STATE OF MARYLAND
PUBLIC SCHOOL LABOR RELATIONS BOARD

IN THE MATTER OF:	*	
JOSEPHAT M. MUA	*	
Charging Party,	*	
v.	*	PSLRB Case No. SV 2013-08
AFSCME, LOCAL 2250	*	
and	*	
AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES, AFL-CIO	*	
Charged Parties	*	

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DECISION AND ORDER DENYING REQUEST FOR RELIEF
AND DISMISSING CHARGE

I. INTRODUCTION

Josephat M. Mua ("Charging Party") was employed in a non-certificated position with the Prince George's County Board of Education ("County Board"). On November 27, 2012, he filed a Charge of Violation of Title 6, Subtitle 4 or Subtitle 5 of the Education Article ("Form PSLRB-05"), with the Public School Labor Relations Board ("Board" or "PSLRB"). Form PSLRB-05 reflects the authority granted to the PSLRB by Section 2-205(e)(4)(i) of the Education Article to "decide any controversy or dispute arising under Title 6, Subtitle 4 or Subtitle 5 of this Article."

In his Charge, Charging Party alleges that his union, AFSCME Local 2250

("Local 2250"), and AFSCME International Union,[1] violated Sections 6-509(b)[2] and 6-510(a)[3] of the Education Article by failing to assist him with several grievances filed on his behalf, requiring him to secure a private attorney for representation in connection with these grievances, and failing to provide him with legal representation and reimbursement of attorney's fees in connection with his termination appeal.

II. FINDINGS OF FACT[4]

Charging Party was initially hired by the County Board as a substitute teacher in 2001. In 2005, Charging Party became a certificated teacher with the County Board. Sometime prior to the 2009-2010 School Year, Charging Party moved from his certificated position to a non-certificated position. Charging Party's non-certificated position fell within the bargaining unit represented by Local 2250.

During the 2009-2010 School Year, Charging Party began experiencing issues at work. He approached Local 2250 with claims that the County Board was subjecting him

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[1] The claim against AFSCME International is dismissed based on the U.S. Supreme Court's ruling in *Carbon Fuel Co. v. United Mine Workers*, 444 U.S. 212 (1979). In *Carbon Fuel*, the Court held that in order to hold an international union liable for the wrongful acts of its locals, evidence must be adduced that the international "instigated, supported, ratified, or encouraged" those actions. 444 U.S. at 218. No such evidence has been offered, or allegation made, by Charging Party, nor has any evidence been adduced that AFSCME International violated Charging Party's statutory rights independent of any actions by Local 2250.

[2] Section 6-509(b). "Fair Representation" – (1) An employee organization designated as an exclusive representative shall represent all employees in the unit fairly and without discrimination, whether or not the employees are members of the employee organization."

[3] Section 6-510(a). "Duty to negotiate in good faith" – (a) When a public school employer and an employee organization negotiate under this section, the public school employer and the employee organization shall: (1) Confer in good faith, at all reasonable times; (2) Honor and administer existing agreements; (3) Make every reasonable effort to conclude negotiations with a final written agreement in a timely manner; and (4) Reduce to writing the matters agreed on as a result of the negotiations.

[4]The facts herein and all reasonable inferences drawn therefrom are considered in the light most favorable to the Charging Party.

to harassment and discrimination. On December 1, 2009, Local 2250 filed a grievance on Charging Party's behalf challenging the alleged harassment and discrimination.[5]

On February 2, 2010, another grievance was filed on behalf of Charging Party.[6] This grievance challenged his performance evaluation and improvement plan, and again asserted that he was being subjected to harassment and discrimination.

On February 15, 2010, Charging Party alleges that Local 2250's Executive Director asked him "to get a private lawyer" to address his work-related concerns, and verbally agreed that Charging Party's attorney's fees would be refunded once the case was over.[7]

On March 16, 2010, Local 2250 filed another grievance on Charging Party's behalf. This grievance challenged his involuntary transfer.[8]

On March 24, 2010, the County Board sent written notice advising Charging Party that he was being recommended for termination. By letter dated June 18, 2010, the County Board notified Charging Party that he was being terminated from employment. On June 30, 2010, Charging Party's private attorney (Laurel Anchors) sent a written appeal of the termination to the County Superintendent.

