

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

Britt Weatherford,)	
)	
Charging Party)	
)	
and)	Case Nos. S-CB-12-016
)	
American Federation of State County and Municipal Employees, Council 31,)	
)	
Respondent)	

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

On March 29, 2012, Executive Director John F. Brosnan issued an order dismissing the unfair labor practice charge filed by Britt Weatherford (Charging Party) in the above-captioned case. The Charging Party alleged that the American Federation of State, County and Municipal Employees, Council 31 (Respondent) engaged in unfair labor practices within the meaning of Section 10(b) of the Illinois Public Labor Relations Act, 5 ILCS 315/10(b) (2010), with respect to its handling of two grievances.

On April 11, 2012, 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. 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 articulated in that document.

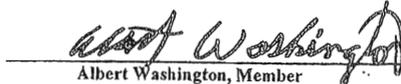
BY THE STATE PANEL OF THE ILLINOIS LABOR RELATIONS BOARD


Jacalyn J. Zimmerman, Chairman


Paul S. Besson, Member


James Q. Brenuwald, Member


Michael G. Coli, Member


Albert Washington, Member

Decision made at the State Panel's public meeting in Chicago, Illinois, on June 12, 2012, written decision issued at Chicago, Illinois, August 10, 2012.

STATE OF ILLINOIS
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Britt Weatherford,)	
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Charging Party)	
)	Case No. S-CB-12-016
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Respondent)	

DISMISSAL

On January 26, 2012, Britt Weatherford (Charging Party) filed a charge in Case No. S-CB-12-016 with the State Panel of the Illinois Labor Relations Board (Board), in which he alleged that the American Federation of State County and Municipal Employees, Council 31 (Respondent) engaged in unfair labor practices within the meaning of Section 10(b) of the Illinois Public Labor Relations Act, 5 ILCS 315 (2010), *as amended* (Act). 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 issue this dismissal for the following reasons.

I. INVESTIGATORY FACTS AND POSITION OF THE CHARGING PARTY

The State of Illinois employs the Charging Party in the title of Information Systems Analyst I. As such, he is included in a bargaining unit represented by the Respondent. Charging Party alleges that the Respondent violated the Act by its conduct towards him in connection with two separate grievances concerning his rate of pay. The first was grievance number 421292, a class action grievance brought by the Respondent on behalf of a number of employees, a group that did not include the Charging Party. The second was grievance 527726, a grievance brought by the Respondent on behalf of the Charging Party.

There is no dispute that the Charging Party filed grievance 421292 in April 2009. The Charging Party indicated that he did not “join in” the group of grievants at the original filing because he had a pending complaint before the Illinois Civil Service Commission, presumably on the same issue. However, he indicated that in September 2010, he contacted the Charging Party and requested that he be included in the group. The Charging Party indicated that by letter received on or about October 28, 2010, Respondent advised him that he would not be included in the group of employees involved in grievance number 421292.

The disposition of this grievance, which involved 36 employees, varied between two groups of employees. According to the Respondent, 26 employees received a promotion to the title of Information Systems Analyst II. On the other hand, 10 employees did not receive any

benefits under the grievance resolution. The Charging Party did not dispute any of these factual assertions.

The second grievance, number 527726, concerned only the Charging Party. The available evidence indicates that the grievance sought a position upgrade for Weatherford. By all accounts, the Respondent withdrew this grievance on July 21, 2011, and the Charging Party received verbal notice of the withdrawal on July 28, 2011, and a letter confirming the disposition of the grievance in early August 2011. The Respondent indicated that the decision to withdraw the grievance was made by the third level grievance committee; the Charging Party did not specifically dispute this assertion, but indicated that he received information that AFSCME Staff representative Emily Johnson withdrew the grievance.

During the course of the investigation, the Board agent assigned to the case requested that the Charging Party provide evidence to support the proposition that the Respondent's conduct could involve a question of intentional misconduct within the meaning of Section 10(b)(1) of the Act. The Board agent made a specific request that the Charging Party provide evidence to show that the Respondent's representatives had any bias or other motive to discriminate against the Charging Party.

The Charging Party provided a detailed narrative of events in response to this request. This narrative commences with an assertion that the Charging Party contacted his department's Ethics Officer in 2006 for the purpose of reporting some unspecified unethical conduct involving unnamed employees within his work area. The Charging Party indicated that not only did he experience retaliation from the Employer's representatives for this action, but that agents of the Respondent participated in the retribution as well. Weatherford specifically mentioned a steward named Rob Piper as a participant in this activity. However, it was not clear why any agent of the Respondent would have taken issue with the Charging Party's conduct.

