

**STATE OF ILLINOIS
ILLINOIS LABOR RELATIONS BOARD
LOCAL PANEL**

Darryl Spratt,)	
)	
Charging Party)	
)	
and)	Case No. L-CB-09-066
)	
Amalgamated Transit Union, Local 241,)	
)	
Respondent)	

**DECISION AND ORDER OF THE ILLINOIS LABOR RELATIONS BOARD
LOCAL PANEL**

On June 3, 2014, Administrative Law Judge (ALJ) Martin Kehoe issued a Recommended Decision and Order (RDO), recommending that the Illinois Labor Relations Board, Local Panel, dismiss a complaint filed against the Amalgamated Transit Union, Local 241 (Respondent or Union). On October 7, 2014, Charging Party Darryl Spratt filed exceptions to ALJ Kehoe's June 3, 2014 RDO. On October 21, 2014, Respondent filed a response to those exceptions. After reviewing the exceptions, response, and record, we accept the ALJ's recommendation.

Procedural history

Darryl Spratt filed a charge alleging that Respondent violated Section 10(b)(1) of the Illinois Public Labor Relations Act, 5 ILCS 315 (2012), by refusing to advance a grievance on his behalf because in 2005 he had supported a candidate opposed to Respondent's president. After investigation, the Board's Executive Director issued a complaint for hearing, making this allegation of retaliation for conduct undertaken in 2005. The procedures following issuance of that complaint have been unusual.

On January 6, 2012, ALJ Elaine Tarver issued an RDO, finding that Respondent violated the Act. This was a default finding, issued because Respondent failed to file a timely answer to the complaint for hearing. ALJ Tarver denied Respondent's request for leave to file its answer late or for a variance from the Board's rules setting the deadline for answers. Respondent filed timely exceptions to the RDO pursuant to Section 1200.135 of the Rules and Regulations of the Illinois Labor Relations Board, 80 Ill. Admin. Code §1200.135. Charging Party did not file a response. The Board heard oral argument at its meeting held on September 11, 2012, after which

on October 26, 2012, it reversed ALJ's Tarver's denial of the motion for variance, allowed the filing of a late-tendered answer, and remanded for an evidentiary hearing. Darryl Spratt and Amalgamated Transit Union, Local 241, 29 PERI ¶ 78 (IL LRB-LP 2012).

ALJ Tarver conducted that evidentiary hearing on October 29, 2013, at which Spratt was represented by counsel, but she was unable to issue an RDO before leaving the Board's employment, and on April 10, 2014, the matter was assigned to ALJ Kehoe. As noted, on June 3, 2014, ALJ Kehoe issued the RDO currently under review. No party filed exceptions to the RDO within the normal time frame, but Charging Party had made attempts to extend the deadline. Exceptions were, by Board rule, due on July 7, 2014, and on July 1, 2014, Charging Party's counsel asked for an extension of time of 28 days because he had not yet communicated with his client about the RDO. The Board's Deputy General Counsel denied that motion because counsel failed to ascertain the position of the opposing party prior to filing his motion as clearly required by Board rule. 80 Ill. Admin. Code §1200.30(d)(4). On July 3, 2014, Charging Party's counsel filed a new motion for an extension of time, correcting the earlier procedural defect by noting that the opposing party was opposed to any extension. Again he sought an extension of 28 days, and again the reason offered for the request was to allow additional time to contact his client and determine if Charging Party wished to file exceptions. On July 10, 2014, the Board's General Counsel denied that motion, reasoning that the 30-day period within which to file exceptions provided sufficient time for counsel to communicate with his client. On July 28, 2014, counsel for Charging Party filed a motion to reconsider the order of July 10, 2014, denying an extension of time. The Board's Local Panel considered that motion at its public meeting held on September 9, 2014, and issued an order granting Charging Party until October 7, 2014, to file exceptions.¹ Charging Party met this extended deadline.

Factual evidence

Darryl Spratt had been a bus operator for the Chicago Transit Authority (CTA), but his employment was terminated on December 19, 2007. Union vice-president Larry Muhammad completed a grievance on Spratt's behalf, which was filed on January 3, 2008. The CTA denied that grievance. Respondent's president Darrell Jefferson received notice of that action on January 15, 2008, and within three days Respondent and CTA conducted a second step grievance

¹ The Board's order erroneously listed the date of its meeting and the date of the order as *October 9, 2014* rather than September 9, 2014.

meeting. The CTA again denied the grievance at that January 18, 2008 meeting. As of April 20, 2008, Respondent had not referred the grievance to arbitration, nor has it advanced the grievance to arbitration through the date of ALJ Kehoe's RDO on June 3, 2014. Spratt filed his unfair labor practice charge on June 30, 2008, and the Executive Director issued a complaint for hearing on August 24, 2011.

