

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

Derek B. Webb,)	
)	
Charging Party)	
)	
and)	Case No. L-CA-19-095
)	
City of Chicago,)	
)	
Respondent.)	

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

On May 21, 2019, Executive Director Kimberly F. Stevens dismissed a charge filed by Derek B. Webb (Charging Party or Webb) on December 19, 2018, which alleged that the City of Chicago (Respondent or City), engaged in unfair labor practices within the meaning of Sections 10(a)(2), (4), and (1) of the Illinois Public Labor Relations Act (Act), 5 ILCS 315 (2010), as amended.

The Executive Director determined that the charge was untimely filed. She noted that the Charging Party had modified his allegation during the investigative process to abandon the Section 10(a)(4) allegation, and that he had clarified his charge to allege simply that the Respondent had “stopped assigning the [him] to the Warrant Desk.” She reasoned that the Respondent had stopped assigning the Charging Party to the Warrant Desk in December 2017, and that the Charging party therefore filed his charge approximately six months too late.

On May 31, 2019, the Charging Party appealed the Executive Director’s Dismissal. The Charging Party alleges that the Executive Director erred in finding that the charge was untimely filed. He acknowledges that the Respondent “stopped assigning him to the Warrant Desk in 2017” and gave him a different assignment with different duties, but he asserts that the alleged adverse

action also encompasses the Respondent's refusal to provide him with overtime opportunities. He concludes that his charge is timely filed because both these issues are "ongoing." The Respondent did not file a response.

For the reasons stated below, we affirm the Executive Director's dismissal of the allegation that the Respondent unlawfully transferred the Charging Party away from the Warrant Desk in December 2017. However, we remand the case for further investigation of the allegation that the Respondent denied the Charging Party overtime opportunities in retaliation for his union and/or protected activities.

The Executive Director correctly found that the charge was untimely to the extent that it alleged that the Respondent unlawfully transferred the Charging Party away from the Warrant Desk in December 2017. 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...unless the person aggrieved thereby did not reasonably have knowledge of the alleged unfair labor practice." 5 ILCS 315/11(a). 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. Village of Wilmette, 20 PERI ¶ 85 (II LRB-SP 2004); Chicago Transit Authority, 16 PERI ¶ 3013 (IL LLRB 2000); City of Darien, 12 PERI ¶ 2002 (IL LRB-SP 1995); Ill. Dep't of Central Mgmt. Servs., 16 PERI ¶ 2011 (IL SLRB 2000) (citing Moore v. Ill. State Labor Rel. Bd., 206 Ill. App. 3d 327 (4th Dist. 1990)).

Here, the Executive Director appropriately found that the Charging Party knew of this alleged misconduct when it occurred in December 2017, well outside the limitations period. Moreover, the Respondent's refusal to reinstate the Charging Party to his former position does not render the charge timely with respect to the underlying transfer. Chicago Transit Authority, 32

PERI ¶ 130 (IL LRB-LP 2016) (respondent's continuing refusal to reinstate charging party after discharge did not render discharge allegation timely where charging party filed charge more than two years after her termination).

However, we remand for further investigation of the allegation that the Respondent denied the Charging Party overtime opportunities in violation of Sections 10(a)(2) and (1) of the Act. On appeal, Charging Party contends that the Respondent's alleged diminution of his overtime opportunities remains a live issue. Although the record contains no formal amendment documenting Charging Party's changes to his charge, we believe the allegation pertaining to overtime denial may fairly be viewed as part of the charge based on the information in the file and the manner in which the Charging Party modified his original allegations. It appears Charging Party made informal modifications to his charge during the investigatory process, by both expanding upon his original claims and withdrawing allegations. During investigation, he emphasized that the Respondent diminished his overtime opportunities. He then modified his allegations further, by phone, by withdrawing the Section 10(a)(4) allegation and contending that the focus of his charge was his claim that the Respondent had unlawfully stopped assigning him to the Warrant Desk. Because Charging Party is a *pro se* litigant, we find it appropriate in this instance to allow for such informal modification.

Finally, we find there is currently insufficient evidence to justify dismissal of this remaining allegation on timeliness grounds. It is not clear whether the Charging Party knew or should have known that the Respondent would significantly reduce his overtime opportunities when it transferred him away from the Warrant Desk in December 2017. To assess this issue, we specifically direct further investigation into whether the Respondent's reduction of the Charging Party's overtime opportunities is solely attributable to its 2017 decision to transfer him away from

the Warrant Desk or whether it was instead independent of that earlier decision. This requires consideration of (1) whether the Respondent, at any time within the limitations period, denied the Charging Party overtime opportunities to which he was contractually entitled, (2) whether the Charging Party received fewer overtime opportunities because he was no longer the individual working at the Warrant Desk, (3) relatedly, whether the Charging Party's opportunity to work overtime at his new assignment was any different than his opportunity to work overtime while working at the Warrant Desk, and if so, (4) whether the Charging Party had reason to know, outside the limitations period, of the disparate opportunities for overtime in the different assignments. Relevant evidence includes records of overtime, seniority, and assignment pertaining to the dates on which the Respondent allegedly denied the Charging Party the opportunity to perform overtime. We emphasize that the records should relate to the period between June 19, 2018 and the present.

