STATE OF ILLINOIS
ILLINOIS LABOR RELATIONS BOARD
LOCAL PANEL

Debra Larkin,	)	
	)	
Charging Party,	)	
	)	Case No. L-CB-16-001
and	)	
	)	
Amalgamated Transit Authority,	)	
	)	
Respondent.	)	

ORDER

On March 15, 2016, Administrative Law Judge Kelly Coyle, on behalf of the Illinois Labor Relations Board, issued a Recommended Decision and Order in the above-captioned matter. No party filed exceptions to the Administrative Law Judge's Recommendation during the time allotted, and at its July 12, 2 016 public meeting, the Board, having reviewed the matter, declined to take it up on its own motion.

THEREFORE, pursuant to Section 1200.135(b)(5) of the Board's Rules and Regulations, 80 Ill. Admin. Code §1200.135(b)(5), the parties have waived their exceptions to the Administrative Law Judge's Recommended Decision and Order, and this non-precedential Recommended Decision and Order is final and binding on the parties to this proceeding.

Issued in Springfield, Illinois, this 13th day of July, 2016.

STATE OF ILLINOIS
ILLINOIS LABOR RELATIONS BOARD
LOCAL PANEL

/s/ Kathryn Zeledon Nelson
Kathryn Zeledon Nelson
General Counsel

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Debra Larkins,	)	
	)	
Charging Party,	)	
	)	
and	)	Case No. L-CB-16-001
	)	
Amalgamated Transit Union, Local 241,	)	
	)	
Respondent.	)	

ADMINISTRATIVE LAW JUDGE'S RECOMMENDED DECISION AND ORDER

On August 4, 2015, Debra Larkins (Larkins or Charging Party) filed a charge with the Local Panel of the Illinois Labor Relations Board (Board) alleging that the Amalgamated Transit Union, Local 241 (Union or Respondent) engaged in unfair labor practices within the meaning of Section 10(b) of the Illinois Public Labor Relations Act, 5 ILCS 315 (2014) as amended (Act). The Board's Executive Director investigated the charge in accordance with Section 11 of the Act and the Rules and Regulations of the Board, 80 Ill. Admin. Code, Parts 1200 through 1300 (Rules). On November 12, 2015, the Executive Director issued a Complaint for Hearing alleging the Respondent violated Sections 10(b)(1) and 10(b)(6) of the Act when it refused to pursue, and later withdrew, her grievance.

The first day of hearing in the above-captioned case was held on February 23, 2016, before the undersigned Administrative Law Judge (ALJ). The Charging Party proceeded pro se. At the conclusion of the Charging Party's case in chief, the Union's attorney moved to dismiss the Complaint arguing that the underlying charge was untimely. Given the amount of testimony presented, I declined to rule on the motion at that time without the benefit of reviewing the transcript. However, when the parties were unable to completely present their cases in one day of

hearing, I informed the parties that before scheduling a second day of hearing, I would review the transcript and rule on the Union's Motion to Dismiss. Also, in recognition of the Charging Party's pro se status and for clarity's sake, I informed the Charging Party that if I ruled in the Union's favor, her case would be dismissed and there would not be a second day of hearing. Upon reviewing the transcript and after full consideration of the parties' stipulations, evidence, arguments, and upon the entire record of this case, I recommend the following.

I. PRELIMINARY FINDINGS

A. At all times material, the Union has been a labor organization within the meaning of Section 3(i) of the Act.

B. At all times material, the Chicago Transit Authority (CTA) has been a public employer within the meaning of Section 3(o) of the Act.

C. At all times material, the Union has been the exclusive representative of a bargaining unit of CTA employees (Unit) which includes the title Bus Operator.

D. At all times material, the Charging Party has been a public employee within the meaning of Section 3(n) of the Act.

E. At all times material, the Union and the CTA were parties to a collective bargaining agreement for the Union which included a grievance procedure culminating in final and binding arbitration.

II. ISSUES AND CONTENTIONS

This Recommended Decision and Order (RDO) stems from the Union's Motion to Dismiss submitted at the close of the Charging Party's case in chief. In its Motion, the Union argues that the charge in this case is untimely and, therefore, should be dismissed. It contends that the Charging Party knew the Union would no longer pursue her grievance regarding her

termination from the CTA in October 2014. Yet, the Charging Party did not file the underlying charge until August 2015, rendering the charge untimely.

In response, the Charging Party contends that her charge was timely filed. The Charging Party argues that she was still actively pursuing her grievance into 2015. The Charging Party further argues that in or around April 2015, the Union President told her that he would try to get the Charging Party reinstated with the CTA. As such, the Charging Party believed the Union was willing to move forward with her grievance.

