

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

Policemen’s Benevolent and Protective Association, Unit No. 5,)	
)	
Charging Party)	
)	
and)	Case No. S-CA-15-056
)	
City of Springfield,)	
)	
Respondent)	

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

On January 23, 2015, Executive Director Melissa Mlynski dismissed a charge filed by Charging Party Policemen’s Benevolent and Protective Association, Unit No. 5, on October 29, 2014, which alleged that Respondent City of Springfield engaged in unfair labor practices within the meaning of Sections 10(a)(4) and (1) of the Illinois Public Labor Relations Act, 5 ILCS 315 (2012), by repudiating the parties’ Memorandum of Understanding which required the Respondent to expunge certain records of disciplinary action after four years.

The Charging Party filed a timely appeal of the Executive Director’s Dismissal pursuant to Section 1200.135(a) of the Board’s Rules and Regulations, 80 Ill. Admin. Code §1200.135(a). After reviewing the record and appeal, we uphold the Executive Director’s Dismissal for the reasons stated therein.

BY THE STATE PANEL OF THE ILLINOIS LABOR RELATIONS BOARD

/s/ John J. Hartnett

John J. Hartnett, Chairman

/s/ James Q. Brennwald

James Q. Brennwald, Member

/s/ Albert Washington

Albert Washington, Member

Decision made at the State Panel's public meeting in Chicago, Illinois on March 10, 2015; written decision issued in Chicago, Illinois on March 11, 2015.

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Policemen's Benevolent and Protective
Association, Unit #5,

Charging Party

and

City of Springfield,

Respondent

Case No. S-CA-15-056

DISMISSAL

On October 29, 2014, the Policemen's Benevolent and Protective Association, Unit #5 (Charging Party or Union), filed an unfair labor practice charge with the State Panel of the Illinois Labor Relations Board (Board), in Case No. S-CA-15-056, alleging that the City of Springfield (City 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

The Charging Party is a labor organization within the meaning of Section 3(i) of the Act. The Respondent is a public employer within the meaning of Section 3(o) of the Act. The Respondent employs Police Officers that are included in a bargaining unit represented by the Charging Party. Charging Party and Respondent are parties to a collective bargaining agreement

(CBA) that includes a grievance procedure culminating in final and binding arbitration, with a term of March 1, 2012 through February 28, 2015. Section 14.9 of the parties' current CBA, Limitation on Use of File Material, provides the following:

- A. It is agreed that any material and/or matter not available for inspection, as provided for in Section 14.8 above, shall not be used in any manner or any form adverse to the officer's interests. File material are confidential, but if a bona fide reason arises for the removal of inactive files from the Department, the officer shall be provided with a written notification regarding where the file is located, who has the file, and the reason for its transfer, to the extent allowed by law.
- B. Any record of reprimand punishment may be used for a period of time not to exceed one (1) year (three (3) years in the case of vehicle use violations) and shall thereafter not be used to support or as evidence of adverse employment action.
- C. Any record of discipline greater than a reprimand shall be expunged five (5) years from the date of suspension.

On April 25, 2013, the Charging Party and Respondent signed a Memorandum of Understanding (MOU) modifying language found in Section 14.9 of the CBA. The MOU provides¹:

WHEREAS, the City of Springfield ("City") and the PBPA Unit #5 have met and discussed the issues of a change to section 14.9(C) of the Collective Bargaining Agreement, section V(A) of the G.O. Roc #3 Add. #4 and section VII(A) of the G.O. Roc #3 Add. #5 as they relate to the retention of I.A. files and the Early Tracking System; and

WHEREAS, there is a consensus that it is mutually beneficial to reduce the retention period for some I.A. files and the Early Tracking System found in said sections;

THEREFORE, it is agreed to by the Parties as follows:

1. Any record of discipline greater than a reprimand shall be expunged (4) years from the date of suspension, and
2. All files with a finding of Not Sustained, Unfounded or Exonerated shall be expunged four(4) years from the finding, and
3. The general order regarding Early Tracking (G.) Roc #3 Add. #5) will be changed to reflect a retention period of one year after the month of the incident or the month upon which the incident is brought forward, whichever is longer, for any and all early track files.

