STATE OF ILLINOIS
ILLINOIS LABOR RELATIONS BOARD
STATE PANEL

Vincent Clemens,	)	
	)	
Charging Party,	)	
	)	
and	)	Case No. S-CB-18-036
	)	
Wauconda Professional Firefighters, International Association of Firefighters, Local 4876,	)	
	)	
Respondent.	)	

DECISION AND ORDER OF THE ILLINOIS LABOR RELATIONS BOARD
STATE PANEL

On March 27, 2019, Executive Director Kimberly Stevens dismissed a charge filed on June 6, 2018, by Charging Party Vincent Clemens. Charging Party alleges Respondent Wauconda Professional Firefighters, International Association of Fire Fighters, Local 4876 (Union) engaged in unfair labor practices within the meaning of Sections 10(b)(1) and (3) of the Illinois Public Labor Relations Act (Act), 5 ILCS 315 (2016), as amended, when it retaliated against Charging Party by conspiring with the Wauconda Fire Protection District (Employer) to defeat his disability claim before the pension board and refusing to represent him in related disciplinary matters. Charging Party claims the Union retaliated against him for encouraging support for another union during efforts to organize the Employer's captains and lieutenants.

The Executive Director dismissed the allegations on timeliness grounds and on grounds the available evidence failed to raise an issue of law or fact to warrant a hearing. The Executive Director dismissed the allegations that the Union conspired with the Employer in interfering with Charging Party's pension board claims and failed to represent him during his November 20, 2107 interrogation because they involved conduct occurring more than six months before the charge

was filed on June 6, 2019. Citing caselaw and Board precedent, she reasoned that the six-month time period began to run when Charging Party became aware of the Union's intent to intervene in his pension board hearing, October 12, 2017, and on November 20, 2017, the date of his interrogation.

The Executive Director then observed that even if those allegations could be considered timely, the available evidence failed to raise issues warranting a hearing. She noted that regarding the Union's intervention in his disability claim, Charging Party provided only bald assertions that he supported a rival union during the organizing campaign as evidence the Union was biased against him. The Executive Director likewise dismissed Charging Party's allegations regarding the Union's refusal to represent him during the Employer's investigation into Charging Party's disability claims and disciplinary process because she concluded the available evidence indicated the Union offered to representation to avoid any conflicts of interest and failed to indicate the Union's actions were intended to cause the Employer to discriminate against Charging Party to discourage or encourage union support or membership.

Charging Party timely appealed; the Union did not file a response. In his appeal, Charging Party challenges the Executive Director's dismissal of allegations on timeliness grounds contending the limitations period began to run on December 6, 2017, the date of his pension board hearing and that the Union's failure to represent him in the discipline constituted a continuing violation of the Act. Regarding the dismissal of allegations on the merits, Charging Party claims his opposition to the Union and support of a rival labor organization engendered the requisite animosity toward him by Union agents, John Spratt and J. Dale Berry.

After reviewing the record, dismissal, appeal, and response, we find Charging Party's appeal lacks merit for it fails to offer a viable basis for reversal. The Executive Director's findings

and determinations were correct and supported by the available evidence and Board precedent. Charging Party's appeal identifies no flaw in the Executive Director's analysis, her findings of fact, or conclusions.

Charging Party's contention that the limitations period began to run on the date of the hearing is unavailing. As the Executive Director correctly noted, the limitations period began to run when Charging Party became aware of the alleged violative conduct, which in this case was on October 12, 2019, when the Union filed its petition to intervene with the pension board. Also unavailing is Charging Party's contention that the allegation regarding the Union's failure to represent him at this November 20, 2017 interrogation is timely as a continuing violation of the Act. Charging Party asserts the November 20, 2017 interrogation was part of the Employer's investigation into his disability claims that continued beyond December 6, 2017, and until January 24, 2018, and the Union failed to represent him during that investigation. The Executive Director, however, only determined the allegation regarding the Union's failure to represent Charging Party at the November 20, 2017 interrogation was untimely and reviewed the merits of the remaining failure to represent allegations.

Although Charging Party accurately recites the continuing violation principle stated in Elmhurst Park District, 18 PERI ¶ 2065 (Il LRB-SP 2002), he misapprehends its applicability to the November 20, 2017 interrogation. Under the continuing violation doctrine, each instance of prohibited conduct occurring within the six-month limitations period is actionable "despite the fact that an initial identical action took place outside" the limitations period. Id. However, the continuing doctrine cannot be used to make actionable alleged unlawful conduct occurring outside the limitation period. See id.

Charging Party's challenge to the dismissal of allegations on the merits is likewise unavailing for it fails to point to any evidence indicating the existence of issues for hearing. Charging Party asserts that Respondent was motivated against him because he opposed the Union and encouraged support of a rival union but nothing in the appeal or the materials included with it indicate the Union took action against Charging Party *because of* this activity. In addition, Charging Party's identification of Michael Young, an employee who is a member of a different bargaining unit represented by the Union and did not support a rival union, fails to compel reversing the Executive Director's findings.

