STATE OF ILLINOIS
EDUCATIONAL LABOR RELATIONS BOARD

In the Matter of:	)	
	)	
Western Massac County Teachers Association, IEA-NEA,	)	
	)	
Respondent,	)	
	)	
and	)	Case No. 2006-CB-0004-S
	)	
Joyce Ilene Grant,	)	
	)	
Charging Party.	)	

OPINION AND ORDER

On July 7, 2006, the Executive Director issued a Recommended Decision and Order in this matter. The Executive Director determined that the unfair labor practice charge filed by Joyce Ilene Grant against the Western Massac County Teachers Association, IEA-NEA ("Union") was in part untimely and in part failed to establish a prima facie violation of Section 14(b)(1). Consequently, the Executive Director dismissed Grant's charge against the Union. Grant filed exceptions to the Executive Director's Recommended Decision and Order on July 24, 2006. The Union filed a response to Grant's exceptions on August 8, 2006. For the reasons discussed below, we affirm the Executive Director's Recommended Decision and Order.

I.

It should initially be noted that the Illinois Educational Labor Relations Board ("IELRB") does not consider new facts raised for the first time before the IELRB. *Chicago Teachers Union (Day)*, 10 PERI 1008, Case No. 93-CB-0028-C (IELRB Opinion and Order, November 10, 1993).

Grant was employed by Joppa-Maple Grove School District 38 ("District 38") as a librarian. In or about October 2004, Grant sought the assistances of Illinois Education Association UniServ Director Mary Jane Morris. Grant informed Union President Larry Marrs of her conversation with Morris. Marrs became very alarmed, and Grant alleges that Marrs said that Morris would just come down and cause trouble.

On February 28, 2005, the District 38 Board of Education voted not to renew Grant's teaching contract for the 2005-2006 school year. According to Grant, the District 38 Board of Education decided not to renew her teaching contract for the 2005-2006 school year because it was in the best interests of District 38 and because of Grant's alleged poor organizational skills.

Immediately upon learning that District 38 had determined not to renew her teaching contract for the 2005-2006 school year, Grant contacted Morris. Grant met with Morris several times between January and May 2005. At Morris' request, Grant drafted a statement as to why Grant believed she had been unfairly discharged by District 38. Grant gave her written statement to Morris. At Morris' suggestion, Grant made certain changes to her statement. Then, as suggested by Morris, Grant gave her written statement to High School Principal Ancell. Ancell never responded to Grant's statement.

According to the Union, Morris met with Grant on March 10, March 11, March 23 and March 24, 2005 to discuss various issues related to her employment by District 38. The Union alleges that, on April 14, 2005, Illinois Education Association Associate General Counsel Wanda Van Pelt and Morris met with Grant and informed her that she did not have tenure rights to pursue in court and there appeared to be no grievance available. Grant alleges that, in or about April 2005, she met with Morris and Van Pelt, and Van Pelt said that she could not help her. Grant refers elsewhere to the meeting as having occurred on April 14, 2005.

At that meeting, Grant indicated that she thought she might have been non-renewed because of her age. However, she could provide no evidence that age was the motivating factor. Van Pelt then informed Grant that there did not appear to be a viable age discrimination charge to pursue.

According to the Union, Morris spoke with Grant on May 24, June 23, June 24 and June 28, 2005 to answer Grant's questions and further discuss issues related to her employment. The Union asserts that, on July 19, 2005, Grant contacted Morris again and said that she was continuing with the age discrimination charge. The Union asserts that Morris responded by telling Grant that she could keep Morris informed if she chose to do so, but that the charge did not involve the Illinois Education Association or Morris' services. Grant asserts that, during the July 19, 2005 conversation, she asked Morris whether she had found out whom District 38 had hired to take her place, because Morris had told her several months before that, if District 38 hired someone who was not as qualified, the Union could perhaps do something. According to Grant, Morris told her that she would not find out whom District 38 had hired, because there was nothing she could do to help her.

Grant alleges that Van Pelt and Morris erroneously determined that she had not achieved tenure at District 38. Grant alleges that Van Pelt and Morris erroneously determined that Grant did not have a viable grievance under the collective bargaining agreement as a means to remedy District 38's decision not to renew her teaching contract

for the 2005-2006 school year. Grant alleges that Van Pelt and Morris conducted only a cursory investigation of her claim that she was a tenured teacher.

II.

