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

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| Tony Damarjian, | ) | |
| | ) | |
| Charging Party | ) | |
| | ) | |
| and | ) | Case No. L-CB-13-031 |
| | ) | |
| Service Employees International Union, Local 73, | ) | |
| | ) | |
| | ) | |
| Respondent | ) | |

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

On August 27, 2013, Executive Director Melissa Mlynski dismissed the unfair labor practice charge filed by Tony Damarjian (Charging Party) in the above-captioned case. The Charging Party alleged that the Service Employees International Union, Local 73, (Respondent) engaged in unfair labor practices within the meaning of Section 10(b) of the Illinois Public Labor Relations Act, 5 ILCS 315/10(b) (2012), by failing to pursue a grievance to arbitration.

The Charging Party filed a timely appeal of the Executive Director's Dismissal pursuant to Section 1200.135(a) of the Board's Rules and Regulations, 80 Ill. Admin. Code §1200.135(a), and Respondent filed a response. After reviewing the record, appeal and response we uphold the Executive Director's Dismissal.

Damarjian had been a detention aide with the City of Chicago, but then was hired as an aviation security officer. To accept that position, he began 16 weeks of training at the police academy. However, he was dismissed from the police academy after failing a test necessary to graduate. He grieved that he was dismissed from the academy without just cause, and the

grievance advanced to the fourth step, but Respondent's pre-arbitration panel recommended it not proceed to arbitration. Damarjian appealed, but Respondent denied his appeal. Charging Party states Respondent is prejudiced against him because he had previously asked it to file a grievance when he lost vacation time during the job switch.

Noting the intentional misconduct standard for allegations of 10(b)(1) violations and Section 6(d) statement that nothing in the Act "shall be construed to limit an exclusive representative's right to exercise its discretion to refuse to process grievances of employees that are unmeritorious," the Executive Director dismissed the charge. Citing both very recent and very early Board precedent, she stated the Board will not second guess a union's administrative decision regarding grievance handling. The dismissal notes Damarjian was given contact information for other agencies having jurisdiction over some of the issues Damarjian had raised.

In his appeal, Damarjian states that his mother is Iraqi and his father Palestinian and asserts that he was called a derogatory term for Arab by other cadets at the academy, many of whom had a military background. He discusses many questionable aspects regarding his termination from the police academy, and now also complains that the Department of Aviation is improperly blocking his attempt to re-enter the police academy in hopes of filling one of the re-opened vacancies at that department. Damarjian indicates that the SEIU eventually obtained his test scores, and told him they decreased each time. The City had told him they had increased each time, but never enough to pass. He claims the discrepancy shows SEIU outright lied in an attempt to assert a basis for not proceeding to arbitration. In his appeal, Damarjian also complains that SEIU did not help him get unpaid earned action time relating to Good Fridays in 2011 and 2012.

In his appeal, Damarjian also complains about treatment by this agency. He states the Board's "intake clerk" refused to include the City of Chicago as a respondent on his charge. He also asserts that he and his father and uncle "were forced to leave [the Board's office] with essential information for the investigator to use which clearly showed the actions of the union (SEIU) and their attitude to be dishonest and untrustworthy." He complained that a Board investigator took minimal time before issuing a letter requesting the submission of more information, to which he responded by submitting the information previously offered the intake clerk. He said he told the investigator to include the City of Chicago in the charge. He also complained about the first investigator to the Executive Director who assigned the matter to second investigator. He complains that the second investigator failed to keep the Executive Director in the loop, though he had twice sent her a complete set of documents.

In his appeal, Damarjian asks that the City of Chicago be included in the complaint, and states that the City of Chicago should be held accountable for violating his rights under the contract it signed with SEIU.

SEIU has filed a response, noting that it helped Damarjian retain his former position as a detention aide, but was unsuccessful in attempting to have the City allow Damarjian a fourth opportunity to pass the test necessary to graduate from the police academy. It notes it allowed Damarjian two opportunities to convince it to take the matter to arbitration, but based on the three failing test scores (each of which was apparently scored by a different individual) felt it could not prevail.

The appeal does not warrant reversal of the dismissal. With respect to the City's alleged failure to adhere to the terms of the collective bargaining agreement, the Board does not enforce the terms of the contract. That is a matter for the grievance and arbitration process provided in

the contract. It was appropriate not to name the City of Chicago as a respondent on a charge; the charge would necessarily have had to be dismissed anyway.

With respect to the charge against Respondent, SEIU declined to process the grievance through arbitration after checking on Damarjian's police academy test scores. There is inconsistency between what the City apparently told him (they went up, but not enough to pass) and what SEIU told him (they went down, and were never high enough to pass), but both versions indicate arbitration would have been fruitless because Damarjian was not going to pass the police academy in any event. More significantly, as noted by the Executive Director, the Board does not second guess a union's decision not to proceed to arbitration. Benny Eberhardt and Int'l Bhd. of Teamsters, Local 700, 29 PERI ¶77 (IL LRB-SP 2012); Amalgamated Transit Union, 2 PERI ¶3021 (IL LLRB 1986). Even if one ignores the particular context of a determination whether to proceed to grievance and looks more broadly at the union's actions in light of the intentional misconduct standard, the most one could possibly find is that, although it had a legitimate reason for not pursuing the grievance, the union lied about the declining test scores, possibly to provide additional cover for its otherwise legitimate action. This is insufficient to show the union's actions adverse to Damarjian were intentionally motivated out of animosity against him. We note there is no allegation of ethnic prejudice on the part of the union or its agents. Nor is there any allegation of conduct Damarjian had engaged in that was likely to annoy the union to such an extent that it would feel the need for retribution. The mere fact that he asked for a grievance over vacation pay is insufficient to cause such animosity without some additional evidence that it had, in fact, provoked such animosity.