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 S. Cronin
John S. Cronin, Member

/s/ Kendra Cunningham
Kendra Cunningham, Member

/s/ Jose L. Gudino
Jose L. Gudino, Member

/s/ William E. Lowry
William E. Lowry, Chairman

Decision made at the State Panel's public meeting in Chicago, Illinois on July 9, 2019, written decision approved at the State Panel's public meeting in Chicago and Springfield, Illinois (via videoconference) on August 13, 2019, and issued on August 13, 2019.

STATE OF ILLINOIS
ILLINOIS LABOR RELATIONS BOARD
STATE PANEL

Vincent Clemens, Charging Party and Wauconda Professional Firefighters, International Association of Fire Fighters, Local 4876, Respondent	Case No. S-CB-18-036

DISMISSAL

On June 6, 2018, Vincent Clemens (Charging Party) filed a charge in Case No. S-CB-18-036 with the State Panel of the Illinois Labor Relations Board (Board), in which he alleged that Respondent, Wauconda Professional Firefighters, International Association of Fire Fighters, Local 4876 (Respondent) engaged in unfair labor practices within the meaning of the Illinois Public Labor Relations Act (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 issue this dismissal for the following reasons.

I. INVESTIGATION

At all times material, the Wauconda Fire Protection District (WFPD) (Employer) employed Charging Party in the title of Lieutenant. As such, Charging Party was a member of a bargaining unit (Unit) represented by Respondent. Respondent and the Employer are parties to a collective bargaining agreement (CBA) for the Unit that included a grievance procedure culminating in final and binding arbitration. Charging Party alleges that Respondent violated Sections 10(b)(1) and

(3) of the Act by conspiring with the Employer to interfere with his pension board hearing to defeat his disability claim in retaliation for supporting another union when the Captains and Lieutenants employed by the Employer were organizing.

In late 2016 and early 2017, the Captains and Lieutenants began discussing the possibility of organizing. According to Charging Party, he was actively engaged in these discussions and efforts. Charging Party states that he opposed organizing under Respondent, even though Respondent already represented the lower ranking employees of the Employer, and that he encouraged his coworkers to consider organizing under the Service Employees International Union (SEIU). On March 23, 2017, Respondent filed a unit clarification petition with the Board, seeking to include the Captains and Lieutenants in the Unit. On April 24, 2017, the Board certified the Unit to include Captains and Lieutenants in Case No. S-UC-17-081.

In October 2016, Charging Party filed an application for employment benefits for a line-of-duty disability pension. Charging Party had previously injured his shoulder and arm during a fire call and, on another occasion, injured his knee when he fell through snow-covered logs. Pursuant to these injuries, Charging Party had taken a Public Employee Disability Act (PEDA) leave.

At some point during September 2017, Michael Feltzer, Charging Party's colleague from the National Ski Patrol, approached Respondent with information, documentation, and photographs showing that Charging Party had been working as an Alpine Patroller with the National Ski Patrol during his PEDA leave. On October 12, 2017, Respondent filed a Petition to Intervene in Charging Party's pension hearing with the Board of Trustees of the Wauconda Firefighter's Pension Fund (Pension Board) based on the information it received from Fetzer regarding Charging Party's employment with the National Ski Patrol. On October 19, 2017,

Respondent submitted an affidavit from Feltzer stating that Charging Party served with the National Ski Patrol and was re-certified as Ski Patroller during his PEDA leave in 2015 and 2016. According to Charging Party, Fetzer harbored dislike for Charging Party due to a previous business relationship. On November 28, 2017, the Pension Board granted the Respondent's petition to intervene.

On November 20, 2017, the Employer interrogated Charging Party regarding allegations that he made false claims regarding his injuries in order to receive PEDA payments. Respondent's attorney asked to be present during the interrogation, but Charging Party and his personal attorney denied this request.

On December 6, 2017, Charging Party appeared before the Pension Board for a hearing to determine if he was eligible for a line-of-duty pension. At this hearing, Feltzer testified that, in order to maintain membership as a Ski Patrol member, a person must complete 80 duty hours per season, and that, if a member does not meet the 80-hour requirement, then permission to maintain Ski Patrol membership must be given by the chairman of the Ski Patrol Board. According to Feltzer, Charging Party served as a Ski Patrol member during 2015 – 2016. In addition, Fetzer indicated that he observed Charging Party at the October 2016 Ski Patrol refresher course and observed Charging Party skiing in February of 2017. Feltzer's wife also testified that, in September of 2017, she observed Charging Party crack open an oxygen tank and secure a standing backboard. Despite the Feltzers' testimonies, the Pension Board found that Charging Party met his burden of proof and demonstrated that he was permanently disabled.

On December 28, 2017, Charging Party was notified by the National Ski Patrol that Fetzer had violated the National Ski Patrol's Policies and Code of Conduct by his involvement in Charging Party's disability claims.

