STATE OF ILLINOIS
EDUCATIONAL LABOR RELATIONS BOARD

Walter Brzeski,	)	
	)	
Charging Party	)	
	)	
and	)	Case No. 2019–CA–0082–C
	)	
Chicago Board of Education,	)	
	)	
Respondent	)	

OPINION AND ORDER

I. Statement of the Case

On June 10, 2019, Walter Brzeski (Brzeski) 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*. Following an investigation, the Board's Executive Director issued a Recommended Decision and Order (EDRDO) dismissing the charge as untimely filed. This matter is now before us on Brzeski's exceptions to the EDRDO. 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 as to assist the reader.

III. Discussion

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). The Executive Director dismissed Brzeski's charge as untimely because Brzeski knew or should have known of the misconduct he alleged violated the Act more than six months before he filed the charge.

In his exceptions, Brzeski contends that his charge was timely because it was based on new evidence that he received from the City of Chicago Department on Human Relations (CCHR) about a week before he filed the instant charge. He does not clearly specify in his exceptions what the new evidence was, except as to refer to it as the CCHR response. He claims the new evidence allowed him to find out that the date he was blocked from substituting at CBE's Steinmetz High School was March 23, 2018 and that it contained unsubstantiated and undocumented statements by Steinmetz's principal and head of security. Despite this, Brzeski knew he was blocked from substitute teaching by May 15, 2018, because he filed a grievance arising out of the block on that date. He does not indicate that the new evidence relates in any way to conduct amounting to a violation of the IELRA. Nor does he contend that he learned of the misconduct alleged in his charge upon discovery of the new evidence. Accordingly, we find that the Executive Director correctly determined that the charge was untimely.

Even assuming, *arguendo*, that the newly discovered evidence rendered Brzeski's charge timely, it should still be dismissed. The charge did not allege that CBE retaliated against him for asserting his rights under the IELRA, but rather that CBE retaliated against him for requesting reasonable accommodations under the Americans with Disabilities Act. Whether a charging party has rights protected by a code or statute other than the Act, or by the Constitution, is beyond the scope of the Board's authority to assess. *General George S. Patton School District 133*, 10 PERI 1118, Case No. 94-CA-0050-C (IELRB Opinion and Order, August 19, 1994).

IV. Order

For the reasons discussed above, IT IS HEREBY ORDERED that the Executive Director's Recommended Decision and Order is affirmed. The unfair labor practice charge is dismissed in its entirety.

V. Right to Appeal

This is a final order of the Illinois Educational Labor Relations Board.[1] 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: **November 19, 2020**
Issued: **November 19, 2020**

/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

Illinois Educational Labor Relations Board
160 North LaSalle Street, Suite N-400
Chicago, Illinois 60601
312.793.3170 | 312.793.3369 Fax
elrb.mail@illinois.go

1 The Board currently has three members. Pursuant to Section 5(d) of the Act, a vacancy on the Board does not impair the right of the remaining Members to exercise all of the powers of the Board.

STATE OF ILLINOIS
EDUCATIONAL LABOR RELATIONS BOARD

Walter Brzeski, Charging Party and Chicago Board of Education, Respondent	)	Case No. 2019-CA-0082-C

EXECUTIVE DIRECTOR'S RECOMMENDED DECISION AND ORDER

I. THE UNFAIR LABOR PRACTICE CHARGE

On June 10, 2019, Charging Party Walter Brzeski (Brzeski) filed an unfair labor practice charge with the Illinois Educational Labor Relations Board (IELRB or Board) in the above captioned case, alleging that Respondent, Chicago Board of Education (CBE) 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, Brzeski was an educational employee within the meaning of Section 2(b) of the Act, employed by CBE in the title or classification of substitute teacher. CBE is an educational employer within the meaning of Section 2(a) of the Act and subject to the jurisdiction of the Board. Chicago Teachers Union (Union) is a labor organization within the meaning of Section 2(c) of the Act, and the exclusive representative of a bargaining unit comprised of certain of CBE's employees, including those in the title or classification of substitute teacher. At all times relevant, Brzeski was a member of the Union's bargaining unit. CBE and the Union are parties to a collective bargaining agreement (CBA) which provides for a grievance procedure culminating in arbitration for the bargaining unit to which Brzeski belongs.