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[5] This grievance was assigned case number "2009-32S." On August 5, 2010, this case was moved to arbitration. On August 10, 2010, Local 2250 requested that the arbitration in this case be held in abeyance.

[6] This grievance was assigned case number "2010-30S."

[7] The agreement to refund Charging Party for attorney's fees presumably related to one of the grievances filed up to that point, rather than the termination appeal, as Charging Party had not yet been recommended for termination.

[8] This grievance was assigned case number "2010-38S."

On July 2, 2010, Damon Felton, Assistant Counsel for the Maryland State Education Association (MSEA), notified Charging Party by email that "all legal fees resulting from Ms. Anchor's [sic] representation are your responsibility as MSEA provides legal representation free of charge in these types of matters."[9]

On December 16, 2010, Charging Party and Local 2250 entered into a Legal Expense Reimbursement Agreement ("Agreement"). The Agreement provides in relevant part that its purpose is "to protect [Charging Party] against harassment, retaliation and discrimination … after his arbitration was withdrawn illegally …." The Agreement further states that Local 2250 "will reimburse attorney's fees for the case which is currently in progress,"[10] "provide [Charging Party] attorneys if any other interference arises as demonstrated by illegal withdraw of the arbitration," and "provide assistance for the internal administrative hearing and make the aggrieved party whole."

Charging Party contacted Local 2250 in early April 2011 to secure legal representation in connection with his upcoming termination appeal hearing. He states that Local 2250 then arranged for him to meet with two attorneys to discuss his case. Charging Party indicates that he met with the attorneys on April 6, 2011, and was informed that they would be back in touch with him.

[9] MSEA provides legal services to Local 2250 and its bargaining unit members.

[10] The Agreement does not indicate the specific "case" to which this statement refers but we will assume for purposes of this decision that it relates to the termination appeal.

Not having heard back from the attorneys after the meeting, Charging Party contends that he communicated with Local 2250 on three occasions during the month of April 2011 to follow up on his request for legal representation. On each such occasion, Charging Party alleges that Local 2250 promised that an attorney would be assigned to represent him at the appeal hearing.

Charging Party states that Local 2250 eventually appointed an attorney to represent him, and that he communicated with the attorney on May 2, 2011. However, Charging Party contends that the attorney withdrew from representing him shortly thereafter due to a family illness. Charging Party indicates that he then contacted Local 2250 to inquire as to when another attorney would be appointed to represent him, and to request reimbursement for the attorney's fees he had incurred.

Though Charging Party maintains he was assured by Local 2250 that another attorney would be assigned to represent him, he claims "the union made no effort to replace the attorney despite [Charging Party's] efforts to contact them for assistance." Charging Party further states that Local 2250 advised him to retain a private attorney for the appeal, and assured him he would be reimbursed for any attorney's fees incurred. Charging Party thereafter sought a postponement of the appeal hearing, and attempted to secure a private attorney to represent him in connection with the appeal hearing.

Charging Party states that he retained a private attorney in mid-May 2011.[11] On June 16, 2011, however, Local 2250's Acting Associate Director informed Charging

[11] Charging Party contends that he paid his private attorney $18,000 between May and August 2011. By the time Charging Party ultimately filed this action, he claims to have incurred $212,980 in attorney's fees.

Party that "[d]ue primarily to your choice to obtain legal services not affiliated with ACE-AFSCME Local 2250, our responsibility to represent you has been removed as well as the cost associated with your case." Charging Party nonetheless alleges that the Local 2250 President subsequently "reassured him that he would be reimbursed for the attorney's fees he accrued."

Hearings in Charging Party's appeal were held before the County Board's Hearing Officer on July 12, 13 and 27, August 3, and October 26, 2011.[12] On the last day of hearing, Charging Party contends that he was informed by the Local 2250 President that "he should wait for the outcome of the hearing and that his issues would be resolved."