On January 4, 2018, the Employer notified Charging Party that, as a result of the November 20, 2017, interrogation and further investigation, the Employer found that Charging Party was not in full compliance with PEDA policies between April 22, 2015, and April 22, 2016, and that he must repay $34,750 in benefits.

Charging Party also alleges that Respondent refused to represent him during the Employer's further investigation into Charging Party's disability claims and the ensuing disciplinary process that lasted into 2018. However, Respondent provided documentation that on December 3, 2017, Respondent offered him union representation from the vice president of another local to prevent any future conflicts of interest.

II. DISCUSSION AND ANALYSIS

The available evidence indicates that portions of this charge are 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." In this charge, Charging Party alleges that Respondent conspired with the Employer to attempt to interfere with Charging Party's disability claims and failed to represent him during his interrogation. Charging Party was aware that Respondent planned to intervene in his disability hearing on October 12, 2017, when Respondent filed a Petition to Intervene with the Pension Board. The Pension Board granted the petition on November 28, 2017. In addition, the Employer interrogated Charging Party on November 20, 2017. Although Charging Party's hearing before the Pension Board took place on December 6, 2017, he was aware before the hearing that Respondent intended to intervene. The Petition to Intervene outlined the reasons for Respondent's intervention and detailed the evidence that Respondent obtained to support its intervention. With respect to the date of the occurrence of

an alleged unfair labor practice, the six-month filing window begins to run "when the charging party became aware (or should have become aware)" of the actions which constituted a violation. Jones v. IELRB, 272 Ill. App. 3d 612, 620 (1st Dist. 1995) This charge was filed on June 6, 2018, which is more than six months after Charging Party became aware of Respondent's actions that he alleges violated the Act. Therefore, these portions of the charge were untimely filed. See State of Illinois. Dept. of Central Management Services (Eugene Brown), 19 PERI ¶105 (ILRB-SP 2003).

Even if Charging Party's charge was timely filed, he has not provided evidence establishing an issue of fact or law for hearing in this case. Section 10(b)(1) of the Act provides "that a labor organization or its agents shall commit an unfair labor practice ... in duty of fair representation cases only by intentional misconduct in representing employees under this Act." Because of the intentional misconduct standard, demonstration of a breach of the duty to provide fair representation, and a violation of Section 10(b)(1), requires a charging party to "prove by a preponderance of the evidence that: (1) the union's conduct was intentional, invidious and directed at charging party; and (2) the union's intentional action occurred because of and in retaliation for some past activity by the employee or because of the employee's status (such as race, gender, or national origin), or animosity between the employee and the union's representatives (such as that based upon personal conflict or the employee's dissident union practices)." Metro. Alliance of Police v. Ill. Labor Relations Bd., Local Panel, 345 III. App. 3d 579,588 (1st Dist. 2003).

To prove unlawful discrimination, which is necessary to establish the second element of a Section 10(b)(1) violation, a charging party must demonstrate, by a preponderance of evidence, that: (1) the employee has engaged in activities tending to engender the animosity of union agents or that the employee's mere status, such as race, gender, religion or national origin, may have caused animosity; (2) the union was aware of the employee's activities and/or status; (3) there was

an adverse representation action taken by the union; and (4) the union took an adverse action against the employee for discriminatory reasons, i.e. because of animus towards the employee's activities or status. Id. at 588-89.

Section 10(b)(3) of the Act states that it is an unfair labor practice for a labor organization or its agents "to cause, or attempt to cause, an employer to discriminate against an employee in violation of subsection (a)(2)." Section 10(a)(2) provides, in relevant part, that it is an unfair labor practice for an employer "to discriminate in regard to hire or tenure of employment or any term or condition of employment in order to encourage or discourage membership in or other support for any labor organization."

In this case, there is insufficient evidence to raise a question for hearing for a violation of Section 10(b)(l) or (3). Even if Charging Party's allegations that Respondent violated the Act when it intervened in his disability claim were timely, Charging Party has not provided evidence to suggest that Respondent was motivated to do so in response to a bias against him beyond his bare assertions that he supported another union during the organizing process. Further, Charging Party's allegations that Respondent refused to represent him during the Employer's investigation into his disability claims and disciplinary process are not well taken. Indeed, Respondent provided evidence that it offered Charging Party union representation by the union vice president from another local to avoid any conflicts of interest alleged by Charging Party. Finally, Respondent has not provided evidence showing that Respondent intended, by its actions, to cause the Employer to discriminate against Charging Party in order to encourage or discourage union support or membership.

Because a portion of the Charging Party's allegations are untimely, and he has not presented evidence indicating that Respondent's actions were motivated by discrimination, Charging Party has failed to present grounds upon which to issue a complaint 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 hereof. 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 27th day of March, 2019.

STATE OF ILLINOIS
ILLINOIS LABOR RELATIONS BOARD
STATE PANEL

Kimberly Stevens
Executive Director