

STATE OF ILLINOIS
EDUCATIONAL LABOR RELATIONS BOARD

Christopher Bean,)	
)	
Charging Party)	
)	
and)	Case No. 2021-CA-0060-C
)	
University of Illinois, Chicago,)	
)	
Respondent)	

OPINION AND ORDER

I. Statement of the Case

On February 4, 2021, Christopher Bean (Bean or Charging Party) filed an unfair labor practice charge with the Illinois Educational Labor Relations Board (Board or IELRB) alleging that the University of Illinois, Chicago (Respondent or University) violated the Illinois Educational Labor Relations Act (Act or IELRA), 115 ILCS 5/1 *et seq.* On March 24, 2022, the IELRB’s Executive Director issued a Recommended Decision and Order (EDRDO) dismissing the charge in its entirety. Bean filed timely exceptions to the EDRDO.¹ The University did not file a response to Bean’s exceptions. For the reasons discussed below, we affirm the dismissal of the charge.

¹ Exceptions to an EDRDO must be filed not later than 14 days after service thereof. 80 Ill. Adm. Code 1120.30(c). Here, the EDRDO was sent to Bean by first-class mail on March 24, 2022. Whenever a time period begins running upon the service of notice or other document upon a party, and service is effected by first class mail, three days shall be added to the prescribed period. 80 Ill. Adm. Code 1100.30(c). If the last day of the period so computed falls on a Saturday, Sunday or legal holiday, the time period shall be automatically extended to the next day that is not a Saturday, Sunday or legal holiday. *Id.* Bean had until April 11, 2022, to file timely exceptions to the EDRDO. Bean’s exceptions are considered filed April 7 because they were sent by certified mail postmarked April 7. Documents sent by certified or registered mail shall be considered to have been filed on the date on which they are postmarked. 80 Ill. Adm. Code 1100.20(a).

II. Factual Background

We adopt the facts as set forth in the underlying EDRDO. Because the EDRDO comprehensively set forth the factual background for the case, we will not repeat the facts herein.

III. Discussion

The Executive Director dismissed the charge in its entirety because it was untimely filed. 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).

Bean filed the instant charge on February 4, 2021. Any unlawful conduct he knew or should have known about before August 4, 2020, six months prior to its filing, cannot be the subject of a timely charge. Bean alleges that his discharge was retaliation on the University’s part for his engagement in various activities both inside and outside of this Board’s jurisdiction. The unlawful conduct occurred at the very latest when he was notified of his discharge on February 11, 2020. Yet he filed the instant charge almost a year later. For this reason, his charge was clearly untimely.

IV. Order

For the reasons discussed above, IT IS HEREBY ORDERED that the Executive Director’s Recommended Decision and Order 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: **June 15, 2022**

Issued: **June 15, 2022**

/s/ Lara D. Shayne

Lara D. Shayne, Chairman

/s/ Steve Grossman

Steve Grossman, Member

/s/ Chad D. Hays

Chad D. Hays, Member

/s/ Michelle Ishmael

Michelle Ishmael, Member

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/s/ Gilbert F. O'Brien

Gilbert F. O'Brien, Member

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EXECUTIVE DIRECTOR'S RECOMMENDED DECISION AND ORDER

I. THE UNFAIR LABOR PRACTICE CHARGE

On February 4, 2021, Charging Party, Christopher Bean, filed an unfair labor practice charge with the Illinois Educational Labor Relations Board (IELRB or Board) in the above-captioned case, alleging Respondent, University of Illinois, Chicago, violated Section 14(a) of the Illinois Educational Labor Relations Act (Act), 115 ILCS 5/1, *et seq.* 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

University of Illinois, Chicago (University), is an educational employer within the meaning of Section 2(a) of the Act and subject to the jurisdiction of the Board. At all times material, Bean was an educational employee within the meaning of Section 2(b) of the Act, employed by Respondent in the job title or classification of Food Service Sanitation Laborer. Service Employees International Union, Local 73 (Union), is a labor organization within the meaning of Section 2(c) of the Act, and the exclusive representative within the meaning of Section 2(d) of the Act, of a bargaining unit comprised of certain of Respondent's employees, including those in the title or classification of Food Service Sanitation Laborer. At all times material, Bean was a member of the Union's bargaining unit.

B. Facts relevant to the unfair labor practice charge

The University hired Bean on or about June 11, 2012. On December 18, 2018, Bean's supervisor, Lilian Villalon, asked him to wait on taking a patient's tray of food to first allow her to add carrots to it. Bean responded by telling her she was full of shit. The next day, December 19, 2018, another supervisor, Mary Niewinski, directed Bean to be more careful in the manner in which he placed utensils on the patients' trays. Bean had been placing the utensils on the trays upside-down, something Niewinski had discussed with him and corrected on previous occasions. Bean responded by becoming very irate, loudly yelling Niewinski was picking on him. Niewinski ignored Bean's outburst and continued examining the trays, while Bean continued yelling, proclaiming he was not going to change the way in which he worked and Niewinski could take care of the trays herself. Niewinski discovered a dirty plastic knife on a tray and asked Bean for a clean one, which he threw at her, while he continued loudly ranting. Eventually, a co-worker led Bean away from Niewinski and the work area.

