On May 23, 2018, Executive Director Kimberly Stevens dismissed a charge filed by Policemen’s Benevolent Labor Committee (Charging Party) on January 18, 2018. The charge alleges the City of Sparta (Respondent) engaged in unfair labor practices within the meaning of Section 10(a)(4) and (1) of the Illinois Public Labor Relations Act (Act), 5 ILCS 315 (2014), as amended, by unilaterally instituting a new requirement for bargaining unit members to complete park patrols and refusing to bargain over the requirement. Specifically, the charge alleges that the Respondent unilaterally changed the terms and conditions of employment for its patrol officers when it issued a memo on January 11, 2018, requiring patrol officers to complete at least 15 ten-minute park patrols and then log them with dispatch. The charge also alleged that because this memo stated that failure to complete the patrols as required would result in discipline, Respondent was implementing new grounds for discipline without bargaining.

The Executive Director dismissed the charge on grounds that the charge was untimely and that the available evidence failed to indicate Respondent had a duty to bargain. Regarding the timeliness issue, the Executive Director, relying on Jones v. IELRB, 272 Ill. App. 3d 612, 620 (1st
Dist. 1995), found that because Respondent had issued numerous memos regarding completion of targeted patrols during a two-year period beginning with a memo issued on March 29, 2016, requiring the completion of fairground patrols, the six-month filing period began to run in 2016 when Charging Party first became aware of Respondent’s action which are the subject of the charge.

On the merits, the Executive Director, relying on MMC Materials Inc., 2005 WL 2706008 (2005), found the requirement to complete a park patrols did not constitute a change to the terms and conditions of employment, and thus, Respondent had no duty to bargain before implementing the requirement. She reasoned that completion of park patrols was not a new requirement because the available evidence indicated patrol officers have been required to complete targeted patrols since at least 2016. She also found that Respondent already had disciplinary procedures in place when the January 11, 2018 memo was issued and that discipline for failure to follow a directive is not a new subject of discipline.

On June 1, 2018, the Charging Party filed an appeal of the Executive Director’s dismissal. Charging Party asserts the Executive Director erred in finding the charge was untimely and that the requirement at issue did not constitute a change requiring bargaining. Charging Party contends there was no basis for the Executive Director to find the Charge untimely filed. Regarding the merits, Charging Party asserts the Executive Director overlooked certain evidence that the Employer made changes to the disciplinary consequences for failing to complete the specified patrols. It also contends the Executive Director’s reliance on MMC Materials is misplaced, noting the case supports the opposite conclusion. Finally, Charging Party claims that because it was not provided with the documents relied on by the Executive Director it was not allowed to review and respond to the materials. Charging Party further asserts that the Executive Director erred in
determining no issue of fact existed because it should be allowed the opportunity to disprove Respondent’s contentions that there was no new requirement or new grounds for discipline.

Respondent timely responded to the appeal. It urges the Board to affirm the dismissal and argues Charging Party’s appeal fails to provide a viable basis to reverse the Executive Director’s findings.

After reviewing the dismissal, Charging Party’s appeal, Respondent’s response, and the record, we find Charging Party’s appeal lacks merit for it fails to identify any error in the Executive Director’s findings and analysis on either the timeliness basis or the issue of whether there was a unilateral change. Although Charging Party contends the Executive Director had no basis to find the charge was untimely, it fails to support this contention with any facts, authority or even further argument. More significantly, Charging Party offers no basis of its own to find the charge timely filed.

Even if we were to find the charge timely filed and reverse the dismissal on that basis, the appeal’s challenges to the dismissal on substantive grounds are also unavailing for none of those challenges are supported by the available evidence or legal authority. Notably, Charging Party urges reversal because it was not given the opportunity to review and respond to the prior memos issued by the Respondent that the Executive Director relied on, but does not actually dispute their contents or that those memos were previously issued. Further supporting the Executive Director’s findings, Charging Party did not even dispute the issuance of the earlier memos or their contents to support its contention that the charge was indeed timely filed, a contention for which Charging Party neglected to provide any support. Moreover, the failure to dispute the prior memos underscores the appropriateness of the dismissal solely on procedural grounds. Accordingly, the Executive Director properly dismissed the charge on both the procedural and substantive grounds.
For the reasons set forth above, we affirm the dismissal for the reasons stated by the Executive Director.

