STATE OF ILLINOIS
ILLINOIS LABOR RELATIONS BOARD
LOCAL PANEL

Virtis Jones, Jr.,	)	
	)	
Charging Party	)	
	)	Case No. L-CB-13-006
and	)	
	)	
Amalgamated Transit Union, Local 241,	)	
	)	
Respondent	)	

ADMINISTRATIVE LAW JUDGE'S RECOMMENDED DECISION AND ORDER

On July 27, 2012, Virtis Jones, Jr., (Charging Party or Jones) filed a charge with the Illinois Labor Relations Board's Local Panel (Board) alleging that the Amalgamated Transit Union, Local 241 (Respondent or ATU) engaged in unfair labor practices within the meaning of Section 10(b)(1) of the Illinois Public Labor Relations Act (Act) 5 ILCS 315 (2014), as amended. The charge was investigated in accordance with Section 11 of the Act. On December 4, 2012, the Board's Executive Director issued a Complaint for Hearing. A hearing was conducted on August 6 and August 20, 2015, in Chicago, Illinois, at which time the Charging Party presented evidence in support of the allegations and all parties were given an opportunity to participate, to adduce relevant evidence, to examine witnesses, to argue orally, and to file written briefs. On December 11, 2015, the Charging Party filed a Motion to Supplement or Reopen the Record. On December 17, 2015, the Respondent filed a Response to the Charging Party's motion and a Motion for Sanctions. After full consideration of the parties' stipulations, evidence, arguments, and briefs, and upon the entire record of the case, I recommend the following:

I. PRELIMINARY FINDINGS

The parties stipulate and I find that:

1. At all times material, the Chicago Transit Authority (CTA) has been a public employer within the meaning of Section 3(o) of the Act.

2. At all times material, the Respondent has been a labor organization within the meaning of Section 3(i) of the Act.
3. At all times material, the Respondent has been the exclusive bargaining representative for a bargaining unit of CTA employees, including those in the classification of bus driver.
4. At all times material, the Respondent and the CTA have been parties to a collective bargaining agreement (CBA) with a stated term of January 1, 2007 through December 31, 2011 and the CTA and the Respondent were parties to a Tentative Agreement (TA) for a successor agreement effective January 1, 2012 through December 31, 2015.
5. The CBA contains a grievance and arbitration procedure in Articles 16 and 17 which in relevant part provides as follows:

ARTICLE 16 – GRIEVANCE PROCEDURE

Should a grievance arise between the Authority and its employees or the duly constituted bargaining agent, an earnest effort will be made to discuss and resolve such matters at the appropriate work location prior to the formal invocation of the grievance procedure. The time limitations set forth herein are of the essence and no action or matter not in compliance herewith shall be considered the subject of a grievance unless the time limitations are extended by written agreement of both parties.

Grievances concerning discharges shall be submitted directly to Step 2 of the grievance procedure within thirty (30) calendar days of the occurrence or knowledge of the occurrence giving rise to the grievance.

Grievances will be processed in the following manner:

Step 1: The grievance must be submitted in writing by the Union to the General Manager or equivalent by delivering a copy to Employee Relations. The grievance must be submitted by the Union within thirty (30) calendar days of the occurrence or knowledge of the occurrence giving rise to the grievance. The General Manager or equivalent shall investigate the grievance. The General Manager or equivalent shall provide a written response to the Union detailing the position of the Authority within thirty (30) calendar days of receipt of the grievance.

Step 2: If the grievance is not resolved at Step 1 and the Union desires to appeal, it shall be referred by the Union to the Vice-President, Employee Relations, or designee within thirty (30) calendar days after receipt of the Authority's answer at Step 1. The Vice-President, Employee Relations, or designee shall place the grievance on an

agenda for discussion between representatives of Employee Relations and the Union to be held within thirty (30) calendar days after receipt of the Union's appeal. If no resolution takes place at the Agenda Meeting, the Vice-President shall submit a written response to the Union within thirty (30) calendar days following the Agenda Meeting.

Step 3: (a) The grievance may be submitted to arbitration as provided in Article 17.

6. Jones was originally assigned to work at the Chicago Garage, located at 642 N. Pulaski Road, Chicago, Illinois.
7. Upon his return from Medical Leave in 2008, Jones sought and was re-assigned to the Kedzie Garage at 358 S. Kedzie Ave., Chicago, Illinois.
8. Jones was employed by the CTA from approximately March 12, 2007 until he was discharged on or about November 24, 2009.
9. The CTA's Corrective Action Guidelines provide for the following schedule of discipline:

   1st Incident: Written Warning
   2nd Incident: Final Written Warning and One (1) Day Suspension
   3rd Incident: Corrective Case Interview/Probation and Three (3) Day Suspension/Probation
   4th Incident: Referral to General Manager with a Recommendation for Discharge.

10. While employed by the CTA, Jones was a part-time employee in the classification of bus operator and as such was included in the bargaining unit of employees represented by Respondent.
11. On or about December 12, 2009, Jones filed a grievance, which was assigned number 09-1132. The grievance alleged that Jones was wrongly discharged.
12. By letter dated December 21, 2009, the Respondent notified Jones it was processing the grievance.
13. The Respondent processed the grievance through Step 2 of the grievance procedure, and the CTA denied the grievance by letter dated January 13, 2010.
14. On or about March 1, 2010 the Respondent notified Jones that the grievance committee of the Respondent voted not to arbitrate the grievance and afforded him the opportunity to appeal the grievance to the membership.

15. The Respondent sent Jones a letter dated October 26, 2010, which is marked as Charging Party's Exhibit 14.
16. On or about September 12, 2011, the Amalgamated Transit Union placed Local 241 in Trusteeship, thereby removing all the officers and placing all final decisions regarding matters of arbitration with the appointed Trustee.
17. By letter dated May 22, 2012, the Trustee for Respondent informed Jones that the Respondent would take no further action and that his grievance was being withdrawn without precedent or prejudice.

II. ISSUES AND CONTENTIONS

The issue is whether the Respondent violated Section 10(b) of the Act when it withdrew Jones's termination grievance prior to arbitration.

Jones argues that the Respondent unlawfully withdrew his grievance because it did so out of animus against him. According to Jones, the Respondent's animus stemmed from Jones's attempts to expose a payroll mistake made by Executive Board Member Keith Hill's friend, CTA clerk Ruth Latson. It was compounded when Jones reported his alleged mistreatment by the Respondent's agents to the International Union President. Jones notes that the Respondent's former Recording Secretary, Michael Simmons, accused Jones of being ungrateful and of going behind his back to the International Union President. Jones concludes that the Respondent's pattern of hostility towards him and its inconsistent, shifting, and pretextual explanations for the withdrawal demonstrate that the Respondent withdrew Jones's grievance because of its agents' animus.

The Respondent asserts that it acted lawfully in withdrawing Jones's grievance because decision-makers Trustee Javier Perez and Assistant to the Trustee Ken Potocki had no animus towards Jones and acted upon the advice of counsel, another neutral party. The Respondent also denies that Hill, Latson, and Simmons harbored animus against Jones, but emphasizes that their feelings towards him are inconsequential because they had no part in the decision-making process. The Respondent concludes that it had a legitimate basis for withdrawing the grievance because the grievance lacked merit and contained insufficient supporting documentation.

