STATE OF ILLINOIS
EDUCATIONAL LABOR RELATIONS BOARD

In the Matter of:	)	
	)	
Agnes Tropp, an Individual,	)	
	)	
Charging Party,	)	
	)	
and	)	Case No. 2007-CB-0002-C
	)	
Illinois Federation of State Office Educators, Local 3236, IFT/AFT,	)	
	)	
Respondent.	)	
_____)		
Agnes Tropp, an Individual,	)	
	)	
Charging Party,	)	
	)	
and	)	Case No. 2007-CA-0008-C
	)	
Illinois State Board of Education,	)	
	)	
Respondent.	)	

OPINION AND ORDER

On March 21, 2007, the Executive Director issued a Recommended Decision and Order in these cases.[1] The Executive Director dismissed the unfair labor practice charges filed by Agnes Tropp on the basis that they were untimely filed.

Tropp filed timely exceptions to the Executive Director's Recommended Decision and Order. She filed separate exceptions for Case No. 2007-CB-0002-C and Case No. 2007-CA-0008-C.[2] The Respondents, Illinois Federation of State Office Educators, Local 3236, IFT/AFT ("Federation") and Illinois State Board of Education ("ISBE") did not file a response to the exceptions.

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[1] Tropp objects to the Executive Director's consolidation of these cases. However, the IELRB routinely consolidates charges filed by an individual against his/her employer and his/her union. This is, as the Executive Director stated, a matter of administrative convenience. Such charges against the employer and the union, as in this case, involve related facts. Indeed, during the investigation of the cases currently before the IELRB, Tropp submitted a set of materials directed to both her charge against ISBE and her charge against the Federation. Therefore, much of the same evidence was before the Executive Director in both cases.

[2] The voluminous material that Tropp attached to her exceptions included material that was not provided during the investigation. The IELRB has routinely refused to consider evidence that is not presented to the Executive Director. *City Colleges of Chicago (Wright College)*, 11 PERI 1055, Case No. 95-CA-0012-C (IELRB, May 26, 1995); *Chicago Teachers Union (Day)*, 10 PERI 1008, Case No. 93-CB-0028-C (IELRB, November 10, 1993). In addition, most of this material is irrelevant and/or concerns events more than six months before Tropp filed her charges, and, in any event, would not establish a prima facie issue of law or fact that unfair labor practices were committed.

We have considered the Executive Director's Recommended Decision and Order, Tropp's exceptions, the investigative record, and applicable precedents. For the reasons in this Opinion and Order, we affirm the Executive Director's Recommended Decision and Order.

I.

Tropp was employed by ISBE until her termination on August 8, 2005, of which she asserts she was informed on August 10, 2005.[3] In an email dated October 18, 2005, Tropp states that collusion between ISBE management and the Federation caused her termination.

Tropp was represented by the Federation. The Federation filed and processed various grievances on Tropp's behalf. The Federation withdrew grievances IFSOE 507, IFSOE 515 and IFSOE 526 on April 17, 2006.[4]

Tropp asserts that the Federation has failed to file grievances, has failed to investigate grievances and has not timely processed her grievances. In an email dated August 31, 2005, Tropp stated that the Federation has not moved her grievances to arbitration in a timely manner. In an email dated September 23, 2005, Tropp stated that Federation President Stadeker did not file for arbitration in a timely manner concerning her termination. Tropp claims that the Federation did not prepare for arbitration and ignored contractual procedures in selecting an arbitrator. Tropp asserts that the Federation has proceeded to arbitrate cases that it knew would be bifurcated on the threshold question of timeliness and did not place into evidence an agreement between the Federation and ISBE to hold certain grievances in abeyance. Tropp contends that her grievances were not heard by ISBE within 15 days of receipt and were not countered by the Federation with a referral to arbitration. In a September 23, 2005 email, Tropp refers to the alleged failure of ISBE and the Federation to follow the 15-day periods in the contract. In the same email, Tropp states that ISBE and the Federation have placed her grievances on hold, and that Stadeker has held her grievances with approval from the Federation's Executive Board.

