

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

PATRICIA SMITH,
Plaintiff,

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v.

CIVIL CASE NO. H-06-3278

JOHN E. POTTER, *et al.*,
Defendants.

MEMORANDUM AND ORDER

Plaintiff Patricia Smith filed this lawsuit against the Postmaster General, the United States Postal Service, and the National Association of Letter Carriers Local Branch 283 (the “Union”) alleging discrimination and retaliation in connection with her employment and discharge. The case is now before the Court on the Union’s Motion to Dismiss [Doc. # 15]. Although the Court granted an extension of time for Plaintiff to respond to the Union’s Motion, *see* Hearing Minutes and Order [Doc. # 17], Plaintiff has neither responded to the Union’s Motion nor requested additional time to do so. Having reviewed the record and applied governing legal authorities, the Court **grants** the Union’s Motion.

Plaintiff alleges that the Union breached the collective bargaining agreement, and negligently and knowingly interfered with Plaintiff’s “guaranteed union rights” by failing to file a timely grievance on Plaintiff’s behalf following her termination.

Plaintiff's claims against the Union, which involve the Union's failure to represent Plaintiff fairly and in accordance with the requirements of the collective bargaining agreement, are governed by a six-month statute of limitations. *See DelCostello v. International Bhd. of Teamsters*, 462 U.S. 151, 169-71 (1983); *Smith v. International Org. of Masters, Mates, and Pilots*, 296 F.3d 380, 382 (5th Cir.), *cert. denied*, 537 U.S. 1088 (2002). The limitations period is counted from the time when the union member "knew or reasonably should have known that [a breach of the duty of fair representation] had occurred." *Kavowras v. New York Times Co.*, 328 F.3d 50, 55 (2d Cir. 2003) (citation omitted). Plaintiff's claims against the Union accrued no later than January 6, 2006, the date she filed her charge with the National Labor Relations Board alleging that the Union failed to represent her fairly and properly. *See id.* Her complaint against the Union in this case, filed October 16, 2006, is barred by the six-month statute of limitations. Accordingly, it is hereby

ORDERED that the Union's Motion to Dismiss [Doc. # 15] is **GRANTED** and Plaintiff's claims against the Union are **DISMISSED WITH PREJUDICE**. The case remains pending against the Postmaster General and the United States Postal Service.

SIGNED at Houston, Texas, this **6th** day of **March, 2007**.


Nancy F. Atlas
United States District Judge