

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

Carl Hamilton,)	
)	
Charging Party)	
)	
and)	Case No. S-CB-11-045
)	
American Federation of State, County)	
and Municipal Employees, Council 31,)	
)	
Respondent)	

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

On August 8, 2011, Executive Director John F. Brosnan dismissed the unfair labor practice charge filed by Carl Hamilton (Charging Party) in the above-captioned case. The Charging Party alleged that the American Federation of State, County and Municipal Employees, Council 31 (Respondent) violated Section 10(b) of the Illinois Public Labor Relations Act, 5 ILCS 315 (2010), as amended (Act), by withdrawing a grievance relating to discipline imposed upon him by his employer, the State of Illinois, Department of Human Services. Accompanying his charge was a request that we appoint an attorney to represent him. Charging Party did not respond to a Board agent's request for additional information in support of his charge.

The Executive Director dismissed the charge, noting that, in order to prevail in a Section 10(b)(1) charge, Charging Party would have to demonstrate that Respondent had engaged in intentional misconduct. The Executive Director found Charging Party would be unable to do so because there was no evidence Respondent's withdrawal of the grievance was unlawfully motivated or was based on anything other than its good faith assessment of the merits of the grievance.

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. Admin. Code, Parts 1200 through 1240 (Board Rules), and Respondent filed a timely response. After reviewing the record, appeal and response, we reverse the dismissal and remand for further investigation.

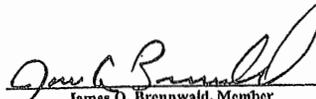
We do not disagree with the Executive Director's assessment that the evidence currently presented is insufficient to demonstrate intentional misconduct and ordinarily we would not hesitate to affirm dismissal of charges where, as here, two of three grievances were resolved in Charging Party's favor and Charging Party failed to respond to a Board agent's request for additional information. However, we find troubling Charging Party's allegation that his union steward was also his supervisor, and we are concerned that our failure to specifically deny Charging Party's request for legal representation may have played a role in his failure to respond appropriately to the Board agent's request for additional information. To eliminate any uncertainty on that point, we hereby deny his request for legal representation, and remand this matter for further investigation. We do not appoint counsel because the investigative stage of our unfair labor practice procedures does not involve legal formalities, Charging Party has demonstrated more than adequate ability to reason and articulate his position, and Charging Party's reference to his financial situation falls far short of demonstrating that he meets the financial standards for the appointment of counsel set out in Section 1220 Table A of the Board Rules.

For these reasons, we reverse the dismissal of the charge, deny Charging Party's request for appointed legal representative, and remand for further investigation.

BY THE STATE PANEL OF THE ILLINOIS LABOR RELATIONS BOARD¹

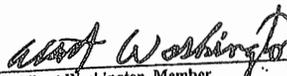

Jacalyne J. Zimmerman, Chairman


Paul S. Besson, Member


James Q. Brennwald, Member

Member Washington, dissenting:

I respectfully dissent from the conclusion of my colleagues and for the reasons articulated by the Executive Director would accept his dismissal of the charges. To demonstrate a violation of Section 10(b)(1) of the Act, Charging Party has the obligation to demonstrate intentional misconduct, yet he has shown that two of three grievances were resolved in his favor and he failed to respond to the Board agent's request for additional information. Under these circumstances, I agree with the Executive Director that Charging Party has failed to raise any issue warranting a complaint for hearing.


Albert Washington, Member

Decision made at the State Panel's public meeting in Chicago, Illinois, on March 13, 2012; written decision issued at Chicago, Illinois, March 23, 2012.

¹ Because the date of the Board's March meeting was rescheduled, Board Member Coli was unable to participate in consideration of this case.

STATE OF ILLINOIS
ILLINOIS LABOR RELATIONS BOARD
STATE PANEL

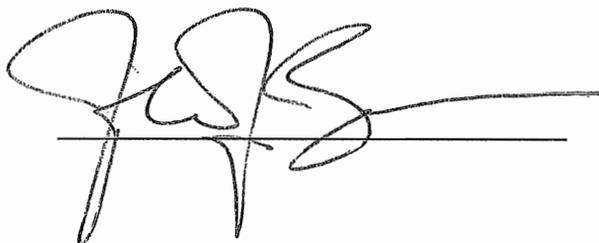
Carl Hamilton,)
)
Charging Party)
)
and) Case No. S-CB-11-045
)
American Federation of State, County)
and Municipal Employees, Council 31,)
)
Respondent)

AFFIDAVIT OF SERVICE

I, John F. Brosnan, on oath state that I have this 23rd day of March, 2012 served the attached **DECISION AND ORDER OF THE ILLINOIS LABOR RELATIONS BOARD STATE PANEL** issued in the above-captioned case on each of the parties listed herein below by depositing, before 5:00 p.m., copies thereof in the United States mail at 100 W Randolph Street, Chicago, Illinois, addressed as indicated and with postage prepaid for first class mail.

Carl Hamilton
7023 S Dante Ave
Chicago, Illinois 60637

Thomas Edstrom
AFSCME Council 31
205 N Michigan Ave, Suite 2100
Chicago, Illinois 60601



SUBSCRIBED and SWORN to
before me this 23rd day
of March 2012.



NOTARY PUBLIC