

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

Beverly Boyd,)	
)	
Charging Party)	
)	
and)	Case No. L-CB-13-009
)	
American Federation of State, County and)	
Municipal Employees, Council 31,)	
)	
Respondent)	

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

On November 8, 2012, Executive Director Melissa Mlynski dismissed unfair labor practice charges filed on August 1, 2012 by Beverly Boyd (Charging Party) against the American Federation of State, County and Municipal Employees, Council 31 (Respondent), for alleged breach of its duty of fair representation in violation of Section 10(b)(1) of the Illinois Public Labor Relations Act, 5 ILCS 315 (2010).¹ Pursuant to Section 1200.135 of the Board's Rules and Regulations, 80 Ill. Admin. Code Parts 1200 through 1240, Boyd filed a timely appeal. Respondent has not filed a response. For the reasons which follow, we affirm the Executive Director's dismissal.

¹ Section 10(b)(1) makes it an unfair labor practice for a labor organization to restrain or coerce public employees in the exercise of the rights guaranteed in this Act, provided, (i) that this paragraph shall not impair the right of a labor organization to prescribe its own rules with respect to the acquisition or retention of membership therein or the determination of fair share payments and (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[.]

Context

The dispute arose when the Cook County Department of Corrections (Employer or DOC) required Boyd to take a Physical Ability Test (PAT). The Executive Director's dismissal sets out the history of the situation in detail. We provide a synopsis.

Boyd began her career with DOC in November 1981 as a correctional officer. In 1996 she moved to what became known as the boot camp. In 1999, the director of the boot camp announced that all correctional personnel had to take bi-annual PATs.

In 2004 Boyd was promoted to sergeant, and because of that move, moved from a bargaining unit of correctional officers that is now represented by Teamsters Local 700 into a bargaining unit represented by AFSCME Local 3692. Because of an injury, in 2006 Boyd transferred from the boot camp to another assignment within DOC.

In 2009 Boyd and Sergeant Norman Scales asked to transfer back to boot camp. The request was denied, but Local 3692 filed a grievance, took it to arbitration, and prevailed. Boyd and Scales were to be transferred back to boot camp effective July 26, 2010. In either June or July 2010, Local 3692 and an Employer representative verbally agreed that Boyd and Scales did not have to take the PAT.

On March 22, 2011, the boot camp director ordered personnel to take the bi-annual PAT, and the deputy director subsequently ordered Boyd and Scales to do so. Local 3692 and Boyd met with an Employer representative who said neither Boyd nor Scales needed to take the PAT, they would be "grandfathered in."

In late 2011, Boyd was promoted to lieutenant, and as a consequence, moved into a collective bargaining unit of lieutenants represented by AFSCME Local 2226 rather than Local 3692. At the time of the promotion, Boyd was transferred from boot camp to another division of

DOC. On October 24, 2011, Local 3692 and the Employer entered into a written agreement stating that Sgt. Scales would be exempt from the PAT. At approximately the same time, now Lt. Boyd requested a transfer back to boot camp. On November 9 and 10, 2011, DOC offered all applicants for boot camp assignments an opportunity to take the PAT. Boyd advised Local 2226 of the testing date, and asked that it send a representative to explain why she did not have to take the PAT. Local 2226 did not send a representative on the date of testing, Boyd refused to take the PAT, and Boyd subsequently received a letter stating she was disqualified from assignment to boot camp.

On December 8, 2011, Boyd filed a grievance with the chief steward of Local 2226. On January 17, 2012, the chief steward asked Respondent's executive board to advance the grievance to arbitration, but on February 1, 2012, the executive board refused to advance it, explaining to Boyd that the arbitration would be unsuccessful.

Charge

Charging Party claims Respondent failed to do what it could to force the Employer to abide by the earlier July 2010 grievance award, and further claims one of Respondent's executive board members who had voted against taking her grievance to arbitration, Lt. Janson, was biased against her because he had also opposed the resolution of Boyd and Scales' earlier grievance which allowed an exemption from PAT. In response, Respondent states that the earlier arbitration award was specific to Boyd and Scales, but only because they were both sergeants at the time, and claims Boyd essentially took herself out of the letter of agreement with respect to exemption from PAT by accepting a promotion to lieutenant.

