

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

American Federation of State, County and)	
Municipal Employees, Council 31,)	
)	
Charging Party)	
)	
and)	Case No. S-CA-14-064
)	
State of Illinois, Treasurer,)	
)	
Respondent)	

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

On April 10, 2014, Executive Director Melissa Mlynski issued a Dismissal of an unfair labor practice charge filed by the American Federation of State, County and Municipal Employees, Council 31 (Charging Party) alleging violations of the Illinois Public Labor Relations Act, 5 ILCS 315 (2012), by the State of Illinois Treasurer (Respondent). Charging Party filed a timely appeal of that Dismissal pursuant to Section 1200.135 of the Board’s Rules and Regulations, 80 Ill. Admin. Code §1200.135, and Respondent filed a timely response.

The Illinois Labor Relations Board, State Panel, reviewed the Appeal, the Dismissal, the Response and the record, but the Board was unable to obtain a majority either in favor of the Dismissal or in favor of the Appeal. Chairman Hartnett and Member Coli would have affirmed the Executive Director's dismissal. Members Besson and Brennwald would have remanded the case. Member Washington was unable to attend the State Panel meeting. Consequently, the Executive Director’s Dismissal stands as the final, non-precedential Board action in this matter.

BY THE STATE PANEL OF THE ILLINOIS LABOR RELATIONS BOARD

/s/ John J. Hartnett
John J. Hartnett, Chairman

/s/ Paul S. Besson
Paul S. Besson, Member

/s/ James Q. Brennwald
James Q. Brennwald, Member

/s/ Michael G. Coli
Michael G. Coli, Member

Decision made at the State Panel's public meeting in Chicago, Illinois, on July 8, 2014; written decision issued at Chicago, Illinois, July 28, 2014.

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STATE OF ILLINOIS
ILLINOIS LABOR RELATIONS BOARD
STATE PANEL

American Federation of State, County and
Municipal Employees, Council 31,

Charging Party

and

State of Illinois Treasurer,

Respondent

Case No. S-CA-14-064

DISMISSAL

On October 24, 2013, American Federation of State, County and Municipal Employees, Council 31 (AFSCME or Charging Party) filed an unfair labor practice charge with the State Panel of the Illinois Labor Relations Board (Board), in Case No. S-CA-14-064, alleging that the State of Illinois Treasurer (Employer or Respondent) violated Section 10(a) of the Illinois Public Labor Relations Act (Act), 5 ILCS 315 (2012) *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. INVESTIGATORY FACTS AND POSITION OF THE PARTIES

The Charging Party is a labor organization within the meaning of Section 3(i) of the Act and the exclusive representative of a bargaining unit (Unit) comprised of certain employees of the Respondent. The Respondent is a public employer within the meaning of Section 3(o) of the

Act. The Charging Party and the Respondent are parties to a collective bargaining agreement (CBA) that had a term of July 1, 2008 to June 30, 2012. On or about January 24, 2012, Respondent notified Charging Party of its intent to terminate the CBA on June 30, 2012. Negotiations concerning a successor contract began on or about April 15, 2013. Charging Party alleges that there has been a violation of 10(a)(4) of the Act because the Respondent has allegedly failed to maintain the status quo amidst contract negotiations. Specifically, Charging Party alleges that Respondent unilaterally changed medical benefit plans and unilaterally stopped providing step increases to bargaining unit members.

Charging Party asserts that while negotiating a successor contract, Respondent must maintain the status quo and it cannot implement changes to the health insurance plan that the State of Illinois bargained with AFSCME for the Master Contract.¹ Charging Party also argues that Respondent does not necessarily have to follow the health insurance coverage as set by the Department of Central Management Services (CMS).

In support of its charge regarding step increases, Charging Party claims that Respondent did not provide notice that it was going to cease providing step increases. Therefore, Charging Party does not know the exact date as to when this unilateral change occurred.

Respondent asserts that it has maintained the status quo according to Article XIII, Section 1 of the terminated CBA, which provides:

[d]uring the term of this Agreement, the Employer shall continue in effect, and the employees shall enjoy the benefits, rights and obligations of the Group Insurance Health and Life Plan applicable to all Illinois State employees pursuant to the provisions of the State Employees Group Insurance Act of 1971 (5 ILCS 375/1 et seq.) as amended by P.A. 90-65 and as amended or superseded. For convenience, Employee Health Care Benefits on the effective date of this Agreement are set forth in Appendix A. In the event of any conflict between the provisions

¹ The Unit employees in this case are not covered by or included in the Master Contract negotiated by the State of Illinois and AFSCME.

of the State Employees Group Insurance Act and the provisions of this Agreement, and Appendix A, the provisions of the Act shall prevail.

The Respondent asserts that the status quo is that CMS, as Director of the insurance program, with input from the State Employees Group Insurance Advisory Commission², has sole control of the benefits offered to State employees and the cost of those benefits. Respondent further asserts that it has not altered this status quo.

With respect to the step increases, Respondent asserts that the charge is untimely as the Respondent ceased all step increases upon the termination of the CBA on June 30, 2012. According to the expired CBA, Unit members received step increases on their anniversary every 12 months. The first anniversary after the expiration of the CBA that would have produced a step increase for Unit employees was on or around July 1, 2012. A second group of Unit employees were due a step increase on or around September 1, 2012. No step increases were given.

II. DISCUSSION AND ANALYSIS

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).

² The Treasurer is not a member of this Commission.

The Board has held that each excluded wage increase does not constitute as individual and separate violations that may reset the clock on the time limitation provided by the Act. If the Employer changed the status quo once, it has not violated the “continuing violation” doctrine. A continuing violation exists only when the illegality of an act can be established without relying on an event that predates the six month time limitation. Service Employees International Union, Local 73 (Cathy Nicosia), 18 PERI ¶2065 (IL SLRB 2002). In City of Darien, the Board found that each instance where a non-unit member receives a merit increase or a unit member’s anniversary date passes without a merit increase does not constitute a separate or continuing violation of the Act sufficient to restart the time period for filing an unfair labor practice. 12 PERI ¶2002 (IL SLRB 2002).

In the instant case, bargaining unit members’ step increases were discontinued upon the termination of the contract on June 30, 2012. The charge was filed on October 24, 2013, well over the six month time frame provided in Section 11(a) of the Act. Although the Charging Party contends that it had no idea that step increases were discontinued, it reasonably should have known since multiple employees within the Unit did not receive their step increases in July and September of 2012.

As far as the charge that the Employer unilaterally changed the status quo concerning health insurance, Article XIII Section 1 of the expired CBA indicates that the status quo for this Unit is to follow the terms of the State Employees Group Insurance Act (Group Insurance Act). This would include any amendments to the Group Insurance Act and any changes made to the insurance programs developed under the Group Insurance Act. Furthermore, the language in Article XIII Section 1 of the expired CBA provides that in the event of any conflict between the Group Insurance Act and the CBA, the Group Insurance Act shall prevail.

There is no evidence that the Respondent has ever had any role in developing the actual insurance benefits offered to Unit employees, as this responsibility is given to CMS under the Group Insurance Act.³ As the available evidence indicates that the Respondent is, in fact, continuing to follow the Group Insurance Act, this charge fails to raise an issue for hearing.

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 10th day of April, 2014.

**STATE OF ILLINOIS
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STATE PANEL**



**Melissa Mlynski
Executive Director**

³ See Section 15 of the Group Insurance Act which states "The [Director of CMS] shall administer the Act and shall prescribe such rules and regulations as are necessary to give full effect to the purposes of the Act." 5 ILCS 375/15.