Leading up to a May 9, 2005 Union election, Spratt supported the candidacy of his friend, Michael Burton for the position of Union second vice-president. He placed fliers on cars in parking lots of CTA garages. There were nine other candidates for the position. During Burton's 2005 candidacy for second vice-president, Darrell Jefferson was running against 12 other candidates for the position of president/business agent. Burton lost his race. Jefferson won his. Spratt testified that at some point after the election, Jefferson told Spratt that Spratt had a lot of making up to do; however, Spratt attributed a wide variety of dates as to when this statement had been made. In fact, there is conflicting evidence on many points. The Union's second vice-president, Larry Muhammad, represented Spratt during the pre-disciplinary interview. Spratt says he was not present, but the official record of the interview indicates that he was. Muhammad again represented Spratt during the discharge meeting. Spratt subsequently filled out a grievance form which Muhammad filed, but Spratt says he never saw a copy and did not know the grievance number. The Union's recording secretary, Michael Simmons, sent Spratt a letter confirming that the Union was processing the grievance, but Spratt denies having received the letter. Simmons represented Spratt at the second grievance step meeting on January 18, 2008. Spratt testified that at some point in January 2008 he asked Jefferson about his grievance, and Jefferson said he had nothing to report and that, in order for the grievance to be arbitrated, he had to campaign for Jefferson leading up to a May 27, 2008 Union election. Spratt said Simmons was present during this exchange, but Simmons disputed that allegation in his own testimony.

The Union's grievance committee met on February 20, 2008, and determined not to process Spratt's grievance, finding that it was unwinnable and too costly. Simmons sent Spratt a letter to that effect on February 25, 2008, but Spratt denies receiving the letter. The committee's decision was effectively finalized on April 7, 2008, the date of a Union membership meeting at which the committee's decision was not reversed.

Spratt's friend Burton ran for president/business agent in the May 27, 2008 election, and Spratt said he supported Burton during the campaign but did not vote. Jefferson won.

Spratt testified that on June 12, 2009, he sent a letter to Jefferson claiming he had not received a response to his grievance and complaining that it had not gone to arbitration and that the Union had not properly represented him. Spratt's letter includes his grievance number. It also references several phone calls he purportedly had made to Jefferson, Muhammad and the Union's first vice-president, Darrell West, that were not returned. This time it was the Union that claimed to have not received Spratt's letter. As previously noted, Spratt filed his charge on June 30, 2009. Spratt said he continued to ask the Union about his grievance, and that in October 2009 Jefferson told him he had making up to do. In March and April 2011, Jefferson told Spratt he had nothing to report. Another election was scheduled for May 2011, and this time Spratt campaigned for Jefferson, placing fliers on cars and in rest rooms. Jefferson was re-elected. Later, in June 2011, Jefferson allegedly told Spratt he had a lot of making up to do, and that he would arbitrate Spratt's grievance after the election (although the election had just passed).²

ALJ's analysis

The ALJ rejected the Union's argument that Spratt's charge was untimely filed. He acknowledged that the Union had refused to advance Spratt's grievance to arbitration on April 7, 2008 and Spratt filed his charge more than six months later on June 30, 2009, but the question of when Spratt knew or should have known of the Union's conduct was less precise. He found that, despite conflicting evidence, Spratt consistently denied having relevant information. Because of the ambiguity of when Spratt should have known, the ALJ did not find his charge untimely.

On the merits, the ALJ noted the complaint alleged an unlawful refusal to advance Spratt's grievance in retaliation for Spratt's support of Burton in 2005, but Spratt's post-hearing brief instead alleged a failure to keep Spratt informed of the status of his grievance and, for the first time, included allegations of retaliation for Spratt's support of Burton in 2008. The ALJ refused to amend the complaint *sua sponte* because he felt doing so would prejudice the Union.

Addressing the allegations of the complaint, the ALJ found Spratt had failed to demonstrate Jefferson knew of Spratt's support of Burton, and even if Jefferson had known,

² As noted in the Board's October 26, 2012 decision, the Amalgamated Transit Union International imposed a trusteeship and suspended all of the Union's officers on September 12, 2011.

