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

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|---|---|---|
| James Conlee Jackson, | ) | |
| | ) | |
| Charging Party | ) | |
| | ) | |
| and | ) | Case No. L-CB-13-001 |
| | ) | |
| Amalgamated Transit Union, Local 241, | ) | |
| | ) | |
| Respondent | ) | |

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

On November 7, 2012, the Illinois Labor Relations Board's Executive Director, Melissa Mlynski, dismissed the charge filed by James Conlee Jackson (Charging Party) in the above-captioned case against the Amalgamated Transit Union, Local 241 (Respondent), alleging it had engaged in unfair labor practices in violation of Section 10(b)(1) of the Illinois Public Labor Relations Act, 5 ILCS 315/10(b)(1) (2010). Pursuant to Section 1200.135 of the Board's Rules and Regulations, 80 Ill. Admin. Code Parts 1200 through 1240, Charging Party filed a timely appeal of the dismissal. No response has been filed. For the reasons which follow, we affirm the dismissal of the charge.

The facts alleged suggest incompetence by Respondent. Charging Party had filed two grievances. Respondent advised Charging Party it had received both and was processing them. This notice was sent to Charging Party's address of record on South King Drive. Three months later, Respondent sent notice that it was dropping one grievance relating to use of FMLA leave (No. 09-544), but that notice was sent to an address on West Hollywood Avenue where Charging

Party had never lived. The post office returned that notice to the union, but before it was returned, Respondent sent notice that it found merit in the other grievance relating to a traffic accident (No. 09-543), and would advance it to arbitration. As with the first notice, this notice was sent to the proper South King Drive address.

Two years later, the local was placed in receivership. Six months later, Charging Party asked his steward about the grievance over the traffic accident, No. 09-543. An executive board member of Respondent initially responded as if Charging Party had inquired about the grievance relating to FMLA leave, No. 09-544, stating it had been dropped when notification was returned by the post office. He also said Respondent had inadvertently consolidated both grievances, and stopped processing both of them when the notice concerning the FMLA leave grievance was returned by the post office.

The Executive Director noted that a violation of Section 10(b)(1) requires a charging party to establish both that the union's conduct was intentional and directed toward charging party *and* that this occurred in retaliation for charging party's actions or because of charging party's status or animosity between charging party and his representatives. Finding no evidence that Respondent intentionally took any action designed to retaliate against Charging Party or because of his status, the Executive Director found the charge had to be dismissed.

In his appeal, Charging Party points out that, contrary to the assertion of Respondent, the two grievances had obviously *not* been consolidated at the time Respondent elected to drop one and pursue the other. He views its explanation as evidence that Respondent is deliberately lying, not as evidence of still more incompetence. He further points to evidence confirming that the grievance concerning the traffic accident had merit. An official told him he never should have been charged for that particular type of an accident (a car door was opened into the panel behind

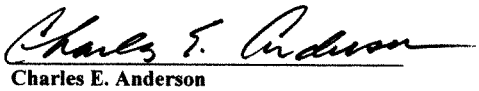
the bus' rear wheels), and a steward told him he had successfully brought a similar situation to arbitration. The misinformation or lying he views as demonstrating intentionality; the fact the union had earlier successfully represented the other driver he views as evidence of discrimination.

Whether one views Respondent's explanation for not processing the traffic accident grievance as more incompetence or as an intentional attempt to cover up past incompetence, Charging Party's appeal still fails to show a chance of prevailing in a failure of the duty to provide fair representation case. In 1989, Section 10(b)(1) was amended to expressly incorporate the standard articulated in Hoffman v. Lonza, Inc., 658 F.2d 519 (7th Cir. 1981): "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." 5 ILCS 315/10(b)(1)(ii) (as amended by Public Act 86-412 (eff. Aug. 30, 1989)). See Murry v. Am. Fed'n of State, Cnty. & Mun. Employees, Local 1111, 305 Ill. App. 3d 627 (1st Dist. 1999). As the Executive Director pointed out, this requires a charging party to show not only that a union's conduct was intentional and directed at the charging party, but that its conduct occurred because of, and in retaliation for, charging party's past actions, or his status (such as race, gender or national origin), or because of animosity between charging party and the union's representatives (such as might occur had charging party supported dissident leadership). Violar Murry and Am. Fed'n of State, Cnty. & Mun. Employees, Council 31, Local 1111, 14 PERI ¶ 3009 (IL LLRB 1998), aff'd, Murry, 305 Ill. App. 3d 627. Negligence, even gross negligence, is insufficient; the union must do something with the intent to disadvantage the charging party. Id. There is no evidence of such intent here.