Tropp asserts that the Federation and ISBE have refused to effect the remedy imposed in a reduction in force arbitration in which the Federation prevailed. In a settlement agreement signed by the Federation on October 26, 2005 and by ISBE on November 17, 2005, the parties agreed that the Federation would withdraw and dismiss the arbitration and all reduction in force-related grievances, and that ISBE would pay certain amounts to certain

[3] In her exceptions, Tropp asserts that she was hired by ISBE on July 1, 2000 as an Accountability Consultant Nonpublic Schools rather than on June 14, 2002 as a Special Education Consultant, as the Executive Director found. It is unnecessary to resolve this factual dispute.

[4] The document submitted by Tropp indicates that grievance IFSOE 515 was withdrawn on April 17, 2005. However, this appears to be a typographical error.

individuals and credit certain individuals with certain leave days. Those individuals did not include Tropp. Tropp asserts that ISBE and the Federation did not disclose the settlement agreement.

Tropp asserts that the Federation has failed to maintain a representative for the Chicago office since January 7, 2005. According to Tropp, the Federation has failed to provide her with legal representation. Tropp asserts that the Federation's Executive Board has chosen not to respond to her emails and certified letters.

Tropp claims that there has been collusion between ISBE and the Federation. She claims that, as a result of this collusion, the Federation has failed to file unfair labor practice charges against ISBE. In a September 23, 2005 email, Tropp stated that collusion existed between ISBE and the Federation.

Tropp also submitted materials concerning various actions of the Federation and ISBE prior to February 2, 2006. Tropp filed the unfair labor practice charges currently before the IELRB on August 2, 2006.

Tropp also refers to letters from the Federation dated April 5 and 28, 2006. The Board Agent requested a copy of those letters, but Tropp did not provide one.

On September 21, 2006, the Illinois Educational Labor Relations Board ("IELRB") issued an Opinion and Order dismissing a previous charge filed by Tropp against the Federation. *Illinois Federation of State Office Educators, Local 3236, IFT/AFT*, 22 PERI 124, Case No. 2006-CB-0005-C (IELRB, September 21, 2006), *appeal dismissed*, No. 1-06-3678 (Ill. App. 1st Dist. Jan. 20, 2007). Among other things, the IELRB found that the fact that some of Tropp's grievances were not processed in a timely manner did not constitute intentional misconduct and that the Federation's alleged failure to file grievances, take them to arbitration, or provide the make-whole remedy from a federal mediation case would not constitute intentional misconduct.

II.

The IELRB has ruled that, in processing unfair labor practice charges, the IELRB "must decide whether its investigation establishes a prima facie issue of law or fact sufficient to warrant a hearing of the charge," *Lake Zurich School District No. 95*, 1 PERI 1031, Case No. 84-CA-0003 (IELRB, November 30, 1984). In order for a complaint to be issued, "the investigation must disclose adequate credible statements, facts or documents which, if substantiated and not rebutted in a hearing, would constitute sufficient evidence to support a finding of a violation of the Act," *Village of Skokie v. ISLRB*, 306 Ill.App.3d 489, 714 N.E.2d 87, 90 (1st Dist. 1999), *quoting Lake Zurich*; *see* 80 Ill. Adm. Code 1105.100(b). In addition, the evidence must support a facially plausible legal theory or argument, reasonably based on the Illinois Educational Labor Relations Act ("Act"). *Chicago School Reform Board*

of Trustees, 16 PERI 1043, Case No. 99-CA-0003-C (IELRB, April 17, 2000). Under this standard, Tropp has not established a prima facie issue of law or fact warranting a hearing.[5]

Section 15 of the Act provides that "[n]o order shall be issued upon an unfair practice occurring more than 6 months before the filing of the charge alleging the unfair labor practice." Under Section 15, the IELRB does not have jurisdiction over an unfair labor practice occurring more than six months before the charge is filed where the alleged unfair labor practice involves a right that is unknown to the common law. *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 (4th Dist. 1990). The rights at issue in these cases were unknown to the common law. Therefore, the IELRB does not have jurisdiction over allegations concerning events that occurred more than six months before the filing of Tropp's charges. The six-month time period begins to run when the charging party becomes aware, or should become aware, of the actions that it asserts constitute an unfair labor practice. *Jones*; *Wapella Education Association v. IELRB*, 177 Ill.App.3d 153, 531 N.E.2d 1371 (4th Dist. 1988).

