STATE OF ILLINOIS
ILLINOIS LABOR RELATIONS BOARD
STATE PANEL

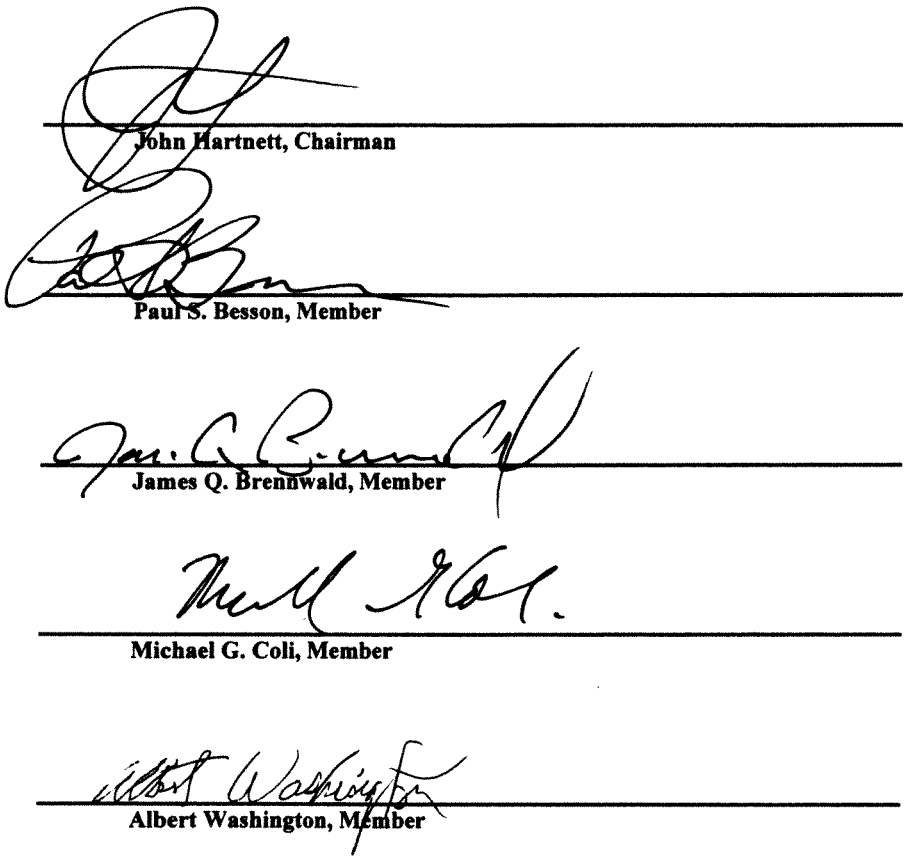
Robert Smith,	)	
	)	
Charging Party	)	
	)	
and	)	Case No. S-CB-13-004
	)	
American Federation of State, County and Municipal Employees, Council 31,	)	
	)	
Respondent	)	

DECISION AND ORDER OF THE ILLINOIS LABOR RELATIONS BOARD STATE PANEL

On January 30, 2013, Executive Director Melissa Mlynski dismissed the unfair labor practice charge filed by Robert Smith (Charging Party) in the above-captioned case. The Charging Party alleged that 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), when Respondent failed to properly pursue two of Charging Party's grievances and advise him of their status.

The 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 §1200.135(a). The Respondent filed no response. After reviewing the record and 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 Chicago, Illinois, on May 16, 2013; written decision issued at Chicago, Illinois, May 24, 2013.

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American Federation of State, county and Municipal Employees, Council 31,	)	
	)	
Respondent	)	

DISMISSAL

On October 29, 2012, Robert Smith (Charging Party) filed a charge in Case No. S-CB-13-004 with the State Panel of the Illinois Labor Relations Board (Board), alleging 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 Charging Party is employed by the State of Illinois, Department of Human Services (Employer). He is included in a bargaining unit represented by the Respondent. Smith claims the Respondent has refused and/or failed to process grievances initiated on his behalf. The materials accompanying the charge form suggest that the charge concerns two grievances, one regarding his seniority and another involving a non-specified pay dispute. The file materials indicate that Smith filed the grievances with AFSCME representative/steward Brian Cooper.

Smith claims that Cooper told him on one occasion that the grievances had been processed and were at step/level three (agency head) of the relevant contractual process. However, Smith also claims that when he subsequently tried to discuss the status of the grievances with Cooper, the latter replied that no grievances had ever been filed, and Cooper interacted with him in vulgar and obscene terms.

By letter dated November 5, 2012, the Board agent assigned to the case requested the Charging Party provide addition information, documentation or evidence to support his charge against the Respondent. Specifically, the Board agent requested that Charging Party provide copies of the grievances that he filed and/or evidence to show that the Respondent's actions could involve intentional misconduct within the meaning of Section 10(b)(1) of the Act. The Charging Party has not provided any additional evidence to date.

I. DISCUSSION AND ANALYSIS

Section 1220.40(a)(1) of the Board's Rules and Regulations, 80 Ill. Admin. Code, Sections 1200 through 1240, provides that "(t)he Charging Party shall submit to the Board or its agent all evidence relevant to or in support of the charge." The Board has interpreted this rule as allowing the executive director to dismiss the case where a charging party has not complied with a request for evidence in support of a charge. SEIU Local 880 (Kirk, et al.), 12 PERT ¶2006 (IL SLRB 1995), aff'd by unpub. order, 13 PERI ¶ 4008 (1996); State of Illinois, Department of Central Management Services Department of Rehabilitation Services 12 PERI ¶ 2005 (IL SLRB 1995), aff'd by unpub. order, 13 PERI ¶ 4008 (1996).

In the instant case, the Charging Party failed to meet a deadline for filing materials in support of the charge. Under the circumstances of this case, the charge merits dismissal for failure to process the charge. Further, the available evidence is not sufficient to raise an issue for

hearing in this case. 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 the Act.

In duty of fair representation cases, the following 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 practices). 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 for the First District in Murry v. American Federation of State, County and Municipal Employees, Local 111, 305 Ill. App. 3d 627, 712 N.E.2d 874, 15 PERI ¶ 3009 (IL LLRB 1998).

In this case, there is no evidence or allegation that any agent of the Respondent has any history or conflict or any personal bias towards the Charging Party. Likewise, there is no evidence that the Respondent provided other similarly situated employees with a greater level of action or diligence in their disciplinary or grievance processes. Under

these circumstances, the Charging Party's contention concerning the Respondent's conduct does not raise an issue for hearing.

II. 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 General Counsel of the Illinois Labor Relations Board, 160 North LaSalle Street, Suite S-400, Chicago, Illinois 60601-3103. The appeal must contain detailed reason in support thereof, and the Charging Party must provide it 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 Springfield, Illinois, this 30th day of January, 2013.

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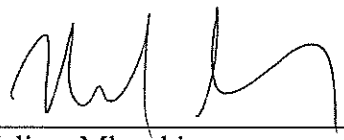

Melissa Mlynski
Executive Director