STATE OF ILLINOIS
ILLINOIS LABOR RELATIONS BOARD
STATE PANEL

Benny Eberhardt,	)	
	)	
Charging Party	)	
	)	
and	)	Case No. S-CB-11-043
	)	
International Brotherhood of Teamsters, Local 700,	)	
	)	
	)	
Respondent	)	

DECISION AND ORDER OF THE ILLINOIS LABOR RELATIONS BOARD STATE PANEL

On September 22, 2011, Executive Director John Brosnan issued an order dismissing an unfair labor practice charge filed by Benny Eberhardt (Charging Party) in the above-captioned case. The Charging Party alleged that the International Brotherhood of Teamsters, Local 700 (Respondent) engaged in unfair labor practices within the meaning of Section 10(b) of the Illinois Public Labor Relations Act, 5 ILCS 315/10b) (2010), with respect to its handling of several grievances.

Charging Party filed a timely appeal of the Executive Director's dismissal pursuant to Section 1200.135 of the Rules and Regulations of the Illinois Labor Relations Board, 80 Ill. Admin. Code §1200.135.[1] The Respondent did not file a response. After reviewing the record and the appeal, we affirm the Executive Director's order dismissing the charge for the reasons which follow.

[1] In an effort to appeal the dismissal, the Charging Party sent the Board a variety of memoranda and documentation on September 23, 2011, September 28, 2011, and October 6, 2011. Although the Board's General Counsel initially determined that Charging Party failed to serve his appeal on the Respondent, we have confirmed that he had made proper service.

The appeal disputes the validity of certain facts presented by the dismissal.[2] However, whether the Employer properly terminated the Charging Party's employment for absenteeism, whether the Charging Party suffered an on-duty injury, and whether the Charging Party actually threatened his superiors with violence as suggested in the dismissal order are not questions that are directly at issue. Rather, the central question is whether the Respondent committed intentional misconduct within the meaning of Section 10(b)(1) of the Act and thus violated its duty of fair representation.

As appropriately noted by the dismissal, this central question is answered by applying a two-part test. The Charging Party must first establish that the Respondent's conduct was intentional and directed at the Charging Party. Second, the Charging Party must establish that the Respondent's intentional action occurred because of and in retaliation for the Charging Party's past actions or because of the Charging Party's status (such as his race, gender, or national origin) or animosity between the Charging Party and the Respondent's representatives (such as that based on personal conflict or the Charging Party's dissident union support). American Federation of State, County and Municipal Employees, Council 31 (McGrew and Widger), 25 PERI ¶73 (IL LRB-SP 2009); American Federation of State, County and Municipal Employees, Local 2912 (McGloin), 17 PERI ¶3001 (IL LRB-LP 2000).

While it is apparent the Respondent intentionally determined, at least for a time, that it would not proceed with some of the Charging Party's grievances, during the investigatory phase of this case the Charging Party failed to sufficiently provide evidence of an unlawful motive as

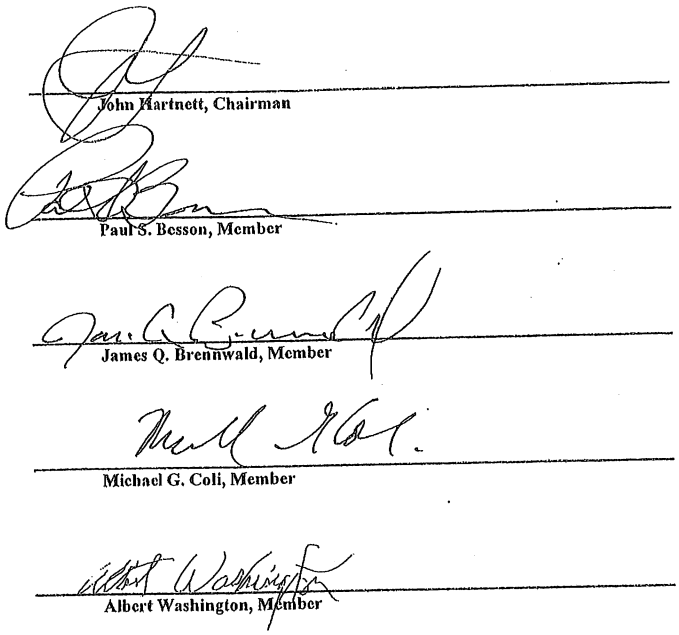
[2] Separately, the appeal appears to assert that the Charging Party was not contacted by the investigator after the Charging Party filed his charge or after his termination. However, notations contained within the Board's file as well as other notations within the Charging Party's own appeal-related filings demonstrate that the Charging Party was in fact personally contacted by the investigator after the charge was filed and after the termination.

