

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

Ricardo Gonzalez,)	
)	
Charging Party)	
)	
and)	Case No. L-CB-14-033
)	
Amalgamated Transit Union, Local 241,)	
)	
Respondent)	

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

On September 26, 2014, Executive Director Melissa Mlynski dismissed an unfair labor practice charge filed by Ricardo Gonzalez (Charging Party) in the above-captioned case. The Charging Party alleged that Amalgamated Transit Union, Local 241 (Respondent) violated Section 10(b) of the Illinois Public Labor Relations Act, 5 ILCS 315/10(b) (2012), by providing ineffective representation and not adequately pursuing his grievances.

The Executive Director dismissed the charge finding that the Charging Party failed to present evidence or otherwise assert that the Respondent's conduct was motivated by animus or another discriminatory reason. 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. Adm. Code § 1200.135(a). The Respondent filed no response. After reviewing the record and appeal, we affirm the Executive Director's Dismissal for the reasons stated in that document.

BY THE ILLINOIS LABOR RELATIONS BOARD, LOCAL PANEL

/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 held in Chicago, Illinois on January 13, 2015;
written decision issued in Chicago, Illinois on January 26, 2015

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DISMISSAL

On May 20, 2014, Ricardo Gonzalez (Charging Party) filed a charge with the Local Panel of the Illinois Labor Relations Board (Board), in Case No. L-CB-14-033, in which he alleged that Amalgamated Transit Union, Local 241 (Union or Respondent) 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)¹. After an investigation conducted in accordance with Section 11 of the Act, I determine that the charge fails to raise an issue of law or fact sufficient to warrant a hearing and hereby issue this dismissal for the reasons stated below.

I. INVESTIGATORY FACTS

The Charging Party is employed by the Chicago Transit Authority (CTA or Employer) as a Bus Driver. As such, he is included in a bargaining unit (Unit) represented by the Respondent. CTA and the Respondent are parties to a collective bargaining agreement (Agreement) setting out terms and conditions of employment for Unit employees, including the Charging Party. The

¹ On the same date, the Charging Party filed Charge No. L-CA-14-076. The Charging Party withdrew this charge on July 11, 2014.

Agreement contains a grievance procedure that culminates in final and binding arbitration. The Charging Party has three pending grievances at various levels of the grievance process.

On April 15, 2013, Gonzalez was in an accident when a car tried to pass and turn in front of his bus. CTA sent Gonzalez to re-training. On April 25, 2013, Gonzalez and the Union filed grievance 13-0576. On May 30, 2013, CTA denied this grievance at Step 1. On August 16, 2013, CTA denied this grievance at Step 2. On November 7, 2013, the Union moved this grievance to arbitration.

On June 17, 2013, Gonzalez was given a written warning and one day suspension for allegedly honking and yelling at a police car parked in the way of his bus. On June 24, 2013, Gonzalez and the Union filed grievance 13-0860. On July 10, 2013, CTA denied this grievance at Step 1. On August 23, 2013, CTA denied this grievance at Step 2. On September 13, 2013, the Union moved this grievance to arbitration.

On March 20, 2014, Gonzalez allegedly had a verbal altercation with a customer and was given a three day suspension. On April 10, 2014, Gonzalez had a hearing with the General Manager. That same day, Gonzalez and the Union filed grievance 14-0492. On May 5, 2014, CTA denied this grievance at Step 1. Charging Party indicates that the grievance is still pending.

II. POSITION OF THE CHARGING PARTY

The Charging Party claims that the Respondent did not do enough to prosecute his grievances, leaving him in danger of being terminated by the Employer because the discipline remains on his record. The Charging Party alleges that although the Respondent filed grievances on his behalf, they still allowed the CTA to discipline him unfairly.

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.

In this case, there is no evidence that the Respondent has taken any type of an adverse employment action against the Charging Party. Respondent has filed three grievances on behalf of the Charging Party. The available evidence indicates two of those grievances have been moved to arbitration and a more recent grievance is still pending in the lower levels of the grievance procedure. It is difficult to understand Charging Party’s contention that the Union allowed the CTA to discipline him. An employer’s decision to discipline an employee is generally beyond the control of the union. The union’s recourse is to file a grievance, which is

exactly what the Respondent did in this case, on three separate occasions. Further, there is no evidence that the Respondent harbors any type of animus towards the Charging Party. Based on this lack of evidence, the Charging Party has failed to present grounds upon which to issue a complaint for hearing.

IV. ORDER

Accordingly, the instant charge is dismissed. The Charging Party may appeal this dismissal to the Board any time within 10 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 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 26th day of July, 2014.

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



Melissa Mlynski, Executive Director