III. FINDINGS OF FACT

CTA employed Virtis Jones Jr. as a part-time employee in the classification of bus operator from approximately March 12, 2007 until November 24, 2009. Jones was a member of the bargaining unit represented by the Respondent.

Jones initially worked at the Chicago Garage, located at 642 N. Pulaski Road, Chicago, Illinois. Shortly after Jones began his employment with the CTA, a manager at the garage assigned him to a bus and a run. During his run, the CTA posted a message to Jones on the bus messaging system asking him why he was on the bus, who he was, and where he was going. Jones called the CTA Control Office. The Control Office informed Jones that his garage had mistakenly written him up as absent. The Control Office then directed Jones to complete his run.

The following day, Jones discovered that the CTA had not paid him for his work the day before. A manager instructed him to discuss the matter with clerk Ruth Latson. Latson claimed he did not perform the run and refused to pay him. Jones discovered that Latson had paid another driver for the run instead, a driver who had not performed the work.

A day later, Jones approached Union Representative Keith Hill for help. Hill told Jones he would take care of the matter. Two weeks later, Jones asked Hill about the matter again and Hill again told Jones he would take care of it. A month later, Jones and Hill had a heated argument about the unpaid run because Hill still had not obtained payment for Jones. Jones told Hill that he had not taken care of it. Hill told Jones, "I told you I was going to take care of it. Now leave me alone. Get away from me."[1]

Approximately six weeks after the run in question, Jones approached Latson at the clerk's window and asked her whether she was playing games with him. Latson replied, "yeah, I'm playing games with you, but I won." Jones later learned that the CTA did not pay drivers for runs they performed more than two months earlier. Jones believed that Latson would have been disciplined if management had discovered her error in granting payment to a driver who did not perform the run while refusing to pay Jones, who did.

Jones claims that Hill and Latson are friends because he they are both members of masonic organizations and because he saw them talking at work. Hill claims that he and Latson

[1] Hill denied that Jones approached him about a route for which he was not properly paid. I credit Jones because he testified in detail and his demeanor reflected he was agitated in recalling a stressful event.

are merely coworkers, not friends, and denies that he is a mason. Harris confirmed that Latson is an Eastern Star Mason.

1. CTA's Employment Policies and Jones's Work History Prior to November 14, 2009

The CTA has a no-fault miss policy. A miss occurs when a driver does not report to work. CTA may discharge a driver if he accumulates four or more misses in a single rolling 12-month period. CTA may at its discretion may give a driver "consideration" and excuse the miss, but it is not required to do so.

Prior to November 14, 2009, Jones had received a miss on November 14, 2008, January 21, 2009, a half miss on May 29, 2009, a miss on June 6, 2009, and a miss on November 12, 2009. The May 29, 2009 miss, the January 21, 2009, and the June 6, 2009 miss supported the CTA's decision to issue Jones a three-day suspension, a final written warning/corrective case interview, and Jones's placement on probation.[2]

On November 10, 2009, Jones signed a Voluntary Trade Agreement (VTA) sheet. A VTA allows full-time bus operator to seek out a part-time bus operator to work his scheduled assignment. The rules governing VTAs provide that "all trades must be approved by management no later than 15:00 hours on the date prior to the request otherwise the trade is not approved." The procedure for obtaining an effective VTA requires the parties to the agreement to sign the agreement in the presence of a manager and to have the manager sign it. The manager also makes a notation in the comments section to indicate the type of time off that the full-time driver requests. The requested time off is either a vacation random day (VRD) or a random day off (RDO).

Former CTA manager Medrick Busse testified that a manager cannot enter a VTA into the system if it does not include the type of time off requested by the full-time driver. Hill stated that managers do not always note the type of time off requested by the full-time driver. He observed that a manager can identify the type of time off a driver would request based on his badge number. Only employees with five years seniority are entitled to VRDs. Thus, if an employee's badge number indicates he is a recent employee then he can only take an RDO.

[2] Jones's probation was effective through October 16, 2009.

Jones's November 10, 2009 VTA provides that he agreed to work the November 14, 2009 bus run of full-time driver Rodney Gardner. Gardner, Jones, and the garage manager all signed the form. The comment section of the form was left blank. Jones asserted that had not seen the VTA in its final form because it was "illegally brokered" by a third party who obtained the full-time driver's signature after Jones had tendered her the signed form.

Jones testified that he sought to confirm the existence of a valid VTA the day before the planned run, on November 13, 2009, because he had not seen the final, signed formed. To that end, at around 3:30 pm that day, Jones asked Manager Busse whether he was scheduled to work the following day and whether the CTA had entered a valid VTA. Busse checked the computer and found that the CTA had not entered a valid VTA. Jones called Busse later that night at 7 or 8 pm and confirmed that he was not required to be at work the next day.

Unbeknownst to Jones, someone had submitted the completed VTA and had entered it into the computer system. As of November 14, 2009, Jones was scheduled to work on November 14, 2009 according to the CTA's computer system. Jones did not report to work on November 14, 2009, and the CTA documented his absence as a miss.

Sometime between November 14, 2009 and November 17, 2009, the CTA held an employee interview with Jones to inquire into his miss on November 14, 2009. Union representative Carlos Harris was also at the meeting. The interview record documents Jones's comments. It states the following: "Operator states that he and operator Mitchell [were] going to management to cancel the VTA but management was not available." The interview record also contains the manager's remarks, which state the following: "This is the operator's fifth miss in a twelve month period, therefore he is being referred to the G.M. for further case disposition on Tues, 11-17-09 @ 1100 hours. Bring your I.D., keys, and any other CTA issued items with you to the hearing. EAP advised."

Jones claims that he never told the interviewer that he tried to cancel the VTA. Jones further asserts that Harris encouraged him to make such a statement, but that he refused to follow Harris's advice. However, Jones does not explain how the statement would have appeared on the form if he did not make it. Moreover, an employee subject to an employee interview has the opportunity to comment on the proposed disciplinary action, by writing "I disagree" or by making a change to the comments section. Indeed, Jones previously offered his own narrative of disciplinary events where he disagreed with the CTA's description or wished to add clarification.

Thus, I do not credit Jones's statement that he never told the interviewer that he tried to cancel the VTA because Jones in this case simply signed the interview record and made no changes.

On November 17, 2009, Arnold Hollins, Acting Transportation Manager II at the Kedzie Garage sent a memo to James Jenkins, General Manager of the Kedzie Garage recommending that the CTA discharge Jones effective November 24, 2009 because Jones had not shown up for work on November 14, 2009 and had had a number of other misses for which he had received considerable discipline. The letter documented Jones's absenteeism record as follows:

Date	**Miss**	**Action**
11/14/2008	Missed	Written Warning
1/21/2009	Missed	Consideration Given by G.M.
5/29/2009	Missed & Worked	Final Written Warning &1-Day Suspension
6/06/2009	Missed	3-Day Suspension, CCI & Probation
6/25/2009	Missed	Consideration Given by G.M.
7/24 thru 7/30/2009	Missed	Consideration Given by G.M.
11/12/2009	Missed	
11/14/2009	Missed	

That day, Union Representative Carlos Harris submitted an information request to General Manager Jenkins to properly process the grievance that Jones intended to file. The only information Harris requested was a Voluntary Transfer Agreement (VTA) sheet.

