

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

William Friend,	)	
	)	
Charging Party	)	
	)	
and	)	Case No. S-CB-15-011
	)	
American Federation of State, County and	)	
Municipal Employees, Council 31,	)	
	)	
Respondent	)	

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

On December 1, 2014, Charging Party, William Friend, filed an unfair labor practice charge against his certified bargaining representative, the American Federation of State, County and Municipal Employees, Council 31 (Union), in which he alleged that the Union engaged in unfair labor practices within the meaning of Section 10(a) of the Illinois Public Labor Relations Act, 5 ILCS 315 (2012) (Act), in the manner in which it processed a grievance it filed in relation to his termination from employment with the Illinois Department of Corrections. On January 28, 2015, the Executive Director of the Illinois Labor Relations Board, Melissa Mlynski, dismissed the charge after finding that certain of its allegations were outside of the six-month limitation period set out in Section 11(a) of the Act, and that the remaining allegations could not meet the intentional misconduct standard required to establish a violation of the duty of fair representation under Section 10(b)(1) of the Act.

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. Adm. Code § 1200.135(a), and the Union filed a timely response to the appeal. After reviewing the record, the appeal, and

the Union's response to the appeal, we affirm the Executive Director's Dismissal for the reasons stated in that document.

BY THE ILLINOIS LABOR RELATIONS BOARD, STATE PANEL

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

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

/s/ John R. Samolis  
John R. Samolis, Member

/s/ Keith A. Snyder  
Keith A. Snyder, Member

/s/ Albert Washington  
Albert Washington, Member

Decision made at the State Panel's public meeting held in Springfield, Illinois on April 14, 2015; written decision issued in Chicago, Illinois on April 29, 2015.

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William Friend,

Charging Party

and

American Federation of State, County and  
Municipal Employees, Council 31,

Respondent

Case No. S-CB-15-011

**DISMISSAL**

On December 1, 2014, William Friend (Charging Party) filed a charge with the State Panel of the Illinois Labor Relations Board (Board) in Case No. S-CB-15-011, alleging that the Respondent, American Federation of State, County and Municipal Employees, Council 31 (AFSCME or Union) violated Section 10(b) of the Illinois Public Labor Relations Act (Act), 5 ILCS 315 (2012), *as amended*. 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 reasons set forth below.

**I. INVESTIGATORY FACTS**

At all times material, the Charging Party was a public employee within the meaning of Section 3(n) of the Act, employed by the Department of Corrections (DOC or Employer) as a Correctional Officer. The Respondent is a labor organization within the meaning of Section 3(i) of the Act that represents a unit of employees employed by the DOC, including the title of Correctional Officer.

The Charging Party was employed by the DOC as a Correctional Officer for approximately 12 years. On August 29, 2013, the Charging Party was involved in an incident at Hill Correctional Center in which Nurse Heidi Gutierrez accused him of sexual harassment. On or about September 20, 2013, the Charging Party was notified by a memorandum from the Administrator of the Office of Affirmative Action that:

- A violation of Administrative **Directive 03.01.310 Sexual Harassment can't** be substantiated;
- However a violation of **Administrative Directive 03.02.108 Standards of Conduct can** be substantiated. Corrective action and training is recommended.

On or about September 26, 2013, the Charging Party was given a revised memo which stated that the previous memo contained a typographical error. The new memo read that: "...there is a violation of Administrative Directive 03.01.310 Sexual Harassment. Furthermore, a violation of Administrative Directive 03.02.108 Standard of Conduct can be substantiated; and corrective action and training is recommended."

On September 26, 2013, the Charging Party was put on Administrative Leave pending an Employee Review Board (ERB) hearing. At the hearing held on October 8, 2013, the ERB hearing officer recommended a 30 day suspension pending discharge. On or about November 25, 2013, upon returning to work after his suspension, the Charging Party alleges he was verbally notified that he had been terminated and that he would be getting a letter in the mail informing him of his discharge. The Charging Party grieved the discharge and an arbitration hearing was held on July 1, 2014.

The Charging Party alleges that the Respondent retaliated against him for the activity he engaged in as AFSCME Local 1274 President. The Charging Party claims he held the position of Local 1274 President for four months beginning in or around May 2013. The Charging Party

claims he resigned his position as Local Union President on August 22, 2013, because he was not being supported by the rest of the Union leadership.

The Board agent assigned to this case informed the Charging Party that in order for the Union to have violated Section 10(b)(1) of the Act, the Union must have engaged in intentional misconduct. The Board agent also informed the Charging Party of the six month limitation for filing a charge and requested that he provide evidence of the Union's violations of the Act within that time limit.

In support of his charge that the Union acted in a retaliatory manner, the Charging Party submitted a letter dated December 1, 2013, that the Charging Party had mailed to AFSCME, Council 31 Executive Director Henry Bayer. In that letter the Charging Party stated:

I would like to point out that Council 31/Local 1274 may be retaliatory in failing to put in a proper grievance on my behalf due to the lawsuit that I and others in Local 3585 filed prior to this incident, the fact I beat Ed Anderson, and, recently, an Executive Board member allegedly said something like: 'Thank goodness, that son of a bitch is gone' at November 26th's Labor Management Meeting...<sup>1</sup>

The Charging Party also cites to the Union's conduct at the arbitration hearing as evidence that the Union engaged in intentional misconduct. Charging Party asserts that the Department of Central Management Services failed to notify him of his termination in writing within 45 days after his ERB hearing, as required by Article IX of the applicable collective bargaining agreement and Administrative Directive 03.01.120 G. The documentation the Charging Party provided shows the termination letter sent by certified mail was postmarked on November 21, 2013<sup>2</sup> and was available for pick up on November 23, 2013.