¹ The letters "I.A" refer to Internal Affairs.

In this unfair labor practice charge, the Charging Party claims that the Respondent violated the Act when it unilaterally decided to cease expunging and destroying records, specifically Internal Affairs/Discipline files, which is in violation of the CBA, Department Orders and the MOU.

This is not the first unfair labor practice charge between these parties regarding expunging records. On October 21, 2013, the City filed a charge against the Union in Case Number S-CB-14-008. In this charge, the City alleged that the Union violated the Act when it negotiated the MOU because the MOU was not negotiated in good faith, violated Section 7 of the Act as well as the existing laws on record retention. The City claimed that the MOU was not authorized by the appropriate agents of the City and that it was never ratified by the City Council. The City requested that the Board invalidate the MOU prior to the Union attempting to arbitrate enforcement of the MOU.²

Certain facts that were discussed in that Dismissal are relevant to the investigation of the instant charge. Specifically, on or about April 11, 2013, the City had received a request for information under the Freedom of Information Act (FOIA) from an individual, and this FOIA request included disciplinary and/or internal affairs records for an employee (or employees) of the Springfield Police Department. Apparently the documents that were subject to that FOIA request were destroyed, which resulted in the individual suing the City.

Sometime after the filing of that lawsuit, and perhaps because of the lawsuit, it came to the attention of the Charging Party that certain files that should have been expunged under the CBA (five years after date of suspension) or the MOU (four years after date of suspension) had

² On November 26, 2014, I issued a Dismissal in that case, finding that the City's charge did not raise a question of fact or law for hearing. On or about December 11, 2014, the City appealed the Dismissal, and the case is currently pending before the Board.

not been destroyed. The Charging Party filed a grievance on or around October 9, 2013 citing the City's failure to expunge and destroy files in a timely manner.

In the instant unfair labor practice charge, the Charging Party asserts that since May of 2013, the Respondent has halted any expunging of files with no legal justification. Charging Party also asserts that in May of 2013, the Mayor of the City unilaterally "ordered the cessation of all IA file expungements."

While the original lawsuit against the City has been dropped, Respondent indicates that there are ongoing investigations regarding the City's retention policies. Respondent contends that this is why it is not moving forward with the destruction of any files, as these investigations could result in litigation that may require the use of those particular IA files.

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).

The current case must be dismissed as untimely as it is clear that the Charging Party became aware of the City's failure to expunge records more than six months before the filing of this charge. The Charging Party points to a string of e-mails that began in or around August of

2014 through September of 2014, highlighting Charging Party's inquiry into why the City has refused to expunge IA files in accordance with the CBA, MOU, and other Orders and/or Directives. However, the evidence indicates that the Charging Party has known of the City's failure to expunge files since at least October of 2013, when the Union filed a grievance over this matter, citing the City's failure to expunge and destroy files in a timely manner. Furthermore, in filing charge S-CB-14-008 in October of 2013, the City made it abundantly clear to the Union that it had no intention of implementing the MOU, alleging that the MOU was negotiated in bad faith and was in violation of local record retention laws.

Indeed, even in the documents accompanying the filing of the instant charge, the Union refers to the City's "year long course of conduct." The Union also claims the Mayor of Springfield unilaterally ordered the cessation of all IA file expungements in May of 2013. Based on all of this, it is clear that the Union did not file the charge within six months of becoming aware of the City's alleged unlawful conduct.

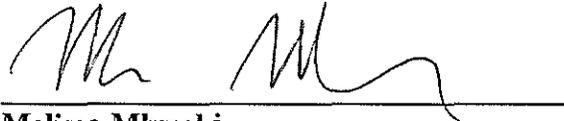
III. ORDER

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 23rd day of January, 2015.

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A handwritten signature in black ink, appearing to read 'Melissa Mlynski', written over a horizontal line.

**Melissa Mlynski
Executive Director**