On November 24, 2009, Jones received a Notice of Discharge from the CTA. It stated the following: "During the period November 14, 2008 through November 14, 2009, you had numerous Missed Assignments for which you were given progressive disciplinary action in accordance with the Authority's Corrective Action Guidelines."

2. Jones's Discharge Grievance

On or about December 12, 2009, Virtis Jones went to the Respondent's offices at 20 S. Clark St. where he filed a grievance, alleging that CTA wrongfully discharged him. It contained no supporting documentation. Union Recording Secretary Michael Simmons signed the grievance. Hill was not involved in processing Jones's discharge grievance.

On December 21, 2009, the Respondent informed Jones by letter that it was processing his grievance. The Respondent processed the grievance through Step 2 of the grievance procedure.

In 2010, the Respondent had a grievance committee with approximately six to ten members. The grievance committee reviewed grievances and made a recommendation to the Executive Board as to whether the Respondent should arbitrate the grievance. The Executive Board accepted the grievance committee's recommendations nine times out of 10. Hill, Harris, and Latson were not members of the grievance committee, but Hill and Latson were members of the Executive Board.

On January 13, 2010, CTA General Manager of Labor Relations Cary Morgan informed Union President Darrell Jefferson by letter than the CTA denied Jones's grievance.

On February 25, 2010, the grievance committee decided not to move Jones's grievance to arbitration. On March 1, 2010, Simmons sent Jones a letter informing him of the committee's decision.

Sometime in March or April, 2010, Jones visited the Respondent's offices and spoke with then-Local Union President Jefferson. Simmons walked in and stated, "what the hell are you doing up in here?" Accordingly to Jones, Simmons also accused Jones of going behind his back. Simmons denied that this interaction occurred and even denied knowing Jones at that time. I credit Jones's testimony that Simmons cursed at him because he reported that conduct to International Union President Lawrence Hanley in a 2012 letter. However, I do not credit Jones's claim that Simmons accused Jones of going behind his back for the following two reasons. First, Jones's 2012 letter to Hanley does not mention such an assertion. Second, Jones's initial description of his interaction with Simmons likewise makes no reference to Simmons's alleged accusation that Jones went behind his back.

On October 26, 2010, Simmons sent Jones a letter stating that the Respondent had requested arbitration of Jones's grievance to preserve his procedural right to arbitration under the terms of the contract. However, it also stated that Jones was not guaranteed arbitration of his grievance and that arbitration was contingent upon the review of Jones's case by the Union's attorney. Simmons stated that if the attorney agreed to proceed with the arbitration, Jones would receive a letter with the date, time, and location of the arbitration.

3. Actions Taken by the Respondent on Jones's Grievance Following the Respondent's Placement in Trusteeship

On or about September 12, 2011, the International Amalgamated Transit Union (International) placed Local 241 in Trusteeship. The International removed the Local's officers including Local President Darrell Jefferson and Recording Secretary Michael Simmons, who left their employment with the Local. The International placed all final decisions regarding matters of arbitration with the appointed Trustee, International Executive Vice President Javier Perez. At the time of trusteeship, the Local had 4500 open grievance.

In January 2012, International President Lawrence Hanley hired Ken Potocki as an assistant to the trustees. Potocki testified that he answered to no one but the President and the Vice President of the International. Hanley selected Potocki because he wanted someone unaffiliated with the Local to work on the grievance backlog, to structure the grievance process, and to familiarize member with the new grievance procedure. Perez instructed Potocki to review the grievances. When Potocki arrived, he discovered that all grievances were identified for arbitration because the prior the Executive Board's grievance committee had placed all denied second step grievances on the arbitration docket to preserve their procedural arbitrability, in light of the contractual time limits.

Sometime between February 26, 2012 and March 14, 2012, the Respondent issued a newsletter to its members. It informed its membership that the ATU International Vice President and the Trustees established a new Internal Grievance Committee process. The letter stated that "the 'new' Grievance Committee consists of Carlos Acevedo, Keith Hill, Herman Reyes, Michael McBride, Woodrow Eiland, Carl Haymore and Ken Potocki." The newsletter explained that the function of the Grievance Committee was to investigate the grievance and to argue on behalf of the grievant up to the second step of the grievance process. It further stated that the Trustee determines whether the grievance proceeds to arbitration. The Respondent designated the members of the Grievance Committee as assistants to the trustee. Potocki testified that the newsletter incorrectly states that he was on the grievance committee. Potocki explained that he was not actually on the committee, he merely established it.[3]

[3] McBride and Hill denied the existence of a grievance committee. McBride explained that the committee simply consisted of the assistants to the trustee.

Potocki reviewed the grievances that had an impending arbitration date and determined their merit. He would then make a recommendation to Perez as to whether the grievance should proceed to arbitration. Potocki had the authority to unilaterally overrule a prior decision by the Executive Board to take a grievance to arbitration and did not need approval of the membership to do so. Each grievance Potocki reviewed included a package of materials.

In early- to mid-April of 2012, Jones visited the Respondent's office to follow up on his grievance. Herman Reyes, Michael McBride, and Keith Hill were present. When Jones arrived at the Respondent's office, McBride retrieved Jones's grievance file on the computer. McBride noted that Jones had accumulated a number of misses, but that he had not grieved them. McBride asked Jones why he had not grieved those misses. Jones replied, "nobody from the Union ever wants to help me."[4] Hill overheard Jones's statement from the other side of the room and interjected, "I saved your ass I don't know how many times...how can you say that the Union does nothing for you?" Jones said, "you didn't save my job; you have never done anything but hurt me." Hill got up from his seat and approached the conference table, facing Jones, who stood on the other side of the table. He stated, "I'm not going to sit here and allow you to do that [disparage the Union]. Get the fuck out of my office." McBride then intervened in the conversation and stated, "Mr. Jones, you got to go. It's time to go." Hill walked Jones to the door. Jones said, "I will be back, this is my mother fucking Union office and you are not going to tell me that I can't be in here." The meeting concluded.[5]

After the meeting, Jones faxed a statement to International President Lawrence Hanley describing the events of the last meeting. His letter stated the following:

> I Virtis Jones [have] been lied to and verbally abused on more than one occasion. I was [cursed] out by the recording [secretary Michael Simmons] and more recently by Executive [B]oard Member Mr. Keith Hill[,] who cause[s] all the problem[s] secretly. Board member Carlos Harris falsif[ied] document[s] and on 4/26/12 Keith Hill curse[d] me out saying <u>get the fuck out of my office</u>. [Please] help me. Mr. McBride was present. I have more than enough document[s].

