STATE OF ILLINOIS
ILLINOIS LABOR RELATIONS BOARD
LOCAL PANEL

Sharon Washington,	)	
	)	
Charging Party	)	
	)	
and	)	Case No. L-CB-13-032
	)	
American Federation of State, County and Municipal Employees, Council 31,	)	
	)	
Respondent	)	

DECISION AND ORDER OF THE ILLINOIS LABOR RELATIONS BOARD LOCAL PANEL

On August 23, 2013, Executive Director Melissa Mlynski dismissed the unfair labor practice charge filed by Sharon Washington (Charging Party) in the above-captioned case. The Charging Party 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 315/10(b) (2012), by not processing a grievance aggressively enough because of her past conflict with the executive vice-preseident of AFSCME Local 1111.

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). Respondent filed no response. After reviewing the record and appeal we uphold the Executive Director's Dismissal.

The charge arises from Charging Party's return to work at Provident Hospital, a facility of her employer, the Cook County Health and Hospital System. Upon her return from medical

leave on October 2, 2012, Charging Party received conflicting information about her employer's willingness to accommodate work restrictions. On December 18, she was told she would be removed from work until her employer conducted a review of her restrictions, and on December 24 she was placed on medical leave. She filed a grievance on January 23, 2013, and it had advanced to step three by February 20, 2013. She filed the instant unfair labor practice charge on March 1, 2013. Subsequently, the parties met on April 10, 2013, to resolve her accommodation request. On June 4, 2013, her employer approved her accommodation request, and by June 10, 2013, she was back to work.

Respondent's position statement indicates that it had earlier processed grievances on Charging Party's behalf (regarding assignment of duties), that it was unaware she had filed the January 23 grievance until it had reached the third step hearing on April 10, that it then participated in the process despite Charging Party's protests, and that the grievance was successfully resolved and Charging Party retained her position.

The Executive Director noted that the intentional misconduct standard applied to allegations of a violation of Section 10(b)(1). Finding no evidence that anyone at AFSCME had delayed or mishandled the grievance, or that conflict with the executive vice-president had any bearing on the manner in which AFSCME processed Charging Party's grievance, the Executive Director concluded that Charging Party could not demonstrate a violation of the Act.

In her appeal, Charging Party, represented by counsel, asserts that AFSCME had not filed the grievance on her behalf, she had filed her own grievance. She further asserted that a union steward was present at the April 8 grievance hearing, but merely stated he was "just present," that he said nothing on Charging Party's behalf, and that he had no reply when asked what AFSCME had done on her behalf when it found she was being taken off duty on December 24.

Charging Party further asserted that AFSCME failed to adequately represent her when it allowed her to be returned to her same department under the same site manager who had previously denied her restrictions. Charging Party states this shows AFSCME "did not aggressively process the Charging Party's grievance."

Attached to her appeal was a copy of the grievance filed by Charging Party on January 23, 2013, as well as a letter Charging Party wrote dated February 4, 2013 and addressed to "Department of Unfair Labor Practices." In the letter, Charging Party indicates that she reported to security that moneys were missing from the pharmacy at Provident, and that following that event, agents of her employer threatened her. She sought union representation against two such agents, including a Ms. Richardson whose administrative assistant was Carmen Goodloe, the vice-president of AFSCME Local 1111. Goodloe gave her a list of all the union stewards who could represent her, and one of these, Michelle Agnew, filed a grievance on her behalf on August 8, presumably 2012, and advanced it to the second step. The meeting scheduled for August 15 was canceled as the employer's labor relations person was "inattentive" to Charging Party's issues. Subsequently, Goodloe relieved steward Agnew of her duties as a steward, purportedly because she had represented Charging Party. Charging Party indicated that other stewards have since failed to respond to her calls and she has had to file her own grievances. Charging Party stated that it was Ms. Richardson, whose administrative assistant is union vice-president Goodloe, who had initially accepted her medical restrictions, then took her off duty on December 24.

As the Board has previously noted, Section 10(b)(1) specifically states "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." As the Executive Director pointed out in her dismissal, this means a charging party must prove 1) that the union's conduct was intentional, invidious and directed at the charging party and 2) this intentional conduct 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). The second element, unlawful discrimination, requires 1) that the employee has engaged in activities tending to engender the animosity of union agents or that her mere status (race, gender, religion, national origin) may have caused animosity; 2) the union was aware of the employee's activities or status; 3) adverse representation action was taken by the union; and 4) animus led to the adverse action. Id. at 588-89.

Insufficient aggressiveness is not the equivalent of adverse action. Under the facts as alleged by Charging Party, the union was of little to no help to Charging Party, but Charging Party was competent enough to obtain the relief she sought on her own. Even crediting Charging Party's version of the degree of union participation in the process, we cannot see that the intentional misconduct standard would be met, and for that reason we affirm the Executive Director's dismissal of the charge.