B. Facts Relevant to the Unfair Labor Practice Charge

On October 4, 2017, Brzeski sent CBE a letter requesting reasonable accommodations as required by the Americans With Disabilities Act, 42 U.S.C. §§ 12101-12117, 12201-12213 (1994) with regards to his work as a substitute teacher at Charles P. Steinmetz College Preparatory High School (Steinmetz). Brzeski's requests included parking in a location with access to the school with the fewest stairs, elevator access, assignments that require the least amount of walking, keys to the classrooms and nearby bathrooms, a teachers desk and chair in each classroom, and assistance on the stairs in case of emergency. All of his requests for accommodations were granted with the exception of elevator access, which CBE stated that it could not grant because the only elevator available at Steinmetz was the freight elevator, which did not meet ADA requirements and does not comport with safety codes as they relate to transferring passengers.

Brzeski filed a grievance on December 19, 2017, alleging that he had been forced to cancel two substitute teaching assignments because Steinmetz failed to provide reasonable accommodations. In the grievance, Brzeski cited two occurrences for which insufficient accommodations were made, including October

13, 2017, and November 6, 2017. On both occasions, the lack of elevator access prohibited Brzeski from accessing the classrooms to which he was assigned.

In a subsequent grievance, filed May 15, 2018, he alleges that he was blocked from substituting at Steinmetz in retaliation for his having requested reasonable accommodations. The alleged block occurred some time between February 8 and March 23, 2018. In a hearing dated August 2, 2018, evidence submitted established that the block occurred on February 26, 2018, and CBE contends that the block was entered for "poor classroom management," including reports that students disregarded his authority and walked out of his classroom. Accordingly, CBE denied the grievance. Brzeski contends that this decision was incorrect, because one of the witnesses interviewed at the hearing was under investigation for residency violations and because Union representatives allegedly did not have the opportunity to question the Steinmetz principal at the time, Stephen Ngo.

On or about August 1, 2018, Brzeski filed a complaint with the City of Chicago Commission on Human Relations (Commission), alleging that Ngo had blocked him from taking substitute teaching assignments at Steinmetz because of his disability. The Commission found that Brzeski had issues with classroom management, including frequent requests to the security team to help manage his classroom, and that there was no substantial evidence of discrimination based on disability.

III. THE PARTIES' POSITIONS

Herein, Brzeski alleges that CBE violated the IELRA by blocking him from taking substitute teaching assignments at Steinmetz because of his disability and because he filed grievances against CBE arising out of his requests for accommodations. CBE declined to file a position statement in this matter.

IV. DISCUSSION AND ANALYSIS

In order for a Complaint and Notice of Hearing to issue, a Charging Party must demonstrate that sufficient evidence exists as would support a finding that the Act has been violated if it is not rebutted at a hearing. Lake Zurich, 1 PERI 1031 (IELRB Opinion and Order, November 30, 1984). Pursuant to Section 15 of the Act, no order shall issue based upon any unfair labor practice occurring more than six months prior to the filing with the Board, of the charge alleging the unfair labor practice. 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. Jones v. IELRB, 272 Ill. App. 3d 612, 650 N.E.2d 1092 (1st Dist. 1995); Charleston Community Unit School District No. 1 v. IELRB, 203 Ill. App. 3d 619, 561 N.E.2d 331, 7 PERI ¶4001 (4th Dist. 1990); Wapella Education Association v. IELRB, 177 Ill. App. 3d 153, 531 N.E.2d 1371 (4th Dist. 1988). The statutory time period is jurisdictional in nature and cannot be tolled. Charleston Community Unit School District No. 1.

In this case, the alleged unlawful conduct was the block placed on Brzeski's ability to accept substitute teaching assignments at Steinmetz. The block occurred on February 26, 2018, and Brzeski in fact knew of the block no later than May 15, 2018, the date that he filed a grievance against CBE arising out of the block. The instant charge was filed on June 10, 2019. For the IELRB to have jurisdiction over this charge, Brzeski would have had to file it no more than six months after he knew or should have known that the block was in place. Even assuming he did not know about the block until he filed his grievance on May 15, an unfair labor practice charge arising out of an action occurring on that date would

have had to be filed by November 15, 2018, almost seven months before the filing of this charge. For this reason, the IELRB does not have jurisdiction to proceed on the merits of this charge.

V. ORDER

Accordingly, 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 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 27th day of February, 2020.

STATE OF ILLINOIS
EDUCATIONAL LABOR RELATIONS BOARD

Victor E. Blackwell
Executive Director