STATE OF ILLINOIS
ILLINOIS LABOR RELATIONS BOARD
LOCAL PANEL

Deborah Ticey,	)	
	)	
Charging Party	)	
	)	
and	)	Case Nos. L-CA-14-054
	)	
City of Chicago,	)	
	)	
Respondent	)	

DECISION AND ORDER OF THE ILLINOIS LABOR RELATIONS BOARD LOCAL PANEL

On May 29, 2014, the Illinois Labor Relations Board's Executive Director, Melissa Mlynski, dismissed the unfair labor practice charge filed by Deborah Ticey (Charging Party) in the above-captioned case. The Charging Party alleged that the City of Chicago (Respondent) engaged in an unfair labor practice within the meaning of Section 10(a) of the Illinois Public Labor Relations Act, 5 ILCS 315 (2012), by ceasing to grant her monthly vacation time beginning in October 2013, refusing to grant her vacation days she allegedly earned on a monthly basis between October and December 2013, and subtracting her used equalization days[1] from her 2014 vacation day allotment, pursuant to a settlement agreement reached with Ticey's union, the American Federation of State, County and Municipal Employees, Council 31 (AFSCME or Union), concerning the first two issues.

The Charging Party filed a timely appeal of the Executive Director's Dismissal pursuant to Section 1200.135(a) of the Board's Rules and Regulations, 80 Ill. Admin. Code §1200.135(a).

[1] Equalization days are non-vacation paid time off which the Respondent granted certain employees upon changing its method of vacation calculation.

Respondent filed no response. After reviewing the record and appeal, we uphold the Executive Director's Dismissal for the reasons stated therein. We also set forth an additional basis for dismissal: AFSCME's clear and unmistakable waiver of Ticey's right to file the instant charge.

Ticey's alleged loss of vacation days stems from the manner in which the City calculated and credited vacation days for newly-certified employees between 2013 and 2014. The settlement agreement addressing this conduct provides the following: "AFSCME hereby withdraws the Grievance with prejudice and waives any and all individual or class claims, including but not limited to any other grievances, suits at law or equity, or claims or charges before any administrative agency, which it now has or may have against the City and its officers, employees, and assigns arising either directly or indirectly out of any and all claims raised in the Grievance, including, but not limited to, any claims related to the vacation day allotment for the years 2013 and 2014 and the employee equalization days for 2013 and 2014 for employees in the newly-certified titles, except only as may be necessary to enforce the specific provisions of this Agreement."

We find this language specifically waives Ticey's right to file the instant grievance because it is directed at the particular type of claim brought by Ticey against the Employer in this case. Unions are typically entitled to reach agreements on behalf of their members, even over their members' objections. Michota v. Anheuser-Busch, Inc. (Budweiser),755 F.2d 330, 335 (3d Cir. 1985) (noting that "[t]he ability of duly elected bargaining representatives to bargain effectively is dependent in part upon its ability to bind the employees it represents to the terms of a negotiated agreement."); Doyle v. Southeastern Pennsylvania Transp. Auth., 2010 WL 147923 (E.D. Pa. 2010). Absent evidence that the Union breached its duty of fair representation, a claim against an employer for an unfair labor practice fails where the union waived the employee's

right to pursue it. Metropolitan Edison Co. v. NLRB, 460 U.S. 693, 705 (1983) ("This Court long had recognized that a union may waive a member's statutorily protected rights") (quoting NLRB v. Allis-Chalmers Mfg. Co., 388 U.S. 175, 180 (1967)); and Plumbers & Pipefitters Local 520 v. NLRB, 955 F.2d 744, 751 (D.C. Cir. 1992) ("[M]any of the rights guaranteed to employees by the NLRA may be altered or waived by a union in collective bargaining, so long as the union fulfills its duty of fair representation and takes no action that would impair the employees' choice of their bargaining representative.").

In the instant settlement agreement, the Union specifically waives "individual claims and charges" against the City "before any administrative agency which it now has or may have ... related to the vacation day allotment for the years 2013 and 2014 and the employee equalization days for 2013 and 2014 for employees in newly-certified titles." As the Executive Director noted in her dismissal of Ticey's related charge against the Union (L-CB-14-025), there is no evidence to suggest that the Union breached its duty of fair representation in reaching this agreement. Thus, the Charging Party's claim against the City must fail because it directly arises out of matters covered by the narrowly-crafted settlement agreement's waiver. Doyle, 2010 WL 147923 at 4-5 (dismissing employee's claim against employer challenging terms of his reinstatement when the binding settlement agreement signed by the union and employer fully resolved those issues); Bolden v. Southeastern Pennsylvania Transp. Authority, 953 F.2d 807 (3rd Cir. 1991) (dismissing employee's claim of unconstitutional search and seizure arising out of a drug test; finding that union had the right to consent to employer's future drug testing of bargaining unit member in the settlement of a grievance). While we note that there may be instances in which a Union's ability to compromise employee claims may be void against public policy, such a case is not before us today.