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[4] This portion of the account is drawn from McBride's testimony. Jones asserts that he never spoke to McBride. However, McBride description is credible because it provides a reasonable impetus for Jones's assertion that the Union never helped him. Jones claims that he never spoke to McBride and that it was Reyes who was looking at the computer. However, McBride's testimony was detailed and his demeanor was earnest. Accordingly, I credit McBride on this issue.

[5] Hill testified that he shook Jones's hand after he led him to the door, whereas Jones denies that Hill shook his hand. I credit Jones on this matter because I find it unlikely that Jones and Hill would shake hands after they cursed at each other.

In response to this statement, Hanley's secretary called Jones and set up a meeting at the Respondent's office to meet Marcellus Barnes, another International Vice President of ATU.

On April 23, 2012, Jones met with McBride, Barnes, Hill, and Herman Reyes at the Union's office. Hill was present only for the beginning of the meeting and was not present when the attendees of the meeting discussed Jones's grievance. When Jones arrived, Hill apologized to Jones, but did not explain why he was apologizing. Hill left the meeting after tendering his apology.

During the meeting, Jones informed Barnes that the Respondent had scheduled an arbitration date for him. Barnes called the Respondent's attorney on speakerphone to check on the status of the grievances that the Respondent had sent to its attorney. He spoke to the attorney's secretary. Following the phone call, Jones asked for handwritten confirmation that his case would proceed to arbitration. In response to that request, McBride printed Jones a copy of Simmons's October 26, 2010 letter and wrote the following words on the letter, "arb. date 8/07/12[,] subject to change[,] M. McBride A.T.T." McBride testified that he wrote the words "subject to change" because the attorney had not yet given the Respondent her opinion of the case. Reyes also signed the document. McBride then scanned the signed letter into the computer and destroyed the paper copy, pursuant to his practice.

Jones asserts that Barnes crossed out the typed section of the letter that states "the possibility of your grievance not being arbitrated is still possible." However, the copy of the letter admitted into evidence indicates that the text of the letter itself was not altered, and Jones failed to produce a letter with the modification that he allegedly observed. Accordingly, I do not credit Jones's testimony that Barnes crossed out that typed section, identified above.

Sometime after April 23, 2012, Potocki reviewed Jones's grievance file. The file included CTA's recommendation of Jones's discharge, the notice of Jones's discharge, the policy on voluntary trade agreements, and CTA documents related to Jones's missed assignments. It also included letters from Michael Simmons to Jones dated December 21, 2009, March 1, 2010, and October 26, 2010. Finally, it included a CTA Form 100, which documented Jones's 2009 disciplinary record. Potocki could not remember whether the notated October 26, 2010 letter was part of the file he reviewed. However, he stated that the letter would have made no difference in recommending that the Respondent decline to arbitrate Jones's grievance.

When Potocki reviewed Jones's disciplinary file, he determined that Jones had met the threshold number of misses sufficient to support a discharge. Specifically, he noted that the attendance data in Jones's disciplinary file showed that Jones had received four misses within a rolling twelve month period. In reviewing the file, Potocki noted that the CTA had charged Jones with misses that he did not grieve.

Potocki credibly testified that he treated Jones's case in the same manner as he treated any other case, stating "I owed nobody nothing and I knew nobody." At the time Potocki reviewed Jones's grievance, he had not met Jones and did not know him. Potocki also did not know Jones's relationship with anyone in the Local, prior to reviewing his file. Hill did not take part in Potocki's review of Jones's grievance.

Potocki sent Jones's file to Perez along with a note recommending that the Respondent should not arbitrate Jones's grievance. Potocki noted that Jones had accumulated excessive misses and that his discharge grievance was not supported with sufficient documentation. At hearing, Potocki testified that Jones provided no documentation from which to argue that Jones had attempted to vacate the VTA, as his comment on the CTA interview record suggested he had done.

Sometime thereafter, Perez reviewed Jones's grievance, which included the discharge package. Perez took six pages of notes on Jones's case. Perez's notes reveal that he reviewed a copy of the October 26, 2010 letter that the Union gave Jones on April 23, 2012, which included the handwritten, tentative arbitration date.

On Friday May 18, 2012 at 2:52 pm, Perez received an email opinion from Respondent's attorney Sherrie Voyles concerning the arbitration of Jones's grievance. In relevant part, Voyles stated, "I do not see any mitigating circumstances in file to argue discharge was too severe. I recommend the Union withdraw. Please advise."

Perez determined that Jones's case did not warrant arbitration because Jones's attendance record was poor, Jones was a short-term employee, and the CTA had given Jones consideration numerous times. In particular, Perez concluded that Jones had accumulated four missing within the rolling 12 month period, based on all the records he received, including the VTA. Perez took Voyles's opinion into account in deciding whether to proceed to arbitration. After Perez reviewed the file, he returned it to Potocki. Jones does not assert that Perez or Potocki harbored animus towards him.

By letter dated May 22, 2012, the Trustee for the Union informed Jones that the Respondent decided to withdraw his grievance. He noted that "it has been determined that your grievance is being withdrawn without precedent and prejudice due to the fact that there [was] no supporting documentation attached to the grievances as well as an excessive number of misses." Potocki signed Perez's name to the letter, upon Perez's authorization.

Following trusteeship of the Local, the International withdrew a majority of the grievances that the Local had previously scheduled for arbitration.

IV. DISCUSSION AND ANALYSIS

1. Motion to Reopen the Record

On December 11, 2015, Jones though his attorney filed a Motion to Reopen the Record to submit into evidence a letter authored by a former officer of the Respondent, Darrell Jefferson, which allegedly pertains to the merits of Jones's grievance. Alternatively, Jones seeks to reopen the record to obtain sworn testimony from Jefferson on that same issue. Jones explains that Jefferson's testimony relates to the legitimacy of the Respondent's reason for withdrawing Jones's grievance from arbitration and argues that the relevance of the proffered evidence constitutes a compelling reason to reopen the record.

Jones's Motion to Reopen the Record is denied because Jones had a full and fair opportunity to present evidence at hearing and has offered no reason why the referenced evidence could not have been provided at that time. A party must provide a compelling reason to justify reopening the record. Vill. of Downers Grove, 6 PERI ¶ 2035 (IL SLRB 1990) (Board denied Employer's motion to reopen the record following issuance of RDO in representation case where the Employer presented no compelling reason to do so); Palos Heights Fire Protection District, 21 PERI ¶ 85 (IL LRB-SP 2005). The Board has previously affirmed an ALJ's denial of a charging party's motion to reopen a record where the charging party received a "full and fair opportunity to present the proposed evidence at hearing" and "failed to do so." City of Chicago (Dep't of Aviation), 13 PERI ¶ 3014 (IL LLRB 1997)(cited text)[6]; see also

[6] In City of Chicago, the charging party made its motion to the ALJ after the RDO issued, whereas the Charging Party here clearly made his motion before the RDO's issued. City of Chicago (Dep't of Aviation), 13 PERI ¶ 3014. This is a distinction without a difference to the analysis here because the Board in City of Chicago did not reference the motion's timing as the basis for its decision. Id.

