

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

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|--|---|----------------------|
| Rachel Carter, |) | |
| |) | |
| Charging Party, |) | |
| |) | |
| and |) | Case No. L-CB-23-024 |
| |) | |
| Service Employees International Union, |) | |
| Local 73, |) | |
| |) | |
| Respondent. |) | |

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

On September 12, 2023, Executive Director Kimberly Stevens dismissed a charge filed by Charging Party Rachel Carter on June 2, 2023. Charging Party is employed by the Cook County Housing Authority (“Employer”) as a Financial Analyst and a member of a bargaining unit represented by Respondent Service Employee International Union, Local 73 (“Union”). She alleges in her charge that Respondent engaged in unfair labor practices within the meaning of Section 10(b) of the Illinois Public Labor Relations Act (Act), 5 ILCS 315/1 *et seq.*, when it failed to file a grievance or otherwise properly address and assist Charging Party with her claims of workplace harassment and retaliation against the Employer.

The Executive Director dismissed the charge on timeliness grounds and on the merits. The Executive Director found the charge untimely because it was filed after the Act’s six-month limitation period. She observed that the Respondent’s alleged offensive conduct occurred in November and December 2021, and that Charging Party had been discharged from employment on May 2, 2022, more than ten months before the charge was filed on June 2, 2023.

Noting the intentional misconduct standard in duty of fair representation cases and a union's discretion in grievance handling under Section 6(d) of the Act, the Executive Director found that Charging Party failed to provide evidence indicating Respondent's actions were unlawful.

Charging Party timely appealed the Executive Director's dismissal. In support of her appeal, Charging Party contends the charge was filed within the six-month limitation period, pointing to the charge she filed with the NLRB on August 16, 2022, three months after her May 2, 2022, discharge. Respondent did not file a response.

Upon review of the record, dismissal order, and the appeal, we find the appeal without merit and affirm the Executive Director's dismissal on timeliness grounds. The Executive Director's determinations regarding timeliness were correct, and the appeal offers no cogent argument or evidence that undermines the Executive Director's determinations on that issue. Charging Party's filing with the NLRB neither tolls the Act's six-month limitation period nor provides evidence that Charging Party was prevented from filing a charge with the Board by Respondent's actions or by events beyond her control. See State of Ill., Dept. of Central Mgmt. Servs., (Eugene Brown, Jr.), 19 PERI ¶ 105 (ILRB-SP 2003) (rejecting a charging party's contention that limitation period should be tolled because he filed with the wrong agency).¹ Accordingly, the Executive Director correctly dismissed the charge on the grounds the charge was untimely filed. 5 ILCS 315/11(a).

¹ Because we find the instant charge to be filed outside the Act's six-month limitation period, we decline to reach the merits of the allegations. See State of Ill., Dept. of Central Mgmt. Servs., (Eugene Brown, Jr.), 19 PERI ¶ 105 (ILRB-SP 2003). (citing Jones v. Ill. Educ. Labor Relations Bd., 272 Ill. App.3d 612, 621 (1st Dist. 1995) in which the court noted that any decision on the merits by the Illinois Educational Labor Relations Board would have been void for lack of jurisdiction).

For the above reasons, we affirm the Executive Director' dismissal on timeliness grounds.

BY THE LOCAL PANEL OF THE ILLINOIS LABOR RELATIONS BOARD

/s/ Lynne O. Sered

Lynne O. Sered, 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 December 14, 2023; written decision approved at the Local Panel's public meeting in Chicago, Illinois, on January 11, 2024, and issued on January 11, 2024.

This Decision and Order is a final order of the Illinois Labor Relations Board. Aggrieved parties may seek judicial review of this Decision and Order in accordance with the provisions of Section 11(e) of the Act and the Administrative Review Law. Petitions for review of this Decision and Order must be filed within 35 days from the date the Decision and Order is served upon the party affected by the decision. 5 ILCS 315/11(e).

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

Rachel Carter,

Charging Party

and

Service Employees International Union, Local
73,

Respondent

Case No. L-CB-23-024

DISMISSAL

On June 2, 2023, Rachel Carter (Charging Party) filed an unfair labor practice charge with the Local Panel of the Illinois Labor Relations Board (Board), in Case No. L-CB-23-024, alleging that the Service Employees International Union, Local 73 (Union or Respondent) violated Section 10(b) of the Illinois Public Labor Relations Act (Act), 5 ILCS 315. After an investigation conducted in accordance with Section 11 of the Act, I determined that this 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

The Housing Authority of Cook County (HACC) (Employer) employed Charging Party as a Financial Analyst. As such, Charging Party was a member of a bargaining unit (Unit) represented by Respondent. Respondent and Employer 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 Section 10(b)(1) of the Act when it failed to

respond to and process her grievance against the Employer related to alleged harassment of and retaliation against Charging Party by her manager.

