

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

Edward Brewer,)	
)	
Charging Party,)	
)	
and)	Case No. L-CB-15-038
)	
Painters District Council #14,)	
)	
Respondent.)	

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

On July 27, 2015, Executive Director Melissa Mlynski dismissed a charge filed by Charging Party Edward Brewer (Charging Party or Brewer) in the above-captioned case. In his charge, the Charging Party alleged Respondent Painters District Council #14 (Respondent or Union) violated Section 10(b) of the Illinois Public Labor Relations Act, 5 ILCS 315/10(b) (2014), in connection with his loss of certain seniority rights.

The Executive Director dismissed the charge finding that the Charging Party failed to establish the Union had committed any intentional misconduct. 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), and the Respondent filed a response. After reviewing the record and appeal, we affirm the Executive Director's Dismissal for the reasons stated in that document with the following comment.

In his charge, although somewhat unclear, the Charging Party seemed to allege that the Union also violated Section 10(b) of the Act because he had not been transitioned from seasonal employment to career service employment. While this allegation was not specifically addressed in the Dismissal, the Charging Party's evidence does not establish that the Union had any role in

this alleged career transition issue. We further note that the Charging Party failed to raise this issue in his appeal. As such, we dismiss the Charge in its entirety.

BY THE ILLINOIS LABOR RELATIONS BOARD, LOCAL PANEL

/s/ Robert Gierut

Robert Gierut, Chairman

/s/ Charles Anderson

Charles Anderson

s/ Richard Lewis

Richard Lewis

Decision made at the Local Panel's public meeting in Chicago, Illinois on December 15, 2015, written decision issued in Chicago, Illinois on January 29, 2016.

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ILLINOIS LABOR RELATIONS BOARD
LOCAL PANEL**

Edward Brewer,

Charging Party

and

Painters District Council #14,

Respondent

Case No. L-CB-15-038

DISMISSAL

On February 18, 2015, Edward Brewer (Charging Party) filed an unfair labor practice charge with the Local Panel of the Illinois Labor Relations Board (Board), in Case No. L-CB-15-038, alleging that the Painters District Council #14 (Union or Respondent) violated Section 10(b) of the Illinois Public Labor Relations Act (Act), 5 ILCS 315 (2014), *as amended*. 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 hereby issue this dismissal for the reasons stated below.

I. INVESTIGATORY FACTS

The Respondent is a labor organization within the meaning of Section 3(i) of the Act. Respondent represents a bargaining unit that includes Painters employed by the City of Chicago (City). The City hired Charging Party as a seasonal Painter on or about July of 2006. For the next five years, every time the seasonal projects came to an end (usually towards the end of the calendar year), the City needed a few extra seasonal Painters to continue working. The City and the Union first held a lottery, with the employees present. Charging Party's name was selected.

According to Charging Party, the next few times the annual lottery was held, only those with the most seniority would be put in the lottery pool. Charging Party's name was randomly selected each time, which resulted in Charging Party having continuous service and seniority over many others.

In July of 2011, Charging Party was injured on the job. He received worker's compensation until he was able to return to work for the City in July of 2014. He claims that his seniority and service continued to grow in the three year time period that he was unable to work. Charging Party claims that upon his return, some Painters with less seniority than him were asked to stay longer and he would be sent home on rainy days, along with other Painters with less seniority. Apparently, this is because Charging Party's place on the seniority list had been lowered. In October of 2014 and November 2014, Charging Party called the Respondent's business agent, Joe Ryanhart, to discuss this issue. Both times the conversation ended up in an argument with choice words being used by both individuals. Moreover, according to the Charging Party, the Union held a "secret" lottery in December of 2014, with no witnesses present as in previous lotteries. Charging Party's name was not drawn in that lottery. Charging Party asserts that his arguments with Ryanhart led him to hold a secret lottery and bump him from number one to number four on the seniority list.

II. DISCUSSION AND ANALYSIS

In this case, the crux of the matter appears to be a dispute over whether Charging Party should have lost seniority as a result of his three year leave of absence on worker's compensation. The Board has no role in resolving such a dispute, unless there is some evidence that the Union engaged in intentional misconduct in violation of Section 10(b)(1) of the Act.

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 provided insufficient evidence of intentional misconduct. Even if the drop in seniority can be considered an adverse representation action, there is insufficient evidence that the Union acted with a discriminatory motive. Charging Party asserts that he had heated conversations with Ryanhart in October and November of 2014 about

his loss of seniority and lack of opportunities as a seasonal Painter. While this could be a motive for Ryanhart to harbor some animosity or show some bias towards the Charging Party, these conversations apparently took place *after* Charging Party's seniority had been reduced. Indeed, the reduction in seniority was apparently the cause of the tension. Therefore, the heated exchange between Charging Party and Ryanhart cannot be used as evidence of intentional misconduct with respect to the reduction in seniority.

The alleged "secret" lottery drawing took place in December of 2014, which was after Charging Party's conversations with Ryanhart. Charging Party implies that this lottery drawing was improper in that it was done differently than past lotteries. However, there is insufficient evidence that Ryanhart was responsible for this alleged change in the way the lottery was handled, or that the change was made to target and discriminate against Charging Party. Charging Party had been on leave for three years, so it certainly possible that the Union made changes to the way it administered the lottery for seasonal painters. Under the circumstances, the mere fact that Charging Party's name was not drawn in the 2014 lottery is not enough to raise a question 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 at Springfield, Illinois, this 27th day of July, 2015.

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



**Melissa Mlynski
Executive Director**