College of DuPage, 5 PERI ¶ 1196 (IELRB 1988)(IELRB denied motion to reopen, which sought to admit evidence that was available and known to the party at the time the record was created; parties had proceeded on a stipulated record). Here, Jones's former attorneys listed Jefferson as a witness in his prehearing memo, but elected not to call him to testify at hearing. Although Jones has since retained new counsel, he has offered no reason why he should not be bound by his prior counsel's litigation strategy or why his prior attorneys failed to call a witness he now claims could provide evidence material to his case.

Furthermore, Jones has offered no case law to support the proposition that the relevance of the proffered evidence, standing alone, justifies granting a motion to reopen. The Board's consideration of relevance in ruling on some motions to reopen does not warrant the logical leap that the relevance of the proposed evidence is sufficient grant such a motion. Cnty. of Boone and Sheriff of Boone Cnty., 19 PERI ¶ 74 (IL LRB-SP 2003)(Board declined to reopen a record in a representation case where it was not relevant, but Board also noted that motion was filed "well beyond the close of hearing"). Indeed, the Board in City of Chicago (Dep't of Aviation) implicitly rejected such an approach. City of Chicago (Dep't of Aviation), 13 PERI ¶ 3014. There, the Board declined the charging party's motion to reopen even though such evidence, on its face, would have been relevant to the charging party's claim of alleged repudiation and refusal to bargain in good faith. Id. (charging party sought to submit evidence concerning the Respondent's pattern and practice of violating employees' Weingarten rights). Thus, the motion to reopen to admit the proposed evidence concerning the merit of Jones's grievance is properly denied, even if it is relevant, where Jones had the opportunity to present it at hearing but failed to do so and failed to justify his omission.

Thus, Jones's motion to reopen the record is denied.

2. Section 10(b)(1) Allegation

The Respondent did not violate Section 10(b)(1) of the Act when it withdrew Jones's grievance and refused to arbitrate it. The Respondent's decision-makers were neutral and the agents who harbored animus against Jones had no involvement in the Respondent's decision to withdraw Jones's grievance from arbitration.

Section 10(b)(1) of the Act provides that it is 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. 5 ILCS 315/10(b)(1). However, Section 10(b)(1) also provides that a labor organization violates its duty of fair representation only by intentional misconduct in representing employees. To demonstrate intentional misconduct by a union within the meaning of Section 10(b)(1), charging party must meet a two-part test. First, he must prove that the Union's conduct was intentional, invidious and directed at him. Second, he must establish that the intentional action occurred because of and in retaliation for some past activity, or because of his status (such as her race, gender, or national origin) or animosity between himself and the Union's representatives (such as that based upon personal conflict or his dissident union practices). Murry v. Am. Fed'n of State, Cnty., and Mun. Empl., Local 1111, 305 Ill. App. 3d 627 (1st Dist. 1999), aff'g Am. Fed'n of State, Cnty., and Mun. Empl. Local 1111 (Murry), 14 PERI ¶ 3009 (IL LLRB 1998); American Federation of State, County, and Mun. Empl., Council 31, (Robertson), 18 PERI ¶ 2014 (IL LRB-SP 2002); Am. Fed'n of State, Cnty., and Mun. Empl., Council 31 (Drain), 16 PERI ¶ 2012 (IL SLRB 2000); Am. Fed'n of State, Cnty., and Mun. Empl., Council 31 (Segrest), 16 PERI ¶ 2003 (IL SLRB 1999); Am. Fed'n of State, Cnty., and Mun. Empl., Local 1111 (Murphy), 9 PERI ¶ 3025 (IL LLRB 1993); Service Employees International Union, Local 25 (Breland), 7 PERI ¶ 3041 (IL LLRB 1991); Service Employees International Union, Local 73 (Milton), 7 PERI ¶ 3033 (IL LLRB 1991).

Thus, in duty of fair representation cases, the charging party must first establish a prima facie case by demonstrating, by a preponderance of the evidence: 1) that 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;[7] 2) that the union was aware of the employee's activities and/or status; 3) that there was an adverse representation action by the union; and 4) that the union took the adverse action against the employee for discriminatory reasons, i.e., because of animus toward the employee's activities or status. Metropolitan Alliance of Police v. State of Illinois Labor Relations Board, Local Panel, 345 Ill. App. 3d 579, 587-88 (1st Dist. 2003); Am. Fed'n of State, Cnty., and Mun. Empl., Council 31, (Robertson), 18 PERI ¶ 2014. To prove the requisite causal connection between the employee's protected activities and the adverse representation action, the charging party must submit direct or circumstantial evidence establishing the union's unlawful motive. Id.

[7] In satisfying this prong of the test, the employee may show that he engaged in activities deemed dissident by union leaders or that union agents harbored personal animosity towards him. American Federation of State, County, and Mun. Empl., Council 31, (Robertson), 18 PERI ¶ 2014 n. 19.

Such evidence includes the timing of the union's action in relation to the employees' activities; expressions of hostility toward protected activities; disparate treatment of employees or a pattern of conduct targeting certain employees for adverse action; inconsistencies between the proffered reason for the adverse action and other actions of the union; and shifting or inconsistent explanations for the adverse representation action. Am. Fed'n of State, Cnty., and Mun. Empl., Council 31, (Robertson), 18 PERI ¶ 2014 n. 20 (IL LRB-SP 2002) citing City of Burbank, 128 Ill.2d 335, 5 PERI ¶ 4013; North Maine Fire Prot. District, 16 PERI ¶ 2037; Chicago Park District, 16 PERI ¶ 3008. To have a viable claim under Section 10(b)(1) of the Act, the charging party must demonstrate an unlawful motive with a showing of fraud, deceitful actions or dishonest conduct by the Union. Am. Fed'n of State, Cnty., and Mun. Empl. (Drain), 16 PERI ¶ 2012; Am. Fed'n of State, Cnty., and Mun. Empl., Council 31 (Segrest), 16 PERI ¶ 2003; Am. Fed'n of State, Cnty., and Mun. Empl., Local 1111 (Murry), 14 PERI ¶ 3009.

Addressing the first prong of the test, there is sufficient evidence that Union agent Latson harbored animus towards Jones based on the manner in which she addressed his requests for payment of a run he performed in 2007. Latson, who worked as a clerk for the CTA, repeatedly refused to issue Jones payment for that work so that she could hide her own mistake in paying an employee who did not perform the work. Latson also reasonably knew the CTA's policy of declining to pay employees for work that that was performed more than two months earlier. When Jones made a final request for payment, sometime after those two months had elapsed, he asked Latson whether she was playing games with him. Latson replied, "yeah, I'm playing games with you, but I won." Latson's derisive reply on a matter of utmost importance to any employee—wages—is sufficient to demonstrate that she harbored personal animus against Jones.