According to the Charging Party, these incidents commenced an ongoing struggle between himself and the Employer's representatives that apparently predated the Charging Party's concerns about the pay issue that involved the Charging Party and others in his title. Weatherford indicated that his first efforts concerning the pay issue commenced in 2008. However, as noted above, he apparently did not seek the Respondent's assistance on this issue for some time thereafter. The Charging Party indicated that while some of the Respondent's stewards and representatives appeared to bear some bias towards him, others did not. The Charging Party indicated that Dale Webb (possibly a steward or local union officer) refused to assist him in grievance actions.

Weatherford further asserts that in 2008, he received information that unnamed agents of the Respondent were angry with him because of a dispute concerning his fair share fee payments. It is not clear whether he references his status as a fee payor, or some objection that he made to the fee amount. Weatherford indicated that at some point thereafter, he received some discipline from the Employer, and while Randy Flood, the local Union president at the time, indicated that he would grieve the discipline, the Union failed to initiate a grievance. The Charging Party did

not specifically allege that Flood had some issue or bias against him; the available evidence suggests that the Charging Party viewed Flood as either neutral or sympathetic to him.

Weatherford indicated that after receiving notice that he would not be included in the group involved in grievance number 421292, he complained to a number of the Respondent's officials. Presumably, the decision to initiate the second grievance was a consequence of these complaints. Weatherford indicated that Piper was a contact in gathering information in support of the grievance. The Charging Party made no comment concerning Piper's conduct during this time. The Charging Party also made no assertions concerning any issues or history with Johnson, apart from a reference to her in the statement of the charge form.¹

The instant charge is the latest of a series of charges filed by the Charging Party. These charges include two filed against the Employer in 2009, as well as three others filed against the Respondent; one in July 2009 and the others in September 2010. While not specifically asserted in the Charging Party's position statement filed in connection with this case, the Charging Party would occasionally reference conduct that took place during the processing of the earlier charges. However, the Charging Party generally did not indicate the issues and contentions of the earlier charges as part of the investigation of the instant case. As explained more fully below, the Board agent assigned to the case also did not review the earlier file materials.

At the Charging Party's request, this matter was reassigned to a Board agent that had no involvement with any of the Charging Party's prior filings. The Board agent presumed that the basis for the request was the Charging Party's lack of confidence in the prior Board agent's perspective on the case. Accordingly, the Board agent advised the Charging Party that he would not discuss the case with the first Board agent or review the materials in the earlier filings as a matter of course. Therefore, if Weatherford wished the Board agent to consider these circumstances as part of the instant case, he would need to resubmit any materials and information from the prior cases. The Charging Party's position statement generally does not include any specific indication of the issues in the prior cases, nor did Weatherford include any filings from prior cases as part of the materials in this case. The review, in this document, of the facts and issues is consistent with the scope of the investigation in this matter.

The Board agent's request for support for the charge included notice to Weatherford that it was incumbent upon him to show that any bias or improper motive that he experienced from the Respondent's agents would need to be linked to the conduct at issue in the charge. The Board agent specifically requested that the Charging Party show some connection between the conduct that gave rise to the charge and any bias or negative behavior that he may have experienced by the Respondent's agents.

The most significant consequence of this approach would appear to be in the Charging Party's claim concerning the withdrawal of grievance number 527726. As noted above, the Charging Party indicated that he had initiated charges concerning Johnson's conduct in earlier

¹ In the relief requested portion of the charge, Weatherford requested that the Respondent's staff "such as Emily Johnson" refrain from handling his grievances, "as I have 2 pending ILRB charges pending against her and the 3rd level committee."

Board cases. However, it was not clear to the Board agent assigned to this case whether the Charging Party was asserting that Johnson's involvement with the withdrawal of grievance 527726 was alleged to be retaliation for the filing of the earlier charges. The Charging Party's position statement does not include any assertion to that effect.

II. DISCUSSION AND ANALYSIS

The first of the two claims in this charge concerns the Respondent's decision not to include the Charging Party in the group of employees at issue in grievance number 421292. I need not review the evidence connected to this claim, as it is not timely filed in this case. The available evidence shows that the Charging Party received notice that he would not be included in the group on or about October 28, 2010. Weatherford filed the instant charge on January 26, 2012, well beyond the six months limitations period set in Section 11(a) of the Act. Accordingly, the Board cannot proceed to hearing on that claim.

The other claim concerns the Respondent's decision to withdraw grievance number 527726. This claim is timely filed, as the Charging Party received notice of the Respondent's decision no earlier than July 28, 2011. Therefore, the question here is whether the Charging Party has provided sufficient evidence to raise an issue for hearing on this claim.