Spratt failed to show that such action would have generated animus three years later given that Burton was running for a different office than that sought by Jefferson and there was no evidence that the two were members of different slates of candidates. The ALJ also found no evidence that Jefferson had influenced how the Union handled Spratt's grievance.

Exceptions and response

In addition to generally excepting to the ALJ's recommended dismissal of the complaint, Charging Party excepts to the ALJ's refusal to consider (1) Spratt's allegation that the Union had failed to keep him informed about the status of his grievance and intentionally misrepresented that status and (2) Spratt's allegations of retaliation arising from Spratt's support of "an opposing candidate" during the 2008 election. On the first point, Spratt points out that the complaint was issued by the Board's Executive Director, not Spratt, and that Spratt was not represented by counsel at the time the complaint issued. It also asserts that Spratt's charge and letter stated Jefferson had said there was nothing to report, that the pre-hearing memo put the Union on notice of allegations of a failure to keep Spratt informed,³ and that testimony was elicited regarding the provision of information. On the second point, Spratt again notes that he was unrepresented at the time he filed his charge, states that he was unaware that he could move to amend the complaint, and notes that at the hearing he was questioned regarding his campaign activity during 2008. Other than his general exception to the dismissal of the complaint, Spratt does not challenge the ALJ's finding that he failed to establish that his 2005 campaign activity motivated the Union's failure to advance his grievance to arbitration.

In its response to the exceptions, the Union notes that Board Rule 1220.50(f) allows for motions to amend a complaint, and that, while the rules contemplate that the ALJ could exercise his discretion to amend the complaint, neither Spratt nor his attorneys had asked him to, and they now provide no authority for the proposition that he was required to do so sua sponte. The Union further argues that amending the complaint to include these allegations would not warrant a different result in that (1) there was no evidence that Jefferson was aware of Spratt's 2008

³ Page 4 of Spratt's pre-hearing memo includes the following:

As a result [of Spratt's support of another candidate "in the race for Union president"], Mr. Jefferson and other officials repeatedly and intentionally misrepresented to Mr. Spratt that his grievance remained pending, and repeatedly and intentionally failed to inform Mr. Spratt that his grievance had been denied. Mr. Jefferson used his status as Union President to cause Mr. Spratt to wrongfully believe that his grievance remained pending, and to wrongfully fail to advance Mr. Spratt's grievance.

campaign activity and (2) there still is no evidence Jefferson influenced the Union's decision not to advance the grievance to arbitration. In a third line of defense, the Union argues that, even if Spratt had made out his prima facie case, the Union would not be liable because it had rational and legitimate reasons not to advance the grievance, pointing to the fact that it was its grievance committee (and ultimately its membership) which decided not to proceed because the grievance was unwinnable and too costly. It asserts it has an unequivocal and protected right to choose not to proceed with a grievance for these reasons.

Analysis and recommendation

We find the complaint should be dismissed for the reasons identified by ALJ Kehoe. Section 10(b)(1) provides that "a labor organization or its agents shall commit an unfair labor practice under this paragraph in duty of fair representation cases only by intentional misconduct in representing employees under this Act." Furthermore, under Section 6(d) of the Act, the exclusive representative has a "wide range in exercising its discretion in matters of the contract and in representing the interests of all public employees in the unit." Vill. of Barrington Hills, 29 PERI ¶ 51 (IL LRB-SP 2012). The decision to settle, advance, or withdraw a grievance—with or without the grievant's assent—violates the duty of fair representation only where arbitrary, discriminatory, or bad faith reasons motivate the union's conduct. Vaca v. Sipes, 386 U.S. 171 (1967). Amalgamated Transit Union, Local 241 (Jackson), 29 PERI ¶ 134 (IL LRB-SP 2013) (even a Union's gross negligence does not satisfy the 10(b) standard).

