

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

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| Dontay Brassel, |) | |
| |) | |
| Charging Party |) | |
| |) | |
| and |) | Case No. L-CB-14-014 |
| |) | |
| International Brotherhood of Teamsters, |) | |
| Local 700, |) | |
| |) | |
| Respondent |) | |

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

On February 25, 2014, Executive Director Melissa Mlynski dismissed an unfair labor practice charge filed by Charging Party Dontay Brassel against Respondent International Brotherhood of Teamsters, Local 700. The charge alleged that Respondent had violated Section 10(b) of the Illinois Public Labor Relations Act, 5 ILCS 315/10(b) (2012), by failing to file or proceed with a grievance over the rebidding of shifts that allegedly violated a collective bargaining agreement and bumped Brassel, a truck driver, from his previous shift.

After the charge was filed, a Board agent investigating the matter requested additional information from Charging Party. Charging Party responded by asking the Board agent to obtain the information from his employer, the City of Chicago, and by submitting a copy of his union representative's letter of resignation from the union which he deemed relevant to his theory that the representative had a personal conflict with him. The Executive Director dismissed the charge, finding no evidence of animosity by the union against Charging Party and noting that under Section 6 of the Act, 5 ILCS 315/6 (2012), unions have a wide range of discretion with

respect to whether and how to process grievances. She also noted with respect to Charging Party's request that the Board agent obtain from his employer the information the agent deemed necessary, that it is the Charging Party that bears the burden of presenting sufficient information to warrant issuance of a complaint.

Charging Party filed a timely appeal of the Dismissal pursuant to Section 1200.135 of the Board's Rules and Regulations, 80 Ill. Admin. Code Parts 1200 through 1240.¹ He primarily argues that the Board agent erred in failing to subpoena information from his employer as he had requested. This argument is without merit. While Section 11(b) of the Act, 5 ILCS 315/11(b) (2012), grants the Board the authority to issue subpoenas, see Harbin v. Local 744, Int'l Bhd. of Teamsters, 198 Ill. App. 3d 788 (1st Dist. 1990); North Shore Sanitary Dist. of Lake Cnty. v. Ill. State Labor Relations Bd., 195 Ill. App. 3d 744, (1st Dist. 1990), our regulations limit this power to periods *following* the issuance of a complaint.² It is incumbent upon the Charging Party to supply sufficient information to warrant the Board's issuance of a complaint.

Charging Party also argues that his union representative refused to do his job because the representative believed the union to be incompetent and that the union president had refused to process a grievance over the rebidding of shifts "without any criteria or reason." We note that neither of these assertions, even if they proved to be true (a point we do not address), could meet the intentional misconduct standard for a violation of Section 10(b)(1)'s duty of fair representation.

¹ On the same date she dismissed these charges, the Executive Director dismissed charges Brassel had filed against his employer in Case No. S-CA-14-031. It is not entirely clear whether Brassel intended to appeal from both dismissals, but we are treating his correspondence that way and are issuing a separate decision in that case.

² "Following the issuance of a complaint for hearing or a notice of representation hearing, *the Board*, upon the request of an Administrative Law Judge or upon the written application of a party, *shall have the power to issue subpoenas* for witnesses and subpoenas for documents." 80 Ill. Admin. Code §1200.90 (emphasis in original, denoting quotation from the Act).

To prove intentional misconduct, a charging party must first show his 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) his 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. Here, Brassel has established neither. It is not the Board's role to second guess a union's decision not to advance a grievance, 5 ILCS 315/10(d) (2012), and the Executive Director properly dismissed Brassel's charge against the Union.

The dismissal of the charge is affirmed.

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 May 13, 2014; written decision issued in Chicago, Illinois on June 12, 2014.

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DISMISSAL

On October 19, 2013, Dontay Brassel (Charging Party or Brassel) filed a charge in Case No. L-CB-14-014 with the Local Panel of the Illinois Labor Relations Board (Board), in which he alleged that the International Brotherhood of Teamsters, Local 700 (Respondent or Union) 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). 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 issue this dismissal for the following reasons.

