

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

Anthony Mayes,)	
)	
Charging Party)	
)	
and)	Case No. L-CB-13-025
)	
American Federation of State, County)	
and Municipal Employees, Council 31,)	
)	
Respondent)	

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

On March 21, 2013, Executive Director Melissa Mlynski dismissed charges filed in the above-captioned case by Charging Party, Anthony Mayes, against Respondent, American Federation of State, County and Municipal Employees, Council 31, 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 grievances relating to Mayes' demotion. 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, and Respondent has filed a response.

Upon a review of the record and the appeal, we affirm the dismissal of the charges. Charging Party was demoted by his employer, the City of Chicago, after a desk audit, and believes the manner in which the Respondent handled grievances related to that demotion and the way Respondent communicated with him violated Respondent's duty of fair representation, thus violating Section 10(b)(1). As the Executive Director notes, violation of the duty of fair

representation requires intentional misconduct. That is a requirement explicitly stated in Section 10(b)(1): “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) (2010). It was added by a 1989 amendment to the Act. Public Act 86-412, §1 (eff. Aug. 30, 1989). See Murry v. AFSCME, Local 1111, 305 Ill. App. 3d 627, 632-33 (1st Dist. 1999) (explaining this history).¹

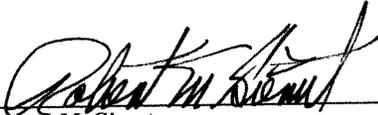
Because of the intentional misconduct standard, demonstration of a breach of the duty to provide fair representation and a violation of Section 10(b)(1), requires a charging party to “prove by a preponderance of the evidence that: (1) the union’s conduct was intentional, invidious and directed at him; 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[e] by a preponderance of the 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

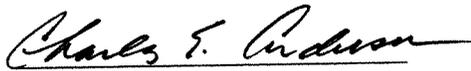
¹ This standard originated in Hoffman v. Lonza, Inc., 658 F.2d 519 (7th Cir. 1981), a case cited by the Executive Director. As Charging Party points out, Hoffman is no longer applied by the court which originated that standard, Ooley v. Schwitzer Div., Household Mfg. Inc., 961 F.2d 1293, 1302 (7th Cir. 1992), but our need to apply the intentional misconduct standard arises directly from Section 10(b)(1), not through application of federal precedent in Hoffman.

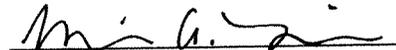
union; and (4) the union took an adverse action against the employee for discriminatory reasons, *i.e.*, because of animus toward the employee's activities or status." Id. at 588-89.

The Executive Director applied the correct legal standard here, and finding no evidence or even specific allegations in the record before us that would be capable of meeting that standard, we are compelled to 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 June 13, 2013; written decision issued in Chicago, Illinois on June 26, 2013.

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Anthony Mayes,)	
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Charging Party)	
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American Federation of State, County and Municipal Employees, Council 31,)	
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Respondent)	

DISMISSAL

On January 2, 2013, Anthony Mayes (Charging Party) filed a charge in Case No. L-CB-13-025 with the Local Panel of the Illinois Labor Relations Board (Board), in which he alleged that the American Federation of State, County and Municipal Employees, Council 31 (Respondent) engaged in unfair labor practices within the meaning of Section 10(b) of the Illinois Public Labor Relations Act, 5 ILCS 315 (2010), *as amended* (Act). 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 following reasons.

I. INVESTIGATORY FACTS AND POSITION OF THE CHARGING PARTY

The City of Chicago (Employer) employs the Charging Party. He is included in a bargaining unit represented by the Respondent. The Employer and Respondent are parties to a collective bargaining agreement (Agreement) setting out terms and conditions of employment for employees in the Unit, including the Charging Party.

Prior to January 2012, the Charging Party held a position in the title of Senior Program Analyst. On October 17, 2011, the Employer advised him that it was demoting him to the title of

Accounting Technician II, effective January 1, 2012. The available evidence suggests that the Employer took this action after performing a job audit on Mayes' position. It also appears that the change involved a substantial loss of pay to the Charging Party.