Charging Party indicates that the Hearing Officer ruled against him on January 25, 2012.[13] He also states that Local 2250 assured him at this time that he would be provided with legal representation at the State Board appeal hearing. [14]

Charging Party thereafter challenged the Hearing Officer's ruling. The County Board subsequently heard oral argument in Charging Party's case on June 14, 2012. On July 11, 2012, the County Board affirmed the decision to terminate Charging Party.

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[12] The County Board delegated the responsibility to hold a hearing to its Hearing Officer.

[13] The record indicates that the Hearing Officer's Findings of Fact, Conclusions of Law, and Recommendations were issued on January 19, 2012.

[14] From February 2012 to July 2012, Charging Party states that he "waited for [the] final decision" and that Local 2250 continued to assured him "that he would be provided a lawyer."

Charging Party subsequently filed an appeal of the County Board's decision to the State Board.[15]

On August 21, 2012, Charging Party states that Local 2250's President again promised him legal representation in connection with his upcoming State Board appeal hearing that had been scheduled for December 5, 2012. On August 24, 2012, Charging Party mailed a letter to Local 2250's President and AFSCME International Union President requesting that legal representation be provided for the State Board appeal hearing.

On August 30, 2012, Charging Party states that he attempted to hand-deliver a letter to AFSCME International Union requesting legal representation for the State Board appeal hearing pre-trial conference scheduled for October 4, 2012. On September 24, 2012, Charging Party states that he again wrote to Local 2250's President and AFSCME International Union President requesting legal representation in connection with the State Board appeal hearing.

On or about October 1, 2012, Charging Party states that he finally realized that Local 2250 had no intention of providing him with legal representation or reimbursement of attorney's fees. Charging Party nonetheless indicates that he continued efforts to secure legal representation and reimbursement of attorney's fees, including: (1) requesting legal representation from Local 2250 during a meeting on October 12, 2012;

[15] The Code of Maryland Regulations (COMAR) provides that "[a]n appeal shall be taken within 30 calendar days of the decision of the local board …." 13A.01.05.02B(1)(a). Because the 30-day period runs "from the later of the date of the order or the opinion reflecting the decision," 13A.01.05.02B(1)(b), Charging Party presumably filed his appeal with the State Board no later than August 11, 2012.

(2) writing to AFSCME International Union seeking legal representation on November 1, 2012; (3) writing to the Local 2250 Executive Director requesting legal representation on November 4, 2012; and (4) writing to the AFSCME Area Field Services Director requesting legal representation and reimbursement of attorney's fees on November 17, 2012.

On November 27, 2012, having still not been provided with legal representation, and by that point having incurred some $212,980 in attorney's fees, Charging Party filed this Charge with the PSLRB.

III. POSITIONS OF THE PARTIES

Charging Party contends that Local 2250 violated Section 6-509(b) and 6-510(a)[16] of the Education Article by failing to assist him with several grievances filed on his behalf, requiring him to secure a private attorney for representation in connection with these grievances, and failing to honor its promise to provide him with legal representation and reimbursement of attorney's fees.

Charging Party claims that he made numerous attempts between April 2011 and November 2012 to enforce Local 2250's promise. Notwithstanding these efforts, and despite numerous assurances from Local 2250, Charging Party maintains that he did not receive legal representation or reimbursement of attorney's fees from Local 2250.

Local 2250 denies that it violated Charging Party's rights under Section 6-509(b)

[16] We dismiss Charging Party's claim under Section 6-510(a), "Duty to negotiate in good faith," for lack of evidence that Local 2250 or the County Board failed to bargain in good faith with regard to the execution or administration of the collective bargaining agreement.

and 6-510(a). It maintains that the Charge concerns events occurring more than 60 days prior to its filing date of November 27, 2012, and was therefore not timely filed in accordance with the PSLRB's Regulations.

Local 2250 also denies that it breached its duty to fairly represent Charging Party, noting that he has failed to demonstrate that it deviated in some way from the proper representation procedure. Local 2250 further maintains that Charging Party's claim with respect to Section 6-510(a) is not applicable as it concerns good faith negotiations between covered employers and employee organizations, and does not address proper representation of individual employees.

Local 2250 separately questions the validity of the Legal Services Reimbursement Agreement. It contends that Local 2250's Executive Director did not have authority to enter into the Agreement, and that Charging Party was informed both prior (July 2, 2010) and subsequent (June 16, 2011) to its execution that Local 2250 would not reimburse him for attorney's fees.