In summary, we see no reason to reverse the Executive Director's dismissal of the charge against the union, and no basis for finding error in staff's failure to initiate a hopeless charge against the employer. We affirm the dismissal.

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 December 17, 2013; written decision issued at Chicago, Illinois, January 31, 2014.

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|---|---|---|
| Tony Damarjian, | ) | |
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| Charging Party | ) | |
| | ) | |
| and | ) | Case No. L-CB-13-031 |
| | ) | |
| Service Employees International Union, Local 73, | ) | |
| | ) | |
| | ) | |
| Respondent | ) | |

**DISMISSAL**

On February 19, 2013, Tony Damarjian (Charging Party) filed a charge with the Local Panel of the Illinois Labor Relations Board (Board), in Case No. L-CB-13-031, in which he alleged that the Service Employees International Union, Local 73 (Union or Respondent) engaged in unfair labor practices within the meaning of Section 10(b) of the Illinois Public Labor Relations Act, 5 ILCS 315 (2012), *as amended* (Act). On July 1, 2013, the Charging Party amended the charge. 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 hereby issue this dismissal for the reasons stated below.

## I. INVESTIGATORY FACTS

Prior to April 13, 2012, Damarjian worked for the City of Chicago as a Detention Aide. On April 13, 2012, Charging Party was hired by the City of Chicago Department of Aviation (Employer or City) as an Aviation Security Officer. As such, Damarjian was part of a bargaining unit represented by the Respondent. On May 7, 2012, Damarjian reported to the Police Academy for 16 weeks of training. On August 21, 2012, the City dismissed Damarjian from the

Police Academy.[1] On September 4, 2012, the Respondent filed grievance GV-121154 alleging that the City violated Articles 1.1, 6.1 and 21 by dismissing Damarjian without adhering to the just cause standard of the collective bargaining agreement. On October 18, 2012, this grievance was advanced to the third step of the grievance process. Ultimately, the grievance was advanced to the fourth step of the grievance process.

On January 2, 2013, the Respondent's pre-arbitration panel recommended that Damarjian's grievance not proceed to arbitration. On January 6, 2013, Damarjian appealed this decision. On February 8, 2013, the Respondent heard Damarjian's appeal. On May 3, 2013, the Respondent denied Damarjian's appeal.++

## II. POSITION OF THE CHARGING PARTY

The Charging Party claims that the Respondent violated the Act because it did not represent him in the grievance process and did not pursue his termination grievance to arbitration. The Charging Party also alleges that the Respondent never really filed a grievance on his behalf. The Charging Party claims that he believes the Respondent is prejudiced against him because, in the past, he asked them to file a grievance on his behalf to recover the vacation time he lost when he switched jobs.[2]

## III. 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

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[1] The available evidence indicates that after his dismissal from the Police Academy, Charging Party returned to his previous employment with the City. It is unclear whether the Union had any role in securing this position for the Charging Party.

[2] It should be noted that during the course of the investigation into this matter, Charging Party indicated that he had intended to file a charge against both the Union and the City of Chicago. Charging Party claims that he explained this to the Board agent who assisted him in filing the instant charge. A review of Board records indicates that Charging Party never did file a charge against the City of Chicago. It should also be noted that during the course of the investigation into the instant charge, and the circumstances related to his termination from the City of Chicago, there was no evidence that the City of Chicago terminated the Charging Party because of, or in retaliation for, his engaging in protected activity under the Act.

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 III. 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.

Here, the Charging Party claims that Respondent did not adequately represent him in the grievance process because he previously asked them to file a grievance on his behalf to recover the vacation time he lost when he switched jobs. However, the Charging Party does not make a connection between this past action and the Respondent's decision to not proceed to arbitration on the termination grievance. The Charging Party does not indicate which of Respondent's employees were angered by his request to file a vacation time grievance, whether these

employees had any role in declining to advance his termination grievance to arbitration or why his request to file a vacation time grievance would anger the Respondent in the first place.

As for the Respondent's decision not to pursue the termination grievance to arbitration, a union is not required to pursue every grievance through every step available in the grievance process. Section 6(d) of the Act states that nothing in the Act "shall be construed to limit an exclusive representative's right to exercise its discretion to refuse to process grievances of employees that are unmeritorious". Accordingly, a union must be accorded substantial discretion in deciding whether, and to what extent, a particular grievance should be pursued. Unless there is compelling evidence of intentional misconduct, the Board will not second guess a union's administrative decision regarding grievance handling. See Benny Eberhardt and International Brotherhood of Teamsters, Local 700, 29 PERI ¶77 (ILRB-SP 2012); Amalgamated Transit Union, 2 PERI ¶3021 (IL LLRB 1986). No such evidence was presented in this case.[3]

## IV. ORDER

Accordingly, the instant charge is 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

[3] During the investigation of this charge, Charging Party raised numerous claims that are outside the jurisdiction of the Board, including a claim that his discharge from the City of Chicago may have been motivated by race, a claim that the City of Chicago was refusing to let Charging Party access his personnel file, and a claim related to the loss of accrued vacation time. The Board agent assigned to this case gave the Charging Party the contact information for the governmental agencies that may have jurisdiction over these matters.

be considered without this statement. If no appeal is received within the time specified, this dismissal will be final.

**Issued in Springfield, Illinois, this 27th day of August, 2013.**

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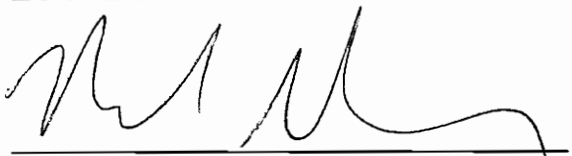

**Melissa Mlynski, Executive Director**