STATE OF ILLINOIS
ILLINOIS LABOR RELATIONS BOARD
STATE PANEL

Dwyane McCann,	)	
	)	
Charging Party	)	
	)	
and	)	Case No. S-CB-14-025
	)	
American Federation of State, County and Municipal Employees, Council 31,	)	
	)	
Respondent	)	

DECISION AND ORDER OF THE ILLINOIS LABOR RELATIONS BOARD STATE PANEL

On August 15, 2014, Executive Director Melissa Mlynski dismissed a charge filed by Charging Party Dwyane McCann alleging that Respondent American Federation of State, County and Municipal Employees, Council 31, violated Section 10(b) of the Illinois Public Labor Relations Act, 5 ILCS 315/10(b) (2012), by actions it took in relation to his termination from employment with the County of Will Land Use Department.

The Executive Director dismissed the charge, finding that the Charging Party failed to present evidence or otherwise assert that Respondent's conduct was based on some animosity toward his activities or other animus toward him. 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. Adm. Code §1200.135(a). The Respondent filed no response. After reviewing the record and appeal, we affirm the Executive Director's Dismissal for the reasons stated in that document.

BY THE STATE PANEL OF THE ILLINOIS LABOR RELATIONS BOARD

/s/ John J. Hartnett
John J. Hartnett, Chairman

/s/ Paul S. Besson
Paul S. Besson, Member

/s/ James Q. Brennwald
James Q. Brennwald, Member

/s/ Michael G. Coli
Michael G. Coli, Member

/s/ Albert Washington
Albert Washington, Member

Decision made at the State Panel's public meeting in Chicago, Illinois, on October 7, 2014; written decision issued in Chicago, Illinois, October 27, 2014.

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	)	
Respondent	)	

DISMISSAL

On April 8, 2014, Dwyane McCann (Charging Party or McCann) filed a charge in Case No. S-CB-14-025 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 or Union) engaged in unfair labor practices within the meaning of Section 10(b) of the Illinois Public Labor Relations Act, 5 ILCS 315 (2012) *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. I hereby issue this dismissal for the following reasons.

I. INVESTIGATORY FACTS AND POSITIONS OF THE PARTIES

The County of Will Land Use Department (Employer) employed Charging Party as a Building Inspector. As such, he was included in a bargaining unit (Unit) represented by the Respondent. The Respondent and the Employer are parties to a collective bargaining agreement for the Unit that includes a grievance procedure culminating in final and binding arbitration. The

charge alleges that the Respondent violated the Act by failing to properly represent him during grievance procedures contesting his discharge.

As background, the Employer laid off McCann on or about January 10, 2010. On or about April 11, 2013, the Employer recalled McCann back from his laid-off status and offered him the position of General Combination Inspector I. Subsequently, the Employer notified McCann that he would have to obtain International Code Council (ICC) certifications in Residential and Commercial Building Inspection in order to fully attain the position.[1]

On or about September 14, 2013, McCann failed the ICC examination. On or about November 7, 2013, the Employer discharged McCann for failing to obtain the required ICC certifications. On or about November 22, 2013, the Union filed a grievance on behalf of McCann contesting his discharge. The substance of the grievance alleged that the Employer did not provide materials necessary for McCann to prepare for the exam.

The Union and Employer held grievance meetings on the following dates: Step I on November 22, 2014, Step 2 on December 16, 2013, and Step III on January 21, 2014. According to the Union, the Employer claimed at Step III that it had sent McCann study materials but that they were returned unopened. The Employer also noted that McCann had more than one testing opportunity to pass the exam. The Union was also notified by Union stewards at McCann's work location that the study materials and testing were available for any employee to obtain on their own. Therefore, on or about April 1, 2014, the Union voted not to proceed to arbitration on McCann's grievance.

McCann claims that, prior to the Steps I and III grievance proceedings, the Union did not afford him written notification disclosing the date, time and location of the proceedings. He

[1] It appears that McCann was able to work as a General Combination Inspector during a probationary period while the ICC examination was pending. Upon passing the examination, the probationary period would end and McCann would have fully attained the position.

states that he was not given the opportunity to confer with Union representation to discuss and agree upon the nature of the issues to be raised for review and consideration during the proceedings. McCann states that the Union's conduct deprived him of the full and equal benefit of the terms and conditions of employment guaranteed under the CBA.

By phone call on April 15, 2014, the Board agent assigned to this case explained to Charging Party the Board's jurisdiction under Section 10(b) of the Act. The Board agent asked the Charging Party to provide evidence to show that Respondent's conduct was intentional and involved animus directed toward him. The Board agent advised the Charging Party that absent this kind of evidence, the Board would lack jurisdiction over this issue.

Charging Party sent the Board agent correspondence stating that the initial documents filed with the charge supported that an unfair labor practice had occurred. In addition, he states that the Union owed him a legal duty and failed to afford him with procedural due process per the CBA.

II. DISCUSSION AND ANALYSIS

Section 10(b)(1) of the Act provides "that a labor organization or its agents shall commit an unfair labor practice . . . in duty of fair representation cases only by intentional misconduct in representing employees under this Act." Because of the intentional misconduct standard, 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 charging party; 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 III. App. 3d 579, 588 (1st Dist. 2003).

To prove unlawful discrimination, which is necessary to establish the second element of a Section 10(b)(1) violation, a charging party must demonstrate, by a preponderance of 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 towards the employee's activities or status. Id. at 588-89.

McCann's assertion in this charge is that the Union should have consulted him on the nature of the information that the Union would bring forth in each step of the grievance procedure. McCann claims that the Union's conduct throughout the grievance procedure was incompetent, inefficient, and ineffective. McCann does not assert that the Union's conduct was due to his status or activities he engaged in that caused the Union's animosity toward him.

While McCann can show that the Union chose not to arbitrate his grievance, he has provided no evidence to establish that the Union harbored any animus towards him or that the Union chose not to arbitrate his grievance due to that animus.

Under Section 6(d) of the Act, the exclusive representative has a wide range of discretion in handling grievance matters, and, as the Board has previously held, a union's failure to take all the steps it might have taken to achieve the results desired by a particular employee does not violate Section 10(b)(1), unless as noted above, the union's conduct appears to have been motivated by vindictiveness, discrimination, or enmity. Outerbridge and Chicago Fire Fighters

Union, Local 2, 4 PERI ¶3024 (IL LLRB 1988); Parmer and Service Employees International Union, Local 1, 3 PERI ¶3008 (IL LLRB 1987). There is no such evidence in this case. The available evidence indicates that after hearing the Employer's position at the Step III grievance meeting, and receiving information from Union stewards at McCann's work site, the Union decided that it would not be successful at arbitration, and choose to withdraw the grievance. Under these circumstances, there is insufficient evidence to raise an issue for hearing in this case.

III. ORDER

Accordingly, the instant charge is hereby dismissed. The Charging Party may appeal this dismissal to the Board any time within 10 calendar days of service hereof. Such appeal must be in writing, contain the case caption and numbers 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 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 15th day of August, 2014.

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Melissa Mlynski, Executive Director