

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

James Kondilis,)	
)	
Charging Party,)	
)	
and)	Case No. L-CB-16-015
)	
Teamsters, Local 700,)	
)	
Respondent.)	

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

On April 14, 2016, Executive Director Melissa Mlynski dismissed a charge filed by James Kondilis (Kondilis or Charging Party), alleging that the Teamsters, Local 700 (Union or Respondent) engaged in unfair labor practices within the meaning of Section 10(b) of the Illinois Public Labor Relations Act, 5 ILCS 315/10(a) (2014) *as amended*, when: 1) his employer denied his requests for reasonable accommodation following his return from a duty injury; 2) his grievances were denied without explanation; 3) his employer denied him reasonable computer access required by its general orders; and 4) the Union failed to provide him with a copy of a new collective bargaining agreement.¹

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) (Rule 1200.135(a)). The Union 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.

¹ The allegations contained in Kondilis' charge arose in the context of his employment as a corrections officer at the Cook County Department of Corrections.

Further, we strike, as untimely, the document titled *Supplement to Appeal* (Supplement) that Charging Party filed on June 6, 2016. Rule 1200.135(a) provides that an appeal, including all supporting materials, shall be filed no later than ten (10) days following service of the Executive Director's dismissal order. As the dismissal order was issued on April 16, 2016, the Supplement filed on June 6, 2015, was filed well outside the time prescribed by the Rule. Further, Charging Party did not request or receive a variance pursuant to Section 1200.160 of the Board's Rules, 80 Ill. Adm. Code § 1200.160 permitting the untimely filing. Finally, we note that the Supplement was not accompanied by any document confirming that Kondilis had effected service on the Respondent as required by Rule 1200.20(e) 80 Ill. Adm. Code § 1200.20(e).

BY THE ILLINOIS LABOR RELATIONS BOARD, LOCAL PANEL

/s/ Robert Gierut
Robert Gierut, Chairman

/s/ Charles Anderson
Charles Anderson, Member

s/ Richard Lewis
Richard Lewis, Member

Decision made at the Local Panel's public meeting in Chicago, Illinois on June 9, 2016, written decision issued in Chicago, Illinois on June 29, 2016.

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DISMISSAL

On October 29, 2015, James Kondilis (Charging Party) filed an unfair labor practice charge with the Local Panel of the Illinois Labor Relations Board (Board), in the above referenced case, alleging that Teamsters, Local 700 (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. INVESTIGATION

The Respondent is a labor organization within the meaning of Section 3(i) of the Act and the exclusive representative of a bargaining unit (Unit) comprised of Sheriff of Cook County employees. The County of Cook and Sheriff of Cook County (County) are public employers within the meaning of Section 3(o) of the Act. Charging Party is a public employee within the meaning of Section 3(n) of the Act, employed in the County's Department of Corrections, as a Correctional Officer. As such, he is included in the Unit. The Union and County are parties to a collective

bargaining agreement for the Unit that includes a grievance procedure culminating in final and binding arbitration.

The Charging Party claims that the Respondent has engaged in intentional conduct in violation of Section 10(b)(1) under the Act by acting with intentional misconduct and animosity towards him when: 1) his requests for reasonable work accommodations due to a duty injury were not accommodated, and, as a result, he was unable to qualify for an opportunity for advancement; 2) his grievances were denied without explanation; 3) he was denied reasonable computer access as per general orders; and 4) a copy of the new collective bargaining agreement was not provided to him upon request.

The Board agent assigned to investigate this unfair labor practice charge gathered information and evidence from the Charging Party and the Respondent. That information and evidence, as it pertains to each of the four allegations raised in this charge, is discussed more fully below.

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, Charging Party raises four separate allegations against the Union. Each of these allegations must be examined in light of the Section 10(b)(1) standard.

- 1) Charging Party's requests for reasonable work accommodations due to a duty injury were not accommodated, and, as a result, he was unable to qualify for an opportunity for advancement.

