

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

Salvatore T. Zicarelli,)	
)	
Charging Party)	
)	
and)	Case No. L-CB-13-020
)	
International Brotherhood of Teamsters,)	
Local 700,)	
)	
Respondent)	

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

On September 17, 2013, Executive Director Melissa Mlynski dismissed a charge filed by Salvatore T. Zicarelli (Charging Party) on November 26, 2012,¹ which alleged that the International Brotherhood of Teamsters, Local 700 (Respondent or Local 700), engaged in unfair labor practices within the meaning of Section 10(b) of the Illinois Public Labor Relations Act, 5 ILCS 315 (2012).² The charge states that the Respondent and the Charging Party's employer conspired to deny the Charging Party the opportunity to testify at a grievance hearing on May 22, 2012.

¹ The Executive Director had earlier dismissed the charge as untimely, but in our decision issued July 19, 2013, we reversed that dismissal and remanded for further investigation. Salvatore T. Zicarelli and Int'l Bhd. of Teamsters Local 700, Case No. L-CB-020, 30 PERI ¶122 (IL LRB-LP 2013).

² In relevant part, Sections 10(b) of the Act provides as follows:

Sec. 10. Unfair labor practices.

(b) It shall be an unfair labor practice for a labor organization or its agents:

(1) to restrain or coerce public employees in the exercise of the rights guaranteed in this Act, provided,

iii. 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.

The Executive Director dismissed the charge on the basis that the charge failed to raise an issue of law or fact warranting a hearing after Charging Party failed to timely respond to a request for additional information by the Board's agent. She found the Charging Party had failed to provide any evidence to demonstrate intentional misconduct by Respondent as required to establish a violation of Section 10(b)(1).

On September 27, 2013, the Charging Party, represented by counsel, filed an appeal of the Executive Director's Dismissal, arguing that his counsel was unable to timely respond to the agent's request for additional information because he was involved in other litigation. He requested an extension of time within which to provide the information requested until October 4, 2013. The information had been due on September 6, 2013.

We deny Charging Party's request for additional time and affirm the dismissal. Section 1220.40(b)(1) of the Rules and Regulations of the Illinois Labor Relations Board, 80 Ill. Admin. Code §1220.40(b)(1), require a charging party to submit all evidence relevant to or in support of an unfair labor practice charge and we have interpreted that rule to allow the Executive Director to dismiss charges in the absence of such evidence. Eddie Cooper and City of Chicago, 20 PERI ¶138 (IL LRB-LP 2004); SEIU Local 880 (Kirk), 12 PERI ¶2006 (IL SLRB 1995), aff'd by unpub. order, 13 PERI ¶4008 (Ill. App. Ct., 4th Dist., 1996). Faced with a deadline to respond to the Board's agent's request for such evidence, we would expect a charging party represented by counsel either to comply or to seek an extension of time in advance of the deadline, not wait until three weeks after that deadline to seek additional time, and then to do so only after the consequence of dismissal for noncompliance is evident. That seems particularly true where, as here, the charge had been reinstated by prior Board action. While Section 1200.160 of our

rules,³ allow us to grant a variance or suspension of our rules under certain criteria, we find it inappropriate to do so here where the third criterion cannot be met because compliance with the request for information or a timely request for an extension of time would not “be unreasonable or unnecessarily burdensome.”

Having denied the belated request for an extension of time, and, based on our review of the record and the appeal seeing no reason for reversal, we affirm the Executive Director’s dismissal of the charge filed in this case.

BY THE LOCAL PANEL OF THE ILLINOIS LABOR RELATIONS BOARD

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

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

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

Decision made at the Local Panel’s public meeting in Chicago, Illinois on March 11, 2014; written decision issued in Chicago, Illinois on March 26, 2014.

³ Section 1200.160 provides:

The provisions of this Part or 80 Ill. Adm. Code 1210, 1220 or 1230 may be waived by the Board when it finds that:

- a) The provision from which the variance is granted is not statutorily mandated;
- b) No party will be injured by the granting of the variance; and
- c) The rule from which the variance is granted would, in the particular case, be unreasonable or unnecessarily burdensome.

80 Ill. Admin. Code §1200.160.

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**REMANDED INVESTIGATION
DISMISSAL**

On November 26, 2012, Charging Party, Salvatore T. Zicarelli, filed a charge with the Local Panel of the Illinois Labor Relations Board (Board) in the above-captioned case, alleging that Respondent, International Brotherhood of Teamsters, Local 700 (Union or Teamsters), violated Section 10(b) of the Illinois Public Labor Relations Act (Act), 5 ILCS 315 (2012), *as amended*. On March 28, 2013, I dismissed the above referenced charge as untimely. Charging Party filed a timely appeal of the dismissal. On July 19, 2013, the Board's Local Panel reversed the dismissal, found the charge was timely filed and remanded the charge for further investigation. Subsequent to the Board's direction, an investigation was conducted in accordance with Section 11 of the Act, and I determined that the charge fails to raise an issue of law or fact sufficient to warrant a hearing.

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 County of Cook, Sheriff of Cook

County employees, including those in the title or classification of Correctional Officer (Unit). The County of Cook and the Sheriff of Cook County (County or Employer) are public employers within the meaning of Section 3(o) of the Act and subject to the jurisdiction of the Local Panel of the Board pursuant to Sections 5(b) and 20(b) of the Act. At all times material, Charging Party is a public employee within the meaning of Section 3(n) of the Act, employed by Respondent in the title or classification of Correctional Officer, and at all times material, was a member of the Unit. The Union and Respondent are parties to a collective bargaining agreement (CBA) for the Unit which provides for a grievance procedure culminating in arbitration.