III. FINDINGS OF FACT

Prior to her termination, Larkins was a Bus Operator for the CTA. In 2009, the CTA terminated Larkins, and the Union grieved her termination on her behalf. The Union and the CTA arbitrated Larkins' grievance in 2011. In December 2011, the arbitrator issued an award in Larkins' favor, returning her to work and granting her back pay.

Larkins returned to work in January 2012. In May 2012, the CTA charged Larkins with a missed assignment or "miss." Over the next several months, the CTA charged Larkins with three additional misses. Larkins grieved several of the charged misses. After charging Larkins with her fourth miss, the CTA terminated her employment in October or November 2012. Larkins subsequently filed a grievance regarding her termination.

The Union, then in trusteeship, advanced Larkins' grievances to arbitration.[1] The CTA and the Union eventually set the arbitration hearing for April 24, 2014. In early April 2014, the Union's then-attorney Tiffany Reeves contacted Larkins to schedule a pre-arbitration meeting. Larkins responded that she did not understand the need for a pre-arbitration meeting and asked Reeves about an arbitration award generally referred to as the "Trotter Award." The Trotter

[1] Although the Union advanced all of Larkins' grievances to arbitration, the parties general refer to the grievances as a single grievance. As such, I will do the same.

Award is an arbitration award addressing CTA's discipline policy. Specifically, the award stated that, according to the contract, CTA could not take into account previous disciplinary violations which had already fallen off the employees' disciplinary records when issuing discipline. According to Larkins, Reeves stated that she was not addressing the Trotter Award and, shortly thereafter, ended the phone call. Larkins also testified that she tried to contact Reeves' office on several occasions over the following week, but was unable to reach anyone directly. In a letter to Larkins dated April 8, 2014, Reeves stated:

> I called you on January 31, 2014 and April 1, 2014, to discuss your grievance arbitration, which was originally scheduled for April 24, 2014. During both calls you were hostile and uncooperative. When I called you on April 1st, I explained to you the importance of meeting to discuss the facts of your case and prepare for the hearing; I attempted to schedule a time to meet with you the following week. Unfortunately, you indicated that you were not interested in meeting with me and would not be assisting me in preparing for your arbitration hearing. Because the Union is my client, I advised them of this situation. As a result of your lack of cooperation, the Union has decided to postpone the hearing. The Union will advise you as to whether a new hearing date will be scheduled.

Also, on April 14, 2014, Larkins emailed Union official Javier Perez inquiring about the status of her case. Perez responded that because Larkins had been uncooperative in scheduling a pre-arbitration meeting, the arbitration date had been postponed. After learning her arbitration hearing had been postponed, Larkins testified that she repeatedly asked Perez for new hearing dates.

On May 2, 2014, Larkins filed an unfair labor practice charge against the Union in Case No. L-CB-14-030. Larkins filed two additional charges against the Union on May 30, 2014, in Case Nos. L-CB-14-034 and L-CB-14-035. In Case Nos. L-CB-14-030 and L-CB-14-034, Larkins generally alleged that the Union failed to arbitrate or otherwise resolve her grievance in a timely manner. In Case No. L-CB-14-035, Larkins alleged that Union had failed to provide her

with information regarding the Trotter Award. On August 20, 2014, the Executive Director dismissed Larkins' three charges finding Larkins had failed to establish the Union had committed any intentional misconduct. The Board affirmed the Executive Director's Dismissal on December 30, 2014.

At some point in the summer or fall of 2014, Union representative Bernard Pierce contacted Larkins to set up a meeting between Larkins and the Union. Larkins testified that Pierce refused to tell her what the meeting was about and that she would not go unless Pierce told her the meeting's subject matter. No meeting was scheduled. Additionally, in September 2014, Larkins called the Union's office and spoke to several Union officials and representatives regarding her grievance. Larkins testified that they discussed the Trotter Award, and the Union reiterated that it did not believe the Trotter Award applied to her case.

On September 7 and 8, 2014, Pierce emailed Larkins in another attempt to schedule a meeting between Larkins and the Union's attorney. Larkins responded that "the only meeting that is necessary, is a meeting that prepares for arbitration, which is the meeting that I was informed of that needs to be scheduled, any other meeting is pointless." Larkins also indicated that she had just been admitted to the hospital and needed time to recover. On October 4, 2014, Larkins emailed multiple individuals, including Pierce, that she had just been discharged from the hospital. Two days later, on October 6, Larkins emailed Pierce asking about the status of her grievance and if her arbitration hearing had been rescheduled. On October 7, 2014, Pierce responded that ""[t]here isn't [an] arbitration hearing schedule for you Debra. The [grievance committee] voted not to move forward with your grievance. You will receive a letter from the local attorney advis[ing] you of this ma'am." After a series of replies, Pierce reiterated that the Committee had voted not to pursue her grievance.

