faxed his charge to the Board.

On May 13, 2013, the Respondent filed its response to the Charging Party's exceptions arguing that the Board should affirm the dismissal because the Charging Party did not file his charge within 180 days of the alleged misconduct. Further, the Respondent argues that the

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<sup>2</sup> Section 1200.20 of the Board's rules provide that documents may be filed by fax as long as the original documents are "mailed or delivered to the appropriate Board office on the same day the fax is transmitted, together with a fax confirmation receipt." 80 Ill. Admin. Code § 1200.20(c)(3)(b). The Rules further provide that "[a]ll unfair labor practice charges...shall be served by the party filing the document on all other parties to the proceedings" and that "[t]he document shall not be considered properly served unless accompanied by proof of service." *Id.* at 1200.20(e). Finally, it states that "[s]ervice made by fax shall be regarded as completed upon production by the fax machine of confirmation of transmission, together with the same-day mailing of a copy of the papers, postage prepaid and properly addressed, to the person being served." *Id.* at 1200.20(e).

<sup>3</sup> The original charge appears in the file, however it is not date stamped by the Board and there is no envelope to indicate when the Charging Party mailed it.

Charging Party did not give the Respondent timely notice of the charge because the Respondent did not “take service” of it until November 28, 2012.<sup>4</sup>

Thus, this appeal raises the two following issues: (1) whether the Executive Director erred in calculating the date on which the six-month limitation period ended and, if so, (2) whether we should reverse the dismissal on that basis or instead affirm the dismissal on alternate grounds. For the reasons set forth below, we reverse the Executive Director’s dismissal and remand the charge for further investigation on the merits.

First, the Charging Party correctly contends that Executive Director miscalculated the filing due date for the charge because the deadline she articulated fell on Thanksgiving (November 22, 2012) and she should have extended that due date to the next business day (November 26, 2012).

Section 11(a) of the Act provides that “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 limitation period begins to run when an employee 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, 564 N.E.2d 213, 7 PERI ¶ 4007 (1990).

Section 1200.30 of the Board’s rules sets forth the manner in which the Board must calculate time limits. It provides that, “in computing any period of time prescribed by the Act or this Part, the designated period of time begins to run the day after the act, event, or default and ends on the last day of the period so computed.” 80 Ill. Admin. Code § 1200.30(a). Further, it

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<sup>4</sup> The Charging Party also filed an amended appeal, identical to the initial one except that it included a certificate of service, and a reply to the Respondent’s response.

states that “if the last day falls on a Saturday, Sunday, or legal holiday, the time period shall be automatically extended to the next day that is not a Saturday, Sunday or legal holiday.” *Id.* On these points, the Board’s rules are consistent with the Statute on Statutes. 5 ILCS 70/1.11 (2010).<sup>5</sup>

Here, the parties do not dispute that the Charging Party reasonably should have known of the alleged misconduct on May 22, 2012. Accordingly, May 22, 2012 is the date on which the limitation period began to run.

However, the Executive Director erred in her calculation because she failed to extend the limitation period past the state holiday on which it fell. The Executive Director rightly noted that November 22, 2012 is the date six months from May 22, 2012. Nevertheless, contrary to the Executive Director’s assertion, the charge was not due on November 22, 2012 because that day was Thanksgiving, a state holiday. Nor was it due on November 23-25, 2012 because those dates fell on a state holiday and two weekend days, respectively. Instead, the charge was due on November 26, 2012, the first business day after November 22, 2012. Thus, the time period for filing was automatically extended to Monday, November 26, 2012, and the Executive Director erred when she failed to extend the limitation period to that date.

Because the limitation period stated in the Act is “six months,” we reject the Respondent’s argument that the Board should apply a 180-day limitation period. The Statutes of Statutes provides that “‘month’ means calendar month” and the Board has repeatedly calculated the limitation period in accordance with that interpretation. 5 ILCS 70/1/10 (2010); City of Lake

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<sup>5</sup> The Statute on Statutes provides as follows: “The time within which any act provided by law is to be done shall be computed by excluding the first day and including the last, unless the last day is Saturday or Sunday or is a holiday as defined or fixed in any statute now or hereafter in force in this State, and then it shall also be excluded. If the day succeeding such Saturday, Sunday or holiday is also a holiday or a Saturday or Sunday then such succeeding day shall also be excluded.” 5 ILCS 70/1.11 (2010).