BY THE STATE PANEL OF THE ILLINOIS LABOR RELATIONS BOARD

/s/ John J. Hartnett
John J. Hartnett, Chairman

/s/ John R. Samolis
John R. Samolis, Member

/s/ Keith A. Snyder
Keith A. Snyder, Member

Decision made at the State Panel’s public meeting held in Springfield and Chicago, Illinois (via videoconference) on September 11, 2018, written decision approved at the State Panel’s meeting in Chicago, Illinois on October 16, 2018, and issued on October 17, 2018.
ST A TE OF ILLINOIS
ILLINOIS LABOR RELATIONS BOARD
STATE PANEL

Policemen's Benevolent Labor Committee,
Charging Party

and

City of Sparta,
Respondent

Case No. S-CA-18-085

DISMISSAL

On January 18, 2018, Policemen's Benevolent Labor Committee (Charging Party) filed a charge in Case No. S-CA-18-085 with the State Panel of the Illinois Labor Relations Board (Board), alleging that the Respondent, City of Sparta (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. Charging Party is a labor organization within the meaning of Section 3(i) of the Act that represents a bargaining unit (Unit) consisting of Respondent's employees in the job titles or classifications of Patrol Officer and Dispatcher. Respondent and Charging Party are parties to a collective bargaining agreement for the Unit that includes a grievance procedure culminating in final and binding arbitration. Charging Party alleges that Respondent violated Section 10(a)(4) and (1) of
the Act by unilaterally instituting a requirement for Officers to complete park patrols and refusing to bargain over this change.

On January 11, 2018, Respondent issued a memo requiring all Officers to make at least 15 ten-minute park patrols a month and to log these patrols with dispatch. Respondent continued that failure to complete this task would result in discipline. Charging Party argues that, by issuing this memo, Respondent instituted a new work requirement affecting employee discipline. Therefore, Charging Party concludes that Respondent implemented a unilateral change that must be bargained over.

Respondent argues that requiring Officers to complete park patrols is not a change in the terms and conditions of employment because Officers have always been required to perform park patrols and have been required to complete targeted patrols for at least several years. In addition, Respondent states that the core job function of Patrol Officers is to patrol different areas within the City of Sparta (City), including parks, and that it is the Respondent's right to determine operations, direct employees, and set the standards of service. Respondent provides documentation, through departmental memos, that it has directed its officers to complete targeted patrols at different parks and public areas throughout the City. In some of the memos, Officers were also required to formally log targeted patrols by reporting them to dispatchers, as in this case. The January 11, 2018, memo informed Officers that, if park patrols were not performed, Officers may be disciplined. Discipline for failure to follow a directive or insubordination is not a new subject of bargaining, as Respondent already has a disciplinary policy in place.

II. DISCUSSION AND ANALYSIS

The available evidence indicates that the 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." See State of Illinois. Dept. of Central Management Services (Eugene Brown), 19 PERI ¶105 (ILRB-SP 2003). On March 29, 2016, Respondent issued a memo requiring that Officers patrol the fairgrounds at least three times per shift. On April 4, 2016, Respondent again issued a memo reminding Officers to complete extra patrols through the park. Respondent issued numerous additional memos between March 2016 and January 11, 2018, requiring Officers to complete targeted patrols. With respect to the date of occurrence of the alleged unfair labor practice, the six-month filing period begins to run “when the charging party became aware (or should have become aware)” of the actions which allegedly constituted a violation. Jones v. IELRB, 272 Ill. App. 3d 612, 620 (1st Dist. 1995). Notice was provided at least two years before this charge was filed that Officers must patrol the parks and targeted patrols may be assigned. Therefore, this charge was untimely filed.

Moreover, contrary to Charging Party’s allegations, Respondent did not make a unilateral change to the terms and conditions of employment by requiring Officers to complete park patrols, and, therefore, did not have a duty to bargain the effects of the January 11, 2018, memo. As previously described, Officers have always been required to patrol the parks and have been assigned targeted patrols since, at the latest, 2016. Charging Party also claims that these “new” duties alter employee discipline. Respondent already had disciplinary procedures in place when this memo issued, and discipline for failure to follow a directive or insubordination is not a new subject of discipline that needs to be bargained. The National Labor Relations Board (NLRB) has held that if an employer’s unilateral change does not amount to a “material, substantial, and significant change,” the employer does not violate the Act. MMC Materials Inc., 2005 WL 2706008 (2005). Here, Charging Party fails to demonstrate that Respondent even implemented a change.
Because this charge is untimely filed and a unilateral change did not occur, this charge fails to raise and issue for hearing.

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 23rd day of May, 2018.

STATE OF ILLINOIS
ILLINOIS LABOR RELATIONS BOARD
STATE PANEL

Kimberly F. Stevens
Executive Director