For these reasons, we find the Executive Director properly dismissed the charge.

BY THE LOCAL PANEL OF THE ILLINOIS LABOR RELATIONS BOARD

/s/ Robert M. Gierut
Robert M. Gierut, Chairman

/s/ Charles E. Anderson
Charles E. Anderson, Member

/s/ Richard A. Lewis
Richard A. Lewis, Member

Decision made at the Local Panel's public meeting in Chicago, Illinois on July 8, 2014, written decision issued in Chicago, Illinois on July 21, 2014.

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DISMISSAL

On February 28, 2014, Charging Party, Deborah Ticey, filed a charge with the Local Panel of the Illinois Labor Relations Board (Board) in the above captioned case. The charge alleges that the City of Chicago (Respondent or Employer) engaged in unfair labor practices within the meaning of Section 10(a) of the Illinois Public Labor Relations Act, 5 ILCS 315 (2012) *as amended* (Act). Following an investigation conducted pursuant to Section 11 of the Act, I determine that the charge fails to raise an issue of law or fact sufficient to warrant a hearing and hereby issue this dismissal for the reasons set forth below.

I. INVESTIGATORY FACTS

The Respondent is a public employer within the meaning of Section 3(o) of the Act. The American Federation of State, County, and Municipal Employees, Council 31 (AFSCME or Union) is a labor organization within the meaning of Section 3(i) of the Act and is the exclusive representative of a bargaining unit composed of Respondent's employees including those employees in the job title or classification of Administrative Service Officer I, and working in its Fleet Services Management (Unit). At all times material, Deborah Ticey is a public employee within the meaning of Section 3(n) of the Act employed by Respondent as a Administrative

Service Officer I, and is a member of the Unit. There is a collective bargaining agreement (CBA) in effect for the Unit which provides a grievance procedure culminating in arbitration.

Pursuant to a Majority Interest Petition filed on July 25, 2011, by AFSCME in Case No. L-RC-12-003, the Union sought to include a series of non-union job classifications, including Administrative Service Officer I, in the Unit. Charging Party was among the affected employees. The petition was investigated by Administrative Law Judge Anna Hamburg-Gal, and set for hearing on January 18 and 19, 2012, and March 28, 2012. Prior to the hearing dates, the City and the Union settled disputed issues concerning City claims that some employees were confidential. Following settlement, the parties agreed to an appropriate bargaining unit, and on January 24, 2012, the Unit was certified.

In the instant charge, Ticey claims that when her duties were transitioned from non-union to union she lost 5.5 vacation days. She was not alone, several affected employees complained. On December 9, 2013, AFSCME filed a grievance claiming a violation of Article VII of the CBA. On February 7, 2014, the parties settled the issue. The settlement provided employees in the newly certified titles hired before January 1, 2011, including Ticey, 13 days of paid leave, effective January 1, 2013. Vacation allotment beginning January 1, 2014, would be according to Article VII of the CBA. In this charge, Ticey disputes the settlement agreement and the loss of her vacation days.[1]

II. DISCUSSION AND ANALYSIS

In this case, AFSCME apparently filed a grievance challenging the way the City was calculating vacation time for employees recently added to the Unit. The City and AFSCME negotiated a settlement agreement to resolve the grievance, and this unfair labor practice charge

[1] On the same date she filed this charge, Charging Party also filed a charge against AFSCME in Case No. L-CB-14-025.

claims that the settlement agreement resulted in the Charging Party losing vacation days. Even assuming Charging Party's account is entirely accurate, she has failed to present sufficient evidence to warrant a hearing. In order for the complained-of change in earning vacation time to violate the Act, Charging Party needed to make some showing that the City reduced her vacation time in retaliation for her engaging in activity protected under the Act. There is simply no evidence that this was the case. Instead, the evidence supports that the City acted in accordance with a settlement agreement it negotiated with the Union.

III. ORDER

Accordingly, the instant charge is hereby dismissed. The Charging Party may appeal this Dismissal to the Board any time within 10 days of service thereof. Such appeal must be in writing, contain the case caption and number and must be addressed to the General Counsel of the Illinois Labor Relations Board, at 160 North LaSalle Street, Suite S-400, Chicago, Illinois 60601-3103. The appeal must contain detailed reasons in support thereof, and the Charging Party must provide it to all other persons or organizations involved in this case at the same time it is served on the Board. The appeal sent to the Board must contain a statement listing the other parties to the case and verifying that the appeal has been provided to them. The appeal will not be considered without this statement. If no appeal is received within the time specified, the Dismissal will be final.

Issued in Springfield, Illinois, this 29th day of May, 2014.

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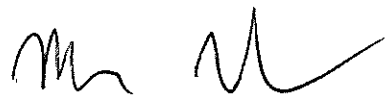

Melissa Mlynski
Executive Director