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<sup>1</sup> Ed Anderson held the position of Local 1274 President before and after the Charging Party's term as local president.

<sup>2</sup> The date of postmark is 44 days after the ERB hearing which was held on October 8, 2013. The Charging Party claims he first became aware of his termination upon returning to work on November 25, 2013, after completing his suspension.

The Charging Party asserts that on July 1, 2014, the morning of his arbitration hearing, he provided AFSCME officials Ed Anderson, Kyle Spencer<sup>3</sup>, Tony McCubbin<sup>4</sup> and AFSCME attorney Scott Miller a case involving an Internal Affairs lieutenant returned to work because he had not been notified of his discharge within the 45 day time period. The Charging Party claims he told Anderson, Spencer, McCubbin, and Miller that he wanted this brought up to the arbitrator, but that Miller allegedly instructed him to “keep my mouth shut and let us handle this, this is what we do” adding “[i]t will make us look like we have something to hide.” The Charging Party also asserts he told Miller that he wanted the Union to mention in the arbitration hearing that the investigative memo from the Office of Affirmative Action had been revised and reissued. The Charging Party alleges Miller tried to minimize the matter of the memo, “blowing [it] off as a typo...”

## II. DISCUSSION AND ANALYSIS

A portion of the Charging Party’s allegations must be dismissed as untimely. Pursuant to Section 11(a) of the Act, “no complaint shall issue based upon any unfair labor practice occurring more than six months prior to the filing of a charge with the Board...unless the person aggrieved did not reasonably have knowledge of the alleged unfair labor practice.” The six month limitations period begins to run when an employee has knowledge of the alleged unlawful conduct or reasonably should have known of it. Moore v. ISLRB, 206 Ill. App. 3d 327, 564 N.E.2d 213, 7 PERI ¶4007 (1990); Service Employees International Union, Local 46 (Evans), 16 PERI ¶3020 (IL LLRB 2000); Teamsters (Zaccaro), 14 PERI ¶3014 (IL LLRB 1998), aff’d by unpub. order, Docket Nos. 1-98-2382 and 1-98-3014, 16 PERI ¶4003 (1st Dist. 1999).

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<sup>3</sup> Union’s Chief Steward.

<sup>4</sup> Union liaison from AFSCME, Council 31.

This charge was filed on December 1, 2014, so any portion of the charge that occurred prior to June 1, 2014 is outside of the six month limitation period. This includes the assertions raised in the Charging Party's letter to the Union's Executive Director dated December 1, 2013.

The portion of the charge that alleges a violation of the Act occurring at the July 1, 2014 arbitration hearing is timely. As such, this portion of the charge must be analyzed under Section 10(b)(1) of the Act, which sets for the Union's duty of fair representation.

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 Ill. 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.

For the purpose of this investigation, I will assume that the Charging Party presented evidence, namely his time serving and subsequently resigning as Local Union President, which indicates there may have been some animosity towards him from certain agents of the Union. However, there is insufficient evidence that the Union, or any of its agents, took an adverse representation action against the Charging Party. To the contrary, the evidence demonstrates that the Union pursued the Charging Party's grievance all the way through to arbitration. The Charging Party's dispute appears to be with the manner in which AFSCME chose to defend him and specific issues/arguments they chose not to pursue during the arbitration hearing. However, it is well settled that under Section 6(d) of the Act, the exclusive representative has a wide range of discretion in grievance handling. 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. American Federation of State, County and Municipal Employees, Council 31 (Leggette), 25 PERI ¶174 (IL LRB-SP 2009). As there is insufficient evidence that the Union acted with such motivation in this case, I find that the charge fails to raise an issue of law or fact for hearing.

### **III. ORDER**

Accordingly, the instant charge is hereby dismissed. Charging Party may appeal this dismissal to the Board at any time within 10 calendar days of service hereof. Any such appeal must be in writing, contain the case caption and number, and be addressed to the Illinois Labor Relations Board's General Counsel, 160 North LaSalle Street, Suite S-400, Chicago, Illinois

60601-3103. Appeals will not be accepted in the Board's Springfield office. In addition, any such appeal must contain detailed reasons in support thereof, and the party filing the appeal must provide a copy of its appeal to all other persons or organizations involved in this case at the same time the appeal 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 a copy of the appeal has been provided to each of them. An appeal filed without such a statement and verification will not be considered. If no appeal is received within the time specified herein, this dismissal will become final.

**Issued in Springfield, Illinois, this 28<sup>th</sup> day of January, 2015.**

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A handwritten signature in black ink, appearing to read 'M Mlynski', is written over a solid horizontal line.

**Melissa Mlynski  
Executive Director**