

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

Baldemar Ugarte Avila,)	
)	
Charging Party)	
)	
and)	Case No. S-CB-15-004
)	
American Federation of State, County and)	
Municipal Employees, Council 31,)	
)	
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 certified bargaining representative, the American Federation of State, County and Municipal Employees, Council 31 (Union), in which he alleged that the Union 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 2003 it settled a grievance advanced on Avila's behalf.

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), and the Union filed a timely response to the appeal. After reviewing the record, the appeal, and the Union's response to the 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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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, American Federation of State, County and Municipal Employees (AFSCME or Union) violated Section 10(b) 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

The State of Illinois, Department of Central Management Services (Illinois Department of Human Services) (Employer) 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 the State as a caseworker. AFSCME 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 Employer and Union are parties to a collective bargaining agreement (CBA) which provides for a grievance procedure culminating in arbitration for the Unit.

In October 2003, the Employer 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 Union violated its duty of fair representation by not properly processing his grievance. In essence, Charging Party contests the significance of certain documents. First, Charging Party alleges that he did not agree to his discharge and that the grievance filed on his behalf, which he

intentionally did not sign, was proof that he opposed the Employer terminating his employment. Charging Party appears to claim the parties' failure to recognize that when he did not sign the grievance he opposed the termination was an administrative error that invalidates the discharge that occurred. Mr. Avila requests reinstatement and retroactive pay to his date of termination in 2003.

II. DISCUSSION AND ANALYSIS

The instant charge is 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 in October 2003. In order for the 2003 unfair labor practice charge to be timely, Charging Party would have to have filed an unfair labor practice charge with the Board by no later than April 2004. Clearly, the charge filed here in October of 2014, 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 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.

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



Gerald S. Post
Acting Executive Director¹

¹ The Executive Director has recused herself from this case.