There is likewise sufficient evidence that Hill harbored animus towards Jones based on Hill's conduct at the meeting held in the Union's office in mid-April 2012. At that meeting, Hill told Jones to "get the fuck out of [his] office" and stood up from his seat on the other side of the room to escort Jones out the door. This harsh language combined with Hill's removal of Jones from the premises is sufficient to establish that Hill harbored personal animus against Jones. Am. Fed'n of State, Cnty., and Mun. Empl., Council 31, (Robertson), 18 PERI ¶ 2014 (threat by union agent to remove charging party from union premises constituted evidence of personal animus towards the charging party); cf. Lyman (Timko), 23 PERI 64 (IELRB 2007) (union representatives' comments that "[b]elieve it or not, Diane, you're not the center of my universe"

and "God, listening to you makes me sick" did not rise to the level of deliberate and severely hostile and irrational behavior); Unite Here, Local 1 (Colbert), 28 PERI ¶ 74 (IL ELRB 2011)(allegation that union agent "almost took his head off" and told him not to bother him with "petty stuff" did not rise to the severe level of hostility necessary to show personal animus).

However, there is insufficient evidence that Simmons harbored animus against Jones. The sole record support for such alleged animus is Simmons's exclamation, "what the hell are you doing up in here?" That single instance of moderately foul language directed at Jones does not rise to the level of "severe hostility" or "irrational treatment" required to prove animus under Section 10(b)(1) of the Act. Paxton-Buckley-Loda Educ. Ass'n. IEA-NEA v. IELRB, 304 Ill. App. 3d 343, 349 (4th Dist. 1999) (requiring charging party to show "substantial evidence of fraud, deceitful action, or dishonest conduct, or deliberate and severely hostile and irrational treatment" in proving same allegations arising under the Illinois Educational Labor Relations Act).

In addition, contrary to Jones's contention, his complaints about Harris, Simmons, and Hill to International Union President Lawrence Hanley would not tend to engender the animosity of the Union's decision-maker, International Vice President and Trustee Perez. As the Respondent notes, the Trustee took control of the Local so that its affairs would no longer be mismanaged by Local officials. The Trustee and the International's leadership would likely be motivated to cure any further mismanagement allegedly perpetrated by Simmons, a now-former Local agent, and the Trustee's own assistants. In fact, the day after Jones made his complaint, President Hanley arranged a meeting between Jones, International Vice President Barnes and the Assistant Trustees to address his concerns. Jones himself observes that the International's leadership condemned its assistants' harassment of Jones by "forc[ing]" Hill to apologize to Jones during the meeting. Accordingly, this is not a case in which Jones attacked the Respondent's leadership and could have reasonably expected reprisal. Rather, he sought the protection of the Respondent's leadership from the alleged persecution by its lower-ranked assistants, and the Respondent's leadership demonstrated it was receptive to Jones's pleas. Cf. Jacobs Transfer, Inc. v. Daniel George v. Drivers, Chauffeurs & Helpers Local 639, et al, 227 NLRB 1231, 1243 (1977)(employee engaged in dissident activities by opposing incumbent officers of the union and making a complaint about the union to a governmental agency) and Am. Fed'n of State, Cnty. and Mun. Empl., Council 31 (Carter), 29 PERI ¶ 135 (IL LRB-LP

2013) (employee engaged in dissident activity by supporting a rival union; charge dismissed where employee presented insufficient evidence to support claim of retaliation).

Addressing the second prong, the Respondent's decision-makers were aware of union agents' hostility towards Jones. Jones wrote a letter to International President Lawrence Hanley explaining his negative interactions with Union agents, and that letter was part of the personnel reviewed by Perez and Potocki in determining whether to pursue Jones's grievance to arbitration. Specifically, the letter explained that Recording Secretary Simons "curse[d him] out," that Executive Board member Hill verbally abused him and "cause[d Jones's] problem[s] secretly," and that Carlos Harris falsified certain documents.[8]

Addressing the third prong, the Union took an adverse representational action against Jones when they decided not to arbitrate his grievance.

However, addressing the fourth prong, there is insufficient evidence that the Respondent declined to arbitrate Jones's grievance because of its agents' animus. The decision-maker in this case was neutral and his decision did not result from the involvement of union agents who harbored animus. In addressing unfair labor practices filed against an employer, the Board has held a respondent's decision may be tainted by unlawful animus even where the ultimately decision-maker is neutral if it results from the recommendation or involvement of an employer representative who harbors animus. State of Illinois, Secretary of State, 31 PERI ¶ 7 (IL LRB-SP 2014). This approach is equally applicable where the respondent is the union because the analytical framework for finding a violation of retaliation and discrimination under Section 10(b)(1) is substantially the same as it is under Sections 10(a)(1). Am. Fed'n of State, Cnty., and Mun. Empl., Council 31, (Robertson), 18 PERI ¶ 2014 (IL LRB-SP 2002)(modeling Section 10(b)(1) analysis on cases arising under Section 10(a)(1) cases alleging adverse employment actions).

Here, the parties stipulate that the final decision regarding the arbitration of all grievances rested with International Vice President and Trustee Perez. Indeed, even the Respondent's newsletter, submitted into evidence by Jones, spells out that it is the International Trustee who investigates denied second step grievances and the Trustee who makes the determination as to whether the grievance proceeds to arbitration. Perez credibly testified that he determined that Jones's case did not warrant arbitration based on his review of Jones's grievance package.

[8] It is not clear from the record what documents Jones claims Harris falsified.

Specifically, he observed that the CTA justifiably discharged Jones under its no-fault miss policy because Jones had accumulated four misses within the rolling 12-month period. Perez additionally noted that Jones's attendance record was generally poor, that Jones was a short-term employee, and the CTA had given Jones consideration numerous times. Before Perez made his final decision on Jones's case, he also consulted attorney Sherrie Voyles and relied on her assessment that Jones's case lacked merit.

Attorney Voyles's email supports Perez's claim that he sought her guidance and relied upon it because it provides an assessment of Jones's file, notes the absence of mitigating circumstances, and seeks a response from the Union as to its course of action ("please advise"). Fenje v. Feld, 301 F. Supp. 2d 781, 811 (N.D. Ill. 2003) aff'd, 398 F.3d 620 (7th Cir. 2005) (out of court statements admissible to show the information upon which an individual relied in making a decision that impacts the plaintiff). Contrary to Jones's contention, there is no indication that Perez dictated Voyles's advice. The sole support for Jones's assertion to that effect comes from a 2015 email in which Voyles remarked that Perez must have instructed her by phone to withdraw Jones's grievance, because she had no written record of that directive.[9] However, there is nothing to suggest that his instruction to withdraw preceded her May 2012 written assessment of the case.

Furthermore, although Potocki made a recommendation to Perez that the Union should not advance Jones's grievance to arbitration, the evidence demonstrates that Perez made an independent review of Jones's file. Here, Perez credibly testified that his review of the file was independent and that he therefore did not rubberstamp Potocki's recommendation. Perez's copious, six pages of notes on Jones's file supports this finding.

Even if Perez had relied substantially on Potocki's recommendation, there is insufficient evidence that Potocki's own recommendation was tainted by animus. As a preliminary matter, Perez hired Potocki for the express purpose of bringing neutrality to decisions regarding the arbitration of grievances, someone without any affiliation with the Local. Potocki credibly testified that he recommended that the Respondent decline to arbitrate Jones's grievance based on his own, independent review of Jones's grievance package. He testified that his recommendation was based on the fact that Jones had excessive misses and that his grievance

[9] The August 5, 2015 date of Voyles's email suggests that Voyles's searched for these emails in preparation for her former client's hearing in this matter, which was scheduled for the following day.

was not supported with sufficient documentation. Specifically, there was no documentary evidence to support the statement Jones made during the employee interview that he had tried to vacate the VTA that justified his final miss.