The ALJ was correct to find there is insufficient evidence to demonstrate that the Union's determination not to advance Spratt's grievance (and any failure to promptly and accurately inform him of this decision) was motivated out of animosity arising from his campaign activity in 2005, and the Union is correct to point out that the same holds true with respect to his campaign activity in 2008.⁴ The mere fact of a failure to advance the grievance and the mere fact of a failure to promptly and accurately communicate is insufficient, Amalgamated Transit Union, Local 308 (McLaurin), 16 PERI ¶ 3015 (IL LLRB 2000) (union's negligent failure to inform member that it had withdrawn her grievance did not demonstrate intentional misconduct, despite the fact that the matter was left unresolved for eight years); Journeyman Plasterers Local Union No. 5 (Figueroa), 18 PERI ¶ 3003 (IL LRB-SP 2001) (charge dismissed where charging party failed to allege an unlawful motive for the Union's conduct), and the record shows nothing

⁴ In contrast to 2005, in 2008 Burton and Jefferson ran against each other for the same position.

more other than a statement Spratt attributes to Jefferson at no less than three distinct times. As Respondent suggests, under the intentional misconduct standard applicable to allegations of failure to fairly represent, whether the ALJ amended the complaint to include the 2008 activity and the allegation regarding withholding accurate information would have made little difference in the outcome. More significantly, while the ALJ had the authority to amend the complaint sua sponte, he did not have the obligation to do so. In fact, by failing to request such an amendment, Spratt, whose attorney entered his appearance 18 months before the hearing, has forfeited any right to complain about lack of such amendment, Cerniglia v. Farris, 160 Ill. App. 3d 568, 574 (4th Dist. 1987). By failing to except to the ALJ's ruling on the allegations actually raised in the complaint, he has also forfeited any opportunity to seek this Board's reversal of the ALJ's recommendation. 80 Ill. Admin. Code §1200.135(b)(2).

Conclusion

The ALJ's recommendation is accepted, and the complaint is dismissed.

BY THE LOCAL PANEL OF THE ILLINOIS LABOR RELATIONS BOARD⁵

/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 December 16, 2014; written decision issued at Chicago, Illinois, January 7, 2015.

⁵ Local Panel Chairman Robert Gierut was recused from consideration of this case.

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Darryl Spratt,)	
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Amalgamated Transit Union, Local 241,)	
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Respondent)	

ADMINISTRATIVE LAW JUDGE’S RECOMMENDED DECISION AND ORDER

On June 30, 2009, Darryl Spratt filed a charge in Case No. L-CB-09-066 with the Local Panel of the Illinois Labor Relations Board (Board) alleging that the Amalgamated Transit Union, Local 241 (Union) engaged in an unfair labor practice within the meaning of Section 10(b) of the Illinois Public Labor Relations Act, 5 ILCS 315 (2012) as amended (Act). Subsequently, the charge was investigated in accordance with Section 11 of the Act and the Rules and Regulations of the Board, 80 Ill. Admin. Code, Parts 1200 through 1240 (Rules). The Board’s Executive Director issued a Complaint for Hearing on August 24, 2011.

On January 6, 2012, Administrative Law Judge (ALJ) Elaine Tarver issued an initial Recommended Decision and Order (RDO) that concluded that the Union defaulted when it failed to file a timely answer to the Complaint for Hearing. The Union filed timely exceptions to the RDO, and the parties later presented oral argument at the September 11, 2012 Local Panel Board meeting. On October 26, 2012, the Local Panel reversed the RDO and remanded the case for a hearing on the merits of the Complaint for Hearing. 29 PERI ¶78 (IL LRB-LP 2012).

In accordance with the Local Panel’s October 26, 2012 Order, ALJ Tarver conducted a hearing on October 29, 2013. Both parties appeared at the hearing and were given a full

opportunity to participate, adduce relevant evidence, examine witnesses, and argue orally. Written briefs were timely filed on behalf of both parties. The case was subsequently reassigned to the undersigned ALJ on April 10, 2014 when ALJ Tarver left the employment of the Board. After full consideration of the parties' stipulations, evidence, arguments, and briefs, and upon the entire record of the case, I recommend the following.

I. PRELIMINARY FINDINGS¹

1. At all times material, the Chicago Transit Authority (CTA) has been a public employer within the meaning of Section 3(o) of the Act.
2. At all times material, the CTA has been subject to the jurisdiction of the Local Panel of the Board pursuant to Section 5(b) of the Act.
3. At all times material, the CTA has been subject to the Act pursuant to Section 20(b) the Act.
4. At all times material, the Union has been a labor organization within the meaning of Section 3(i) of the Act.
5. At all times material, the Union has been the exclusive representative of a bargaining unit of persons employed by the CTA in various job classifications including that of bus operator.
6. At all times material, the Union and the CTA have been parties to a collective bargaining agreement for the unit with effective dates of January 1, 2007 through December 31, 2011.
7. Article 16 and Article 17 of the collective bargaining agreement contain the grievance and arbitration provisions that govern disputes between the Union and the CTA.

