

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

Debra Larkins,)	
)	
Charging Party)	
)	Case Nos.
and)	L-CB-14-030
)	L-CB-14-034 &
Amalgamated Transit Union, Local 241,)	L-CB-14-035
)	
Respondent)	

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

On August 20, 2014, Executive Director Melissa Mlynski issued a Dismissal, dismissing three charges filed by Debra Larkins (Charging Party) against her union, the Amalgamated Transit Union, Local 241 (Union Respondent), in Case Nos. L-CB-14-030, L-CB-14-034 and L-CB-14-035. Charging Party filed a timely appeal of the Executive Director's dismissals pursuant to Section 1200.135(a) of the Illinois Labor Relations Board's Rules, 80 Ill. Admin. Code § 1200.135(a). Union Respondent did not file a response. After reviewing the appeal and the record, we affirm the Executive Director's Dismissal for the reasons articulated in that document.

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 18, 2014; written decision issued in Chicago, Illinois on December 30, 2014.

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

Debra Larkins,

Charging Party

and

Amalgamated Transit Union, Local 241,

Respondent

Case Nos. L-CB-14-030
L-CB-14-034
L-CB-14-035

DISMISSAL

On May 2, 2014, Charging Party, Debra Larkins, filed a charge with the Local Panel of the Illinois Labor Relations Board (Board) in Case No. L-CB-14-030 alleging that Respondent, Amalgamated Transit Union (Union or ATU), violated Section 10(b)(1) of the Illinois Public Labor Relations Act, 5 ILCS 315 (2012), as amended (Act). On May 30, 2014, Charging Party filed two additional unfair labor practice charges in Case Nos. L-CB-14-034 and L-CB-14-035, alleging violations of Section 10(b)(1) of the Act. After an investigation conducted in accordance with Section 11 of the Act, I determined that the charges fail 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

At all times material, Larkins has been a public employee within the meaning of Section 3(n) of the Act, employed by the Chicago Transit Authority (CTA) as a Bus Driver. Respondent is a labor organization within the meaning of Section 3(i) of the Act, and the exclusive representative of a bargaining unit (Unit) that includes the title of Bus Driver. Respondent and

the CTA are parties to a collective bargaining agreement (CBA) for the Unit, which provides for a grievance procedure culminating in arbitration.

In Case No. L-CB-14-030 and L-CB-14-034, Larkins generally alleges that the ATU failed to arbitrate grievances challenging her termination and failed to resolve these grievances in a timely manner. In Case No. L-CB-14-035, Larkins alleges that the ATU failed to provide her with a copy of an arbitration award and settlement agreement that she believed would be beneficial to resolving her grievances and failed to apply the arbitration award and settlement agreement to her grievances.

a. The First Termination

Charging Party began working for the CTA as a part-time Bus Operator in April of 2006. In October of 2008 she became a full-time Bus Driver. In February of 2009, the CTA discharged Larkins for having received four safety violations within a 24 month period, with one of the violations being issued because she ran a red light while driving a bus (red light camera violation). Larkins grieved her discharge and an arbitration hearing occurred in September of 2011, before Arbitrator James Cox. Arbitrator Cox granted the grievance on December 29, 2011, and ordered: “Debra Larkins is to be offered reinstatement within two weeks from the date of this Award with back pay and benefits less any outside earnings of benefits received. However, considering her safety record, upon reinstatement, she is to be subject to a ninety day probationary period during which she may be discharged for a safety violation.” Cox based his decision to reinstate Larkins on the fact that one of her violations, the red light camera violation, should not have counted as a safety violation against her record because of an agreement between the CTA and the ATU that red light camera citations received during a specified time frame would not count as a safety violation for disciplinary purposes. With the red light incident

removed, she no longer had four violations on her disciplinary record and she was not subject to discharge under the CBA's corrective action guidelines.

b. The Trotter Award and Settlement

In accordance with Section 12.9 of the collective bargaining agreement, the CTA cannot use past discipline as the basis of corrective action if the discipline occurred more than one year prior, except in the cases of safety violations. In an arbitration held on behalf of CTA Bus Driver Ronald Trotter, the arbitrator held that one of his past violations fell outside of this one year timeframe, so that violation could not be counted against him for corrective disciplinary purposes. This arbitration decision (Trotter Award) resulted in the ATU and the CTA reaching an agreement to settle all outstanding grievances that involved similar facts where a violation "fell off" an employee's record because it was more than a year old. Consequently, as a result of the Trotter Award, a large number of CTA employees that had been discharged, but had discipline fall off their records, were reinstated via a settlement agreement (Trotter Settlement) between the ATU and the CTA.