Many of Tropp's allegations are untimely under this standard. In particular, emails written by Tropp reflect her awareness of ISBE's and the Federation's alleged conduct more than six months before August 2, 2006, the date when she filed her charges. In addition, certain of Tropp's allegations were previously adjudicated in Case No. 2006-CB-0005-C. Under *Board of Education of Mundelein Elementary School District No. 75 v. IELRB*, 179 Ill.App.3d 696, 534 N.E.2d 1022 (4th Dist. 1989), the IELRB does not have the authority to reconsider its decisions. Accordingly, the IELRB does not have the authority to rule on these allegations.

Tropp's remaining allegations against the Federation do not establish a prima facie issue of law or fact warranting a hearing. Under the language of Section 14(b)(1) of the Act, a union does not violate its duty of fair representation unless it engages in intentional misconduct. In order to establish that a union has engaged in intentional misconduct, a charging party must present "substantial evidence of fraud, deceitful action, or dishonest conduct" or "deliberate and severely hostile and irrational treatment," *Paxton-Buckley-Loda Education Association v. IELRB*, 304 Ill.App.3d 343, 710 N.E.2d 538 (4th Dist. 1999), *quoting Hoffman v. Lonza*, 658 F.2d 519 (7th Cir.

[5] Tropp contends that the IELRB should decide in her favor because the Federation and ISBE did not submit any response to her charges during the investigation. However, if the evidence presented by a charging party does not warrant a hearing under the standard of *Lake Zurich*, no complaint should be issued, even if the respondent does not submit a response.

1981), *citing Amalgamated Ass'n of Street Electric Ry. & Motor Coach Employees of America v. Lockridge*, 403 U.S. 274 (1971). Tropp has not presented evidence of such conduct by the Federation.[6]

Tropp's allegations against ISBE which have not been shown to be untimely concern the arbitration settlement agreement.[7] Tropp has not provided adequate credible evidence that ISBE's conduct toward her with respect to the settlement agreement was the result of collusion or in retaliation for protected activity on her part. Therefore, Tropp has not established a prima facie issue of law or fact warranting a hearing that ISBE violated Section 14(a) of the Act.[8]

Tropp has not made a prima facie showing that the Federation or ISBE violated the Act. Accordingly, the Executive Director's Recommended Decision and Order is affirmed, and the charges are dismissed.

III. 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 Board maintains an office (Chicago or Springfield). "Any direct appeal to the Appellate Court shall be filed within 35 days from the date that a copy of the decision sought to be reviewed was served upon the party affected by the decision," 115 ILCS 5/16(a).

Decided: September 11, 2007
Issued: September 11, 2007
Chicago, Illinois

/s/ Lynne O. Sered
Lynne O. Sered, Chairman

/s/ Ronald F. Ettinger
Ronald F. Ettinger, Member

/s/ Bridget L. Lamont
Bridget L. Lamont, Member

/s/ Michael H. Prueter
Michael H. Prueter, Member

/s/ Jimmie E. Robinson
Jimmie E. Robinson, Member

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[6] Tropp also argues that the Federation violated her right to due process under the 14th Amendment to the United States Constitution. Whether this is correct is not a matter within the IELRB's jurisdiction. *General George S. Patton School District 133*, 10 PERI 1118, Case No. 94-CA-0050-C (IELRB, August 19, 1994). Therefore, we do not consider this issue.

[7] Tropp asserts that the Federation and ISBE did not disclose the settlement agreement. Accordingly, it has not been shown that Tropp was aware or should have become aware of the settlement agreement more than six months before she filed her charges.

[8] Tropp did not indicate in her charges which subsections of the Act she was alleging that ISBE and the Federation had violated.