Most importantly, there is insufficient evidence in the record that Latson, Hill, or Simmons, the individuals who allegedly harbored animus against Jones, had any influence on Perez's decision to withdraw Jones's grievance from arbitration. As discussed above, and as stipulated by the parties, the decision regarding the arbitration of grievances rested with Perez alone. Perez made his decision after independently reviewing the file and considering the advice of counsel, Sherrie Voyles.

There is no merit to Jones's claim that Simmons had any part in the Respondent's decision to withdraw Jones's grievance from arbitration. Voyles makes reference to an email from "Mike" and notes that he informed her that that Perez was reviewing the file; however, the "Mike" referenced by Voyles is most likely Mike McBride, whose address appears in Voyles emails, rather than Mike Simmons, who ceased working for the Respondent years earlier—before Perez became the Trustee. City of Evanston, 29 PERI ¶ 162 (IL LRB-SP 2013)(charging party has the burden of proof).

Contrary to Jones's implication, the denial by some of the Respondent's witnesses of the grievance committee's existence does not warrant the inference that the grievance committee decided to withdraw Jones's grievance from arbitration or that it even made a recommendation to that effect. Indeed, such a conclusion is unwarranted where the parties' stipulated that Trustee Perez made the decision to withdraw Jones's grievance and where Perez's explanation of his decision-making process was supported his extensive notes and an attorney's written recommendation.

Even assuming, *arguendo*, that Jones engaged in activities that would engender the animosity of the Respondent's decision-maker, there is insufficient evidence that the Respondent's decision-maker withdrew Jones's grievance because of Jones's activities. Rather, the Respondent's basis for withdrawing the grievance was unwavering, non-pretextual, and consistent with the Respondent's other actions.

First, the Respondent's agents Potocki and Perez repeatedly and unwaveringly stated that the Respondent withdrew Jones's grievance because the grievance lacked merit and supporting documentation.

Second, that proffered explanation is non-pretextual because it is plausible and Jones offered insufficient evidence that it was based on something other than a good faith assessment of its merits. The Board accords substantial discretion to union in deciding whether to pursue a particular grievance. Cnty. of Boone and Boone Cnty. Sheriff and United Automobile Aerospace and Agricultural Implement Workers (Martenson), 31 PERI ¶ 120 (IL LRB-SP 2015); International Brotherhood of Teamsters. Local 700 (Eberhardt), 29 PERI ¶ 77 (ILRB-SP 2012); Amalgamated Transit Union (Diaz), 2 PERI ¶ 3021 (IL LLRB 1986). To that end, the Board does not ordinarily second guess a union's administrative decision regarding grievance handling. Cnty. of Boone and Boone Cnty. Sheriff and United Automobile Aerospace and Agricultural Implement Workers (Martenson), 31 PERI ¶ 120; International Brotherhood of Teamsters. Local 700 (Eberhardt), 29 PERI ¶ 77; Amalgamated Transit Union (Diaz), 2 PERI ¶ 3021. Here, the Respondent's reason is plausible because the raw data in Jones's file indicates that he received at least four misses in a rolling 12-month period. These include a miss on January 21, 2009, a half miss on May 29, 2009, a miss on June 6, 2009, a miss on November 12, 2009, and a miss on November 14, 2009. In light of this attendance history, the Respondent plausibly determined that the grievance lacked merit, even though the CTA's discharge letter may have contained some errors.[10] State of Ill., Secretary of State, 31 PERI ¶ 7 (IL LRB-SP 2014)(granting employers similar deference in retaliation and discrimination cases arising under Section 10(a)(2) of the Act; finding basis for discipline non-pretextual where it was issued on plausible grounds); Cnty. of Rock Island and Sheriff of Rock Island Cnty., 14 PERI ¶ 2029 (IL SRLB 1998) aff'd Grchan v. Ill. State Labor Rel. Bd., 315 Ill. App. 3d 459 (3rd Dist. 2000); Cnty. of DeKalb and DeKalb Cnty. State's Attorney, 6 PERI ¶ 2053 (IL SLRB 1990), aff'd by unpub. order No. 2-90-1309 (Ill. App. Ct., 2d Dist. 1991).

Contrary to Jones's contention, there is insufficient evidence to suggest that Jones provided documentary evidence to the Respondent in support of his grievance or, alternatively, that the Respondent's agents tampered with his file to remove it. As a preliminary matter,

[10] Arguably, CTA's discharge recommendation letter included a miss that should not have been counted while it discounted a miss that should have been counted. The November 14, 2008 miss was not properly included in the four-miss total because it is arguably outside the 12-month rolling period. However, the January 21, 2009 miss should have been included in the four-miss total because Jones did not in fact receive consideration for that miss, as the letter erroneously states. Rather, Jones received a final written warning and a one-day suspension for the January 21, 2009 miss. That miss also served as the basis for a three-day suspension and his placement on probation on June 6, 2009.

Jones's grievance did not contain any documentation supporting his assertion that he tried to cancel his VTA. Nor did it include documentation supporting his alternate assertion that he believed CTA had not processed the VTA, or had not processed it in accordance with its own rules. Jones claims that someone removed the notated October 26, 2012 letter from his grievance file, which contained a proposed arbitration date and McBride's initials, because Potocki testified that he could not remember whether he saw it. However, the preponderance of the evidence demonstrates that the letter was in fact included in the grievance filed because Perez made reference to it in the notes he took while reviewing Jones's file.

Next, Respondent's decision to withdraw Jones's grievance from arbitration was consistent with its earlier decision to advance the grievance to arbitration. The Respondent requested arbitration of Jones's grievance simply to preserve his right to arbitration under the contract and it did not make any assessment of the grievance's merit at that time. In fact, the Local customarily advanced every grievance to arbitration once the Employer denied it at the second step. Thus, the Respondent's determination that the grievance lacked merit is consistent with the Local's decision to advance it to arbitration where the Local made the initial request for arbitration on purely procedural grounds.