c. The Second Termination

Following her 2009 discharge for safety violations, which the Union successfully grieved and arbitrated, and her return to work in February of 2012, Larkins began to be cited for rule violations. Larkins was charged with missed assignments on May 27, 2012; July 4, 2012; July 7, 2012; and October 20, 2012. Larkins was terminated on or about November 12, 2012. She disputed three of the rule violations by filing timely grievances. The CTA denied each of the grievances, the last of which was denied January 7, 2014. The ATU advanced all of the grievances to arbitration.

The ATU issued a Grievance Report dated December 16, 2013, which listed individuals that received settlement awards, and were entitled to reinstatement, in accordance with the

Trotter Award. Larkins' name was listed on this report as pending a possible award. A later ATU Grievance Report dated January 27, 2014, did not list Larkins' name as pending a possible settlement or award in accordance with the Trotter Award. Concerned about the length of time she had been unemployed, the time it was taking to resolve her grievances, and possibly the fact that her name was no longer on the list as a pending grievance or as a pending candidate for a settlement under the Trotter Award, Larkins called the Union attorney that was handling her case on January 31, 2014. The attorney and Larkins spoke for some time during which Larkins was informed that an arbitration hearing was scheduled for April 24, 2014. During the conversation, Larkins asked the Union representative why her grievances were not included in the Trotter Settlement. The attorney apparently explained that she did not believe that the Trotter Award and Settlement applied to Larkins' situation. Larkins allegedly informed the attorney that she had read the Trotter Award and that she believed she should be included in the Trotter Settlement, thereby fast tracking a resolution of her grievances without the need to proceed to arbitration. The Union attorney again informed Larkins that her case did not meet the criteria for settlement under the Trotter Award. Larkins' allegedly stated that the Union was leaving her out of the Trotter Settlement. According to the ATU attorney, Larkins became irate and began screaming and using abusive language. The attorney then terminated her phone call with Larkins. Larkins claims that despite her requests, the Union would not provide her with a copy of the Trotter Award or Trotter Settlement.

On April 1, 2014, the ATU's attorney called Larkins to schedule an appointment to meet to prepare for the arbitration hearing prior to the April 24, 2014, hearing date. According to the ATU, Larkins was uncooperative and stated she was not interested in meeting with the ATU attorney and that she would not assist the Union in preparation for her arbitration. Allegedly, she further stated that she would only show up for the arbitration hearing. Larkins again asked about

the Trotter Settlement. The attorney said the settlement did not apply because all of Larkins' missed assignments occurred in one year and she did not have any rule violations fall off her record. Larkins again stated she was not interested in preparing for the hearing and continued to state she was covered under the Trotter Award for expedited settlement. The ATU attorney ended her call with Larkins because of this behavior.

The ATU attorney then sent Larkins a letter dated April 8, 2014, informing her that since she was hostile, uncooperative, and would not assist in preparing for the April 24, 2014, hearing date, the arbitration was postponed and she would be advised whether a new hearing would be scheduled. On April 14, 2014, Larkins contacted ATU Trustee Javier Perez by email requesting the status of her grievance arbitration hearing. Perez responded to Larkins' email stating he understood that it was her inability to commit to a date to prepare for the hearing that prevented the ATU from properly preparing her case for arbitration and therefore the hearing was postponed. Larkins replied back that his understanding was incorrect; that she reached out "more than once, and no one got back to her." She further stated that she was available to meet. Perez replied that the April 24, 2014 date was no longer available because another grievance had already been scheduled for that date. Since April of 2014, the ATU has not contacted Larkins, nor has it scheduled another hearing date to arbitrate her grievances.

II. POSITION OF THE PARTIES

Charging Party alleges that the Union engaged in intentional, retaliatory acts that breached the duty of fair representation by failing to process her grievances in a timely manner. Charging Party claims that grievances that were filed after hers have been processed whereas hers have been left to languish. Charging Party also alleges that the Union violated the Act by failing to provide her with a copy of the Trotter Award and Settlement and failing to apply the Trotter Award and Settlement to her grievances.