Grant argues that she had a valid claim of being a tenured teacher, and that the Union knew or should have known that she had such a claim. She contends that she had good grounds for grieving her termination, yet the Union failed to file a grievance on her behalf or to assist her in filing a grievance. Grant asserts that there is substantial evidence to support her claim that the Union's failure to grieve her termination was due to intentional misconduct. She argues that, although the acts occurring prior to April 30, 2005, of which she knew or should have known, are time-barred, she did not know with any certainty that the Union had failed to file a grievance on her behalf until July 19, 2005.[1]

The Union argues that Grant did not have a valid claim of being a tenured teacher, and, even if she had, the Union's duty of fair representation does not cover court actions to enforce School Code provisions. The Union contends that Grant did not have good grounds for grieving her termination. The Union asserts that there is no evidence that Morris and/or Van Pelt acted in deliberately and severely hostile or fraudulent manner, and that there is no evidence that Morris or Van Pelt held the same hostility as Union President Marrs or that Marrs was involved in the discussions Morris and/or Van Pelt had with Grant during the period of January through July 2005. The Union argues that the charge is untimely, because Grant knew or should have known that the Union had failed to file a grievance as of March 23, 2005 (the date the grievance was due) or by April 14, 2005 (the date Morris and Van Pelt met with Grant and told her that she was not tenured and that there was no grievance to be pursued).

III.

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." Similarly, Section 1120.20(d) of the IELRB's Rules and Regulations, 80 Ill. Adm. Code Section 1120.20(d), provides that "[u]nfair labor practice charges may be filed no later than six months after the alleged unfair labor practice occurred."

[1] The Executive Director also determined that the charge was not timely filed as to Grant's allegations that Marrs engaged in severely hostile or fraudulent and deceitful conduct in allegedly persuading Grant to resign a half-time Grade School Librarian position, in allegedly promising Grant that the Union would have Grant returned to her full-time High School Librarian position in January 2005, and/or in berating Grant for having scheduled a meeting with the UniServ Director. Grant does not challenge this determination before the IELRB.

Section 15 of the Act is not a mere statute of limitations; rather, it is jurisdictional. Jones v. IELRB, 272 Ill.App.3d 612, 209 Ill.Dec. 119, 650 N.E.2d 1092 (1st Dist. 1995); Charleston Community Unit School District No. 1 v. IELRB, 203 Ill.App.3d 619, 149 Ill.Dec. 53, 561 N.E.2d 331 (4th Dist. 1990). The court stated in Charleston that, if the right involved is unknown to the common law, the time limit is an inherent element of that right and of the power of the administrative agency to hear the matter. Here, Grant's right of fair representation would arise from the Union's statutory status as exclusive representative, rather than from the common law. Jones. Accordingly, the time limitation in Section 15 must be regarded as jurisdictional in this matter. Id. The six-month period for filing an unfair labor practice charge begins to run when the charging party becomes aware, or should become aware, of the conduct that allegedly constitutes an unfair labor practice. Jones; Wapella Education Association v. IELRB, 177 Ill.App.3d 153, 126 Ill.Dec. 532, 531 N.E.2d 1371 (4th Dist. 1988).

Here, Grant filed her unfair labor practice charge on October 31, 2005. Therefore, conduct of the Union that occurred before April 30, 2005 cannot form the basis of a finding of an unfair labor practice. Evidence presented by both the Union and Grant demonstrates that Union representatives informed Grant on April 14, 2005 that the Union was not going to assist her. The IELRB does not have jurisdiction over the events that occurred on April 14, 2005.

Grant argues that she did not know with any certainty that the Union had failed to file a grievance on her behalf until July 19, 2005. However, even under Grant's version of the facts, Van Pelt made a clear statement on April 14, 2005 that the Union could not assist her. That statement was not qualified by any implication that the Union could perhaps assist her if her replacement was less qualified. "[T]he filing period begins to run even if the charging party does not know the legal significance of the acts which constitute the alleged unfair labor practice," Jones, 272 Ill.App.3d at 620, 209 Ill.Dec. at 125, 650 N.E.2d at 1098. Here, even if Grant did not know the legal significance of Van Pelt's statement, the filing period began to run based on Van Pelt's clear statement.

In Wapella, 177 Ill.App.3d at 169, 126 Ill.Dec. at 542, 531 N.E.2d at 1381, the court stated that, where a complaint based upon earlier unlawful conduct is time barred, a subsequent refusal to bargain over the same matter "will neither revive a legally defunct unfair labor practice nor constitute an independent unfair labor practice for the purpose of triggering a new six-month limitation period." Similarly, a subsequent refusal to represent an employee with respect to the same matter "will neither revive a legally defunct unfair labor practice nor constitute an independent unfair labor practice for the purpose of triggering a new six-month limitation period." Morris' refusal

to assist Grant on July 19, 2005 was merely a repetition of Van Pelt's and/or Morris' refusal to assist her on April 14, 2005. As such, Morris' conduct on July 19, 2005 neither revived a legally defunct duty of fair representation charge nor constituted an independent unfair labor practice for the purpose of triggering a new six-month filing period.

We conclude that Grant's charge is untimely. Accordingly, it must be dismissed.

III.

For the above reasons, **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.

IV. 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: January 9, 2007
Issued: January 18, 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

Illinois Educational Labor Relations Board
160 North LaSalle Street, Suite N-400
Chicago, Illinois 60601
Telephone: (312) 793-3170