In early 2015, the ATU was released from trusteeship, and the membership elected new leadership. Larkins repeatedly contacted new Union President Tom Sams regarding her grievance. Larkins testified that in April or May 2015, Sams told her that her grievance had been withdrawn. After Larkins continued to press the issue, Sams, essentially, told her that he would see what he could do. Larkins testified that she never heard back from Sams.

IV. DISCUSSION AND ANALYSIS

In short, the Complaint alleges that the Union refused to pursue and ultimately withdrew the grievance regarding Larkins' 2012 termination in violation of Section 10(b)(1) and 10(b)(6) of the Act. In its Motion to Dismiss, the Union contends that Larkins' charge is untimely and, therefore, should be dismissed.[2] When considering a motion to dismiss, courts interpret the evidence "in the light most favorable to the nonmoving party. Such motions to dismiss should be granted only if the plaintiff can prove no set of facts that would support a cause of action." Westfield Ins. Co. v. Birkey's Farm Store, Inc., 399 Ill. App. 3d 219, 230-231 (3d Dist. 2010).

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 has knowledge of the alleged unlawful conduct or reasonably should have known of the unlawful conduct, regardless of whether the employee understands the conduct's legal significance. Moore v. Ill. State Labor Relations Bd., 206 Ill. App. 3d 327 (4th Dist. 1990). Additionally, under Sections 10(b)(1) and 10(b)(6), the unlawful conduct in question is the union's negative representation

[2] The Union's sole argument in its Motion to Dismiss is regarding the timeliness of the charge. As such, I only address the question of timeliness and not the merits of the case.

action. AFSCME, Council 31 (Hughes), 20 PERI ¶ 88 (IL LRB-SP 2004); AFSCME, Council 31 (Robertson), 18 PERI ¶ 2014 (IL LRB-SP 2002).

Larkins contends that her charge is timely because she had continued to pursue her grievance and Union President Sams said, in or around April 2015, that he would try to get her reinstated with the CTA. I disagree. In the instant case, the negative representation action was the Union's refusal to process Larkins' grievance any further, not Sams' conduct as Larkins suggests. Larkins' testimony and the documentary evidence establish Larkins received notice that the Union would no longer pursue her grievance October 7, 2014. Thus, Larkins was required to file her charge in April 2015. However, Larkins actually filed in August 2015, nearly four months late. Although Larkins may have found Sams' conduct confusing, I do not find that his statements render the Union's October notice unclear or restart the statute of limitations. Therefore, I find that Larkins' charge is untimely and must be dismissed.

V. CONCLUSIONS OF LAW

The Charging Party's unfair labor practice charge is untimely.

VI. RECOMMENDED ORDER

IT IS HEREBY ORDERED that the Union's Motion to Dismiss is GRANTED and the Complaint is dismissed.

VII. EXCEPTIONS

Pursuant to Section 1200.135 of the Board's Rules, parties may file exceptions to the Administrative Law Judge's Recommended Decision and Order and briefs in support of those exceptions no later than 30 days after service of this Recommendation. Parties may file responses to exceptions and briefs in support of the responses no later than 15 days after service of the exceptions. In such responses, parties that have not previously filed exceptions may

include cross-exceptions to any portion of the Administrative Law Judge's Recommendation. Within 7 days from the filing of cross-exceptions, parties may file cross-responses to the cross-exceptions. Exceptions, responses, cross-exceptions, and cross-responses must be filed with Kathryn Zeledon Nelson, General Counsel of the Illinois Labor Relations Board, 160 North LaSalle Street, Suite S-400, Chicago, Illinois 60601-3103, and served on all other parties. Exceptions, responses, cross-exceptions, and cross-responses will not be accepted at the Board's Springfield office. The exceptions and/or cross-exceptions sent to the Board must contain a statement listing the other parties to the case and verifying that the exceptions and/or cross-exceptions have been provided to them. The exceptions and/or cross-exceptions will not be considered without this statement. If no exceptions have been filed within the 30-day period, the parties will be deemed to have waived their exceptions.

Issued in Chicago, Illinois on March 15, 2016
STATE OF ILLINOIS
ILLINOIS LABOR RELATIONS BOARD
LOCAL PANEL

/s/ Kelly Coyle
Kelly Coyle
Administrative Law Judge