

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

John Blomenkamp,)	
)	
Charging Party)	
)	
and)	Case No. S-CB-14-012
)	
Policemen’s Benevolent and Protective)	
Association,)	
)	
Respondent)	

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

On April 28, 2014, Executive Director Melissa Mlynski dismissed a charge filed by Charging Party John Blomenkamp alleging that Respondent Policemen’s Benevolent and Protective Association (“Union”) violated Section 10(b) of the Illinois Public Labor Relations Act, 5 ILCS 315 (2012) (“Act”), by actions it took in relation to Blomenkamp’s discharge from employment. The Executive Director dismissed the charge after finding it had been filed outside the six-month limitation period established in Section 11(a) of the Act. Pursuant to Section 1200.135(a) of the Board’s Rules and Regulations, 80 Ill. Adm. Code §1200.135(a), the Charging Party filed a timely appeal of the dismissal. For the reasons that follow, we affirm the Executive Director’s dismissal.

I. Background

Charging Party was employed by the Village of Freeburg as a police officer and was represented by the Respondent. Based on evidence of misconduct gathered from Village surveillance cameras, the Village sought his discharge. It held a pre-disciplinary hearing on August 2, 2012 (although Charging Party did not attend), and subsequently discharged him effective September 2012. The Union grieved the discharge, which proceeded to arbitration. Charging Party hired private counsel to represent him in the grievance arbitration, and did so at least as early as November 16, 2012, months before the arbitration proceeding began in June 2013. On December 6, 2013, the arbitrator issued a decision denying the grievance.

Charging Party filed the charge presently at issue on February 3, 2014. He contends that the Union engaged in an unfair labor practice in two ways. First, the Union, through its lawyer Shane Voyles, breached its duty to fairly represent him when Voyles advised him not to attend the pre-disciplinary hearing. Charging Party also claims that the Union breached its duty to fairly represent him when, after he obtained private counsel, the Union refused to continue to represent him and refused to pay fees related to the grievance arbitration.

III. ANALYSIS

The Act prohibits the Board from issuing an unfair labor practice complaint based on conduct occurring more than six months before a charge is filed. 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 and the service of a copy thereof upon the person against whom the charge was made, unless the person aggrieved thereby did not reasonably have knowledge of the alleged unfair labor practice...” 5 ILCS 315/11(a). Courts and the Board interpret that statutory limitations period to begin running when a charging party has knowledge of the alleged unlawful conduct, or reasonably should have known of that conduct. Village of Wilmette, 20 PERI ¶85 (II LRB-SP 2004); Chicago Transit Authority, 16 PERI ¶3013 (IL LLRB 2000) *citing* Teamsters Local 714 (Zaccaro), 14 PERI ¶3014 (IL LLRB 1998) *aff’d by unpub. order*, 14 PERI ¶4003 (1st Dist. 1999); Ill. Dep’t of Cent. Mgmt. Servs., 16 PERI ¶2011 (IL SLRB 2000) *citing* Moore v. Ill. State Labor Rel. Bd., 206 Ill. App. 3d 327, 335 (4th Dist. 1990); Am. Fed’n of State, County and Mun. Employees, Local 3486 (Pierce), 15 PERI ¶2026 (IL SLRB 1999).

The Executive Director dismissed the charge in this case because she found it was filed more than six months after the alleged unlawful conduct.¹ She noted in the Dismissal that the complained-of advice by Union counsel Voyles was given prior to the August 2, 2012, pre-disciplinary hearing, and the Union’s decision to no longer provide representation or to pay for private counsel occurred prior to the multi-day grievance arbitration hearing conducted in June of 2013, both more than six months before the filing of the charge on February 3, 2014.

On appeal, Charging Party first argues that, as it relates to the advice from Voyles, the charge is timely because he was “not aware of the impact” of the advice until the arbitrator’s

¹ Because the charges were filed on February 3, 2014, the limitations period extends back to August 3, 2013.

decision on December 6, 2013. Second, Charging Party argues that “the decision by the [Union] to suspend any further representation, including payment of costs of the hearing on the grievance, was ongoing;” therefore, the charge is timely as to that issue.

We discuss each of these contentions in turn.

A. Union counsel’s advice to the Charging Party

It is uncontested that the allegedly unlawful “ineffective representation” by Union counsel Voyles occurred prior to the pre-disciplinary hearing held on August 2, 2012. The charge, filed on February 3, 2014, was filed more than 18 months after the complained-of advice. Instead of looking to the date the advice was given as the event from which the limitations period clock begins to run, Charging Party instead asks the Board to look to the date of the arbitrator’s decision, December 6, 2013. He argues that until the decision, he was not aware of the impact of Voyles’s advice. This argument is unpersuasive.