On October 25, 2011, Mayes initiated a grievance over the demotion. On November 14, the Charging Party received notice that the Respondent had advanced the grievance to the third level of the contractual process. During the course of these events, the Employer apparently reconsidered its decision to make the change effective January 1, 2012; rather, it appears that Mayes continued to work in the Analyst title and commensurate level of pay until June, 2012. The Charging Party maintained contact with the Respondent's representatives throughout this period. Mayes forwarded the Board copies of an email from AFSCME representative Leslie Carter indicating that if the Employer cut Mayes' pay, the Union would "gladly" submit the matter to arbitration.

As noted above, the Employer reclassified the Charging Party and decreased his salary on or about June 1, 2012. Mayes advised the Respondent of these circumstances on June 14, 2012, and again requested information concerning further action on his grievance. It also appears that either he and/or a local union representative initiated a second grievance on June 28, 2012, concerning the issue. The document supplied by the Charging Party shows a signature in the space provided for a local union steward or representative. By email dated June 28, 2012, AFSCME local representative advised the Charging Party that the Employer had denied the latter grievance as untimely and lacking merit. It is not clear whether the Charging Party understood that the information in the email concerned the second grievance.

In a letter to Carter dated October 24, 2012, Mayes requested that the Respondent explain its failure to advance the grievance to arbitration. Carter responded by email dated October 30,

2012. Therein, Carter indicated that the union had “repeatedly asked” for information from Mayes concerning the Employer’s claim that Mayes lacked the abilities to perform the duties of his former title. It also makes reference to a July 3 email indicating that “the grievance would be withdrawn.” The Charging Party makes no reference to a July 3 email in his outline of the events connected to the charge.

Finally, the email indicated that “there was no second grievance filed by the local on this matter.” Upon receipt of this message, Mayes once again asked for an explanation of the Respondent’s decision to withdraw the grievance. Therein, he asks Carter to “not refer to the July 3 email.” Mayes asserts that the Respondent did not reply to this communication.

The Charging Party argues that the Respondent’s failure to advance the grievance to arbitration, after assuring him otherwise, is a breach of the duty to represent him. The Charging Party offers no evidence or assertion of any personal bias or ongoing issue between him and the Respondent’s representatives, apart from that outlined in the charge. The Charging Party indicated that he knew of no other employee who was “intentionally disregarded” by the Respondent.

II. 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) of the Act. 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). See also, American Federation of State, County and Municipal Employees, Local 2912 (McGloin), 17 PERI ¶3001 (IL LRB LP 2000); Amalgamated Transit Union, Local 308 (McLaurin), 16 PERI ¶3015 (IL LLRB 2000).

I note that there appears to be some lack of clarity concerning the totality of the communications between the Charging Party and Respondent. The Charging Party asserts that the Respondent never sought additional information from him, while Carter's last communication makes reference to "repeated" requests for information. Further, as noted above, the Respondent makes reference to a July 3 email concerning the status of his grievance, and the Charging Party makes no reference to it at all in his filings with the Board. Oddly, Mayes' last communication with the Respondent requests that the Carter not "refer" to that email. This statement suggests that Mayes was aware of the email, as opposed to not having received it.

Regardless of this dispute concerning the circumstances, the Charging Party failed to provide any substantial evidence concerning bias or animus on the part of any of the Respondent's agents. As such, there is no evidence that the Respondent's conduct involved any improper motivation sufficient to raise an issue for hearing. Likewise, there is no substantial evidence of discriminatory treatment in this case. In sum, Mayes bases the instant charge almost exclusively on Carter's assurance concerning arbitration of the grievance. While he clearly

believes that Respondent was bound to follow through on that assurance, there is no support for the proposition that this conduct in itself raises an issue for hearing.

III. ORDER

Accordingly, the instant charge is hereby dismissed. The Charging Party may appeal this dismissal to the Board any time within 10 days of service hereof. Such appeal must be in writing, contain the case caption and number, and must be addressed to the General Counsel of the Illinois Labor Relations Board, 160 North LaSalle Street, Suite S-400, Chicago, Illinois, 60601-3103. The appeal must contain detailed reasons in support thereof, and the Charging Party must provide it to all other persons or organizations involved in this case at the same time it 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 the appeal has been provided to them. The appeal will not be considered without this statement. If no appeal is received within the time specified, this dismissal will be final.

Issued in Springfield, Illinois, this 21st day of March, 2013.

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Melissa Mlynski, Executive Director