Local 2250 further claims that it was under no obligation to represent Charging Party in his termination appeal given that the appeal process is not covered by the negotiated collective bargaining agreement but instead arises out of the statutory appeal mechanism set forth in Title 6, Subtitle 2 of the Education Article.

IV. ANALYSIS[17]

[17] We shall assume, without deciding, that Local 2250's failure to provide Charging Party with legal representation and/or reimbursement for attorney's fees in connection with his termination appeal is actionable as a breach of duty of fair representation under Education Article, Title 6, Subtitle 4 or 5.

As a threshold matter, we consider the issue of whether this action was timely filed. The Board's Regulations provide that a Charge "must be filed with the Executive Director of the PSLRB within 60 days after the charging party knew, or reasonably should have known, of the statutory violation alleged." Code of Maryland Regulations (COMAR) 14.34.02.01B.[18] Establishing when Charging Party "knew or reasonably should have known" of the statutory violation alleged thereby fixes the point at which his claims accrued, and guides the determination as to whether this action was filed within the limitations period.

As already noted, Charging Party alleges that the attorney appointed by Local 2250 withdrew from representing him in early May 2011, and that Local 2250 made no effort to replace the attorney. Based on Local 2250's failure to honor its promise to provide legal representation, Charging Party reasonably should have known of the statutory violation alleged as early as May 2011.

If this point was not clear to Charging Party in May 2011, it should have been during his five days of appeal hearings in July, August and October 2011, at which Local 2250 again failed to provide him with legal representation.

[18] The PSLRB has statutory authority to "[a]dopt regulations, guidelines, and policies …." Md. Code Ann., Educ. § 6-806(b)(1). Because the PSLRB acted within its statutory authority to promulgate regulations to establish time limits for the filing of Charges, we reject Charging Party's claim the PSLRB's regulations do not establish a limitations period for this purpose. We therefore also reject Charging Party's argument that the three-year statute of limitations provided for in civil actions under Md. Code Ann., Courts and Judicial Proceedings § 5-101 applies here. Whether such a limitations period applies to other potential causes of action of Charging Party is not within the PSLRB's jurisdiction to determine.

If this was still not clear to Charging Party in October 2011, it certainly should have been after January 2012 when Local 2250's promise of legal representation failed to materialize, or in June 2012 when Local 2250 did not provide legal representation at Charging Party's oral argument before the County Board.[19] And if Charging Party remained unaware of the alleged statutory violation in June 2012, he must surely have known by the time he appealed the County Board's July 11, 2012 decision to the State Board, still without legal representation from Local 2250.

Beyond any reasonable inferences Charging Party should have drawn from these facts, the record shows he had actual knowledge that Local 2250 did not intend to provide him with legal representation or reimbursement of attorney's fees. By letter dated June 16, 2011, Local 2250's Acting Associate Director informed Charging Party:

> It is noted and documented in your file that you chose to hire an outside attorney to preside as your representative. Due primarily to your choice to obtain legal services not affiliated with ACE-AFSCME Local 2250, our responsibility to represent you has been removed as well as the cost associated with your case.

Though Charging Party maintains that Local 2250 subsequently reaffirmed its commitment to provide legal representation and reimbursement of attorney's fees, the letter's express disclaimer of any such obligation to Charging Party—combined with Local 2250's ongoing pattern of noncompliance *after* the June 16 letter—should have put him on notice that Local 2250 did not intend to honor its promises.

[19] Charging Party should also have known at this time that Local 2250 had not honored its commitment to reimburse him for $18,000 in attorney's fees incurred from May through August 2011.

Charging Party eventually filed his Charge with the Board on November 27, 2012. This came more than 18 months after Local 2250's failure to provide legal representation after the withdrawal of his union-appointed attorney, 17 months after Charging Party received the June 16, 2011 letter, 15 months after Charging Party incurred $18,000 in attorney's fees for which he requested reimbursement from Local 2250, 10 months after Local 2250's failed promise of legal representation in January 2012, five months after the County Board oral argument in June 2012, and more than three months after Charging Party appealed the County Board decision to the State Board.