The Board has held that it is the knowledge of the alleged unlawful conduct, and not the continuing effect of the conduct that triggers the six-month limitations period. Village of Wilmette, 20 PERI ¶ 85 (charge untimely when union waited 18 months to file charge after employer notified employees it intended to treat union-represented employees differently than non-union employees even where the employees’ pay was affected within the six-month period prior to the charge). In Moore v. Illinois Labor Relations Bd., 206 Ill. App. 3d 327 (4th Dist. 1990), the charging party alleged that his union failed in its duty to fairly represent him when it entered into a settlement agreement involving another employee that resulted in the charging party’s promotion being rescinded. The Fourth District affirmed the Board’s dismissal of this claim on the ground that the charge was not filed within six months of charging party’s actual knowledge of the settlement agreement, and rejected the charging party’s argument that, at the time he became aware of the settlement agreement, he did not understand that the union’s actions could constitute an unfair labor practice. In reaching this decision, the Fourth District noted that “[a]llowing extension of the limitations period until an aggrieved person learns the legal significance of actions would extend the period indefinitely.” Id. at 336.

Applying that reasoning, as well as the Board and court precedent cited above, to the case at hand, we find that the February 3, 2014, charge is well beyond the six-month period for contesting allegedly unfair representation that occurred before August 2, 2012.²

B. Union's decision to withdraw representation and to not pay fees

Regarding the allegation that the Union engaged in an unfair labor practice by discontinuing representation of the Charging Party and not paying fees associated with his private representation at arbitration, the Charging Party argues that this allegedly unlawful conduct is "ongoing." However, the record is clear that in a letter dated November 16, 2012, the Union made clear to private counsel that the private counsel had a contractual relationship with Charging Party and not with the Union. Moreover, the Union informed private counsel that he "will not be paid by [the Union] for anything." Further, in a letter dated December 19, 2012, Voyles indicated that the Union was not getting involved in matters related to the grievance. He went on to lay out his position that the Union "certainly cannot be bound to pay for an arbitrator [it] did not select."

In this case, the alleged unfair labor practice is the underlying decision and not the continuing effect of the implementation of the decisions. See City of Lake Forest, 29 PERI ¶52 (IL LRB-SP 2012) (employer *implemented* its decision within the six-month period, but charge was untimely where the decision was made, and the employee was aware of the employer's decision, beyond the six-month limitations window). The Union's letters make clear that Charging Party, through his counsel, was aware of the Union's decisions in November and December of 2012, more than a year before the charge was filed. Thus, the charge, as it relates to the Union's decision to cease representation and payment of costs related to the grievance arbitration, is untimely.

² In any event, Charging Party's argument fails on its own terms, as his reliance on Voyles's advice not to attend the pre-termination hearing had no bearing whatsoever on the arbitrator's ruling that the employer had just cause for the termination. The issuance of the arbitration award therefore held no significance with respect to the question of when Charging Party reasonably had knowledge of the alleged unfair labor practice.

In sum, we affirm the Executive Director's dismissal, as the charge was filed more than six months after the Charging Party was aware of the alleged unfair labor practices.

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/ Albert Washington
Albert Washington, Member

Decision made at the State Panel's public meeting in Springfield, Illinois, on June 3, 2014; corrected written decision issued at Chicago, Illinois, June 23, 2014.

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

John Blomenkamp,)	
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Charging Party)	
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and)	Case No. S-CB-14-012
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Policemen's Benevolent and Protective)	
Association,)	
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Respondent)	

DISMISSAL

On February 3, 2014, John Blomenkamp (Charging Party) filed a charge in Case No. S-CB-14-012 with the State Panel of the Illinois Labor Relations Board (Board), alleging that the Respondent, Policemen's Benevolent and Protective Association (PBPA) engaged in unfair labor practices within the meaning of Section 10(b) of the Illinois Public Labor Relations 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 fact or law sufficient to warrant a hearing and therefore recommend dismissal of the charge for the following reasons.

I. INVESTIGATORY FACTS AND POSITION OF THE CHARGING PARTY

Prior to his September 6, 2012 discharge, Charging Party was employed by the Village of Freeburg (Village or Employer) as a police officer. As such, he was a member of a bargaining unit represented by the Respondent. The Employer discharged Charging Party in September of 2012, finding that he had engaged in misconduct. The evidence of the asserted misconduct was, according to the Charging Party, videotapes gathered by surveillance cameras installed in the police department locker room by the Employer in January of 2012. Apparently, the Employer

discussed the installation of the surveillance cameras with representatives of the Union prior to their installation.