On March 19, 2021, Charging Party contacted Respondent's representatives to raise concerns about her treatment in the workplace. Charging Party alleged unfair treatment and harassment by her supervisors. On March 23, 2021, Respondent's representatives met with Charging Party and representatives from the Employer to resolve the issues. On March 24, 2021, Respondent's representative Crystal Jones, via email, informed the Employer that Respondent did not intend to file a grievance about the issue but set forth some concerns that the Union would like to see addressed.

On November 15, 2021, Charging Party contacted Respondent's representative Dian Palmer (Palmer), raising additional workplace concerns and alleging continued harassment and retaliation. Palmer responded to Charging Party's email and informed her that Respondent had reviewed her email and forwarded it to the Union Director for Cook County for review and that a follow-up would occur. On November 18, 2021, Respondent's representative Trumaine Reeves (Reeves) contacted Charging Party via email and requested to schedule a telephone conversation. On December 2, 2021, Palmer informed Charging Party that Respondent was looking into her concerns and would follow up.

On December 2, 2021, Charging Party filed charges against the Employer with the Equal Employment Opportunity Commission (EEOC). On December 17, 2021, Charging Party emailed Respondent's representatives and asked to file a grievance against the Union for failure of representation. On December 17, 2021, Respondent's representative Carmen Nowitzki (Nowitzki) contacted the Employer to schedule a meeting to discuss Charging Party's concerns. Nowitzki's email stated that the requested meeting was not a grievance meeting or a hearing, but that

Respondent was “attempting to resolve this matter amicably.” On January 10, 2022, Charging Party moved to a different department with the Employer. On May 2, 2022, the Employer discharged Charging Party from her employment. On August 16, 2022, Charging Party filed a Charge against Respondent with the National Labor Relations Board (NLRB). On June 2, 2023, Charging Party filed this current charge with the Board.

II. DISCUSSION AND ANALYSIS

The available evidence indicates that Charging Party’s allegation that Respondent violated the Act when it failed to represent her and assist in resolving alleged workplace harassment issues 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 first raised workplace concerns with the Union on March 19, 2021. On March 23, 2021, Respondent’s representatives met with Charging Party and representatives from the Employer to resolve the issues. On November 15, 2021, Charging Party contacted Respondent’s representatives again, raising workplace concerns and alleging harassment and retaliation. On December 2, 2021, Respondent informed Charging Party that it was looking into her concerns and would follow-up. On December 2, 2021, Charging Party filed charges against the Employer with the EEOC. On December 17, 2021, Charging Party emailed Respondent’s representatives and asked to file a grievance against the Union for failure of representation. On December 17, 2021, Respondent’s representative contacted the employer to schedule a meeting to discuss Charging Party’s concerns. On January 10, 2022, Charging Party moved to a different department with the Employer. On May 2, 2022, the Employer discharged Charging Party from her employment. On August 16, 2022, Charging Party filed a Charge against Respondent with the

NLRB. Finally, on June 2, 2023, Charging Party filed the instant charge, almost ten months after filing with the NLRB and more than one year after her termination. Therefore, this allegation was filed untimely. See State of Illinois. Dept. of Central Management Services (Eugene Brown), 19 PERI ¶105 (ILRB-SP 2003).

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 unit member or because of the unit member's status (such as race, gender, or national origin), or animosity between the unit member 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 Ill. 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) he or she has engaged in activities tending to engender the animosity of union agents or that his or her mere status, such as race, gender, religion or national origin, may have caused animosity; (2) the union was aware of his or her activities and/or status; (3) there was an adverse representation action taken by the union; and (4) the union took an adverse action against him or her for discriminatory reasons, i.e. because of animus towards a unit member's activities or status. Id. at 588-89.

Further, under Section 6(d) of the Act, a labor organization has a wide range of discretion in contract interpretation and grievance handling. Accordingly, as the Board has previously held, a union's failure to take all the steps it might have taken to achieve the results desired by a particular employee or a particular group of employees does not violate the Act, unless, as noted above, the union's conduct appears to have been motivated by vindictiveness, discrimination, or enmity. Outerbridge and Chicago Fire Fighters Union, Local 2, 4 PERI ¶3024 (IL LLRB 1988); Parmer and Service Employees International Union, Local 1, 3 PERI ¶3008 (IL LLRB 1987).

Here, Charging Party has failed to allege, and the available evidence does not indicate, intentional misconduct on behalf of Respondent. According to the available evidence, Respondent presented Charging Party's concerns regarding her workplace issues to the Employer. The evidence demonstrates that, on more than one occasion, Respondent's representatives met with the Employer to discuss Charging Party's concerns. As stated above, Respondent's conduct and handling of the issues presented by Charging Party are not a violation of the Act absent a showing that Respondent was motivated by vindictiveness, discrimination, or enmity. Charging Party has provided no evidence demonstrating an improper motive on behalf of Respondent.

Ultimately, the available evidence suggests Charging Party's allegations are untimely filed. Even considering the charge on its merits, Charging Party has not submitted evidence suggesting that Respondent's actions were improperly motivated and therefore amount to a violation of the Act. As such, this charge fails to raise an 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 in Springfield, Illinois, this 12th day of September, 2023.

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



**Kimberly F. Stevens
Executive Director**