

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

Ricky Anderson,)	
)	
Charging Party)	
)	
and)	Case No. L-CB-13-036
)	
Amalgamated Transit Union, Local 241,)	
)	
Respondent)	

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

On June 26, 2013, Executive Director Melissa Mlynski dismissed a charge filed by Ricky Anderson (Charging Party) on April 23, 2013, which alleged that the Amalgamated Transit Union Local 241 (Respondent or Local 241), engaged in unfair labor practices within the meaning of Section 10(b) of the Illinois Public Labor Relations Act (Act), 5 ILCS 315/10(b) (2012),¹ by not processing a grievance he had filed.

Anderson's grievance concerned his employer's use of mechanics to perform the duties of bus servicemen, the impact of this practice on seniority rights, and its potential impact during a then-anticipated lay off. The grievance languished for some time, and the local's executive board ultimately determined not to proceed with it. Anderson communicated with the international, and appealed the executive board's decision to the local membership, but a quorum

¹ In relevant part, Sections 10(b) of the Act provides:

- 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, ... 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.

of the membership was not present and pursuant to rules of the local, the decision of the executive board stood.

Anderson filed his unfair labor practice charge on April 23, 2013, but the executive director dismissed it because she found no evidence of intentional misconduct. Anderson appeals, indicating some of the executive director's factual assertions are in error. The Executive Director indicated there had been a lay off in 2008, when there had merely been anticipation of a major lay off, avoided by last-minute legislation for mass transit funding. She also indicated some incorrect dates for Anderson's correspondence with the international. Anderson also indicates that information he received from the international about his right to appeal to the membership, and then appeal to the international, conflicted with information he received from the local about need for a quorum for the membership to take action.

To prove intentional misconduct, the Charging Party must first show the Union's actions were intentional and directed at him. 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). Second, he must show that action was retaliatory and occurred because of some past activity or animosity between the Charging Party and the Union. Id. To establish the second element, the Charging Party must show: (1) he engaged in activities likely to cause the animosity of the Union; (2) the Union was aware his activities; (3) he suffered an adverse representation action; and (4) the Union had a discriminatory motive. Metro. Alliance of Police v. ILRB, Local Panel, 345 Ill. App. 3d 579, 588-89 (1st Dist. 2003), citing AFSCME, Council 31 (Robertson), 18 PERI ¶ 2014 (IL SLRB 2002). There must be a causal connection between the employee's activities and the union's discriminatory act. Id. at 589. A violation of Section 10(b)(1) requires a charging party to establish both that the union's conduct was intentional and directed toward

charging party *and* that this occurred in retaliation for charging party's actions or because of charging party's status or animosity between charging party and his representatives. It is not the Board's role to second guess a union's decision not to advance a grievance.

With respect to his need to demonstrate intentional misconduct, Anderson refers to a statement purportedly made by an assistant business agent to one of the union representatives that "the grievance is going nowhere." We find this statement, by itself, insufficient to meet the intentional misconduct standard. The statement is as likely to reflect an assessment that the grievance lacked merit as it is to demonstrate intent to thwart a grievance with merit. At least without some indication of animosity toward Anderson, it really does not evidence misconduct. As to the confusion regarding appeal procedures within the union, those are internal procedures with which the Board does not become involved. Amalgamated Transit Union Local 241 (Karl Cook), No. L-CB-12-050, 29 PERI ¶ 115 (IL LRB-LP 2012).

We find that correction of any mistaken assertions of fact in the dismissal would not cure the lack of sufficient articulation of misconduct in the charge. For that reason, 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 February 13, 2014; written decision issued at Chicago, Illinois, February 28, 2014.

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DISMISSAL

On April 23, 2013, Charging Party, Ricky Anderson, filed a charge with the Local Panel of the Illinois Labor Relations Board (Board) in the above-captioned case, alleging that Respondent, Amalgamated Transit Union, Local 241 (Union or Local 241) 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*. After an investigation conducted pursuant to 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 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 comprised of Chicago Transit Authority (Employer or CTA) employees in the job titles or classifications of Bus Servicer and Bus Mechanic (Unit). The CTA is a public employer within the meaning of Section 3(o) of the Act. The Employer and Respondent are parties to a collective bargaining agreement (CBA) which provides a grievance procedure culminating in arbitration. Anderson is a public employee within the meaning of Section 3(n) of the Act, employed by the CTA as a Bus Mechanic, and a member of the unit.

In or around October 2008, the CTA laid-off a number of its Bus Mechanics. In December of 2008, the CTA offered the Laid-off mechanics to be hired back, but in the job title or classification of Bus Servicers. In or around February 2010, Anderson became aware of the hire-back offer, and after determining it affected nearly 60 former mechanics, he filed a collective grievance affecting laid-off Bus Mechanics, alleging that the CTA hired or transferred Bus Servicers to fill vacated positions created by the lay-off of Bus Mechanics. He contends that this action violated unit members' seniority bumping rights. On October 20, 2010, the Union assigned Grievance No. #10-0919 for investigation.

On or before October 26, 2010, Anderson wrote to Amalgamated Transit Union, International president, Larry Hanley, advising him of the CTA alleged violation of the seniority article of the CBA. In response to Anderson's letter, Hanley wrote then Local 241 business agent, Darrell Jefferson addressing Anderson's concerns, and asking that it conduct an investigation of Anderson's grievance.

On November 22, 2010, Local 241 wrote to Anderson advising him that the Union's executive board voted to not take any further action on the grievance, but offered him an opportunity to appeal the Union's decision to the membership at the next meeting on January 3, 2011. On that date, there was no quorum to conduct any Union business, the Union again determined that it would not arbitrate Anderson's grievance. On February 3, 2011, Anderson again wrote to Hanley advising him of the action of Local 241. Hanley advised him to appeal the decision. On May 25, 2011, the Union wrote to Anderson advising him that the executive board's grievance committee had reviewed his grievance, and, pending a further review and approval by the Union's attorneys, would advance the grievance to arbitration.

On or about September 15, 2011, Local 241 was placed under trusteeship by the international union, and Local 241 executive board was replaced with ATU International Trustees, Marcellus Barnes and Javier Perez. The trustees conducted a review of Local 241 business, and determined that several hundred grievances had not been resolved, Anderson's among them. On April 30, 2012, Perez wrote Anderson to advise him that his grievance would be reviewed by the Union attorneys and a determination would be made concerning its worthiness for arbitration. Again, Anderson wrote to Hanley complaining of the local's processing of the grievance. Hanley, again, advised Anderson that the grievance must be handled locally. On May 17, 2012, in an effort to keep the issue alive, Anderson filed a second grievance, No. 12-0524, this time listing more than 130 mechanics affected by the CTA policy that began in 2008. Perez responded to the grievance on the same date, informing Anderson that it is under review.

On April 5, 2013, Perez notified Anderson explaining that the Union attorneys at Jacobs, Burns, Orlove, and Hernandez, determined that the initial grievance, No. #10-0919, would be withdrawn and no further action would be taken.

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 Ill. App. 3d 579, 588 (1st Dist. 2003). To prove unlawful discrimination, 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.

In this case, there is no evidence that Local 241 intentionally took any action either designed to retaliate against Anderson or the other mechanics affected by the CTA hire-back policy, or due to their status. Under Section 6(d) of the Act, the exclusive representative has a wide range of discretion in contract interpretation and 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 the Act, 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). As there is no evidence indicating that the Union was so motivated, Anderson 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 26th day of June, 2013.

**STATE OF ILLINOIS
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LOCAL PANEL**



**Melissa Mlynski
Executive Director**