

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

Lesley Jones,)	
)	
Charging Party)	
)	
and)	Case No. L-CB-13-011
)	
Amalgamated Transit Union, Local 241,)	
)	
Respondent)	

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

On December 18, 2012, Executive Director Melissa Mlynski dismissed charges filed in the above-captioned case by Charging Party, Lesley Jones, against Respondent, Amalgamated Transit Union, Local 241, alleging Respondent had failed its duty of fair representation and thus violated Section 10(b)(1) of the Illinois Public Labor Relations Act, 5 ILCS 315/10(b)(1) (2010), in the manner in which it had handled a grievance relating to Jones' termination of employment. Charging Party timely filed an appeal pursuant to Section 1200.135 of the Board's Rules and Regulations, 80 Ill. Admin. Code Parts 1200 through 1240. Respondent has not filed a response.

Upon a review of the record and the appeal, we affirm the dismissal of the charges. Charging Party, a bus servicer, was terminated after injuring another employee while driving a bus on his employer's property. It was his third accident in the prior 12 months. Respondent decided not to pursue a grievance of the termination to arbitration. Charging Party points out aspects of the situation that he believes would have made a grievance meritorious, and also suggests Respondent disfavored bus servicers with bad driving records.

As the Executive Director notes, to prove intentional misconduct in an alleged breach of the duty to provide fair representation, the Charging Party must first show the union's actions were intentional and directed at him. Murry and AFSCME, Local 1111, 14 PERI ¶ 3009 (ILLRB 1998), *aff'd, sub nom. Murry v. AFSCME, Local 1111*, 305 Ill. App. 3d 627 (1st Dist. 1999). Second, he 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) he engaged in activities likely to cause the animosity of the union; (2) the union was aware his activities; (3) he 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). There must be a causal connection between the employee's activities and the union's discriminatory act. Id. at 589. 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.

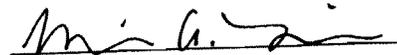
Charging Party suggests the Respondent was prejudiced against him because he, a bus servicer, had a bad driving record: two prior bus-on-bus accidents in the previous 12 months. Of course this same detail is very relevant to an assessment of the likelihood of prevailing in potential arbitration and tends to offset those aspects of his case that Charging Party thinks make it meritorious. Regardless of the extent to which this may be true, it is not the Board's role to evaluate the merits of a potential grievance; indeed, Section 6(b) of the Act precludes the Board from doing so. Therefore, in order to show inappropriate prejudice by his union, a charging party has to reference evidence of something beyond the relative merits of a potential grievance.

Jones has not done that here. For that reason, we affirm the Executive Director's dismissal of the charge.

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 April 16, 2013; written decision issued in Chicago, Illinois on May 30, 2013.

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LOCAL PANEL**

Lesley Jones,)	
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Charging Party)	
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and)	Case No. L-CB-13-011
)	
Amalgamated Transit Union, Local 241,)	
)	
Respondent)	

DISMISSAL

On August 30, 2012, Charging Party, Leslie Jones, filed a 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 (Local 241 or Union), violated Section 10(b) of the Illinois Public Labor Relations Act (Act), 5 ILCS 315 (2010), *as amended*. Following 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

At all times material, Jones was a public employee within the meaning of Section 3(n) of the Act, employed by the Chicago Transit Authority (CTA), in the title or classification of Bus Servicer. Respondent is a labor organization within the meaning of Section 3(i) of the Act, and the exclusive representative of a bargaining unit composed of CTA employees, including those in the title or classification of Bus Servicer (Unit). At all times material, Jones was a member of Local 241's bargaining unit. The CTA 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. The CTA and

Local 241 are parties to a collective bargaining agreement, which provides for a grievance procedure culminating in arbitration.

On or about January 9, 2009, the CTA terminated Jones' employment after it was determined that on January 3, 2009, he struck coworker Arnold Herard while operating a CTA bus on CTA property located at 7700 South Vincennes Avenue. The CTA's investigation of the incident produced a witness who testified in a written statement that he responded to cries for help after Herard was struck by the bus driven by Jones. On January 5, 2012, the CTA terminated Jones' employment after determining that Jones was at fault in the January 3rd accident, and Jones had been involved in two previous bus accidents within the six months preceding the January 3rd incident.¹

On January 26, 2009, Jones filed a grievance with the assistance of Local 241 board member, Gus Stevens. On April 4, 2011, Jones was allowed to present his grievance to the membership. Thereafter, assistant trustee Michael Simmons wrote to Jones advising Jones that the Union's membership voted to advance his grievance to arbitration, pending the review and approval by Local 241 attorneys. On September 26, 2011, Simmons again wrote to Jones, this time advising him that successful arbitration of his grievance appeared difficult. Jones was further advised that the circumstances underlying the grievance would be investigated by the Union's attorneys and a decision whether to arbitrate would be forthcoming. On June 19, 2012, Local 241 international trustee, Javier Perez, Jr., wrote to Jones and explained that the Union decided not to advance Jones' grievance to arbitration.

II. POSITION OF THE PARTIES

Charging Party asserts that the April 4, 2011, vote of the membership and the letter from Simmons led him to believe that his termination grievance was going to be arbitrated. The Union asserts that Jones was advised in April 2009, that based on the facts surrounding the January 3, 2009, accident

¹ Jones' previous bus accidents occurred on August 8, 2008 and November 1, 2008.

and the CTA's investigation, which included Jones' employment history, the Union would not take his grievance to arbitration. Notwithstanding the vote of the membership on April 4, 2011, the ultimate authority to advance Jones' grievance was with the Union attorneys, who, based on the facts at hand, exercised the Union's right under Section 6 of the Act, to refuse to process an unmeritorious grievance. On June 19, 2012, Jones was advised of the decision of the Union.

III. DISCUSSION AND ANALYSIS

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 Local 241 intentionally took any action either designed to retaliate against Jones or due to his status. Jones tendered nothing in support of his claim that the Union failed to do enough on his behalf. 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

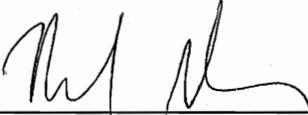
vindictiveness, discrimination, or enmity. Outerbridge and Chicago Fire Fighters Union, Local 2, 4 PERI ¶3024 (IL LLRB 1988); Parmer and Service Employees International Union, Local 1, 3 PERI ¶3008 (IL LLRB 1987). As there is no evidence indicating that the Union was so motivated, Charging Party has failed to present grounds upon which to issue a complaint for hearing.

IV. 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 18th day of December, 2012.

**STATE OF ILLINOIS
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LOCAL PANEL**



Melissa Mlynski, Executive Director