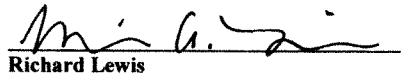
The dismissal of the charge is affirmed.

BY THE LOCAL PANEL OF THE ILLINOIS LABOR RELATIONS BOARD

**Robert M. Gierut**
**Chairman**



**Charles E. Anderson**
**Board Member**



**Richard Lewis**
**Board Member**

Decision made at the Local Panel's public meeting in Chicago, Illinois on February 7, 2013; written decision issued in Chicago, Illinois on February 15, 2013.

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**DISMISSAL**

On July 2, 2012, Charging Party, James Conlee Jackson, filed an unfair labor practice charge with the Local Panel of the Illinois Labor Relations Board (Board), in the above-captioned case, alleging that Respondent, Amalgamated Transit Union, Local 241 (Union or Local 241), violated Section 10(b) of the Illinois Public Labor Relations Act (Act), 5 ILCS 315 (2010), *as amended.* After an investigation conducted pursuant to Section 11 of the Act, I determined that the charge fails to raise an issue of fact or law sufficient to warrant a hearing and issue this dismissal for the reasons set forth below.

## I INVESTIGATORY FACTS

Respondent is a labor organization within the meaning of Section 3(i) of the Act and the exclusive representative of a bargaining unit comprised of certain Chicago Transit Authority (Employer or CTA) employees, including those in the job title or classification of Bus Operator (Unit). The CTA is a public employer within the meaning of Section 3(o) of the Act. Charging Party is a public employee within the meaning of Section 3(n) of the Act, employed by the CTA in the job title or classification of Bus Operator, and is a member of the Unit. The CTA and Local 241 are parties to a collective bargaining agreement (CBA) for the Unit which contains a grievance procedure culminating in arbitration.

On or about May 28, 2009, Charging Party filed Grievance Number 09-0543, claiming that the CTA had unfairly held him accountable for a traffic accident (TA). On or about the same time, Charging Party filed a second grievance, Number 09-0544, concerning a dispute he had with a supervisor over Charging Party's use of Family and Medical Leave Act (FMLA).

On or about June 9, 2009, Local 241 Recording Secretary, Michael Simmons, notified Charging Party by U.S. Mail that the Union received both grievances and was processing them according to the provisions of the CBA. That notification was sent to Charging Party's address of record, on South King Drive, in Chicago.

On September 24, 2009, Simmons notified Charging Party by U.S. Mail that the executive board of the Union determined that grievance 09-544 (FMLA) lacked sufficient merit to be advanced to arbitration, and that the Union would take no further action. That notification was sent to an address on West Hollywood, in Chicago. Charging Party has never lived at that address, and neither he nor the Union proffered any explanation for the error. This notice was returned to the Union by the post office as undeliverable.

On September 25, 2009, Simmons notified Charging Party by U. S. Mail that the executive board of the Union determined that grievance 09-543 (TA) had sufficient merit to be advanced to arbitration. That notification was sent to Charging Party's address of record, on South King Drive, in Chicago.

From September 25, 2009, to July 1, 2011, the Union did not contact Charging Party concerning grievance Number 09-543, which had supposedly been advanced to arbitration. On July 1, 2011, Charging Party emailed Simmons and inquired as to the status of grievance 09-0543. Charging Party did not get a response from Simmons or anyone else from the Union.

On or about September 12, 2011, the International ATU placed Local 241 in trusteeship and removed its executive board, including Simmons. The International then appointed interim leadership.