Executive Director's dismissal

The Executive Director noted that, pursuant to Section 6(d) of the Act, a union need not take all possible steps to achieve results desired by a particular employee, and that failure to take all such steps does not violate Section 10(b)(1) unless motivated by vindictiveness, discrimination, or enmity. She found no evidence Respondent intentionally took action designed to retaliate against Charging Party or because of her status. She found no demonstration that Respondent treated Charging Party differently than other similarly situated employees, and that even if one of Respondent's board members had opposed the exemption from PAT, there was no evidence of bias against Charging Party.

Charging Party's appeal

Charging Party attached to her appeal a memorandum from correctional officer Maria Garcia indicating that, after failing the bi-annual fitness test in April 2010, she was given the opportunity to work as a drill instructor for six months and take the next bi-annual test in October 2010. Garcia failed that test, too, but was not forced to resign and continued to work in the boot camp until she was awarded her bid for another position outside the boot camp a month or two later, on December 19, 2010. Boyd also attached a letter dated May 5, 2011, indicating that one of her grievances had been granted.

In the body of her appeal, Boyd points out several errors in the Executive Director's dismissal. She denies that a promotion to lieutenant required a transfer back to DOC and states there was never a contingency clause in the settlement of her grievance stating it would not apply if she accepted a merit promotion to lieutenant. She states she never applied for a transfer back to boot camp, but instead applied for a posted vacancy for a lieutenant position in the boot camp. She states this vacancy had existed while she was still in the boot camp and at the time she was

promoted from sergeant to lieutenant, and questions why, when both the Employer and her union were aware of it, the position had not been offered to her. She denies Local 2226 told her to take the PAT, and then grieve, or that it gave her any advice on the matter. She states the Executive Director was wrong to state there were no PAT criteria for those over 59 when both Sgt. Scales (the first person in boot camp to reach 59) and she had, prior to their settlement, been required to perform a significantly reduced PAT of, for example, 1 or 2 sit-ups instead of 23, and 1 or 2 pushups instead of 16.

Charging Party claims that Lt. Bassett, who had accepted a merit promotion to lieutenant on March 25, 2012, was placed in the non-bid lieutenant position that she had previously bid for, but had been disqualified from, but that he had not been required to take a new PAT test after the one he had passed while still a sergeant. She claims this process was inconsistent with the collective bargaining agreement entered between Respondent and the Employer in a number of ways: 1) Bassett should have been in the rank of lieutenant before taking a PAT for a lieutenant position; 2) the bid for the lieutenant position should have been posted; 3) all with prior training for the position should have been able to apply; and 4) after the PAT is administered, selection should be based upon order of application and seniority. Boyd also states that Respondent's executive board member, Lt. Janson, was a lieutenant in the boot camp, had a personal interest in the case, and therefore had a conflict of interest. She states Janson had unsuccessfully attempted to file a grievance challenging the letter of agreement that had provided the exemption from the PAT for Sgt. Scales.

Charging Party argues Local 2226 should have at least held a meeting with the Employer to attempt to negotiate a settlement as Local 3692 had earlier done.

Analysis and decision

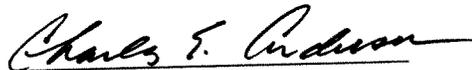
“A labor organization or its agents shall commit an unfair labor practice . . . in duty of fair representation cases only by intentional misconduct.” 5 ILCS 315/10(b)(1). To prove intentional misconduct, the Charging Party must first show that a union’s actions were intentional and directed at her. Murry and AFSCME, Local 1111, 14 PERI ¶ 3009 (IL LLRB 1998), aff’d, sub nom. Murry v. AFSCME, Local 1111, 305 Ill. App. 3d 627 (1st Dist. 1999). Second, she must show that action was retaliatory and occurred because of some past activity or animosity between the Charging Party and the union. Id. To establish the second element the Charging Party must show: (1) she engaged in activities likely to cause the animosity of the union; (2) the union was aware her activities; (3) she suffered an adverse representation action; and (4) the union had a discriminatory motive. Metro. Alliance of Police v. Ill. Labor Relations Bd., Local Panel, 345 Ill. App. 3d 579, 588-89 (1st Dist. 2003) (citing Robertson and AFSCME, Council 31, 18 PERI ¶ 2014 (IL SLRB 2002)). There must be a causal connection between the employee’s activities and the union’s discriminatory act. Id. at 589. It is not the Board’s role to second guess a union’s decision not to advance a grievance: 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.