¹ These preliminary findings emanate from the parties' joint statement of uncontested material facts.

8. At all times material, the CTA employed Spratt in the job classification of bus operator.
9. At all times material, Spratt has been a public employee within the meaning of Section 3(n) of the Act.
10. At all times material, Spratt has been a member of the unit.
11. At all times material, the Union's governing document was its bylaws and constitution.
12. At all times material, Darrell Jefferson was the Union's president/business agent.
13. At all times material, Jefferson, as president, was authorized to act on behalf of the Union as specified by its bylaws and constitution.
14. On or about December 19, 2007, the CTA terminated Spratt's employment.
15. On or about December 31, 2007, Union Vice President Larry Muhammad completed grievance number 07-860 for Spratt contesting his discharge from CTA.
16. On or about January 3, 2008, the Union filed the grievance with the CTA.
17. On or about January 3, 2008, the Union sent Spratt a letter advising the Union was processing his grievance.
18. On or about January 15, 2008, Jefferson received notice from the CTA that the CTA had denied the grievance.
19. On or about January 18, 2008, the Union and the CTA conducted a second step grievance meeting on the grievance at which time the CTA again denied the grievance, which the CTA confirmed in writing.
20. As of April 20, 2008, the Union did not refer the grievance to arbitration.
21. There is no written agreement signed by the Union and the CTA extending the time limitations contained in Article 17.1 of the collective bargaining agreement as they relate to the grievance.

22. Since on or about January 18, 2008 to date, the Union has not advanced the grievance.
23. On June 30, 2009, Spratt filed an unfair labor practice charge with the Board alleging that the Union violated Section 10(b) of the Act.
24. On approximately August 24, 2011, the Board issued a Complaint for Hearing in this matter.
25. The Union has filed an answer and affirmative defenses to the Complaint for Hearing.

II. ISSUES AND CONTENTIONS

The Complaint for Hearing alleges that the Union violated Section 10(b)(1) of the Act when the Union refused to advance Spratt's termination grievance in retaliation for Spratt supporting a particular Union member before a Union election in May of 2005. The Union disputes that allegation and contends that Spratt's unfair labor practice charge is untimely.

III. FINDINGS OF FACT

In the lead-up to a May 9, 2005 Union election, Spratt supported the candidacy of his friend, Michael Burton, by putting fliers on cars in the parking lots of a number of CTA garages. Burton was running against nine others to keep his position of second vice president of the Union. Another Union member, Darrell Jefferson, was running against twelve others to keep his position of president/business agent of the Union. Burton lost his race, but Jefferson won his. According to Spratt's testimony, at some point after the election, Jefferson told Spratt that Spratt had a lot of making up to do.

On December 11, 2007, Spratt was interviewed by the CTA regarding possible violations of CTA rules. During that interview, Spratt was represented by Larry Muhammad, the Union's

second vice president. (Spratt testified that he was not present during the interview. An official record of the interview indicates he was.) On December 19, 2007, the CTA gave Spratt a formal notice of discharge during a discharge meeting. The notice asserted that Spratt had violated a number of CTA rules and stated that, effective immediately, Spratt's employment with the CTA was terminated. During the discharge meeting, Spratt was again represented by Muhammad.

In response to his discharge, Spratt filled out a Union grievance form on December 31, 2007. Muhammad then wrote and formally filed a grievance on Spratt's behalf on January 3, 2008. (Spratt testified that he has never seen a copy of his grievance and has never known what his grievance number was. However, Spratt also testified that Muhammad told Spratt that he had filed a grievance in January of 2008.) The same day, Michael Simmons, the Union's recording secretary, sent Spratt a letter stating that the Union was processing Spratt's grievance. (Spratt testified that he never received Simmons' January 3, 2008 letter.) On January 9, 2008, the CTA sent Jefferson a letter denying Spratt's grievance and Muhammad sent the CTA a formal information request related to Spratt's discharge. Later, on January 18, 2008, the CTA sent Jefferson an additional denial after a second step grievance meeting. During the January 18, 2008 meeting, Simmons represented Spratt.