Charging Party initially filed a charge in Case No. S-CB-13-006 alleging that the PBPA committed an unfair labor practice because union officials did not inform the union membership of the surveillance camera installation. On February 6, 2013, the undersigned dismissed this charge because the failure to inform the membership was not “intentional misconduct” as defined by the Act.

In the current charge, the Charging Party claims the Respondent, through its lawyer Shane Voyles, breached its duty to fairly represent him by advising him not to attend a pre-disciplinary hearing before he was discharged. The available evidence indicates that the pre-disciplinary hearing was held on August 2, 2012. Charging Party also claims that the Respondent violated its duty to fairly represent him when Voyles allegedly refused to provide any further legal services, including the payment of any fees, after Charging Party chose to hire his own legal counsel to represent him in the grievance arbitration.¹ It is unclear exactly when the Charging Party hired his own counsel, but the available evidence indicates that the grievance arbitration proceedings commenced before Arbitrator Gerard Fowler in June of 2013, so the hiring must have occurred before that time. Finally, Charging Party seeks to overturn the arbitration award issued by Arbitrator Fowler on December 6, 2013. In that award, the arbitrator dismissed the grievance in its entirety.

II. ANALYSIS

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 and

¹ In support of his charge, Charging Party attaches correspondence and emails from Voyles that are dated August of 2012 through December of 2012.

the service of a copy thereof upon the person against whom the charge was made.” 5 ILCS 315/11(a) (2010). The six-month period begins to run once charging party has knowledge of the alleged unlawful conduct, or reasonably should have known of the conduct. Village of Wilmette, 20 PERI ¶85 (IL LRB-SP 2004); Chicago Transit Authority, 16 PERI ¶3013 (IL LLRB 2000), citing Teamsters Zaccaro, 14 PERI ¶3014 (IL LLRB 1998) aff’d by unpub. order, 14 PERI ¶4003 (1st Dist. 1999); Illinois Department of Central Management Services, 16 PERI ¶2011 (IL SLRB 2000) citing Moore v. Il. State Labor Relations Board, 206 Ill. App. 3d 327, 335, 564 N.E. 2d 213, 7 PERI ¶4007 (4th Dist. 1990); American Federation of State, County and Municipal Employees, Local 3486 (Pierce), 15 PERI ¶2026 (IL SLRB 1999).

Based on this case law, in order for the charge to be considered timely filed, the alleged wrongful actions must have occurred within the six month time period before February 3, 2014, the date this charge was filed. The substance of the instant charge concerns actions taken during the pre-disciplinary process as well as during the grievance proceedings. The specific incidents cited by the Charging Party occurred outside of the six months period before this charge was filed. For example, the pre-termination hearing occurred in August of 2012, and the Charging Party hired his own counsel some time before June of 2013, when the arbitration proceedings commenced. It appears that it was the hiring of counsel that triggered the PBPA to take the position that it would no longer pay for legal and arbitration related expenses. Since all of these events occurred before June of 2013, but the charge was not filed until February of 2014, these allegations are untimely and should be dismissed.²

² Even if some of the arbitration related expenses that the PBPA refused to pay occurred during the six month time period leading up to the filing of this charge, I would still find the charge to be untimely. This is because the PBPA apparently made it clear to the Charging Party, prior to June of 2013, that if he hired his own counsel, the PBPA would no longer provide any further legal services, including the payment of any fees.

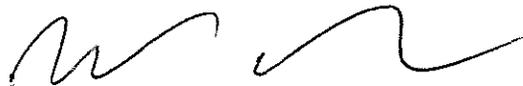
Finally, to the extent that the Charging Party is requesting that the Board overturn the arbitration award, this portion of the charge should also be dismissed. It is beyond the jurisdiction of the Board, under the facts presented in this case, to review the arbitrator's award. Section 8 of the Act specifies that the grievance and arbitration provisions of the collective bargaining agreement are subject to the Uniform Arbitration Act, 710 ILCS 5 (2012) (UAA). Any attempt to vacate the award must be made pursuant to the UAA.

III. ORDER

Accordingly, the instant charge is hereby dismissed. The Charging Party may appeal this dismissal to the Board any time within 10 days of service hereof. Such appeal must be in writing, contain the case caption and number, 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 reason 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 in Springfield, Illinois, this 28th day of April, 2014.

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Melissa Mlynski, Executive Director