STATE OF ILLINOIS
ILLINOIS LABOR RELATIONS BOARD
LOCAL PANEL

Marketa Kristofek,	)	
	)	
Charging Party	)	
	)	
and	)	Case No. L-CB-13-026
	)	
Service Employees International Union, Local 73,	)	
	)	
	)	
Respondent	)	

DECISION AND ORDER OF THE ILLINOIS LABOR RELATIONS BOARD LOCAL PANEL

On February 13, 2013, Executive Director Melissa Mlynski dismissed charges filed in the above-captioned case by Marketa Kristofek against Service Employees International Union, Local 73, alleging it 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 handled a grievance relating to Kristofek's termination of employment.

Charging Party timely filed an appeal of the dismissal pursuant to Section 1200.135 of the Board's Rules and Regulations, 80 Ill. Admin. Code Parts 1200 through 1240, and Respondent filed a response. In fact, due to a delay in the delivery of a portion of her appeal by the U.S. Postal Service and our General Counsel's inquiry into that circumstance, Charging Party twice filed slightly different appeals, each accompanied by slightly different supporting documents. Charging Party also filed an additional set of documents in support of her appeal, and subsequently attempted to amend the dismissed charges by submitting still more, newly

discovered documents in the process. In addition to its response, Respondent moved to strike everything submitted by Charging Party outside the time frame set for filing an appeal by Section 1200.135.

While we find merit to Respondent's argument that Section 1200.135 does not provide for the filing of supporting documents outside the time frame for filing appeals and recognize both the potential concern for the procedural right of respondents to respond to charging parties' submissions as well as our own ability to efficiently manage our docket, in this particular instance we deny the motion to strike. In the interests of administrative efficiency, we will not only consider the documents Charging Party filed in support of her appeal(s), but we will also consider the documents Charging Party submitted with her tendered motion to amend the charges. We cannot, in fact, allow an amendment of charges which have already been dismissed, but we note the substance of the documents concern the charges currently under review rather than some separate matter, and consequently we also cannot consider the motion to amend as a new set of charges. Our leniency in this regard arises from the confusion which followed the delayed receipt of a portion of Charging Party's initial appeal and Charging Party's pro se status and should not be construed as likely to recur under other sets of circumstances. Charging parties should submit their appeals or exceptions together with a supporting brief and, where relevant, all supporting documents within the time specified by Section 1200.135.

Having decided to consider all of the material submitted by the Charging Party in the context of this appeal, we nevertheless find it appropriate to affirm the dismissal of the charges. While Charging Party's complaints are numerous, they focus on the perceived inadequacy of the results of the grievance, Respondent's role as representative of the bargaining unit rather than as Charging Party's personal representative, and the alleged inadequacy of the Respondent's

counsel's explanation of the nature of its representation. In these and all other matters raised by Charging Party we fail to see evidence of any action intentionally taken against the Charging Party's interest out of animosity toward her or because of anything she had done or because of her status, as would be necessary to demonstrate a violation of Section 10(b)(1) of the Act. 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). For this reason, we affirm the dismissal of the charges.

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 May 7, 2013; written decision issued in Chicago, Illinois on May 30, 2013.

STATE OF ILLINOIS
ILLINOIS LABOR RELATIONS BOARD
LOCAL PANEL

Marketa Kristofek,	)	
	)	
Charging Party	)	
	)	
and	)	Case No. L-CB-13-026
	)	
Service Employees International Union, Local 73,	)	
	)	
	)	
Respondent	)	

DISMISSAL

On January 2, 2013, Charging Party, Marketa Kristofek, filed a charge with the Local Panel of the Illinois Labor Relations Board (Board) in the above-captioned case, alleging that Respondent, Service Employees International Union, Local 73 (Union or Local 73) 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 fact or law sufficient to warrant a hearing and hereby 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 composed of certain of City of Chicago (Employer or City) employees, known as Public Safety Unit 2 (Unit), including those in the title or job classification of Aviation Security Officer (ASO). The City is a public employer within the meaning of Section 3(o) of the Act. Local 73 and the City are parties to a collective bargaining agreement (CBA) for the Unit which provides a grievance procedure culminating in arbitration. Charging Party is a public employee

within the meaning of Section 3(n) of the Act, employed by the City as a ASO and a member of the Unit.

Kristofek, a 55 year old African-American female, has been employed as an ASO by the City for approximately 22 years. At some point in or around April 2011, the City's Inspector General (IG) initiated an internal investigation following an anonymous allegation that Kristofek lacked the required certification as a police officer, which is issued by the Illinois Law Enforcement Training and Standards Board (LETSB). [1] The IG investigation determined that in fact she was not certified by LETSB when hired in 1990. Kristofek does not dispute the IG findings.

Kristofek had previously been hired and employed by the Chicago Housing Authority (CHA) in the job title or classification of Police Officer from March 1990 to June 1990. During that period, Kristofek received police training at the Chicago Police Training Academy, but failed to successfully complete the program because she failed the LEOTB (Law Enforcement Officers Training Board) certification test three times. According to current LETSB rules, a probationary police officer who fails to pass the certification exam three times is forever barred from taking the exam again with the same law enforcement agency, and the candidate is to be terminated. If the person seeks employment with another

[1] It should be noted that Kristofek provided a job description for ASO (Title Code 4210) dating from November 1987. Among the requirements of the title, an ASO "...must meet Illinois Law Enforcement Officers' Training Board (LEOTB)" requirements. Over the years, LEOTB evolved into LETSB.