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 November 5, 2013; written decision issued at Chicago, Illinois, January 31, 2014.

STATE OF ILLINOIS
ILLINOIS LABOR RELATIONS BOARD
LOCAL PANEL

Sharon Washington, Charging Party and American Federation of State, County, and Municipal Employees, Council 31, Respondent	))))))))))	Case No. L-CB-13-032

DISMISSAL

On March 1, 2013, Charging Party, Sharon Washington, filed the above captioned charge with the Local Panel of the Illinois Labor Relations Board, alleging that Respondent, American Federation of State, County, and Municipal Employees, Council 31 (AFSCME or Union), engaged in unfair labor practices within the meaning of Section 10(b) of the Illinois Public Labor Relations Act (Act), 5 ILCS 315 (2010), *as amended.* Following an investigation conducted pursuant to 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 issue this dismissal for the reasons set forth below.

I. INVESTIGATORY FACTS AND POSITION OF THE CHARGING PARTY

Respondent is a labor organization within the meaning of Section 3(i) of the Act, and the exclusive representative of a bargaining unit (Unit) composed of certain County of Cook (County or Employer) employees, including those employees in the job title or classification of Administrative Assistant II (AA II), employed by the County's Health and Hospital System, at Provident Hospital. The County is a public employer within the meaning of Section 3(o) of the Act. Charging Party is a public employee within the meaning of Section 3(n) of the Act,

employed by the County at Provident Hospital as an AA II, and is a member of the Unit. The County and Respondent are parties to a collective bargaining agreement (CBA) which provides a grievance procedure culminating in arbitration.

Charging Party has been employed by the County's Health and Hospital System, at Provident Hospital, for over 20 years. She contends that she has an excellent employment history. Between on or about September 20, 2012, through October 2, 2012, Charging Party was on disability leave. During that period, she was hospitalized, suffering from Sarcoidosis, a life-long illness affecting her respiratory system. Upon release from treatment, her doctors allowed her to return to work with restrictions.[1]

Charging Party claims that upon her return to work, on or about October 2, 2102, the County provided conflicting information concerning her ability to return to work with restrictions. Charging Party's immediate supervisor, Donald McDaniels, would not accept her restrictions. However, the County's Director of Accounts and Patient Access, Dorothy Richardson, approved the restrictions and allowed Charging Party to return. On December 18, 2012, Charging Party was summoned to the County's Employee Health Services Department and told that she was to be removed from duty until the County conducted a review of her restrictions. On or about December 24, 2012, Charging Party was advised that the County would no longer accept Charging Party's employment with restrictions. Charging Party was placed on medical leave as of December 24, 2012. On January 23, 2013, Charging Party filed a grievance alleging the County violated several sections of the CBA, the Americans with Disabilities Act (ADA), and the Family Medical Leave Act (FMLA). On February 20, 2013, the grievance was advanced to step three of the grievance procedure.

[1] Respondent has been advised that Charging Party's restrictions are permanent, and include the following: Avoid patient contact; cannot work near crowds; working environment cannot be too hot, too cold, too humid, and cannot be in an area where janitorial staff uses harsh cleaning or disinfectant chemicals.

As noted above, the Charging Party filed the instant charge on March 1, 2013. Charging Party alleges that Respondent has not aggressively processed her grievance because of a past conflict with AFSCME Local 1111 Executive Vice President, Carmen Willis-Goodloe.

The available evidence indicates that on or about April 10, 2013, Charging Party, AFSCME, and the County met to discuss a resolution of Charging Party's accommodation request. On June 4, 2013, the County approved Charging Party's accommodation request, effective June 10, 2013, returning her to Provident Hospital and her duties as an AA II.

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 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.

The evidence obtained indicates that, contrary to Charging Party's unsupported assertions that Respondent did not aggressively process her grievance, the Union engaged the County in discussions following the third step meeting and resolved the grievance in favor of Charging Party. There is no evidence that anyone in the Union delayed or otherwise mishandled Charging Party's grievance or that Charging Party's alleged conflict with Willis-Goodloe had any bearing on the manner in which AFSCME processed this grievance. Absent such evidence, Charging Party has not demonstrated a violation of the Act.

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 23rd day of August, 2013.

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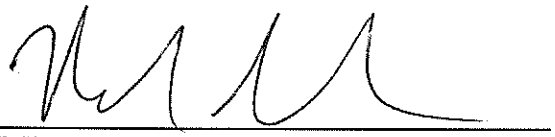

Melissa Mlynski
Executive Director