STATE OF ILLINOIS
EDUCATIONAL LABOR RELATIONS BOARD

Chicago Teachers Union, Local 1, IFT-AFT, AFL-CIO,	)	
Charging Party	)	
and	)	Case No. 2019-CA-0048-C
Chicago Board of Education,	)	
Respondent	)	

OPINION AND ORDER

I. Statement of the Case

On March 1, 2019, Chicago Teachers Union, Local 1, IFT-AFT, AFL-CIO (Union) filed a charge with the Illinois Educational Labor Relations Board (Board or IELRB) alleging that Chicago Board of Education (CBE) committed unfair labor practices within the meaning of Section 14(a) of the Illinois Educational Labor Relations Act (Act or IELRA), 115 ILCS 5/1, *et seq.*, by non-renewing the employment of Kerri Witowski (Witowski) and Anton Miglietta (Miglietta) in retaliation for engaging in protected activity within the meaning of the Act. Following an investigation, the Board's Executive Director issued a Recommended Decision and Order (EDRDO) wherein he dismissed the charge because it was untimely filed. The Union filed exceptions to the EDRDO, and CBE filed a response to the exceptions. After careful consideration of the Union's exceptions and CBE's response, for the reasons discussed below, we affirm the EDRDO dismissing the unfair labor practice charge.

II. Factual Background

We adopt the facts as set forth in the underlying EDRDO. Because the EDRDO comprehensively sets forth the factual background of the case, we will not repeat the facts herein except to assist the reader.

At all times relevant to this case, Witowski and Miglietta were employed by CBE as probationary appointed teachers at its Uplift Community High School. On or about June 1, 2018, Witowski and Miglietta both received letters from CBE informing them that their employment was going to be non-renewed for the following school year because they were not on track to achieve proficiency by the end of the 2017–2018 school year, that the non-renewal was effective at the end of the 2017–2018 school year, the non-renewal would become final on the date they received their summative ratings, and that they would be reinstated to their current position provided it was available if their summative rating was proficient or better. Miglietta and Witowski both received summative ratings of "unsatisfactory" on September 21, 2018.

III. Discussion

The Union argues in its exceptions that the charge was timely filed because the ultimate charge alleged is Miglietta and Witowski each received an unsatisfactory rating in September 2018 which was the basis for their non-renewal. Section 15 of the Act provides that "[n]o order shall be issued upon an unfair labor practice occurring more than 6 months before the filing of the charge alleging the unfair labor practice." The six-month period begins to run when the charging party knows or has reason to know that an unfair labor practice has occurred. *Wapella Education Association v. Illinois Educational Labor Relations Board*, 177 Ill. App. 3d 153, 531 N.E.2d 1371 (4th Dist. 1988). Only acts that occur within the six-month time period can serve as the basis for a timely charge. *Jones v. Illinois Educational Labor Relations Board*, 272 Ill. App. 3d 612, 650 N.E.2d 1092 (1st Dist. 1995); *City Colleges of Chicago/Johnson*, 12 PERI 1004, Case No. 95-CA-0047-C (IELRB Opinion and Order, December 8, 1995). A charge must be filed within six months of the time the charging party was put on notice, actual or constructive, of the alleged unlawful conduct. *Wapella*, 177 Ill. App. 3d 153, 531 N.E.2d 1371. In this case, Witowski and Miglietta were put on notice, thus had reason to know, that CBE had projected their summative ratings to be less than proficient because it was stated to them in the June

2018 letters nine months before the Union filed the charge. Thus, the Executive Director correctly determined that the charge was untimely filed.

IV. Order

For the reasons discussed above, IT IS HEREBY ORDERED that the Executive Director's Recommended Decision and Order dismissing the charge is affirmed.

V. Right to Appeal

This is a final order of the Illinois Educational Labor Relations Board. Aggrieved parties may seek judicial review of this Order in accordance with the provisions of the Administrative Review Law, except that, pursuant to Section 16(a) of the Act, such review must be taken directly to the Appellate Court of the judicial district in which the IELRB maintains an office (Chicago or Springfield). Petitions for review of this Order must be filed within 35 days from the date that the Order issued, which is set forth below. 115 ILCS 5/16(a). The IELRB does not have a rule requiring any motion or request for reconsideration.