On or about May 23, 2012, Charging Party contacted Local 241 steward, Jose Colon, inquiring about the status of grievance 09-0543. On behalf of Charging Party, Colon contacted Local 241 executive board member Keith Hill and asked about 09-0543. Hill responded about 09-0544, which was denied for arbitration. Hill's response about 09-0543 was that it was dropped by the Union when the notification regarding 09-0544, sent to the West Hollywood address, was returned as undeliverable by the post office. Hill could not explain why 09-0544 was sent to the wrong address, but continued to state that grievance 09-543 had been dropped and that it was unlikely to be reinstated for consideration. Hill offered that the Union inadvertently consolidated both grievances and ceased processing them when it received the notice returned by the post office.

## II. DISCUSSION AND ANALYSIS

Section 10(b)(1) of the Act provides 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 this Act, provided ...(ii) 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. Intentional misconduct is something more than mere negligence or the exercise of poor judgment. Rather, it is action conducted in a deliberately and severely hostile manner. Board of Governors for Western Illinois University, 10 PERI ¶1037 (IL ELRB ED 1994). Intentional misconduct cannot be inferred from negligence. Public Service Employees Union, Local 46 (Perry), 15 PERI ¶3016 (IL LLRB 1999).

The misdirected mailing of the September 24, 2009 notification is unfortunate and, at best, could be considered negligent. However, even negligence or errors on the part of a bargaining agent in representing an employee, absent evidence of bad faith, will not constitute a breach of a labor

organization's duty of fair representation. Galowitch and Fraternal Order of Police, Lodge 7, 3 PERI ¶3009 (IL LLRB 1987).

In duty of fair representation cases, a two-part standard is used to determine whether a union has committed intentional misconduct within the meaning of Section 10(b)(1). Under that test, a charging party must establish that the union's conduct was intentional and directed at charging party, and secondly, that the union's intentional action occurred because of and in retaliation for charging party's past actions, or because of charging party's status (such as his or her race, gender, or national origin), or because of animosity between charging party and the union's representatives (such as that based on personal conflict or charging party's dissident union support). The Board's use of this standard, based on Hoffman v. Lonza, Inc., 658 F.2d 519 (7th Cir. 1981), was affirmed by the Illinois Appellate Court in Murry v. American Federation of State, County and Municipal Employees, Local 1111, 305 Ill. App. 3d 627, 712 N.E.2d 874, 15 PERI ¶4009 (1st Dist. 1999), aff'g American Federation of State, County and Municipal Employees, Local 1111 (Murry), 14 PERI ¶3009 (IL LLRB 1998).

In this case, there is no evidence that the Union intentionally took any action either designed to retaliate against Charging Party or due to his status. Charging Party made no showing that he was treated differently than other similarly situated employees. Under Section 6(d) of the Act, the exclusive representative has a wide range of discretion in grievance handling, and as the Board has previously held, a union's failure to take all the steps it might have taken to achieve the results desired by a particular employee does not violate Section 10(b)(1), unless as noted above, the union's conduct appears to have been motivated by vindictiveness, discrimination, or enmity. Outerbridge and Chicago Fire Fighters Union, Local 2, 4 PERI ¶3024 (IL LLRB 1988); Parmer and Service Employees International Union, Local 1, 3 PERI ¶3008 (IL LLRB 1987). As there is no evidence indicating that the

Union was unlawfully motivated, Charging Party has failed to present grounds upon which to issue a complaint for hearing.

## III. ORDER

Accordingly, the instant charge is hereby dismissed. Charging Party may appeal this dismissal to the Board at any time within 10 calendar days of service hereof. Any such appeal must be in writing, contain the case caption and number, and be addressed to the General Counsel of the Illinois Labor Relations Board, 160 North LaSalle Street, Suite S-400, Chicago, Illinois 60601-3103. Appeals will not be accepted in the Board's Springfield office. In addition, any such appeal must contain detailed reasons in support thereof, and the party filing the appeal must provide a copy of its appeal to all other persons or organizations involved in this case at the same time the appeal 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 a copy of the appeal has been provided to each of them. An appeal filed without such a statement and verification will not be considered. If no appeal is received within the time specified herein, this dismissal will become final.

**Issued in Springfield, Illinois, this 7th day of November, 2012.**

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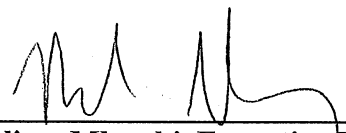

**Melissa Mlynski, Executive Director**