Maryland courts have held that a cause of action normally accrues "when the plaintiff discovers, or through the exercise of due diligence, should have discovered, the injury, damages or potential claim." *Haas v. Lockheed Martin Corp*., 396 Md. 469, 508 (2007) (citations omitted).

In the context of duty of fair representation cases, federal courts have likewise held that the limitations period ordinarily begins to run "when the plaintiff knew, or should have known through the exercise of due diligence, that his claim had accrued." *Dement v. Richmond, Fredericksburg & Potomac R.R. Co*., 845 F.2d 451, 460-61 (4th Cir. 1988) (citing *Dozier v. Trans World Airlines, Inc*., 760 F.2d 849, 851 (7th Cir. 1985)).[20]

[20] *See also Leach Corp. & Int'l Ass'n of Machinists and Aerospace Workers*, 312 NLRB 990, 991 (1993), *enf'd sub nom.*, *Leach Corp. v. NLRB*, 54 F.3d 802 (D.C. Cir. 1995) (NLRB determination that statute of limitations begins to run when charging party has "knowledge of the facts necessary to support a ripe unfair labor practice.").

Charging Party nonetheless contends that the "due diligence" standard should not be applied here. In this regard, he notes that his relationship with Local 2250 was based on confidence and trust, and that Local 2250 therefore stood in a position analogous to that of a fiduciary. This fiduciary relationship, according to Charging Party, "curtailed the usual suspicion that [he] would ordinarily have in light of their continued promises."

In support of this contention, Charging Party notes that the Maryland Court of Appeals cited with approval a ruling by the Georgia Supreme Court which found that:

> "failure to use such diligence may be excused where there exists some relation of trust and confidence . . . between the party committing the fraud and the party who is affected by it, rendering it the duty of the former to disclose to the latter the true state of the transaction, and where it appears that it was through confidence in the acts of the party who committed the fraud that the other was prevented from discovering it."[21]

We recognize that federal courts have found that the duty of fair representation is similar to the duty owed by fiduciaries to beneficiaries,[22] and accept the Maryland Court of Appeals' pronouncement that when fiduciaries are involved, "different standards are applied" from the usual requirement that a party "exercise ordinary diligence to discover fraudulent conduct of the opposite party." *Merchants Mortgage Company*, 275 Md. at 215.

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[21] *Merchants Mortgage Company et al. v. Lubow*, 275 Md. 208; 339 A.2d 664 (1975) (quoting *Perkins v. First National Bank of Atlanta*, 221 Ga. 82, 95-96, 143 S.E.2d 474, 484 (1965) (internal quotation omitted)).

[22] *See, e.g., Air Line Pilots Ass'n v. O'Neill*, 499 U.S. 65, 111 S. Ct. 1127 (1991) ("The duty of fair representation is thus akin to the duty owed by other fiduciaries to their beneficiaries*."); Chauffeurs, Teamsters & Helpers, Local No. 391 v. Terry*, 494 U.S. 558; 110 S. Ct. 1339 (1990) ("When viewed in isolation, the duty of fair representation issue is analogous to a claim against a trustee for breach of fiduciary duty.").

We are also aware that the duty of fair representation encompasses an obligation on the exclusive representative "to exercise its discretion with complete good faith and honesty" and "to avoid arbitrary conduct," *Stanley v. American Federation of State and Municipal Employees, Local No. 553, et al*., 165 Md. App. 1 (2005) (citations omitted), and that at least one federal court of appeals has articulated a standard for determining whether a union's misconduct toward an employee delays accrual of the statute of limitations in a duty of fair representation case. *See Gardner v. International Tel. Employees Local No. 9,* 850 F.2d 518, 523 (9th Cir. 1988) (fair representation claim does not accrue if employee "was totally and reasonably ignorant" of his rights).

In the case now before us, the June 16, 2011 letter notified Charging Party that Local 2250 did not intend to provide him with legal representation and reimbursement of attorney's fees. Accordingly, despite whatever promises Local 2250 had made up to that point or thereafter, Charging Party was on notice at that time that Local 2250 did not intend to honor its commitment. The June 16 letter thereby fixes the point at which Charging Party "knew, or reasonably should have known" of the statutory violation alleged, and consequently identifies when his claims accrued. By then failing to file his claim within the limitations period, Charging Party assumed the risk that this action would be found untimely.