ATU does not deny it has taken a long time to process Larkins' grievances. The ATU asserts that part of the reason for the delay is that Local 241 is under a trusteeship and that there is a significant backlog of pending grievances. ATU asserts the processing of Larkins' grievances is not atypical of the time that it takes to advance a grievance to arbitration. According to the ATU, it normally takes two or more years to schedule an arbitration hearing due to the volume of grievances filed. The ATU admits that some grievances filed after Larkins' grievances have been resolved, but asserts that this does not establish that the ATU violated the Act. ATU explains that some grievances can be expedited because there is only one witness and/or there is no need to file a brief. However, Larkins' situation was more complicated because it involved three grievances, multiple witnesses and the filing of a brief on the issues.

As to the allegation regarding the Trotter Award and Settlement, the ATU asserts that Trotter was not applicable to Larkins' situation because she had four rules violations within the same year, so none of the violations could fall off her disciplinary record.

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 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.

a) The Allegation that ATU Failed To Timely Process Grievances

There is insufficient evidence that the ATU failed to move Trotter's grievances in a timely manner, as the available evidence indicates that the ATU is processing a large number of grievances, and there is no indication that Larkins' case was atypical. However, even assuming that Larkins could establish that the ATU moved slower on her grievances than on other, similar grievances, Charging Party must provide credible evidence that ATU's action was intentionally directed to disadvantage her based on her activities or her status. No such evidence has been presented. Charging Party did not provide any evidence of an invidious or improper motive on the part of the Union or its agents in the processing of her grievances. Charging Party did not provide any evidence that any agent of the ATU had a personal bias or some other motive to treat Charging Party differently than other members of the Unit. To the contrary, the evidence establishes that the ATU successfully arbitrated a grievance on Larkins' behalf when she was terminated by the CTA in 2009, obtaining her return to work with back pay. The evidence also establishes that, with respect to the 2012 termination, the ATU processed her grievances and

moved the grievances to arbitration. It was only after Larkins expressed an unwillingness to meet with the ATU attorney prior to the arbitration that the ATU postponed the arbitration. Although Larkins later informed the ATU that she was willing to meet, the ATU had already assigned another grievance to be heard on the April 24, 2014 hearing date.

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. See Metropolitan Alliance of Police v. State of Illinois Labor Relations Board, 345 Ill. App. 3d 579, 803 N.E.2d 119 (2003). There is no evidence indicating that the ATU was so motivated in this case. ATU's decision to postpone the arbitration based on Larkins' lack of cooperation does not violate its duty of fair representation under the Act. Therefore, this portion of the charges must be dismissed.

b. The Allegation that ATU Refused To Provide Trotter Award and Settlement or Include Larkins in a Trotter Award and Settlement

Charging Party asserts that the ATU violated the Act because she requested a copy of the Trotter Award and Settlement and they failed to provide her with a copy. This aspect of the charges is a bit perplexing as the Charging Party seems to have obtained and read the Trotter Award, but apparently she did not receive it from the ATU. The Union did not provide her with a copy of the Trotter Settlement. Furthermore, there is no dispute that the ATU did not seek to resolve Larkins' grievances under the Trotter Award and Settlement.

While Charging Party insists that the Trotter Award is applicable to her case, the ATU determined that the Trotter Award did not apply since all of Larkins' rule infractions occurred in one year, and none "fell off" her disciplinary record. There is no evidence that ATU's

interpretation is unreasonable or illegally motivated, such as evidence that ATU treated Larkins different than other similarly situated Unit members. As noted above, the Union has much discretion in how it handles a grievance, and this would include the Union's decision on whether or not to seek settlement. Absent any evidence of intentional misconduct, this portion of the charges must be dismissed. Similarly, under the circumstances, it cannot be said that the failure to give Larkins the Trotter Award and/or Settlement is enough to raise an issue for hearing.

IV. ORDER

Accordingly, the instant charges are hereby dismissed. The Charging Party may appeal this Dismissal to the Board any time within 10 days of service thereof. 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, at 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 20th day of August, 2014.

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**Melissa Mlynski
Executive Director**