

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

Baldemar Ugarte Avila,)	
)	
Charging Party)	
)	
and)	Case No. S-CA-15-042
)	
State of Illinois, Department of)	
Central Management Services,)	
)	
Respondent)	

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

On October 1, 2014, Charging Party, Baldemar Ugarte Avila, filed an unfair labor practice charge against his employer the State of Illinois, Department of Central Management Services (Employer), in which he alleged that the Employer engaged in unfair labor practices within the meaning of Section 10(a) of the Illinois Public Labor Relations Act, 5 ILCS 315 (2012), (Act), when in 2002 and 2003 it denied Avila's request for an employment accommodation.

On November 14, 2014, the Board's Acting Executive Director, Jerald Post, dismissed the charge after finding that the complained-of conduct was outside the six-month limitation period established in Section 11(a) of the Act. The Charging Party filed a timely appeal of the Acting Executive Director's Dismissal pursuant to Section 1200.135(a) of the Board's Rules and Regulations, 80 Ill. Adm. Code § 1200.135(a). The Respondent did not file a response to the appeal. After reviewing the record and appeal, we affirm the Acting Executive Director's Dismissal for the reasons stated in that document.

BY THE ILLINOIS LABOR RELATIONS BOARD, STATE PANEL

/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

/s/ Albert Washington
Albert Washington, Member

Decision made at the State Panel's public meeting held by video conference in Chicago, Illinois and Springfield, Illinois, on January 13, 2015; written decision issued in Chicago, Illinois on January 27, 2015.

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ILLINOIS LABOR RELATIONS BOARD
STATE PANEL**

Baldemar Ugarte Avila)	
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Charging Party)	
)	
and)	Case No. S-CA-15-042
)	
State of Illinois, Department of Central Management Services, (Illinois Department of Human Services))	
)	
Respondent)	
)	

DISMISSAL

On October 1, 2014, Charging Party, Baldemar Ugarte Avila, filed a charge with the State Panel of the Illinois Labor Relations Board (Board) in the above-captioned case, alleging that Respondent, State of Illinois, Department of Central Management Services (Illinois Department of Central Management Services) (State 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 issue this dismissal for the reasons set forth below.

I. INVESTIGATORY FACTS AND CHARGING PARTY'S POSITION

Respondent is a public employer within the meaning of Section 3(o) of the Act and subject to the jurisdiction of the State Panel of the Board pursuant to Section 5(a-5) of the Act. At times material, Avila was a public employee within the meaning of Section 3(n) of the Act, employed by Respondent as a caseworker. The American Federation of State, County and

Municipal Employees, Council 31 (AFSCME or Union), is a labor organization within the meaning of Section 3(i) of the Act, and the exclusive representative of a bargaining unit of State employees, including those in the title of caseworker (Unit). At all times relevant, Avila was a member of the AFSCME bargaining unit. The State and Union are parties to a collective bargaining agreement (CBA) which provides for a grievance procedure culminating in arbitration for the Unit.

In December 2002, Charging Party requested an accommodation for a medical condition which Respondent denied. Charging Party appealed the denial and Respondent again denied Charging Party the accommodation. In October 2003, Respondent discharged Charging Party for alleged violations of its affirmative attendance policy. On October 10, 2003, the Union sent a letter to Charging Party notifying him of his right to file a grievance contesting the discharge. The Union also advised Charging Party that rather than using the grievance procedure, he could file his own appeal with the Illinois Civil Service Commission foregoing the grievance process. The Union filed a grievance on Charging Party's behalf alleging that Charging Party was discharged and/or suspended without just cause in violation of the collective bargaining agreement. A Union representative filed grievance number 371594 on October 10, 2003. Charging Party did not sign the grievance form.

On or about November 17 and 20, 2003, the Employer and the Union agreed to allow Charging Party to resign rather than have the termination remain on his employment record. Charging Party signed the postal receipt notifying him of the Union and the Employer's proposed settlement of the grievance however, Charging Party did not agree to resign.

On October 1, 2014, Avila filed the instant unfair labor practice charge contending the Employer's denial of his request for an employment accommodation violated the Act. Charging Party further argues that he never signed the grievance that the Union filed and therefore all

subsequent action taken by the Union and the Employer was as a result of an administrative error and cannot be considered. Mr. Avila requests reinstatement and retroactive pay to his date of termination in 2003.

II. DISCUSSION AND ANALYSIS

Charging Party first alleges that the Employer violated the Act when it denied his request for a work accommodation. Whether a public employee has been deprived of rights because of a request for a reasonable accommodation, a right which is protected by a statute other than the Illinois Public Labor Relations Act is beyond the scope of the Board's authority to consider. Accordingly, Avila's allegation that the Employer violated his rights by not granting a reasonable accommodation is not within the Board's jurisdiction to determine.

However, even if the Board does have jurisdiction of the instant charge, the charge was not filed with the Board within the six-month statutory window period for filing a charge. To the extent that Charging Party alleges that the denial of the accommodation or his termination was improper due to an administrative error, the allegations are untimely filed. Charging Party claims that his charge is timely because the grievance that was filed was timely. Charging Party misunderstands what criteria the Board considers when assessing whether a charge is timely 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...unless the person aggrieved did not reasonably have knowledge of the alleged unfair labor practice." The six month limitations 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, 335, 564 N.E.2d 213, 7 PERI ¶4007 (4th Dist. 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 (Ill. App. Ct., 1st Dist. 1999).

The events that gave rise to the filing of the instant charge on October 1, 2014 occurred when the Employer denied Charging Party an accommodation in December 2002 and January 2003.¹ Nevertheless, Charging Party was aware of the denial of his request for an accommodation at the latest in January 2003, and it is from that date he reasonably should have known the accommodation was not granted. More than eleven years have elapsed since his knowledge that the accommodation was not granted. Accordingly, the charge filed in 2014 regarding the denial of an accommodation that occurred in 2003, is untimely.

To the extent Charging Party is claiming his termination is in error and should be overturned; the termination which occurred in October 2003 also presents an untimely-filed charge. Again, as stated above regarding the accommodation, Charging Party knew he was discharged in 2003 and the limitations period for filing an unfair labor practice charge would have been within six months of October, 2003. More than ten years later Charging Party filed this charge claiming that an administrative error that occurred in 2003 should invalidate his discharge. Clearly, this allegation is untimely.

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 Illinois Labor Relations Board's General Counsel, 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

¹ As stated above, the Board does not have statutory authority to consider whether an Employer has violated the Act by denying a request for an accommodation that is due to a medical condition.

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 14th day of November, 2014.

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A handwritten signature in blue ink that reads "Gerald S. Post". The signature is written in a cursive style and is positioned above a horizontal line.

Jerald S. Post
Acting Executive Director²

² The Executive Director has recused herself from this case.