STATE OF ILLINOIS
ILLINOIS LABOR RELATIONS BOARD
STATE PANEL

Karla Knox,	)	
	)	
Charging Party	)	
	)	
and	)	Case No. S-CB-13-037
	)	
American Federation of State, County and Municipal Employees, Council 31,	)	
	)	
Respondent	)	

DECISION AND ORDER OF THE ILLINOIS LABOR RELATIONS BOARD STATE PANEL

On April 29, 2013, Executive Director Melissa Mlynski dismissed charges filed in the above-captioned case by Charging Party, Karla Knox, against Respondent, American Federation of State, County and Municipal Employees, Council 31, alleging Respondent had failed its duty of fair representation and thus violated Section 10(b)(1) of the Illinois Public Labor Relations Act, 5 ILCS 315/10(b)(1) (2010), by withdrawing a charge related to Knox's discharge from employment in exchange for receiving three days' back pay in settlement of a prior grievance regarding her discipline for tardiness. Charging Party timely filed an appeal pursuant to Section 1200.135 of the Board's Rules and Regulations, 80 Ill. Admin. Code §1200.135. Respondent did not file a response.

Upon a review of the record and the appeal, we affirm the dismissal of the unfair labor practice charge. Section 10(b)(1) provides: "A labor organization or its agents shall commit an unfair labor practice . . . in duty of fair representation cases only by intentional misconduct." 5 ILCS 315/10(b)(1) (2010). 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 him; 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, a charging party must "demonstrate[e] by a preponderance of the 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 toward the employee's activities or status." Id. at 588-89.

The Executive Director erred in stating that Knox failed to allege bias toward her and failed to assert Respondent had provided a greater level of diligence in processing grievances for others similarly situated: Knox's charge alleges Respondent more zealously represented males than females and less readily grieved discipline over alleged misuse of FMLA leave than other types of leave. However, Knox's allegations were stated in the most general of terms. She neither made any specific factual allegations nor provided evidence in support of her general allegations. This lack of evidence and detail is particularly relevant given the investigator's initial letter to Charging Party requesting:

> Any information/documentation that you believe is important or should be considered during my investigation regarding your claim against ASCME Council 31, Local 1058. This includes the names of any other bargaining unit members who were not discharged for similar alleged misconduct or whose grievances were handled differently than yours.

The investigator advised Charging Party that "[a] union violates the Act when it treats you differently than other employees for the purpose of doing you harm" and warned that "[a]s I read the statement to the charge, there is no evidence at this point that such is the case here." He then stated:

> Should you have any such evidence or documentation, you must provide it to me by the date listed below.
> This information should include:
> - Identification of the Union representative that had a bias against you.
> - A description of the source of the bias or animosity.
> - Any evidence that the person has a role in processing your grievance, and that the bias caused him/her to treat your grievances differently from someone else's.

Despite this very clear request for specific information, Charging Party failed to present evidence or even specific allegations sufficient to raise an issue suggesting Respondent engaged in intentional misconduct. Finding no such evidence or specific allegations, we affirm the Executive Director's dismissal.

BY THE STATE PANEL OF THE ILLINOIS LABOR RELATIONS BOARD

John Hartnett, Chairman

Paul S. Benson, Member

James Q. Brunswald, Member

Michael G. Coli, Member

Albert Washington, Member

Decision made at the State Panel's public meeting in Springfield, Illinois on June 11, 2013; written decision issued in Chicago, Illinois on June 28, 2013.

STATE OF ILLINOIS
ILLINOIS LABOR RELATIONS BOARD
STATE PANEL

Karla Knox,	)	
Charging Party	)	
and	)	Case No. S-CB-13-037
American Federation of State, County and Municipal Employees, Council 31,	)	
Respondent	)	

DISMISSAL

On February 26, 2013, Karla Knox (Charging Party) filed a charge in Case No. S-CB-13-037, with the State Panel of the Illinois Labor Relations Board (Board), in which she 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 hereby issue this dismissal for the following reasons.

I. INVESTIGATORY FACTS AND POSITION OF THE CHARGING PARTY

The Charging Party is employed by the City of Rockford as a Telecommunicator/911 Dispatcher. As such the Charging Party is a member of a bargaining unit that is represented by the Respondent.

Charging Party states that on or about February 8, 2012, she received a call from a citizen who wanted to see the police about a personal problem. Charging Party claims she handled that call according to the established 911 procedures. However, she subsequently had a conversation

with another police officer, who was on duty, but not assigned to that call. Charging Party claims she was then terminated for releasing confidential information about the call during her conversation with the police officer.

Charging Party asserts that the Respondent has breached its responsibility to fairly represent her regarding the grievance that she filed contesting her discharge. Charging Party states that the Respondent unfairly withdrew her discharge grievance in exchange for an agreement to receive three (3) days pay for a previous grievance she had filed for a tardiness violation. Charging Party asserts that at no time did she agree to settle or withdraw her discharge grievance to receive three (3) days pay.

By letter dated March 8, 2013, the Board Agent requested that the Charging Party provide additional information/documentation or evidence to support her charge against the Respondent, specifically any evidence to show that the Respondent's conduct could involve "intentional misconduct" within the meaning of section 10(b)(1) of the Act. Charging Party, through her attorney, provided numerous documents, including letters and emails regarding Charging Party's communication with the Respondent about her discharge and subsequent grievance.

II. DISCUSSION AND ANALYSIS

Charging Party has failed to provide evidence or assertions that the Respondent's actions/inactions involved intentional misconduct within the meaning of Section 10(b)(1) of the Act. Section 10(b)(1) provides, in relevant part, 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 practices).

To prove intentional misconduct, the Charging Party must first show that a union's actions were intentional and directed at her. Murry and AFSCME, Local 1111, 14 PERI ¶3009 (IL LLRB 1998), aff'd sub nom. Murry v. AFSCME, Local 1111, 305 Ill. App. 3d 627, (1st Dist. 1999). Second, she must show that the action was retaliatory and occurred because of some past activity or animosity between the Charging Party and the union. Id. To establish the second element, the Charging Party must show: (1) she engaged in activities likely to cause the animosity of the union; (2) the union was aware of her activities; (3) she suffered an adverse representation action; and (4) the union had a discriminatory motive. Metro. Alliance of Police v. Ill. Labor Relations Bd., Local Panel, 345 III. App. 3d 579, 588-89 (1st Dist. 2003) (citing Robertson and AFSCME, Council 31, 18 PERI ¶2014 (IL SLRB 2002)). There must be a causal connection between the employee's activities and the union's discriminatory act. Id. at 589. Again, a violation of Section 10(b)(1) requires a charging party to establish both that the union's conduct was intentional and directed toward charging party and that this occurred in retaliation for charging party's actions or because of charging party's status or animosity between charging party and his representatives. It is not the Board's role to second guess a union's decision not to advance a grievance.

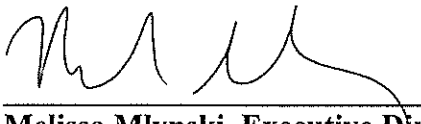
In this case, there is no evidence or allegation that any agent of the Respondent had any history of conflict or any personal bias towards the Charging Party. Likewise, there is no evidence or assertion that the Respondent provided other similarly situated employees with a greater level of action or diligence in their disciplinary grievances. Absent such evidence, the Charging Party has not raised an issue for hearing.

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 General Counsel of the Illinois Labor Relations Board, 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 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, the dismissal will be final.

Issued in Springfield, Illinois, this 29th day of April, 2013

ILLINOIS LABOR RELATIONS BOARD
STATE PANEL



Melissa Mlynski, Executive Director