

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

Britt Weatherford,	)	
	)	
Charging Party	)	
	)	
and	)	Case No. S-CB-11-002
	)	
American Federation of State, County and Municipal Employees, Council 31,	)	
	)	
Respondent	)	

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

On January 28, 2011, the Illinois Labor Relations Board's Executive Director, John F. Brosnan, dismissed the unfair labor practice charge filed by Britt Weatherford (Charging Party) in the above-captioned case, finding that it was untimely filed and served. The Charging Party alleged that the American Federation of State, County and Municipal Employees, Council 31, (Respondent or AFSCME) engaged in unfair labor practices within the meaning of Section 10(b) of the Illinois Public Labor Relations Act, 5 ILCS 315/10(b) (2010), by failing to process his grievances.

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 Parts 1200 through 1240 (Rules) The Respondent filed no response. After reviewing the record and appeal, we reverse the Executive Director's Dismissal and remand the matter for further investigation.

The relevant facts of the case are as follows: In 2009, Weatherford filed seven grievances against his employer, the State of Illinois, Department of Healthcare and Family Services. In January 2010, AFSCME informed Weatherford that his grievances were pending at

the third step of the parties' contractual grievance procedure. On March 13, 2010, AFSCME informed Weatherford that all his grievances had been withdrawn by AFSCME's third level grievance committee.

The charge received by the Board does not contain a postmark, but on September 13, 2010, Weatherford (1) drafted the charge, (2) paid for the postage on the envelope he used to mail that charge to the Board, and (3) sent a copy of the charge to AFSCME by certified mail, return receipt requested. Weatherford included a proof of service sheet with his charge to the Board, confirming that he mailed a copy of the charge to AFSCME's correct address on September 13. The Board received Weatherford's charge on September 14, 2010, and AFSCME received Weatherford's charge at some point after September 13, 2010.

The Executive Director properly determined that Weatherford's charge was timely only if he filed and served it within the six-month limitation period established in Section 11(a) of the Act: in Weatherford's case, on or before September 13, 2010.<sup>1</sup> However, the Executive Director incorrectly calculated the actual filing and service dates. Contrary to the Executive Director's determination, we find the charge timely because it was filed when mailed on September 13, 2010, not when the Board received it on September 14, and was served when mailed on September 13, 2010, not on whatever date AFSCME received the document.

Section 1200.20(f) of the Rules provides that "a document shall be considered filed with the Board on the date that it is postmarked, tendered to a delivery service or received by personal

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<sup>1</sup> In relevant part, Section 11(a) of the Act provides:

[N]o 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 or was prevented from filing such a charge by reason of service in the armed forces, in which event the six month period shall be computed from the date of his discharge.

delivery in the office of the appropriate Panel before the close of the Board's business hours." It is reasonable to assume that Weatherford mailed the charge on September 13 because he paid the envelope's postage on that date and the Board received his charge the following day. Thus, Weatherford's charge was timely filed.

We also find the charge was timely served on AFSCME.<sup>2</sup> The issue here is whether, for purposes of calculating the six-month limitation period, service of a charge is made on a respondent when it is mailed, or only when the Board presumes the respondent has received it. The Board's rules provide that "service of a document upon a party by mail shall be presumed complete three days after mailing, if proof of service shows the document was properly addressed." In construing this rule, we adopt the non-precedential but persuasive reasoning of a recent Appellate Court Order and find that service is made when the charge is mailed. Lyman v. State of Ill. Labor Rel. Bd., Local Panel, No. 1-08-1900, 2009 WL 8154332 (Ill. App. Ct., 1st Dist., Sept. 10, 2009).

The Court in Lyman interpreted the Board's rule and distinguished between *making* service and *completing* service. 2009 WL 8154332 at 5. The Court determined that if service were deemed *made* only when it was *completed*, then the rules would effectively require a party who wished to serve a charge by mail to send it at least three days before the six-month time period expired. Id.

We agree that such a construction would have the inequitable effect of shortening the limitation period, and note, as the court also observed, that the Board has never explicitly

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<sup>2</sup> Section 1200.20(e) of the Rules requires charges to "be served by the party filing the document on all other parties to the proceedings."

interpreted its rule in this way.<sup>3</sup> Accordingly, we find that Weatherford timely served AFSCME with his charge because service was made when he mailed it to AFSCME on September 13, the last day of the six-month limitation period.<sup>4</sup>

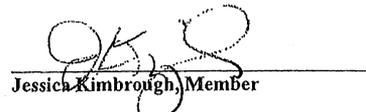
For the above reasons, we reverse the Executive Director's dismissal and remand the matter for further investigation.

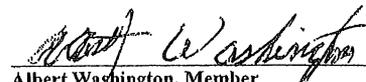
BY THE STATE PANEL OF THE ILLINOIS LABOR RELATIONS BOARD

  
Jacalyn J. Zimmerman, Chairman

  
Michael Coli, Member

  
Michael Hade, Member

  
Jessica Kimbrough, Member

  
Albert Washington, Member

Decision made at the State Panel's public meeting in Springfield, Illinois on August 9, 2011, written decision issued in Chicago, Illinois on August 24, 2011.

<sup>3</sup> While the ALJ in AFSCME, Council 31 (Moren), 18 PERI ¶ 2018 (IL LRB-SP 2002), calculated the timeliness of a charge based on when service was completed (using the three-day presumption), those three days were immaterial to the ALJ's timeliness determination because the charge was actually served well within the six-month limitation period.

<sup>4</sup> Our decision in this case does not affect our court-affirmed practice of using the three-day presumption to calculate deadlines for subsequent documents. City of St. Charles v. Illinois Labor Rel. Bd., 395 Ill. App. 3d 507, 509 (2d Dist. 2009) (holding 14-day period for city to file exceptions to ALJ's decision did not begin to run until three days after Board mailed the decision; noting also that Board may not overcome the presumption of service showing document was actually received earlier).