On or about October 23, 2013, Charging Party returned to work following a duty injury that occurred on or about April 14, 2004. Charging Party alleges the Union has ignored his numerous requests for, and has failed to place him in, a position that fully accommodates his physical limitations and work restrictions, which includes no inmate contact. Charging Party is currently assigned to Central Kitchen, a location that involves the possibility of inmate contact. In addition, because he is assigned to Central Kitchen and was not returned to his original position before the duty injury, he does not qualify for the Intermittent Correctional Officer to Police Officer Training class. Applications for this class closed October 13, 2015.

The available evidence does not raise a question for hearing under Section 10(b)(1) with respect to this allegation. First, there is insufficient evidence that the Union harbored any type of

grudge or bias against Charging Party because of this status or because of some past activity. Second, there is insufficient evidence that the Union took some action (or inaction) because it held a bias or grudge against Charging Party. To the contrary, the available evidence demonstrates that the Union made numerous inquiries on Charging Party's behalf. However, after conferring with the County, the Union took the position that the County was in compliance with the law as they had provided Charging Party with a position that met his accommodations. Charging Party may disagree with this assessment, but this is not enough to raise a question for hearing, absent any evidence that the Union acted with some discriminatory motive. Furthermore, it should be noted that the Charging Party's apparent assumption that the Union is involved in granting Americans with Disabilities Act (ADA) accommodations is incorrect. There is no evidence that the Union has any role in granting an ADA accommodation. It is the County that is responsible for implementing the ADA process, not the Union.

- 2) The Charging Party claims that the Respondent has engaged in intentional conduct under the Act by not providing an explanation of the Arbitrator's denial of grievances filed on his behalf.

Charging Party and/or the Union filed a number of contractual grievances on Charging Party's behalf. These grievances covered a variety of issues including alleged improper notification of drug testing, denial of benefit time, the County's alleged failure to accommodate Charging Party's medical restrictions, lack of computer access, removal from a desk position and/or removal from one position to another position in a different department.

The Union pursued grievances on these topics through the grievance procedure and the grievances were eventually scheduled for expedited arbitration. On August 4, 2015, Arbitrator Brian Reynolds denied six of these grievances in a one page order. Presumably because the proceedings were expedited, there is no written explanation for the denial.

In his charge, Charging Party faults the Union for failing to provide an explanation of the Arbitrator's denial of the grievances. Because of the nature of an expedited proceeding, the Union may not have been given a full explanation for the Arbitrator's denial. However, even if I assume, for the purpose of this investigation, that the Union did not fully and adequately communicate with the Charging Party regarding the outcome of his grievances, this alone is not enough to raise a question for hearing under Section 10(b)(1). This is because there is insufficient evidence that the Union took this action (or inaction) because it was motivated by a bias or animosity towards the Charging Party, as opposed to the Union being negligent or remiss in communicating with the Charging Party on these particular grievances.

3) Charging Party claims he is denied reasonable computer access as per general orders.

The available evidence indicates that Charging Party does not have a computer at his immediate workstation, but there is a computer available for his use in his work area upon request. However, to the extent that this situation represents a denial of Charging Party's reasonable access to a computer, this appears to be at the discretion of the County and not the Union. There is some evidence that the Union has made inquiries on Charging Party's behalf regarding access to a computer. Charging Party may feel that the Union should be more aggressive in pursuing this issue on his behalf, but under Section 6(d) of the Act, the Union has considerable discretion in grievance filing and handling, and as the Board has previously held, 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 such evidence in this case.

- 4) Charging Party claims a copy of the new collective bargaining agreement was not provided to him upon request.

Charging Party filed this unfair labor practice charge on October 29, 2015, and was claiming, at that time, that the Union had failed to provide him a copy of the CBA. In response, the Union indicates that the current CBA between the County and the Union was not finalized and ratified by the County Board until late October. This would explain the Union's delay in responding to Charging Party's request for a copy of the CBA. The Union indicates it sent the Charging Party a copy of the CBA simultaneous with filing its position statement in this matter.

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 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 14th day of April, 2016.

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



Melissa Mlynski, Executive Director