The next day, December 20, 2018, the University placed Bean on administrative leave with pay effective immediately, pending an investigation into his workplace conduct on December 18 and 19, 2018. On February 22, 2019, the University scheduled a predisciplinary meeting for March 6, 2019, with regard to Bean's workplace conduct on December 18 and 19, 2018. Bean, along with a Union representative, attended the March 6 predisciplinary meeting. The following day, March 7, 2019, the University issued Bean a 30-day suspension for violating a number of University policies by his December 18 and 19, 2018 workplace conduct, including those prohibiting violence in the workplace, insubordination, profanity in the workplace, insolence towards supervisors and co-workers, and the creation of a hostile and unsafe workplace. Bean served the suspension from March 11 to April 10, 2019.

On or about January 21, 2020, the University notified Bean it planned to terminate his employment. The University cited three main reasons for its action in this regard: Bean's tardiness during the last three months of 2019; Bean's unexcused absences during the last three months of 2019; Bean's failure to complete ethics training for 2019. The University asserted Bean was tardy on the following dates: October 3, 2019—

three hours and forty-two minutes late; October 28, 2019—three minutes late; October 31, 2019—one hour and twenty-two minutes late; November 4, 2019—fifty minutes late. Regarding the unexcused absences during the last three months of 2019, the University contended Bean left work without approval, for one hour and thirty-eight minutes on October 22, 2019, and from November 14, 2019 to January 6, 2020. Bean asserted he had been injured at work on November 7, 2019, and his absence from November 14, 2019 to January 6, 2020, was covered by Workers' Compensation, to allow him to recover from the November 7 injury. However, the University had denied his Workers' Compensation claim on November 27, 2019, and Bean did not provide evidence he was in fact on a Workers' Compensation leave. Regarding Bean's failure to complete ethics training for 2019, the University asserted it notified Bean, as it did with all University employees, of his obligation to complete the "2019 Ethics Training for University Faculty and Staff" by no later than October 31, 2019; Bean failed to do so.

By a January 21, 2020 letter, the University served Bean with written charges to terminate his employment. Therein, the University notified Bean it had scheduled a disciplinary conference for him on January 27, 2020, and explained if he wished to challenge the termination of his employment, he could do so by the following means: 1. the procedure for review specified in the Rules of the State Universities Civil Service System, Ch. VI, Section 250.110(f)(1) through (7); and 2. the grievance procedure contained in the collective bargaining agreement which covered his job classification. At the Union's request, the University later agreed to postpone the January 27 disciplinary conference, scheduling it for February 5, 2020.

Bean attended the February 5 disciplinary conference, accompanied by a Union representative. Several representatives of the University also attended. During the disciplinary conference, Bean admitted to the four tardies as charged by the University. As to the University's contention Bean left work without approval, for one hour and thirty-eight minutes on October 22, 2019, Bean responded he had notified another University employee, Ruth Kross, he was leaving for a meeting with the Union regarding his grievance over his earlier 30-day suspension. The University responded Kross was not the appropriate

person to notify and she did not give him permission to leave his work area, instead he should have notified his manager, Villalon. In regard to the unauthorized absence from November 14, 2019 to January 6, 2020, Bean asserted he called in each day to report he was on Workers' Compensation, as he was injured on duty and expected the University to pay him for that time. The University responded that while Bean had called in every day, he was charged with being on leave without approval, and since his Workers' Compensation claim was denied, and he was not on any other type of approved leave, his absence from November 14, 2019 to January 6, 2020 was without approval. Bean did not provide evidence he was in fact on a Workers' Compensation leave. Regarding Bean's failure to complete ethics training for 2019, the University asserted it notified Bean, as it did with all University employees, of his obligation to complete the 2019 ethics training by no later than October 31, 2019. Bean admitted he failed to complete the ethics training as directed, but argued the University failed to schedule him to take the ethics training and did not allow him access to a computer in order to do so. The University's witness, Niewinski, responded Bean was, as were all the employees in her work area, given access to a computer in a supervisor's office to complete the training and allowed to do so while on work time, even on overtime if necessary. On February 11, 2020, the University sent Bean a certified letter notifying him his employment with the University was terminated effective that date.

III. THE PARTIES' POSITIONS

Bean contends the University terminated his employment in retaliation for filing a Workers' Compensation claim and attending the October 22, 2019 pre-arbitration meeting with his Union representatives. The University denies it retaliated against Bean in any manner whatsoever, and asserts the IELRB has no jurisdiction to remedy Bean's allegation with regard to the Workers' Compensation issue. In addition, the University asserts Bean's charge was not timely filed.

IV. DISCUSSION AND ANALYSIS

The instant charge is untimely filed. 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. 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).

Herein, Bean filed his charge on February 4, 2021, and therefore, the date six months prior to his filing was August 4, 2020. Accordingly, alleged unlawful conduct he knew of before August 4, 2020, or reasonably should have known of by that date, cannot be the subject of a timely charge.

Although Bean does not, and likely could not, contend he was unaware of the University's conduct in relationship to his claims at or near the time such conduct occurred, all of the conduct by the University, about which Bean now complains, occurred at the absolute latest, on or about February 11, 2020, the date on which the University terminated his employment. Yet, despite his knowledge of the complained-of conduct, Bean did not file the instant charge until February 4, 2021, nearly a year after the University terminated his employment. Because Bean filed his unfair labor practice charge more than six months after he knew of the conduct complained of therein, it is untimely.

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), Ill. Admin. Code tit. 80, §§1100-1135 (2020), 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, at ELRB.mail@illinois.gov and 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 24th day of March, 2022.

**STATE OF ILLINOIS
EDUCATIONAL LABOR RELATIONS BOARD**

**Victor E. Blackwell
Executive Director**