In sum, we affirm the dismissal in part, but remand for further investigation on the allegation that the Respondent unlawfully denied the Charging Party opportunities for overtime in retaliation for his union and/or protected, concerted activities.

-BY THE LOCAL PANEL OF THE ILLINOIS LABOR RELATIONS BOARD

/s/ Robert M. Gierut
Robert M. Gierut, Chairman

/s/ Charles E. Anderson
Charles E. Anderson, Member

/s/ Angela C. Thomas
Angela C. Thomas, Member

Decision made at the Local Panel's public meeting in Chicago, Illinois on September 10, 2019, written decision approved at the Local Panel's public meeting in Chicago, Illinois on October 8, 2019, and issued on October 9, 2019.

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

Derek B. Webb,

Charging Party

and

City of Chicago,

Respondent

Case No. L-CA-19-095

DISMISSAL

On December 19, 2018, Derek B. Webb (Charging Party) filed a charge in Case No. L-CA-19-095 with the Local Panel of the Illinois Labor Relations Board (Board), in which he alleged that the Respondent, City of Chicago (Respondent) engaged in unfair labor practices within the meaning of the Illinois Labor Relations Act, 5 ILCS 315 (2014), *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. I hereby dismiss this charge for the following reasons.

I. INVESTIGATION

Respondent is a public employer within the meaning of Section 3(o) of the Act. Respondent employs Charging Party in the job title or classification of Warrant and Extradition Aid. As such, Charging Party is a member of a bargaining unit (Unit) represented by the American Federation of State, County, and Municipal Employees (AFSCME), Council 31 (Union). Respondent and the Union are parties to a collective bargaining agreement (CBA) for the Unit that includes a grievance procedure culminating in final and binding arbitration. Charging Party

alleges that Respondent violated Sections 10(a)(1) and (2) the Act when it stopped assigning him to the Warrant Desk in retaliation for serving as union president and filing numerous grievances.

Charging Party previously served as union president of AFSCME Local 654 from 2012 until at least 2017. During that time, Charging Party filed and assisted with numerous grievances, including grievances regarding Respondent's alleged diminution of bargaining unit work when it began staffing the Warrant Desk with Police Officers. Charging Party contends that this is an ongoing problem.

Charging Party's initial allegations included a 10(a)(4) violation claiming that Respondent has been continuing to violate a previous settlement agreement that Respondent made with the Union by allowing Police Officers to staff the Warrant Desk. After receiving information from the Board agent that individuals do not have standing to file allegations that an employer engaged in bad faith bargaining and violated Section 10(a)(4) of the Act, Charging Party withdrew this allegation. City of Flora, 8 PERI ¶ 2012 (1992).

In his response to the Board agent's inquiries, Charging Party clarified his allegations and now claims that Respondent is retaliating against him by not assigning him to the Warrant Desk. He asserts that Respondent stopped assigning him to the Warrant Desk in 2017 and that this practice continues to date. Charging Party further alleges that, since he has been assigned away from the Warrant Desk, his duties mirror those that are in the classification of Teletype Operator, and his main duty is to take messages. Charging Party contends that Respondent has retaliated against union officials and employees who filed grievances over this issue in a similar manner. Charging Party indicates that the Warrant Desk is now mainly staffed with Police Officers.

II. DISCUSSION AND ANALYSIS

The available evidence indicates that this charge is untimely 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

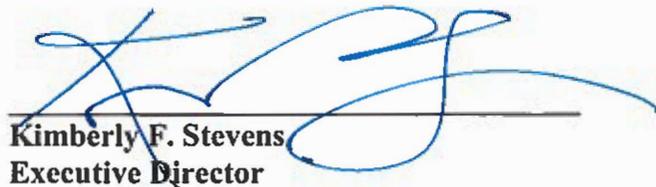
person against whom the charge is made." Charging Party admits that Respondent stopped assigning him to the Warrant Desk in December 2017. This charge was filed on December 19, 2018, about a year after the alleged incident. Therefore, this charge is untimely filed and must be dismissed. See State of Illinois. Dept. of Central Management Services (Eugene Brown), 19 PERI ¶105 (ILRB-SP 2003).

III. ORDER

Accordingly, this charge is hereby dismissed. The Charging Party may appeal this dismissal to the Board any time within 10 calendar days of service of this dismissal. 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 or filed electronically at ILRB.Filing@Illinois.gov in accordance with Section 1200.5 of the Board's Rules and Regulations, 80 Ill. Admin. Code §§1200-1300. 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. Please note that the Board's Rules and Regulations do not allow electronic service of the other persons or organizations involved in this case. 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 21st day of May, 2019.

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


**Kimberly F. Stevens
Executive Director**