According to Spratt, at some point in January of 2008, Spratt went to Jefferson's office and asked Jefferson what was going on with the grievance. Allegedly, Jefferson responded by telling Spratt that he had nothing to report and, in order for the grievance to be arbitrated, Spratt would have to campaign for him in the lead-up to a May 27, 2008 Union election. Spratt testified that Simmons was present during that exchange, but Simmons' testimony disputes that allegation.

The Union's grievance committee met and discussed Spratt's grievance on February 20, 2008 and ultimately decided to deny the grievance after determining that it was unwinnable and too costly. On February 25, 2008, Simmons sent Spratt a letter stating that the Union's grievance committee had voted and determined not to arbitrate Spratt's grievance and that the Union would be taking no further action. In effect, that determination was later finalized at an April 7, 2008 Union membership meeting. The grievance has never advanced to arbitration. (Spratt testified that he never received Simmons' February 25, 2008 letter.)

Burton and Jefferson ran against each other for the position of president/business agent in the May 27, 2008 Union election. According to Spratt's testimony, Spratt supported Burton during his campaign but did not vote. Jefferson won the election.

Spratt testified that he sent Jefferson a letter on June 12, 2009. In the letter, Spratt asserts that he had not received a response regarding his grievance, that his grievance had not "been placed in arbitration," and that the Union had not properly represented him. (Spratt uses his grievance number in his letter.) The letter also refers to phone calls Spratt allegedly made to Jefferson, Muhammad, and Darrell West (the Union's first vice president) that purportedly went unreturned. (The Union contends that the letter was never received.)

As noted above, Spratt filed an unfair labor practice charge with the Board on June 30, 2009, and the affiliated Complaint for Hearing was issued on August 24, 2011. According to Spratt, after he filed the charge, he continued to ask Union officials about his grievance. Spratt also alleges that, in October of 2009, Jefferson told him that he had making up to do.

According to Spratt, in March of 2011, Jefferson told Spratt that he had nothing to report regarding Spratt's grievance. Jefferson allegedly repeated that statement in April of 2011. Another Union election took then place in May of 2011. In the lead-up to that election, Spratt

campaigned for Jefferson (who was running for Union president/business agent again) by putting fliers on cars and in washrooms. Jefferson was reelected. Later, in June of 2011, Jefferson allegedly told Spratt that Spratt had a lot of making up to do and that Jefferson would arbitrate Spratt's grievance after the election (which Jefferson had already won).

IV. DISCUSSION AND ANALYSIS

Is Spratt's unfair labor practice charge untimely?

The Union argues that Spratt's unfair labor practice charge is untimely because the Union refused to move Spratt's grievance to arbitration more than six months before Spratt filed his charge with the Board. I find that argument unpersuasive.

I would grant that, in part, Section 11(a) of the Act states that "no complaint shall issue based upon any unfair labor practice occurring more than six months prior to the filing of a charge with the Board." However, as the remaining language of Section 11(a) clarifies, the issue is not whether Spratt filed his charge within six months of the decision, but whether the date he filed was more than six months after he knew or reasonably should have known that the Union had committed a chargeable offense. Moore v. Illinois State Labor Relations Board, 206 Ill. App. 3d 327, 335, 564 N.E.2d 213, 218 (4th Dist. 1990); Amalgamated Transit Union, Local 241, 26 PERI ¶57 (IL LRB-LP 2010). The Union's refusal to move Spratt's grievance to arbitration – the crux of the Complaint for Hearing – was finalized on April 7, 2008, and Spratt's charge was filed on June 30, 2009. Admittedly, that span is longer than six months. Yet, when Spratt learned or reasonably should have learned of the Union's refusal is unclear.

Indeed, much of evidence consistently suggests that the Union issued Spratt several informative letters. It is also unclear how Spratt knew and could use his grievance number on

June 12, 2009 (when Spratt allegedly sent Jefferson a letter) if he really had never received “any response” from the Union and “never” knew the number. Similarly, Spratt did not explain why he suddenly felt inspired to fax the Union information related to his grievance on February 29, 2008 and do so via Simmons, the author of the Union’s February 25, 2008 letter informing Spratt that the Union would be taking no further action regarding the grievance.

Nevertheless, under oath, Spratt has fairly consistently denied that the Union apprised him of the status of his grievance and denied receiving the Union’s correspondence. According to Spratt’s brief, Spratt only learned that the CTA had denied his grievance after the Union’s 2011 election. It also appears that Spratt never meaningfully understood the grievance procedure, and the record does not clarify whether or when he should have. Because of that ambiguity, I do not find that Spratt’s charge was untimely. See Chicago Joint Board, Local 200, Retail, Wholesale and Department Store Union v. Illinois Labor Relations Board, 2011 IL App (1st) 101497, ¶21, 951 N.E.2d 1164, 1169; Rock Island Education Association (Adams), 10 PERI ¶1045 (IL ELRB 1994).