Section 10(b)(1) of the Act provides that it shall be an unfair labor practice for a labor organization or its agents:

to restrain or coerce public employees in the exercise of the rights guaranteed in this Act, provided, (i) that this paragraph shall not impair the right of a labor organization to prescribe its own rules with respect to the acquisition or retention of membership therein or the determination of fair share payments and (ii) that a labor organization or its agents shall commit an unfair labor practice under this paragraph in duty of fair representation cases only by intentional misconduct in representing employees under this Act;

In duty of fair representation cases, a two-part standard is utilized to determine whether a union has committed intentional misconduct within the meaning of Section 10(b)(1) of the Act: 1) that the union's conduct is intentional and directed at the employee; and 2) that 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 his or her race, gender, or national origin) or animosity between the employee and the union's representatives (such as that based upon personal conflict or the charging party's dissident union activity). The Board's use of this standard, which was developed from Hoffman v. Lonza, Inc., 658 F.2d 519 (7th Cir. 1981), was affirmed by the Illinois Appellate Court in Murry v. American Federation of State, County and Municipal Employees, Local 1111, 305 Ill. App. 3d 627, 712 N.E.2d 874, 15 PERI ¶4009 (1st Dist. 1999), aff'g AFSCME, Local 1111 (Murry), 14 PERI ¶3009 (IL LLRB 1998).

Initially, I note that the Respondent's decision to withdraw grievance number 527726 is not in itself sufficient to raise an issue for hearing. By all accounts, not all of the employees in

the Charging Party's job title received a benefit from the earlier grievance resolution. As such, there is evidence that at least some members of the class had the same experience as the Charging Party, i.e., an unsuccessful outcome to the pay adjustment grievance. There is no evidence or assertion from the Charging Party concerning any impropriety or improper motivation by the Respondent in the disposition of the benefits of the earlier grievance resolution. As such, the available evidence shows that while some persons in the Charging Party's title received an economic benefit, others did not. This, in turn, makes the withdrawal of the Charging Party's grievance insufficient evidence of an inference of intentional misconduct.

However, Weatherford also alleges that the Respondent's agents had an ongoing history of bias towards him and conflict with him. The Charging Party provided an outline of several years' worth of interactions between himself and the Respondent's representatives. Most relevant to this allegation is an assertion that the Charging Party experienced difficulties with Rob Piper. The Charging Party indicated that their conflict dated from 2006, when Piper took the side of the Employer and retaliated against the Charging Party after Weatherford's contact with the Ethics office. The Charging Party offers no description of the underlying circumstances, so it is not clear why Piper would be motivated to act in this way. Nonetheless, this omission is not one that is fatal to the Charging Party's claim.

Rather, the more substantial omission in this case is any evidence or assertion that Piper acted improperly years later, when he was a contact for the Charging Party in providing information to the union in support of grievance number 527726. The Charging Party indicated that he gave a substantial amount of information to Piper in support of the grievance. There is no evidence or assertion that Piper failed to forward the materials to Johnson or other appropriate representatives of the Respondent. There is no evidence or assertion that Piper undertook any action to sabotage the processing of grievance number 527726. Finally, there is no evidence or assertion that Piper played any role in the decision to withdraw the grievance. Under these circumstances, while the Charging Party detailed his difficulties with Piper, he gave no evidence that Piper had anything whatsoever to do with the decision to withdraw grievance number 527726.

The Charging Party also failed to provide any evidence to show a bias on the part of Johnson. There is no claim that Johnson had any motive to engage in intentional misconduct, nor any assertion that her bias led to the withdrawal of the grievance. In the position statement in support of the charge, the Charging Party simply asserts that Johnson made the decision to withdraw the grievance. The only other reference to Johnson whatsoever in the entire file is the Charging Party's request that "staff like Emily Johnson" not handle his case, as he had filed charges against her before the Board.

It is important to note that the Charging Party was on specific notice that the Board would investigate this charge without an automatic review of his earlier charges. This approach was, to a large degree, occasioned by the Charging Party's request that the Board reassign the file to a different Board agent than one who was originally assigned to the case. The Board agent

assigned to this case advised the Charging Party of this procedure, and gave specific instructions that if he believed materials from earlier filings were relevant to the instant charge, he needed to supply them for the file.

All of this should not lead to an inference that there is likely to be sufficient evidence of intentional misconduct in this case. It is neither right nor proper for the Charging Party to interpret this dismissal in such a fashion. It is equally possible that had Weatherford provided the Board with all of the potential evidence concerning the Respondent's decision to withdraw the grievance, I would have found insufficient evidence to proceed to a hearing. However, the Charging Party's failure to provide any evidence whatsoever concerning these circumstances was certainly fatal to this claim.

III. ORDER

Accordingly, the instant charge is hereby dismissed. 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 Board's General Counsel, 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 a copy 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 in Chicago, Illinois, this 29th day of March, 2012.

**ILLINOIS LABOR RELATIONS BOARD
STATE PANEL**



John F. Brosnan, Executive Director