required by the second element of the above test. In order to warrant an evidentiary hearing, the Charging Party must at least have alleged and provided some supporting evidence of unlawful motive or a reason for the existence of such unlawful motive such as dissident union activity, a personal conflict with the Respondent's representatives, or membership in some protected class. Journeyman Plasterers Local Union, No. 5, 18 PERI ¶3003 (IL LRB-LP 2001); American Federation of State, County and Municipal Employees, Council 31 (Segrest), 16 PERI ¶2003 (IL SLRB 1999). The Charging Party's bare assertion that his grievances had worth does not suffice as credible evidence sufficient to warrant a hearing. See American Federation of State, County and Municipal Employees, Council 31 (Israel), 12 PERI ¶2038 (IL SLRB 1996).

Notably, Section 6(d) of the Act asserts that nothing in the Act "shall be construed to limit an exclusive representative's right to exercise its discretion to refuse to process grievances of employees that are unmeritorious." Thus, a union must be accorded substantial discretion in deciding whether and to what extent a particular grievance should be pursued. See American Federation of State, County and Municipal Employees, Local 2912 (McGloin), 17 PERI ¶3001; Amalgamated Transit Union, 2 PERI ¶3021 (IL LLRB 1986). The Board will not second guess a union's administrative decisions absent compelling evidence of intentional misconduct. American Federation of State, County and Municipal Employees, Council 31 (Segrest), 16 PERI ¶2003. No such evidence was presented in this instance.

Based on the above review of the evidence and the appeal, we uphold the Executive Director's dismissal.

BY THE STATE PANEL OF THE ILLINOIS LABOR RELATIONS BOARD



John Hartnett, Chairman

Paul S. Besson, Member

James Q. Brennwald, Member

Michael G. Coli, Member

Albert Washington, Member

Decision made at the State Panel's public meeting in Springfield, Illinois, on October 9, 2012; written decision issued at Chicago, Illinois, October 26, 2012.

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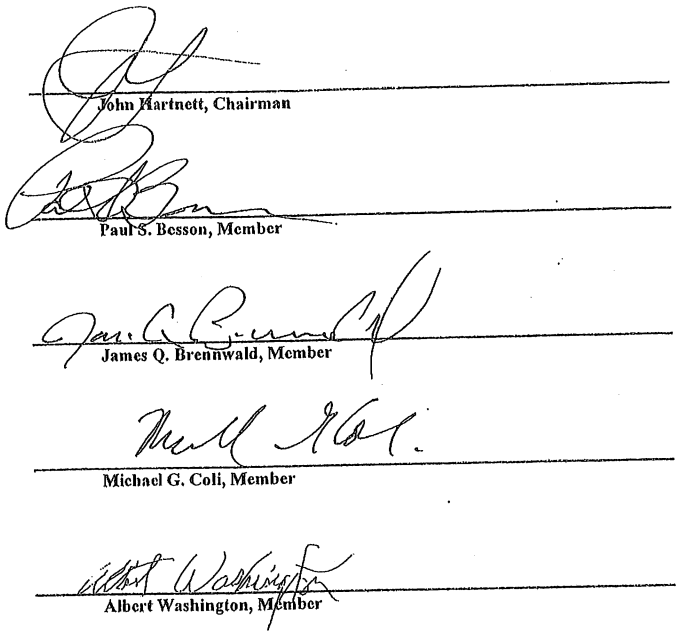

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