STATE OF ILLINOIS
ILLINOIS LABOR RELATIONS BOARD
LOCAL PANEL

Basharath Ali Khan,	)	
	)	
Charging Party	)	
	)	
and	)	Case No. L-CB-13-037
	)	
American Federation of State, County and Municipal Employees, Council 31,	)	
	)	
Respondent	)	

DECISION AND ORDER OF THE ILLINOIS LABOR RELATIONS BOARD LOCAL PANEL

On July 25, 2013, Executive Director Melissa Mlynski dismissed the unfair labor practice charge filed by Basharath Ali Khan (Charging Party) in the above-referenced 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) when Respondent declined to take Charging Party's grievance on his discharge 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). Respondent filed no response. After reviewing the record and appeal we uphold the Executive Director's 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 October 10, 2013; written decision issued at Chicago, Illinois, October 24, 2013.

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DISMISSAL

On April 24, 2013, Charging Party, Basharath Ali Khan, filed a charge with the Local Panel of the Illinois Labor Relations Board (Board) in the above-captioned case, alleging that Respondent, American Federation of State, County, and Municipal Employees, Council 31, (Union or AFSCME), violated 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

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 certain County of Cook (County or Employer) employees, including those in the title or job classification of Emergency Room Clerk V (Unit). The County is a public employer within the meaning of Section 3(o) of the Act. Respondent and the County are parties to a collective bargaining agreement (CBA) for the Unit which provides a grievance procedure culminating in arbitration. Prior to being terminated,

Charging Party was a public employee within the meaning of Section 3(n) of the Act, employed by the County as an Emergency Room Clerk V, and a member of the unit.

On or about September 11, 2012, the Employer terminated Charging Party's employment as an Emergency Room Clerk V. The Employer alleged that Khan violated several rules involving patient, employee, and visitor abuse, as well as gross insubordination, and negligence in the performance of his duties. Following Khan's termination, a grievance was filed challenging the Employer's decision.[1]

On November 26, 2012, the Union grievance committee met to review the Employer's allegations and justification for Khan's termination. On January 25, 2013, following that review, AFSCME wrote to Khan advising him that the grievance committee determined that the grievance lacked merit, and the Union would not pursue it further. On February 2, 2013, Khan appealed the Union's decision. Citing several personal health issues, and ethnic bias at the hands of his supervisors, Khan pleaded with the Union to review his case and requested that it move his grievance to arbitration. On March 4, 2013, AFSCME staff representative, Ade Alagbala, wrote to Khan advising him that upon review of the grievance file and the Employer's witness statements, it again determined that the grievance lacked merit and would not be advanced to arbitration. On March 13, 2013, Khan wrote to AFSCME director, Henry Bayer, asking that he intercede on his behalf and move his grievance to arbitration. After receiving no response from Bayer, Khan filed the instant charge.

[1] Following a telephone interview with the Board agent, Khan provided several items detailing disciplinary issues, which Khan believes were placed in his personnel file. Khan asserts the accusations are false and are evidence of the Employer's calculated intent to terminate his employment. For example, on June 1, 2012, Khan's supervisor accused him of overextending his break and docked him 20 minutes from his pay. On April 20, 2012, Khan was issued a verbal reprimand after his supervisor accused Khan of eating a patient's food. On March 19 & 20, 2011, Khan was accused of being insubordinate to a supervisor, failure to register patients, unprofessional behavior and being AWOL from his unit for more than one hour. On February 11, 2010, Khan refused to follow supervisory instructions to report to employee health after Khan reported suffering from a personal illness.

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.

In this case, there is no evidence that AFSCME intentionally took any action either designed to retaliate against Khan or due to his status. The available evidence indicates that the grievance committee chose not to pursue his termination grievance because they determined that the grievance lacked merit. Section 6(d) of the Act states that nothing in the Act "shall be

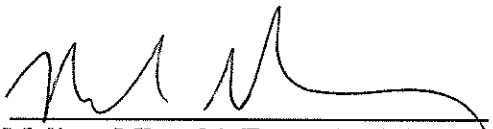
construed to limit an exclusive representative's right to exercise its discretion to refuse to process grievances of employees that are unmeritorious." Accordingly, a union must be accorded substantial discretion in deciding whether, and to what extent, a particular grievance should be pursued. Unless 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 instance.

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. 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 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, the dismissal will be final.

Issued in Springfield, Illinois, this 25th day of July, 2013.

STATE OF ILLINOIS
ILLINOIS LABOR RELATIONS BOARD
LOCAL PANEL



Melissa Mlynski, Executive Director