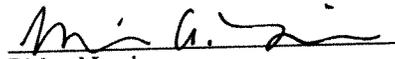
Charging Party’s recitation of errors in the Executive Director’s dismissal fails to demonstrate anything approaching this standard, nor does her assertion of other irregularities in the promotion process in that she fails to show that others, similarly situated, were treated differently. Furthermore, the fact that Janson may have had a personal interest in the issue in that he may have preferred that boot camp employees be able to pass the PAT is insufficient

without evidence of some animosity toward Boyd. We agree with the Executive Director's judgment that the allegations and arguments presented to us are insufficient to warrant issuance of a complaint for hearing, and for that reason we affirm the Executive Director's dismissal.

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 March 15, 2013; written decision issued in Chicago, Illinois on April 8, 2013.

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Respondent)	

DISMISSAL

On August 1, 2012, Charging Party, Beverly Boyd, filed a charge with the Local Panel of the Illinois Labor Relations Board (Board) in the above-captioned case, alleging that Respondent, American Federation of State, County, and Municipal Employees, Council 31, Local 2226 (AFSCME or Local 2226), violated Section 10(b) of the Illinois Public Labor Relations Act (Act), 5 ILCS 315 (2010), *as amended*. After an investigation conducted in accordance with Section 11 of the Act, I determined that the charge fails to raise an issue of law or fact sufficient to warrant a hearing and issue this dismissal for the reasons set forth below.

I. INVESTIGATORY FACTS AND CHARGING PARTY'S POSITION

At all times material, Boyd was a public employee within the meaning of Section 3(n) of the Act, employed by the County of Cook, Sheriff of Cook County (County or Employer or Sheriff), in the title or classification of Correctional Lieutenant.¹ 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 County of Cook, Sheriff of Cook County employees assigned to the

¹ On or about December 16, 2009, Boyd achieved a merit promotion from Correctional Sergeant to the rank of Correctional Lieutenant. As a Correctional Sergeant, Boyd was a member of AFSCME Local 3692; once she was promoted to Correctional Lieutenant, she became a member of AFSCME Local 2226.

Employer's Department of Corrections (DOC), including those in the title or classification of Correctional Lieutenant (Unit). At all times material, Boyd was a member of the Unit. The County is a public employer within the meaning of Section 3(o) of the Act and subject to the jurisdiction of the Local Panel of the Board pursuant to Section 5(b) thereof. AFSCME and the County are parties to a collective bargaining agreement (CBA), which provides for a grievance procedure culminating in arbitration.

On July 15, 1999, Boot Camp Executive Director, Patrick Durkin, under the authority of the Sheriff of Cook County, issued a general order notifying all sworn correctional personnel assigned to Boot Camp that they will be required to submit to a bi-annual physical fitness requalification/evaluation, or Physical Ability Test (PAT). Among the components of the test, the PAT required an employee to perform a 1.5 mile run, bent-leg sit-ups, and push-ups. Performance standards are graduated according to age and gender, with higher performance required of younger employees, and less stringent performance for those older, up to 59 years of age. A copy of the order does not show any requirement for employees over 59 years of age. An employee who fails to perform to set standards will be provided an opportunity within 90 days to re-qualify. If the employee cannot meet the standards, he/she will be re-assigned from Boot Camp to DOC.

In or around November 1981, Boyd began her career with the Employer as a Correctional Officer.² In 1996, Boyd was assigned to a newly formed unit, within DOC, to become known as "Boot Camp." In 2004, Boyd was promoted to Sergeant, retained her position in Boot Camp, and became a member of AFSCME Local 3692. In or around October 2006, because of a duty related injury, Boyd was transferred from Boot Camp to DOC. In or around 2009, Boyd and Sergeant Norman Scales requested to be transferred back to Boot Camp from DOC. Boot Camp

² Cook County Correctional Officers are currently represented by Teamsters Local 700.

Director John Harrington denied the transfers citing operational disruption. Boyd and Scales filed a grievance claiming two current Boot Camp instructors, who had recently transferred to Boot Camp, had lesser seniority. In October 2009, Sergeants' Local 3692 took the grievance to arbitration, and in June 2010, the Union prevailed and Boyd and Scales were awarded the transfer back to Boot Camp, effective July 26, 2010.