Did the Union violate Section 10(b)(1) of the Act?

The Complaint for Hearing alleges that the Union violated Section 10(b)(1) of the Act. Section 10(b)(1) states, in relevant part, that it shall be an unfair labor practice for a labor organization or its agents to restrain or coerce public employees in the exercise of the rights guaranteed in the Act. It also references the Act’s well-established duty of fair representation which exists between a union and its members. In short, Spratt contends that the Union violated that duty, and this analysis must determine whether such a violation has occurred.

In order to determine whether a union has violated its duty of fair representation, the Board utilizes a two-part test. Under that test, a charging party must first establish that the

union's conduct was intentional and directed at the charging party, and secondly, that the union's intentional action occurred because of and in retaliation for the charging party's past actions or because of the charging party's status (such as his or her race, gender, or national origin) or because of animosity between the charging party and the union's representatives (such as that based on personal conflict or the charging party's dissident union support). American Federation of State, County and Municipal Employees, Council 31 (McGrew and Widger), 25 PERI ¶73 (IL LRB-SP 2009); American Federation of State, County and Municipal Employees, Council 31 (Robertson), 18 PERI ¶2014 (IL LRB-SP 2002); American Federation of State, County and Municipal Employees, Local 2912 (McGloin), 17 PERI ¶3001 (IL LRB-LP 2000).

Before continuing, however, it must be noted that the Complaint for Hearing formally alleges that the Union unlawfully refused to advance Spratt's grievance because of and in retaliation for Spratt's support for Burton in May of 2005. Spratt's brief makes a very different allegation. Unlike the Complaint for Hearing, Spratt's brief argues that the Union committed an unfair labor practice "by failing to fulfill its obligation to keep Mr. Spratt informed of the status of his grievance, and by intentionally misrepresenting its status and repeatedly telling Spratt throughout 2008 and 2009 (and beyond) that there was 'nothing to report' related to his grievance." In addition, his brief contends for the first time that Jefferson also retaliated against Spratt because of Spratt's support of Burton in 2008 and theorizes that Simmons (who is not referenced in the Complaint for Hearing) had a retaliatory motive as well.

Spratt has not sought to amend the Complaint for Hearing, and I decline to do so sua sponte. Therefore, this analysis will centrally address the core allegation specifically provided by the Complaint for Hearing – namely, that the Union unlawfully refused to advance Spratt's grievance because of and in retaliation for Spratt's support for Burton in May of 2005. In my

view, to do otherwise would prejudice the Union. See Chicago Transit Authority, 16 PERI ¶3021 (IL LLRB 2000); East St. Louis Housing Authority, 29 PERI ¶154 (IL LRB-SP G.C. 2013). I also note that a mere failure to provide responses to requests for information regarding the status of a grievance does not violate Section 10(b)(1). See American Federation of State, County and Municipal Employees, Local 2912 (McGloin), 17 PERI ¶3001.

Logically, given the Complaint for Hearing's core allegation, it must initially be determined whether Spratt engaged in activities tending to engender the animosity of union agents. (It is undisputed that the Union intentionally refused to advance Spratt's grievance.) If Spratt cannot show that he did, then he has not established a necessary element of a prima facie case and the Complaint for Hearing must be dismissed.² See Metropolitan Alliance of Police v. State Labor Relations Board, Local Panel, 345 Ill. App. 3d 579, 588, 803 N.E.2d 119, 126 (1st Dist. 2003); American Federation of State, County and Municipal Employees, Council 31 (Robertson), 18 PERI ¶2014. Regarding that issue, Spratt contends that Jefferson harbored personal animosity toward Spratt because of Spratt's support for Burton in 2005. Under the circumstances, that theory seems very implausible. Moreover, the evidence presented to support it is less than compelling and Spratt has not cited any precedent directly on point. Accordingly, I find that Spratt has not established a prima facie case.