Forest, 29 PERI ¶ 52 (IL LRB-SP 2012) (where charge was filed October 26, 2009, statements made to union members could not serve as the basis for a timely unfair labor practice charge where they were made earlier than April 26, 2009); Chicago Transit Authority (Foster), 29 PERI ¶ 32 (IL LRB-LP 2012) (where charging party knew of unlawful conduct on February 7 or 8, 2010, charge that was filed on August 6, 2010 was timely); State of Ill., Dep't of Cent. Mgmt. Serv. (Atterberry), 28 PERI ¶ 168 (IL LRB-SP 2012)(where charging party filed her charge on July 20, 2011 alleged unlawful conduct that she knew of before January 20, 2011, could not be the subject of a timely charge); see also Int'l Union of Operating Engineers, Local 143 (Eskridge), 29 PERI ¶ 65 (IL ELRB ED 2012) (applying identical language from the Illinois Educational Labor Relations Act, 115 ILCS 5 (2010); where charge was filed on November 17, 2011, alleged unlawful conduct of which charging party knew prior to May 17, 2011 could not be the subject of a timely charge); Chicago Bd. of Educ., 29 PERI ¶ 66 (IL ELRB 2012)(where charge was filed on February 23, 2012, conduct of which charging party was aware prior to August 23, 2011 could not be the subject of a timely charge). Notably, the Respondent's attorney acknowledges this rule and the Board's application of it in Respondent's December 28, 2012 position statement to the Board.<sup>6</sup>

Further, while we acknowledge that the Charging Party failed to strictly comply with the Board's filing and service rules, we find it equitable to grant a variance from both rules at issue here. First, we grant a variance from the rules pertaining to filing by fax because the Board timely received a copy of the charge and because the Executive Director both deemed the charge filed and based her dismissal on other grounds.

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<sup>6</sup> In that document, the Respondent argues that the Charging Party's charge was untimely when filed on November 26, 2012, because it was "not filed within the six months of the alleged violation as required under Section 11(a) of the Act."

The Rules provide that the Board may grant a variance or waiver from its requirements when it finds that “(a) the provision from which the variance is granted is not statutorily mandated, (b) no party will be injured by the granting of the variance, and (c) the rule from which the variance is granted would, in the particular case, be unreasonable or unnecessarily burdensome.” 80 Ill. Admin Code § 1200.160.

Here, in contrast to the six month limitation period itself, which is statutory, the fine points of filing are administratively-mandated and are thus subject to waiver. Further, no party would be injured by the variance because the Board received a copy of the charge on November 26, 2012, within the limitation period. Finally, it would be unreasonable to apply the fax-filing rule where the Executive Director deemed the charge filed despite its procedural infirmities, and erroneously based her dismissal on the date the Board received the faxed charge rather than on the Charging Party’s failure to follow the Rules. To illustrate, the Executive Director deemed the charge filed on November 26, 2012 because she observed that the Charging Party did not file “until” that date. Further, the Executive Director based her decision on the date of the Charging Party’s fax because the dismissal plainly states that “the instant charge is untimely filed” and reasons the Charging Party “did not file [it] until November 26 2012,” the faxing date. In fact, the Executive Director never held that the Charging Party’s omissions would warrant dismissal, even if he had faxed the charge within the limitation period she calculated; rather, she merely stated that the Rules “should be noted.”

Next, we grant the Charging Party a variance from the rules that require proof of service on the Respondent because the Respondent admits that it timely received the charge. Here, the proof of service requirement is not statutorily mandated and thus may be waived. Further, no party is injured by our decision to grant a variance here because the Respondent admitted on

December 28, 2012, that it actually received the charge on November 26, 2012, within the limitation period. Finally, it would be unreasonable to apply the requirement of proof of service under these circumstances, particularly in light of appellate court case law which condones waiving proof of service requirements where there is evidence that the opposing party received timely actual notice, as the Respondent did here. See Zwicky v. Freightliner Custom Chassis Corp., 373 Ill. App. 3d 135, 140-41 (2nd Dist. 2007)(finding plaintiff's failure to respond to request for admissions resulted in binding admission, even though defendant failed to file proof of service, where plaintiffs conceded that they timely received the requests for admission); Larson v. Pedersen, 349 Ill. App. 3d 203, 205 (2nd Dist. 2004) (declining to excuse plaintiff's failure to appear in court merely because her attorney, who had filed motion for leave to withdraw, did not provide her with proof of service of his motion, where the evidence demonstrated that plaintiff knew she was required to appear in court on a certain date with a new attorney); but see Vill. of Univ. Park, 29 PERI ¶ 126 (IL LRB-SP 2013) (no waiver of service rules granted where there was no evidence that the Respondent received the Charging Party's exceptions).