During this same period, in or around June and July 2010, AFSCME Local 3692 conducted meetings with Harrington, and Deputy Director Terrence Coughlin, to determine whether Boyd and Scales should be required to submit to the PAT before being transferred back to Boot Camp. The Union and Harrington agreed that neither Boyd nor Scales would be required to take the PAT prior to re-assignment to Boot Camp, in compliance with the arbitration award. However, this agreement was verbal and never put to paper. Boyd claims that Union representative John DiNicola, and Union stewards Sgt. Vernon Brandon, Sgt. Donne Santos, Sgt. Terry Bassett, and Sgt. Eric Pryzbycien were present and witnessed the agreement.

On or about March 22, 2011, Harrington issued a directive requiring all sworn staff to engage and pass the bi-annual PAT. The directive specified that there was no exemption for officers over the age of 59. Boyd is over 59 years of age. On or about April 1, 2011, Coughlin issued an order requiring Boyd and Scales to comply with the PAT, basing his order on Harrington's directive, which was at odds with the July 2010 verbal agreement between the Union, Harrington and Coughlin.

Beginning in May 2011, through September 2011, Boyd and Union representatives met with Executive Director of Re-entry and Diversion, Rashanda Carroll, to determine whether Boyd and Scales should be required to participate and pass the PAT. According to Boyd, on or about September 27, 2011, Carroll stated that Boyd and Scales would not be required to take the

test, and that they would be “grandfathered” into Boot Camp. Carroll emphasized that neither Boyd nor Scales would be tested, and that she wanted them both in Boot Camp.

In or around late 2011, Boyd was promoted to Lieutenant and became a member of AFSCME Local 2226, representing Correctional Lieutenants.³ Because of her promotion, Boyd was re-assigned from Boot Camp to DOC Division 11. On or about October 24, 2011, AFSCME and the Employer executed a side Letter of Agreement (LOA) indicating that only Scales would be exempt from PAT. In or around that same time, Boyd applied for transfer back to Boot Camp. On or about November 9 & 10, 2011, the Employer offered all applicants for assignment to Boot Camp, including Boyd, the opportunity to take and pass the PAT. Boyd notified AFSCME Lieutenants’ Local 2226 of the testing date and requested that a member of the local stand with her in order to explain why she was exempt from the PAT based on the July 2010 arbitration award and subsequent agreement to exempt Boyd and Scales. The Union asserts that it advised Boyd to take the PAT, because it was a lawful order, and then file a grievance afterward. The Union admits that after providing advice to Boyd to comply with the PAT requirement, it did not assign anyone from Local 2226 to accompany her. Boyd refused to take the PAT, and on or about November 15, 2011, Boyd received a letter from Harrington stating that she had been disqualified for the Boot Camp assignment because of her failure to take and pass the PAT.

On or about December 8, 2011, Boyd filed a grievance with AFSCME Local 2226, Chief Steward Charles Luna. On or about January 17, 2012, Luna requested that Local 2226’s executive board advance the grievance to arbitration. On or about February 1, 2012, AFSCME

³ Both Boyd and Scales were offered what AFSCME describes as a merit promotion to Lieutenant. It was understood that acceptance of the promotion required the transfer from Boot Camp to DOC. Scales declined the promotion, and was retained in Boot Camp.

informed Boyd that arbitration of her grievance would not be successful and therefore the Union would not advance it to arbitration.

Boyd claims that the refusal of the County to honor the July 2010 award stems from her previous disputes with the administration. Boyd's complaint with the Union is that it failed to do what it could to get the County to abide by the July 2010 award, and allow her to transfer to Boot Camp. Charging Party has also alleged that Local 2226 board member, Lieutenant Lawrence Janson, voted against taking Boyd's PAT grievance to arbitration. She claims bias on Janson's part because he also opposed the resolution of the grievance filed by Boyd and Scales in 2010, allowing exemption from PAT.

The Union agrees that the July 2010 arbitration award was specific to both Sgt. Boyd and Sgt. Scales, but only because at that time, they were both Sergeants. Further, Boyd essentially took herself out of the LOA memorializing an exemption from PAT by accepting the promotion to Lieutenant in late 2011. The Union denies the existence of any negative issues between Boyd and Janson.