In a later edition of the job description from 1996, an ASO must possess the minimum qualifications as follows: "One year of professional security guard, police or military police experience, OR an Associates' Degree in Law Enforcement, Criminal Justice, or a directly related field, OR a certificate from a military, federal, state or local law enforcement officers' training program. A high school diploma or GED is required."

In November 2011, the City again revised the title's minimum education, training, and experience qualifications. An ASO must demonstrate two years of professional security guard, police or military police experience, OR at least 60 semester hours or 90 quarter hours of credit from an accredited college or university, OR a certificate from a military, federal, state or local law enforcement officers' training program. Additionally, the job description states that NEW (emphasis added) employees must successfully complete the minimum standards set forth by LETSB and be certified as a law enforcement officer.

law enforcement agency, he/she must repeat the entire training program with the new agency, and pass the certification exam. In or around June 1990, the CHA police department was disbanded.

Following the disbanding of the CHA police, in October 1990, Kristofek was appointed as a probationary ASO following an interview by Assistant City Commissioner for Airport Security, James Joyce. According to Kristofek, she admitted to failing the tests and not being LEOTB certified during the interview, but contends that apparently Joyce indicated otherwise on the City's Hiring Criteria Rating Form, by noting Kristofek's past military police training and CHA training. In February 2012, after the IG investigation determined that Kristofek was not LETSB certified, the City terminated her employment.

II. POSITIONS OF THE PARTIES

In the instant charge, Kristofek alleges that Local 73 has not represented her interests and has not made any effort to reclaim her employment with the City as an ASO. Local 73 asserts otherwise, contending that upon Kristofek's termination, Local 73 filed a grievance on her behalf, alleging that her termination based on the alleged lack of LETSB certification was improper. The Union advanced the grievance to arbitration, and on July 31, 2012, Arbitrator Brian Clauss sustained the grievance and awarded Kristofek reinstatement to her former position as an ASO and recovery of lost wages, benefits and seniority. Clauss further ordered that Kristofek must contact LETSB and begin efforts to secure her certification, even if she is required to begin police training anew.

In the interim, because of her termination on February 3, 2012, shortly thereafter, Kristofek contacted the Municipal Employees' Annuity and Benefit Fund (Fund) and applied to receive monthly payment of pension benefits. On or about December 2012, following the receipt of notice of the arbitrator's award to include reinstatement as an ASO, the Fund ceased payment of the pension. In order to continue payment, the Fund required Kristofek to provide a statement asserting that she had no

intention of returning to work. Kristofek contends that Local 73 is not doing enough to either achieve reinstatement as an ASO, or secure continued payment of the monthly pension benefit, giving rise to the filing of this charge.

Respondent asserts that since the arbitrator's award, Local 73 has been diligently working to get Kristofek reinstated as an ASO. During these efforts, Local 73 discovered that because Kristofek failed the LETSB certification three times while employed and trained by the Chicago police department, she is barred from taking the certification exam through Chicago as a City of Chicago employee. However, according to LETSB rules, Kristofek can only take the exam after receiving retraining through another law enforcement agency. To date, Kristofek has not taken the additional steps to secure LETSB certification as required by the arbitrator's award.

Several issues have arisen because of Kristofek's termination, grievance, and reinstatement award. At the age of 55, it is unlikely that Kristofek would be hired by any other law enforcement agency, since most have an upper age limit of 35. Additionally, Kristofek has applied for and, at least partially, received payments from the pension Fund. If she was to achieve certification and return to work, she would have to pay back money paid to her from the Fund. If she failed to pay back the money, her future pension would be reduced. Finally, Kristofek has not indicated her full commitment to return as an ASO. Nevertheless, Local 73 is continuing its efforts on her behalf. Local 73 is engaged in an effort to reinstate Kristofek as an ASO, even seeking to have her certification "grandfathered", or, failing that, seeking to obtain placement/employment within the City in a title providing equivalent salary, benefits and seniority. With regard to the pension payment fiasco, Local 73 has been advising Kristofek of her options depending on whether she can obtain reinstatement and certification, whether she can be placed in an equivalent title, or whether she can continue to accept pension.

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).

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).

In the instant case, there is no evidence that Local 73 intentionally took any action either designed to retaliate against Kristofek due to her status, or because of personal animosity, or because of dissident union activity. In fact, Local 73 filed, advanced to arbitration and won her grievance, and continues in its efforts to obtain the best outcome for Kristofek. There is no evidence to support a

violation of the Act based on intentional misconduct, personal animosity, or past activity. As there is no evidence indicating that the Union violated the Act, Kristofek 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 13th day of February, 2013.

STATE OF ILLINOIS
ILLINOIS LABOR RELATIONS BOARD
LOCAL PANEL

Melissa Mlynski
Executive Director