I. INVESTIGATORY FACTS AND POSITION OF THE CHARGING PARTY

Respondent is the exclusive representative of a bargaining unit (Unit) comprised of certain employees employed by the City of Chicago Department of Streets and Sanitation (Employer). At all times material, the Charging Party was employed by the Employer under the title of Motor Truck Driver, and a member of the Unit. The Charging Party alleges that the

Respondent violated the Act when it failed to process his grievance, in or about August of 2013, regarding the Employer's decision to transfer Brassel to a different work shift.¹

As background, Brassel was bumped from his shift in August of 2013. Brassel states that he contacted his Union representative, Greg Ortiz, on or about August 12, 2013, regarding Brassel's desire to file a grievance concerning the shift bump. Brassel claims Ortiz agreed to receive all of Brassel's information in the appropriate grievance format. On or about August 15, 2013, Brassel states that MTD Foreman, Mike Kafka, requested that Brassel sign a voluntary transfer request to coincide with the Employer's decision. After he declined, Brassel states that he contacted Ortiz again and told him about this latest request from the Employer. Brassel alleges that Ortiz told him that he did not have a grievance and the issue was moot due to the fact that Brassel was being moved. After Brassel protested Ortiz's comment, he told Ortiz that he already initiated his grievance by his step 1 oral conversation with Superintendent Tommy Johnson. Brassel told Ortiz that he wanted to proceed with the grievance and that the Employer was retaliating against him. Brassel claims Ortiz replied by stating that he was tired, was going home and for Brassel to call him the next day.

Brassel states that he was approached again by Kafka to sign the voluntary request form, on or about August 16, 2013. Brassel declined again. On the same day, Brassel contacted Ortiz to discuss this second request from the Employer. Brassel alleges that Ortiz spoke with Union President Becky Strezechowski who told Ortiz that Brassel did not have a grievance and that the Union would not file or process Brassel's information as a grievance.

Brassel asserts that Ortiz never told him that his information lacked merit or that his grievance was not valid, but Ortiz would not accept any additional information. Subsequently,

¹ On October 19, 2013, the Charging Party also filed a charge against the Employer, in Case No. L-CA-14-031, for transferring him to a different work shift.

Brassel expressed his dissatisfaction and stated that he would file a charge with the Labor Board. Brassel claims that Ortiz told him that he would contact Strezechowksi again about the issue and Brassel should call Ortiz back on August 17, 2013, because there was still time to file the grievance.

Brassel contacted Ortiz on August 17, 2013 and alleges that Ortiz again reiterated Strezechowski's refusal to file the grievance. Brassel claims that Ortiz expressed frustration about the Union and its incompetence. To this point, Brassel states that he sought relief from the Board because he felt betrayed by his Union.

By letter dated October 25, 2013, the Board agent asked Brassel to provide any evidence of intentional misconduct practiced by the Union in violation of his rights under the Act. In response, the Charging Party told the Board agent to request specific information and documents, from the Employer, which were pertinent to the charge. In addition, Brassel also requested that the Board agent request a copy of Ortiz's resignation letter, tendered on or about October 1, 2013, from the Union.²

Lastly, Brassel states that Ortiz's resignation from his position as a business agent for the Union illustrates his willful discrimination against Brassel in not advancing the grievance. Brassel states that after he told Ortiz he would file a charge with the Board, Ortiz stated that he was quitting and did not care. Brassel claims that this shows Ortiz's personal conflict with him and a failure to represent him.

² Brassel states that the Board agent has the responsibility to request this information under the Illinois Compiled Statutes and the Act. Brassel also states that Section 1200.90 of the Board's Rules and Regulations requires the Board agent to request this information. However, this rule provides: "[f]ollowing the issuance of a complaint for hearing..., the Board, upon the request of an Administrative Law Judge or upon written application of a party, shall have the power to issue subpoenas for witnesses and subpoenas for documents." 80 Ill. Admin. Code § 1200.90. (Emphasis added.)

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, 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 the instant case, the Charging Party failed to provide evidence that Ortiz, or any other agent of the Respondent, had a personal bias or some other motive to treat Charging Party differently than other members of the Unit. If anything, the statements allegedly made by Ortiz

show his own displeasure with his position and the Union, but are not indicative of animosity or personal conflict with Brassel. The Union refused to process a grievance on Charging Party's behalf, but under Section 6(d) of the Act, the exclusive representative has a wide range of discretion in grievance handling. The Board has previously held that 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). There is no evidence indicating that the Union was so motivated in this case.

Furthermore, Charging Party's request for the Board agent to obtain additional information from the Employer and the Union puts the responsibility of establishing an issue of law or fact for hearing on the Board agent, when the responsibility should be on the Charging Party. In this case, Brassel did not submit sufficient evidence to raise an issue for hearing.

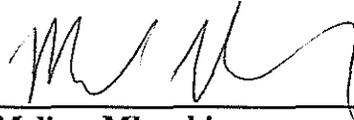
III. ORDER

Accordingly, the instant charge is hereby dismissed. The Charging Party may appeal this dismissal to the Board any time within 10 calendar days of service hereof. Such appeal must be in writing, contain the case caption and numbers 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

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

Issued in Springfield, Illinois, this 25th day of February, 2014.

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A handwritten signature in black ink, appearing to read 'M Mlynski', is written above a solid horizontal line.

**Melissa Mlynski
Executive Director**