Further, the Respondent's decision to withdraw Jones's grievance from arbitration is consistent with its agents' identification of an arbitration date at the April 23, 2012 meeting because the Respondent never guaranteed Jones arbitration of his grievance. Instead, the Respondent's agents consistently informed Jones that the Respondent's arbitration of his grievance was contingent on higher level review, either by the Local's attorneys or the Trustee. When McBride provided that arbitration date, he expressly wrote that it was "subject to change." Furthermore, the very letter upon which McBride made that notation contained the statement that, "[u]pon review by the local's attorneys, the possibility of your grievance not being arbitrated is still possible."[11]

Even if McBride had offered Jones an immutable arbitration date (he didn't), McBride could not have bound the Respondent, and the Respondent's final decision not to arbitrate was therefore not at odds with any earlier decision made by the Respondent. McBride had no actual authority to bind the Respondent to an arbitration date because the Trustee had sole authority to

[11] The letter itself did not specify that the Trustee would review the grievance because the Local drafted the letter on October 26, 2010 before the International Trustee took control of the Local.

decide to arbitrate a grievance and Jones has pointed to no evidence that suggests otherwise. SEDOL Teachers Union, Lake County Fed'n of Teachers, Local 504, IFT-AFT, AFL-CIO v. Illinois Educ. Labor Relations Bd., 282 Ill. App. 3d 804, 814 (1st Dist. 1996)(finding no actual authority where party alleging authority did not identify a valid grant of that authority). Furthermore, McBride had no apparent authority to decide to arbitrate a grievance because the Respondent never created the reasonable impression that McBride could make such a decision. Rather, the Respondent's February/March 2012 newsletter issued to its members dispelled any such notion because it specified that the trustees, rather than their assistants or the grievance committee, would ultimately determine whether the Respondent would arbitrate a member's grievance. Schoenberger v. Chicago Transit Auth., 84 Ill. App. 3d 1132, 1138 (1st Dist. 1980)(it is "necessary to trace the source of an agent's authority to some word or act of the alleged principal"). Notably, McBride's own statements at the April meeting could not have establish his authority to bind the Respondent to an arbitration date. Zahl v. Krupa, 365 Ill. App. 3d 653, 661 (2d Dist. 2006) ("Only the words and conduct of the alleged principal, not those of the alleged agent, establish the agent's authority, whether actual or apparent")

Similarly, Respondent's higher-level review and ultimate withdrawal of Jones's grievance following the April 23, 2012 meeting is consistent with the Union's treatment of other members' grievances. Trustee Perez directed Potocki to review the merit of all grievances pending at arbitration, in acknowledgment of the fact that the Local had indiscriminately set all grievances for arbitration once the CTA had denied them at the second step. Furthermore, the Respondent declined to pursue arbitration for a majority of those grievances, even though the Respondent had previously requested arbitration in each of those cases. Cnty. of Boone and Boone Cnty. Sheriff and United Automobile Aerospace and Agricultural Implement Workers (Martenson), 31 PERI ¶ 120 (finding no disparate treatment where union treated charging party's grievance in the same manner as it treated other employees' grievances).

Finally, the proximity between Hill's latest expression of animus towards Jones (April 2012) and the Respondent's decision to decline arbitration of Jones's grievance (May 2012) does not weigh in favor of finding a causal nexus between the two, where decision-maker Perez was neutral and where Hill, the individual with animus, had no input into the decision-making process. City of Springfield and Director of Public Safety for the City of Springfield, 6 PERI ¶

2004 (IL SLRB 1989)(evidence of animus must be linked to the individuals whose decisions are alleged as being discriminatory).

Thus, Jones has failed to make a prima facie case and has not shown that the Respondent violated Section 10(b)(1) of the Act.

3. Sanctions

The Respondent's motion for sanctions is denied because Jones's request to reopen the record does not constitute frivolous litigation.

Section 11(c) of the Act provides that the Board has discretion to include an appropriate sanction in its order if a party has made allegations or denials without reasonable cause and found to be untrue, or has engaged in frivolous litigation for the purposes of delay or needless increase in the cost of litigation. The test for determining whether a party has made factual assertions that were untrue and made without reasonable cause is an objective one of reasonableness under the circumstances. Chicago Transit Auth., 16 PERI ¶ 3021 (IL LLRB 1999); Chicago Transit Auth., 15 PERI ¶ 3018 (IL LLRB 1999); Cnty. of Rock Island, 14 PERI ¶ 2029 aff'd, 315 Ill. App. 3d 459 (3rd Dist. 2000). The test for determining whether a party has engaged in frivolous litigation is whether the party's defenses to the charge were not made in good faith or did not represent a "debatable" position. Chicago Transit Auth., 16 PERI ¶ 3021; Cnty. of Cook, 15 PERI ¶ 3001 (IL LLRB 1998); Cnty. of Cook and Sheriff of Cook Cnty., 12 PERI ¶ 3008 (IL LLRB 1996); City of Markham, 11 PERI ¶ 2019 (IL SLRB 1995). The courts view a party's legal arguments in the context of all its submissions. Wood Dale Fire Protection Dist. v. Ill. Labor Rel. Bd., State Panel, 395 Ill. App. 3d 523, 535-36. They have held the imposition of sanctions to be inappropriate, even where the Respondent has taken a legal position that is incorrect in the face of non-debatable black letter law, as long as the Respondent's remaining arguments and submissions to the Board are supportable. Wood Dale Fire Protection Dist., 395 Ill. App. 3d at 535-36.

Here, Jones's request to reopen the record lacked merit, but presented a debatable position. Furthermore, there is insufficient evidence that Jones filed the motion for the purpose of delay or needless increase in costs of litigation. Rather, Jones simply acted in good faith to expand the record to present a more persuasive and favorable case. Fraternal Order of Police, Lodge 7 (Harej), 31 PERI ¶ 137 (IL LRB-LP 2015) (charging party did not engage in frivolous

litigation absent evidence that he acted in bad faith, to delay or needlessly increase costs); Chicago Transit Authority, 20 PERI ¶ 80 (IL LRB-LP 2004)(denying motion for sanctions on similar grounds where non-moving party offered new evidence into the record after hearing, along with its brief; yet granting motion to strike).

Thus, the Respondent's motion for sanctions is denied.

V. CONCLUSIONS OF LAW

1. Jones's Motion to Reopen the Record is denied.
2. The Respondent did not violate Section 10(b)(1) of the Act when it declined to arbitrate Jones's grievance.
3. The Respondent's Motion for Sanctions is denied.

VI. RECOMMENDED ORDER

The Complaint is dismissed.

VII. EXCEPTIONS

Pursuant to Section 1200.135 of the Board's Rules, parties may file exceptions to the Administrative Law Judge's Recommended Decision and Order and briefs in support of those exceptions no later than 30 days after service of this Recommendation. Parties may file responses to exceptions and briefs in support of the responses no later than 15 days after service of the exceptions. In such responses, parties that have not previously filed exceptions may include cross-exceptions to any portion of the Administrative Law Judge's Recommendation. Within seven days from the filing of cross-exceptions, parties may file cross-responses to the cross-exceptions. Exceptions, responses, cross-exceptions and cross responses must be filed with General Counsel Kathryn Zeledon Nelson of the Illinois Labor Relations Board, 160 North LaSalle Street, Suite S-400, Chicago, Illinois 60601-3103, and served on all other parties. Exceptions, responses, cross-exceptions and cross-responses will not be accepted at the Board's Springfield office. The exceptions and/or cross-exceptions sent to the Board must contain a statement of listing the other parties to the case and verifying that the exceptions and/or cross-exceptions have been provided to them. The exceptions and/or cross-exceptions will not be

considered without this statement. If no exceptions have been filed within the 30-day period, the parties will be deemed to have waived their exceptions.

Issued at Chicago, Illinois this 3rd day of February, 2016

STATE OF ILLINOIS
ILLINOIS LABOR RELATIONS BOARD
LOCAL PANEL

/S/ *Anna Hamburg-Gal*

Anna Hamburg-Gal
Administrative Law Judge