Accordingly, even assuming that Charging Party was owed a duty of care by Local 2250 akin to that of a fiduciary, he was not free to close his eyes to the obvious reality that Local 2250 did not intend to honor its promises. *See Frederick Rd. Ltd. Pshp. v. Brown & Sturm*, 360 Md. 76, 756 A.2d 963 (1998) ("fiduciary relationship permits a

complaining party to trust, albeit not blindly, that such a relationship will not be violated."). We therefore find that Charging Party's failure to file this action within the limitations period renders it untimely.

Charging Party nevertheless cites *Smith v. Local 7898, United Steelworkers of America*, 834 F.2d 93 (4th Cir. 1987) for the proposition that the statute of limitations may be equitably tolled based on Local 2250's withholding of information from him. The Maryland Court of Appeals addressed the doctrine of equitable tolling in *Murphy v. Merzbacher*, 346 Md. 525, 532 (1997):

> when stealth, subterfuge, or other difficulties of detection leave a plaintiff "blamelessly ignorant" of the facts and circumstances legally entitling him or her to relief, the statute does not begin to run against the plaintiff, unless he or she knows, or through the exercise of reasonable diligence should know, of the wrong (citations omitted). [23]

The Court of Appeals went on to explain:

> Otherwise, we have consistently held that our statutes of limitations are to be strictly construed, and absent a legislative creation of an exception, we "'will not allow any implied or equitable exception to be engrafted upon it.'" *Garay v. Overholtzer*, 332 Md. 339, 359, 631 A.2d 429, 431 (1993) (*quoting Booth Glass Co. v. Huntingfield Corp.*, 304 Md. 615, 623, 500 A.2d 641, 645 (1985)); *Walko Corp. v. Burger Chef*, 281 Md. 207, 210-11, 378 A.2d 1100, 1101-02 (1977) (traditional rule concerning tolling of statutes of limitations can be fairly termed one of strict construction); *McMahan v. Dorchester Fert. Co.*, 184 Md. 155, 160, 40 A.2d 313, 315-16 (1944).

[23] *See also In re MAXXAM, Inc. v. MAXXAM, INC.*, 1995 Del. Ch. LEXIS 73 (Del. Ch. 1995) ("a defendant should not be permitted to use the statute of limitations as a shield where the defendant possesses information critical to the existence of an actionable claim of wrongdoing and prevents the plaintiff from discovering that information in timely fashion." In such circumstances, "the running of the statute of limitations is deemed to be tolled until such time as the plaintiffs knew or had reason to know of the facts constituting the alleged wrong.").

346 Md. at 532-533.

Here again, there was no "stealth, subterfuge, or other difficulties of detection" that would render Charging Party "blamelessly ignorant" of the facts. To the contrary, Local 2250's manifestation of its intent not to comply with the Agreement was clear, consistent and continuous over a considerable period of time.

Were we to assume that Charging Party had no reason to know of the facts and circumstances surrounding the alleged statutory violations until after the initial repudiation in May 2011, or after the subsequent repudiations in July, August, September, and October 2011, and January 2012, and find that he only had reason to know in June 2012 when oral argument was heard on the County Board appeal, this action would still not have been timely filed. Even assuming further that Charging Party was not aware of the relevant facts and circumstances until after the County Board's July 11, 2012 decision, and that he only acquired such knowledge when he subsequently filed his appeal to the State Board, his claim would nonetheless still be time-barred having been filed outside the limitations period.