Between 2010 and 2012, Charging Party filed approximately 28 grievances over the use of, and accumulation of, compensatory time. On or before May 22, 2012, several of the grievances had been settled, but the Union alleged that the County failed to abide by the settlement agreements. The Union opted to advance to arbitration the remaining unsettled grievances and to seek enforcement of those previous settlements which it claimed the County failed to honor.

While the grievances were winding their way through the process, Charging Party filed a complaint in federal court, Case No. 11-C-4909. Among the claims made in his suit, Charging Party alleged that the Employer discriminated against him on the basis of race, sex, and age. The complaint also alleged that the Employer retaliated against him because of the many grievances he filed.

In the instant case, Charging Party claims that on May 22, 2012, at the grievance hearing before Arbitrator Brian E. Reynolds, some sort of conspiracy existed between the Union, the County, and the Arbitrator to deny him his civil right to provide testimony at his grievance hearing. He asserts that upon arrival, he was excluded from a conference between the Union, the County, and the Arbitrator. When the conference was over, the Union told him that his

testimony would not be taken that day and that the grievance hearing would be postponed because of the potential to prejudice his suit in federal court. Charging Party contends that by participating in the meeting with the Employer and the Arbitrator and agreeing to delay resolution of his grievances, the Union failed in its duty to provide proper representation.

With regard to the previously resolved grievances, during the May 22 meeting with the Arbitrator, the Union argued that the settlements were enforceable and that the County must grant all previously agreed-to remedies. The Arbitrator agreed, and issued awards affirming the previously agreed-to remedies. It was also agreed that a hearing on the remaining grievances would be postponed so as not to compromise or prejudice Charging Party's case in federal court.¹

Following receipt of the Board's directive to re-investigate this charge, on August 30, 2013, the Board agent wrote to Charging Party's attorney and requested that he provide additional information in support of the charge by September 6, 2013. Charging Party's attorney acknowledged receipt of the request and confirmed that he would respond by that date. As of the date of this report, Charging Party has failed to comply with the Board agent's request for information to support the charge. The Board agent also contacted the Union for its position in this matter. The Union responded maintaining that it did not violate the Act.

II. DISCUSSION AND ANALYSIS

Section 10(b)(1) of the Act provides "that a labor organization or its agents shall commit an unfair labor practice . . . in duty of fair representation cases only by intentional misconduct in

¹ On August 6, 2013, George M. Marovich, United States District Judge, Northern District of Illinois, issued a Memorandum Opinion and Order in Case No. 11 C 4909. In the order, Judge Marovich responds to, and grants the County's motion for summary judgment on each allegation in Zicarelli's complaint. With regard to the allegation of discrimination or disparate treatment based on sex, race or age, the Court found no evidence. With regard to the allegation of retaliation for filing grievances, the Court found that Zicarelli did not suffer a "materially adverse" employment action. Upon receipt of Judge Marovich's order, the Union has renewed its effort at arbitration, and is awaiting response from the County.

representing employees under this Act.” Because of the intentional misconduct standard, demonstration of a breach of the duty to provide fair representation, and a violation of Section 10(b)(1), requires a charging party to “prove by a preponderance of the evidence that: (1) the union’s conduct was intentional, invidious and directed at charging party; and (2) the union’s intentional action occurred because of and in retaliation for some past activity by the employee or because of the employee’s status (such as race, gender, or national origin), or animosity between the employee and the union’s representatives (such as that based upon personal conflict or the employee’s dissident union practices).” Metro. Alliance of Police v. Ill. Labor Relations Bd., Local Panel, 345 Ill. App. 3d 579, 588 (1st Dist. 2003). To prove unlawful discrimination, which is necessary to establish the second element of a Section 10(b)(1) violation, a charging party must demonstrate, by a preponderance of evidence, that: (1) 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 animosity; (2) the union was aware of the employee’s activities and/or status; (3) there was an adverse representation action taken by the union; and (4) the union took an adverse action against the employee for discriminatory reasons, i.e. because of animus towards the employee’s activities or status. Id. at 588-89.

Other than Charging Party’s initial complaint that he was not provided an opportunity to testify at the arbitration hearing for the unresolved grievances, he has not provided any evidence to demonstrate intentional misconduct as required by Section 10(b)(1) of the Act. Moreover, Charging Party has failed to comply with the Board agent’s request to provide information to support the charge, and without such evidence, a complaint for hearing cannot be issued.

Section 1220.40(b)(1) of the Rules and Regulations of the Illinois Labor Relations Board (Rules), require that a charging party shall submit to the Board or its agent all evidence relevant

to or in support of the charge. This rule has been interpreted to allow the Executive Director to dismiss cases where the charging party has not complied with a request for evidence in support of the charge, or has not responded to a request for a written withdrawal. Eddie Cooper and City of Chicago, 20 PERI ¶138 (ILRB L.P. 2004); SEIU Local 880(Kirk, et al.), 12 PERI ¶2006 (IL SLRB 1995) aff'd by unpub. order, 13 PERI ¶4008 (1996).

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 17th day of September, 2013.

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Melissa Mlynski, Executive Director