Decided: **September 19, 2019**
Issued: **Chicago, Illinois**

/s/ Andrea R. Waintroob
Andrea R. Waintroob, Chairman

/s/ Judy Biggert
Judy Biggert, Member

/s/ Gilbert F. O'Brien
Gilbert F. O'Brien, Member

/s/ Lynne O. Sered
Lynne O. Sered, Member

/s/ Lara D. Shayne
Lara D. Shayne, Member

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EXECUTIVE DIRECTOR'S RECOMMENDED DECISION AND ORDER

I. THE UNFAIR LABOR PRACTICE CHARGE

On March 1, 2019, Charging Party, the Chicago Teachers Union, Local 1, IFT-AFT, AFL-CIO, filed an unfair labor practice charge with the Illinois Educational Labor Relations Board (IELRB) in the above-captioned case, alleging that Respondent, the Chicago Board of Education, violated Section 14(a) of the Illinois Educational Labor Relations Act (Act), 115 ILCS 5/1, *et seq.* (2012), *as amended*. After an investigation conducted in accordance with Section 15 of the Act, the Executive Director issues this dismissal for the reasons set forth below.

II. INVESTIGATORY FACTS

A. Jurisdictional Facts

At all times material, the Chicago Board of Education (CBE) was an educational employer within the meaning of Section 2(a) of the Act. At all times material, Kerri Witowski (Witowski) was an educational employee within the meaning of Section 2(b) of the Act, employed by CBE in the job title or classification of school counselor at Uplift Community High School (Uplift). At all times material, Anton Miglietta (Miglietta) was an educational employee within the meaning of Section 2(b) of the Act, employed by CBE in the job title or classification of teacher at Uplift. At all times material, the Chicago Teachers Union, Local 1, IFT-AFT, AFL-CIO (CTU) was a labor organization within the meaning of Section 2(c) of the Act. At all times material, CTU was the exclusive representative of a bargaining unit comprised of certain of CBE's employees, including school counselors and teachers. As relevant, CTU and CBE are parties to a collective bargaining agreement (CBA) for the unit, set to expire on June 30, 2019, which provides for a grievance procedure culminating in arbitration.

B. Facts Relevant to the unfair labor practice charge

Witowski was hired as a probationary appointed teacher (PAT) in the school counselor position at Uplift in June of 2016. Miglietta became employed at Uplift as a PAT in August of 2016. Stephanie Moore (Moore) was the principal at Uplift from 2005 until 2018.

During the Spring of 2017, Witowski and Miglietta were involved in organizing and circulating a letter to the Uplift Local School Council (LSC) and office of CBE Network 2 that expressed a lack of confidence in Moore as a principal.[1] Those same concerns were also presented at an LCS meeting attended by Witowski, Miglietta, and other members of the bargaining unit.

Later that year in December of 2017, Miglietta was involved in organizing a meeting at the Chicago Grassroots Curriculum Taskforce to discuss concerns about poor administrative leadership at Uplift, and the negative impact it was having on students, teachers, and the school. Miglietta also helped create a survey regarding Moore's contract renewal that was distributed to teachers, other Uplift school stakeholders, and also for presentation during an LSC meeting.

Subsequently, Moore issued Witowski and Miglietta pre-disciplinary notices in January of 2018. While Witowski was accused of being tardy to work on several occasions, Miglietta was accused of not complying with Uplift's lesson plan submission policy.

In March of 2018, Moore issued a second pre-disciplinary notice to Miglietta, accusing him of verbally humiliating a new staff member.

On or about June 1, 2018, Witowski and Miglietta received correspondence from CBE notifying them that their appointments were not being renewed, and they would no longer be employed in their current positions at Uplift because they were not on track to achieve a proficiency rating by the end of the school year.[2] Witowski and Miglietta received "unsatisfactory" summative evaluation ratings on September 21, 2018, respectively.

CTU filed the instant unfair labor practice charge against CBE on behalf of Witowski and Miglietta in this proceeding on March 1, 2019.

III. THE PARTIES' POSITIONS

CTU contends that CBE took adverse action against Witowski and Miglietta in retaliation for engaging in activity protected by the Act.

On the other hand, CBE argues that a nexus does not exist between Witowski and Miglietta's alleged protected union activity and CBE's non-renewal decision.