² Procedurally, in duty of fair representation cases, the charging party must first establish a prima facie case by demonstrating by a preponderance of the evidence: (1) that the employee has engaged in activities tending to engender the animosity of union agents or that the employee's mere status (such as race, gender, religion, or national origin) may have caused the animosity, (2) that the union was aware of the employee's activities and/or status, (3) that there was an adverse representation action by the union, and (4) that the union took the adverse action against the employee for discriminatory reasons (i.e., because of animus toward the employee's activities or status). Once the charging party establishes a prima facie case, the burden will then shift to the union to demonstrate that it would have taken the same action in the absence of the animus. American Federation of State, County and Municipal Employees, Council 31 (Robertson), 18 PERI ¶2014.

Spratt asserts that, during the lead-up to the May 9, 2005 election, he supported his friend Burton by putting fliers on cars. Other than Spratt's own (often tangled) assertions, however, nothing in the record indicates that Jefferson (or any Union agent) actually knew about that activity. Self-serving testimony not supported by independent evidence which tends to substantiate it is of little probative value. See City of Chicago, 3 PERI ¶3002 (IL LLRB 1986); McHenry Community High School District No. 156, 1 PERI ¶1005 (IL ELRB ALJ 1984). Further, even if Jefferson did know about Spratt's support, it seems very unlikely that Jefferson would be concerned about Spratt supporting a candidate who was running for a different Union position than Jefferson was, and it seems even less likely that Jefferson would still be concerned about that support nearly three years later. Had Burton and Jefferson actually run for the same Union position in 2005 (as Spratt and the Complaint for Hearing incorrectly allege) or if Spratt had demonstrated that the two were affiliated with different factions or tickets at the time, Spratt's theory might make more sense.

In addition to the foregoing, I note that Spratt has not shown that Jefferson influenced how the Union handled Spratt's grievance and thus has not established a causal nexus. Moreover, in duty of fair representation cases, a union can ultimately escape liability if it proffers a rational, legitimate explanation for its actions. Metropolitan Alliance of Police, 345 Ill. App. 3d at 589, 803 N.E.2d at 126; Moore, 206 Ill. App. 3d at 339, 564 N.E.2d at 220; American Federation of State, County and Municipal Employees, Council 31 (Segrest), 16 PERI ¶2003 (IL SLRB 1999); Amalgamated Transit Union (Diaz), 2 PERI ¶3021 (IL LLRB 1986); see American Federation of State, County and Municipal Employees, Local 3506 (Pierce), 16 PERI ¶1010 (IL ELRB 1999); Dober v. Roadway Express, Inc., 707 F.2d 292, 294 (7th Cir. 1983). Simply put, I find that, if necessary, the Union could do so here, as the record unambiguously

indicates that the Union's grievance committee determined that Spratt's grievance was unwinnable and too costly.

V. CONCLUSION OF LAW

I find that Spratt failed to prove by a preponderance of the evidence that the Union violated Section 10(b)(1) of the Act.

VI. RECOMMENDED ORDER

IT IS HEREBY ORDERED that the Complaint for Hearing be dismissed in its entirety.

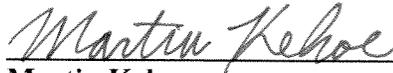
VII. EXCEPTIONS

Pursuant to Section 1200.135 of the Board's Rules, parties may file exceptions to the Administrative Law Judge's Recommended Decision and Order and briefs in support of those exceptions no later than 30 days after service of this Recommendation. Parties may file responses to exceptions and briefs in support of the responses no later than 10 days after service of the exceptions. In such responses, parties that have not previously filed exceptions may include cross-exceptions to any portion of the Administrative Law Judge's Recommendation. Within 5 days from the filing of cross-exceptions, parties may file cross-responses to the cross-exceptions. Exceptions, responses, cross-exceptions, and cross-responses must be filed with the General Counsel of the Illinois Labor Relations Board at 160 North LaSalle Street, Suite S-400, Chicago, Illinois 60601-3103 and served on all other parties. Exceptions, responses, cross-exceptions, and cross-responses will not be accepted at the Board's Springfield office. The exceptions and/or cross-exceptions sent to the Board must contain a statement listing the other

parties to the case and verifying that the exceptions and/or cross-exceptions have been provided to them. The exceptions and/or cross-exceptions will not be considered without this statement. If no exceptions have been filed within the 30-day period, the parties will be deemed to have waived their exceptions.

Issued in Chicago, Illinois this 3rd day of June 2014.

**STATE OF ILLINOIS
ILLINOIS LABOR RELATIONS BOARD
STATE PANEL**



**Martin Kehoe
Administrative Law Judge**