II. DISCUSSION AND ANALYSIS

Section 10(b)(1) of the Act provides, 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.

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), affg 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 AFSCME intentionally took any action either designed to retaliate against Boyd or due to her status. In 2010, AFSCME Sergeants' Local 3296 successfully argued on Boyd's behalf attaining for her and Sgt. Scales exemption from the PAT. Following Boyd's promotion to Lieutenant, and her subsequent application to return to Boot Camp, Boyd requested assistance and guidance from AFSCME Lieutenants' Local 2226 with regard to the PAT. Lieutenants' Local 2226 properly advised her to comply with the examination requirement to the best of her ability, and upon completion, file the appropriate grievance. Boyd disregarded the advice of Local 2226 and was disqualified for assignment to Boot Camp. Boyd has made no showing that the Union treated her differently than other similarly situated employees.⁴

Similarly, Charging Party has made no showing that Union board member Janson was biased against her. Even if, as Boyd claims, Janson disagreed with the 2010 arbitration award

⁴ Boyd provided a statement from a Correctional Sergeant who stated that in April 2010 and again in October 2010 she was allowed to remain assigned to Boot Camp even though after taking the PAT, she failed to achieve the PAT standards. Another statement from a Correctional Sergeant claims that the PAT is discriminatory because it provides different standards based on age and gender, and it is not job related. However, these statements do not establish that the Union has treated Charging Party differently than other similarly situated employees.

and/or subsequent agreement to exempt Boyd and Scales from PAT, there has been no showing that he harbored a bias towards Boyd as a result. Further, there has been no showing that he made any statements or took any actions evidencing such a bias.

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

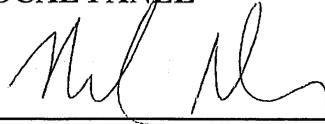
III. ORDER

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 19th day of December, 2012.

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



Melissa Mlynski, Executive Director

STATE OF ILLINOIS
ILLINOIS LABOR RELATIONS BOARD
LOCAL PANEL

Beverly Boyd,

Charging Party

and

American Federation of State, County and
Municipal Employees, Council 31,

Respondent

Case No. L-CB-13-009

DATE OF
MAILING: **December 19, 2012**

AFFIDAVIT OF SERVICE

I, Lori Novak, on oath, state that I have served the attached **DISMISSAL** issued in the above-captioned case on each of the parties listed herein below by depositing, before 1:30 p.m., on the date listed above, copies thereof in the United States mail pickup at One Natural Resources Way, Lower Level Mail Room, Springfield, Illinois, addressed as indicated and with postage prepaid for first class mail.

Beverly Boyd
2300 South Central Blvd
Chicago, IL 60623

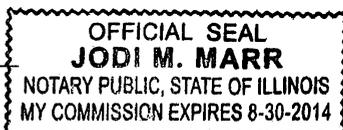
John DiNicola
Thomas Edstrom
AFSCME Council 31
29 N. Wacker Dr., Suite 800
Chicago, IL 60606

Lori Novak

Lori Novak

SUBSCRIBED and **SWORN** to
before me, **December 19, 2012**

Jodi M. Marr
NOTARY PUBLIC



STATE OF ILLINOIS
ILLINOIS LABOR RELATIONS BOARD
LOCAL PANEL

Beverly Boyd,

Charging Party

and

American Federation of State, County and
Municipal Employees, Council 31,

Respondent

Case No. L-CB-13-009

DATE OF
MAILING: **January 2, 2013**

AFFIDAVIT OF SERVICE

I, Lori Novak, on oath, state that I have served the attached **DISMISSAL** issued in the above-captioned case on each of the parties listed herein below by depositing, before 1:30 p.m., on the date listed above, copies thereof in the United States mail pickup at One Natural Resources Way, Lower Level Mail Room, Springfield, Illinois, addressed as indicated and with postage prepaid for first class mail.

John DiNicola
Thomas Edstrom
AFSCME Council 31
205 N. Michigan Ave., Ste. 2100
Chicago, IL 60601



Lori Novak

SUBSCRIBED and SWORN to
before me, **January 2, 2013**



NOTARY PUBLIC