IV. DISCUSSION AND ANALYSIS

As a preliminary matter, the Act sets forth that no order shall be issued upon an unfair labor practice occurring more than six months before the filing of the charge alleging the unfair labor

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[1] According to CTU, CBE Network 2 is the school district regional office that oversees Uplift.

[2] In relevant part, the letter addressed to Witowski states, "Each year, principals or unit administrators evaluate their Probationary Teachers and make recommendations regarding whether or not to renew their appointment for the following school year. As a result of this process, the Board of Education has approved the Chief Executive Officer's recommendation to non-renew you and you will no longer be employed in your current position at Uplift Community High School. The reason for your non-renewal is that you are not on track to achieve proficiency as a teacher by the end of the school year. Your non-renewal is effective at the end of the 2017-18 school year and will become final on the date you receive your summative rating. Your health and dental benefits will be extended through August 31, 2018. If your summative rating is proficient or better, you will be reinstated to your current position provided your position is still available."

practice. 115 ILCS 5/15. The six-month limitations period begins to run when the person aggrieved by the alleged unlawful conduct either has knowledge of it, or reasonably should have known of it, regardless of whether that person understands the legal significance of the conduct that constitutes the unfair labor practice. *Jones v. IELRB*, 272 Ill.App.3d 612, 650 N.E.2d 1092 (1st Dist. 1995).

Here, I find that CTU's charge is untimely, and thus, outside of the Board's jurisdictional authority. CTU filed the instant charge on March 1, 2019 on behalf of Witowski and Miglietta. The aggrieved individuals, Witowski and Miglietta, both received letters from CBE dated June 1, 2018, of its recommendation to non-renew, which became effective at the end of the 2017-2018 school year. For the charge at bar to constitute a timely filing, any alleged unfair labor practice must have occurred on or after September 1, 2018. Although the June 1st letters further stated that the non-renewals would become final on the date Witowski and Miglietta received their respective summative ratings, it is inconsequential to the timeliness issue that Witowski and Miglietta received their respective lowered summative evaluations on September 21, 2018. This is because they both should have reasonably known of CBE's alleged conduct, which they believed constituted retaliation, from the June 1st letters.[3] *See id.*

Consequently, CTU's charge against CBE was filed more than six months after the alleged unfair labor practice, namely, the non-renewal decision, and the charge is untimely. *See Jones v. IELRB*, 272 Ill.App.3d 612, 650 N.E.2d 1092 (1st Dist. 1995). Therefore, CTU is precluded, in this instance, from alleging that CBE violated Sections 14(a)(3) and derivatively (1) of the Act and the charge must be dismissed.

V. ORDER

For these reasons, the instant charge is hereby dismissed in its entirety.

VI. RIGHT TO EXCEPTIONS

In accordance with Section 1120.30(c) of the Board's Rules and Regulations (Rules), 80 Ill. Admin. Code §§1100-1135, parties may file written exceptions to this Recommended Decision and Order together with briefs in support of those exceptions, not later than 14 days after service hereof. Parties may file responses to exceptions and briefs in support of the responses not later than 14 days after service of the exceptions. Exceptions and responses must be filed, if at all, with the Board's General Counsel, 160 North LaSalle Street, Suite N-400, Chicago, Illinois 60601-3103. Pursuant to Section 1100.20(e) of the Rules, the exceptions sent to the Board must contain a certificate of service, that is, **"a written statement, signed by the party effecting service, detailing the name of the party served and the date and manner of service."** If any party fails to send a copy of its exceptions to the other party or parties to the case, or fails to include a certificate of

[3] Both Witowski and Miglietta avow to receiving the letters at issue on or about June 1, 2018.

service, that party's appeal will not be considered, and that party's appeal rights with the Board will immediately end. See Sections 1100.20 and 1120.30(c) of the Rules, concerning service of exceptions. If no exceptions have been filed within the 14-day period, the parties will be deemed to have waived their exceptions, and unless the Board decides on its own motion to review this matter, this Recommended Decision and Order will become final and binding on the parties.

Issued in Chicago, Illinois, this 25th day of June 2019.

STATE OF ILLINOIS
EDUCATIONAL LABOR RELATIONS BOARD

Victor E. Blackwell
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