On these facts, we find that Charging Party was on notice of the necessary information to bring this action well before he filed his Charge, i.e., the express repudiation of the obligation to provide legal representation and reimbursement of attorney's fees outlined in the June 16, 2011 letter, along with a pattern of unfulfilled promises to provide such legal representation and reimbursement of attorney's fees preceding and following the letter. Under these circumstances, we conclude that

Charging Party's failure to timely file his claims cannot be excused under the theory of equitable tolling.[24]

For these same reasons, we also reject the claim that Local 2250's actions constitute a continuing violation of Charging Party's rights that would excuse his failure to timely file this action. The "continuing violation" or "continuing harm" theories toll the statute of limitations "where there are ongoing violations of a potential plaintiff's rights." *MacBride v. Pishvaian*, 402 Md. 572, 575, 937 A.2d 233, 235 (2007) (citations omitted). These theories do not apply, however, to "continuing ill effects from the original alleged violation." 402 Md. at 585 (quoting *Duke Street Ltd. P'ship v. Bd. of Cty. Comm'rs*, 112 Md. App. 37, 52, 684 A.2d 40, 48 (1996)). Inasmuch as Charging Party's claims are premised on the continuing effects of the original alleged statutory violation, i.e., the failure to provide legal representation and reimbursement of attorney's fees for Charging Party's termination appeal—about which he knew or reasonably should have known more than 60 days prior to filing this action—these theories do not excuse his untimely filing.

Nor for the same reasons do we believe that the "continuation of events" theory excuses the failure to timely file this action. This theory tolls the statute of limitations during the existence of a fiduciary relationship. *Dual Inc. v. Lockheed Martin Corp.*, 383 Md. 151, 173, 857 A.2d 1095, 1107 (2004). The statute of limitations is not tolled, however, where a "party had knowledge of facts that would lead a reasonable person to

[24] For the same reasons, we also reject the claim that Local 2250 should be estopped from asserting that Charging Party failed to timely file this action.

undertake an investigation that, with reasonable diligence, would have revealed wrongdoing on the part of the fiduciary." *Dual*, 383 Md. at 174, 857 A.2d at 1108 (citation omitted). Again, the overwhelming weight of evidence supports the conclusion that Charging Party had sufficient knowledge of the facts and surrounding circumstances of the alleged wrongdoing by Local 2250 to have enabled him to file this action in a timely fashion.[25]

In short, we conclude that Charging Party "knew, or reasonably should have known, of the statutory violation alleged" well before 60 days prior to November 27, 2012, when this action was filed. Because he chose not to file his Charge until after the limitations period expired, it is time-barred and is dismissed on this basis.

V. CONCLUSION

For the reasons stated herein, we conclude that Charging Party failed to file this action in a timely fashion, and therefore DISMISS the Charge.[26]

[25] Our dissenting colleague suggests that Local 2250's ongoing promises to Charging Party should toll the limitations period. We disagree. As outlined at length in the majority opinion, Local 2250's repeated failure to provide legal representation or reimbursement of attorney's fees—continuing for more than one year—provided ample notice to Charging Party well in advance of filing this action that its promises simply could not be relied upon.

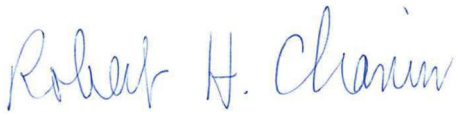
[26] Based on our finding, we reach no decision on Charging Party's other claims against Local 2250, i.e., tortious interference, breach of membership contract, retaliation, conflict of interest, recoupment of dues paid, etc.

ORDER

IT IS HEREBY ORDERED THAT THE CHARGE IN THE INSTANT MATTER, PSLRB Case No. SV 2013-08, IS DISMISSED.

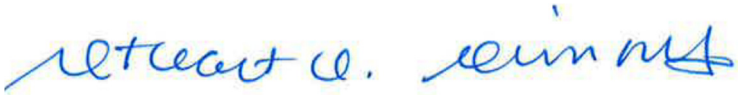
BY ORDER OF THE PUBLIC SCHOOL LABOR RELATIONS BOARD

Seymour Strongin, Chairman



Robert H. Chanin, Member

Charles I. Ecker, Member



Stuart O. Simms, Member

Glen Burnie, MD
May 29, 2013

APPEAL RIGHTS

Any party aggrieved by this action of the PSLRB may seek judicial review in accordance with Title 10, Subtitle 2 of the State Government Article, Annotated Code of Maryland, Sec. 10-222 (Administrative Procedure Act—Contested Cases), and Maryland Rules CIR CT Rule 7-201 *et seq.* (Judicial Review of Administrative Agency Decisions).