

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

Latrechia Brazil,)	
)	
Charging Party,)	
)	
and)	Case No. L-CB-15-042
)	
Amalgamated Transit Union, Local 241,)	
)	
Respondent.)	

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

On July 31, 2015, Executive Director Melissa Mlynski dismissed a charge filed by Charging Party Latrecia Brazil (Charging Party) in the above-captioned case. In her charge, the Charging Party alleged Respondent Amalgamated Transit Union, Local 241 (Respondent) violated Section 10(b) of the Illinois Public Labor Relations Act, 5 ILCS 315/10(b) (2014) as amended, when it failed to properly advance her grievances challenging her discharge.

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 did not file a 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 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.

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

Latricia Brazil,

Charging Party

and

Amalgamated Transit Union, Local 241,

Respondent

Case No. L-CB-15-042

DISMISSAL

On April 7, 2015, Latricia Brazil (Charging Party) filed an unfair labor practice charge with the Local Panel of the Illinois Labor Relations Board (Board), in Case No. L-CB-15-042, alleging that Respondent, Amalgamated Transit Union, Local 241 (ATU or Local 241) 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 AND POSITIONS OF THE PARTIES

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 Bus Drivers employed by the Chicago Transit Authority (CTA). The CTA and the ATU are parties to a collective bargaining agreement for the Unit that includes a grievance procedure culminating in final and binding arbitration. The Charging Party was a public employee within the meaning of Section 3(n) of the

Act, employed as a full-time Bus Driver for the CTA. Charging Party alleges that the Union breached its duty of fair representation by failing to process her grievances in a timely manner.

The CTA discharged the Charging Party on or about January 27, 2015, for allegedly submitting falsified Family Medical Leave Act paperwork. Charging Party filed a grievance on February 3 and February 11, 2015, challenging her discharge. Each grievance was date stamped as received by ATU. Charging Party asserts that the Respondent has not contacted her about these grievances, and her attempts to contact the Respondent on March 25, 2015, went unanswered. Charging Party further asserts that she was inadequately represented by the Respondent at her termination hearing. In her charge, Charging Party also references other grievances filed from 2009 – 2014, which were ignored by the Respondent, but she did not provide copies of those grievances.

In a letter dated April 14, 2015, the Board agent assigned to the case informed the Charging Party of the elements necessary to establish a violation under Section 10(b)(1) of the Act. In her response, Charging Party reiterates that she has still not received a return phone call from the ATU.

In response to the charge, the Respondent maintains it investigated its voice mail boxes and was unable to find a message from the Charging Party in the general mail box. Respondent indicates that officers of Local 241 have recently changed and this may account for the situation. The Respondent further indicates that it is processing the Charging Party's discharge grievance and that the grievance is currently at the second step of the grievance process.¹ Respondent also maintains that it has not intentionally ignored her calls nor acted in any way to retaliate against

¹ Although Charging Party provided evidence that she filed two grievances, the ATU only refers to one grievance in its response. It appears that both grievances challenge the discharge and both grievances request that Charging Party be made whole and returned to work.

Charging Party nor did it take any action against her for any discriminatory reasons. Respondent also provided a name and phone number for the Charging Party to call regarding her grievance.²

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.

² A Board agent subsequently provided this contact information to the Charging Party.

In the instant case, Charging Party has failed to provide sufficient evidence under the intentional misconduct standard as to her allegation that the ATU is not processing her discharge grievances. There is insufficient evidence that ATU harbored any type of animus or bias against Charging Party, or that it took an adverse representation action against her because of that animus or bias. Even if the Respondent failed to return her phone calls, this alone is not enough to raise a question for hearing, particularly when the Respondent indicates that it is pursuing at least one of her discharge grievances.

Charging Party also asserts that ATU has ignored many previous grievances that she filed, dating back to 2009. However, Charging Party did not provide copies of these grievances or any evidence to support her claim that these grievances were ignored. Without this information it is impossible to determine whether this allegation was timely filed³ and/or whether the allegation raises a question for hearing. Similarly, the Charging Party alleges that she was inadequately represented during her termination hearing. However, she provides no information to explain or support this allegation. As such, this too fails to raise a question for hearing.

III. ORDER

Accordingly, the instant charge is dismissed in its entirety. 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, at 160 North LaSalle Street, Suite S-400, Chicago, Illinois, 60601-3103. The appeal must contain detailed reasons in support thereof, and be served upon all other persons or organizations involved in this case at the same time it is served on the

³ Pursuant to Section 11(a) of the Act, “no complaint shall issue based upon any unfair labor practice occurring more than six months prior to the filing of a charge with the Board... unless the person aggrieved thereby did not reasonably have knowledge of the alleged unfair labor practice.”

Board. A statement asserting that all other parties have been served must accompany an appeal, or the board will not consider it. If the Board does not receive an appeal with the specified time, the Dismissal will be final.

Issued at Springfield, Illinois, this 31st day of July, 2015.

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



Melissa Mlynski, Executive Director