For the reasons above, we reverse the Executive Director's dismissal and remand the charge for further investigation on the merits.

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 State Panel's public meeting in Chicago, Illinois on July 9, 2013, written decision issued in Chicago, Illinois on July 19, 2013.

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

Salvatore T. Zicarelli,	)	
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Charging Party	)	
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and	)	Case No. L-CB-13-020
	)	
International Brotherhood of Teamsters,	)	
Local 700,	)	
	)	
Respondent	)	

**DISMISSAL**

On November 26, 2012, Charging Party, Salvatore T. Zicarelli, filed a charge with the Local Panel of the Illinois Labor Relations Board (Board) in the above-captioned case, alleging that Respondent, International Brotherhood of Teamsters, Local 700 (Local 700 or Union), violated Section 10(b) of the Illinois Public Labor Relations Act (Act), 5 ILCS 315 (2010), *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 issue this dismissal for the reasons set forth below.

**I. INVESTIGATORY FACTS AND CHARGING PARTY'S POSITION**

At all times material, Zicarelli was a public employee within the meaning of Section 3(n) of the Act, employed by the County of Cook (County or Employer), in the title or classification of Correctional Officer. Respondent is a labor organization within the meaning of Section 3(i) of the Act, and the exclusive representative of a bargaining unit of County employees, including those in the title or classification of Correctional Officer. At all times material, Zicarelli was a member of Local 700's bargaining unit. The County is a public employer within the meaning of Section 3(o) of the Act and subject to the jurisdiction of the

Local Panel of the Board pursuant to Section 5(b) and 20(b) thereof. The County and Local 700 are parties to a collective bargaining agreement (CBA), which provides for a grievance procedure culminating in arbitration. Charging Party claims that Respondent and the Employer conspired to deny him the opportunity to testify at a grievance hearing on May 22, 2012, and that such denial violated his civil rights.

## II. DISCUSSION AND ANALYSIS

The instant charge is untimely filed. 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 and the service of a copy thereof upon the person against whom the charge is made, unless the person aggrieved thereby did not reasonably have knowledge of the alleged unfair labor practice." The six month limitation period begins to run when an employee 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).

Charging Party knew of the alleged conduct complained of herein no later than May 22, 2012. Despite that knowledge, Charging Party did not file the instant charge until November 26, 2012, more than six months later.<sup>1</sup> Respondent did not take service of the charge until November 28, 2012.

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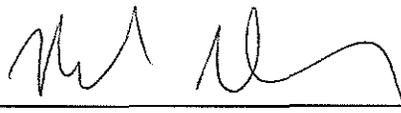
<sup>1</sup> It should be noted that under the Rules and Regulations of the Illinois Labor Relations Board, Section 1200.20, "Filing and Service of Documents", a charging party is allowed to file charges and other documents by fax, but the original document must be sent via U.S. Mail, or delivered in person or by messenger on the same date as the fax, and must include a copy of the fax confirmation. Documents submitted by fax must also be postmarked on the same date as the fax. Evidence of timely service on the other parties must also be included with the documents filed with the Board. Service shall be considered as complete upon presentation of fax confirmation and proof of service. In this case, Charging Party, through his attorney, filed only a fax copy of the charge with the Board, did not follow-up with the same-day delivery or mailing of the original charge and fax confirmation, and did not produce proper service proof on the Respondent.

### III. ORDER

Accordingly, the instant charge is hereby dismissed. Charging Party may appeal this dismissal to the Board at any time within 10 calendar days of service hereof. Any such appeal must be in writing, contain the case caption and number, and be addressed to the General Counsel of the Illinois Labor Relations Board, 160 North LaSalle Street, Suite S-400, Chicago, Illinois 60601-3103. Appeals will not be accepted in the Board's Springfield office. In addition, any such appeal must contain detailed reasons in support thereof, and the party filing the appeal must provide a copy of its appeal to all other persons or organizations involved in this case at the same time the appeal 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 a copy of the appeal has been provided to each of them. An appeal filed without such a statement and verification will not be considered. If no appeal is received within the time specified herein, this dismissal will become final.

**Issued in Springfield, Illinois, this 29<sup>th</sup> day of April, 2013.**

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



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**Melissa Mlynski  
Executive Director**