STATE OF ILLINOIS
ILLINOIS LABOR RELATIONS BOARD
LOCAL PANEL

Jason Monsour,	)	
	)	
Charging Party,	)	
	)	
and	)	Case No. L-CB-16-010
	)	
Amalgamated Transit Union, Local 308	)	
	)	
Respondent.	)	

DECISION AND ORDER OF THE ILLINOIS LABOR RELATIONS BOARD LOCAL PANEL

On August 29, 2016, Executive Director Melissa Mlynski dismissed a charge filed by Jason Monsour (Monsour or Charging Party) on October 5, 2015, alleging that the Amalgamated Transit Union, Local 308 (Union or Respondent) engaged in unfair labor practices within the meaning of Section 10(b) of the Illinois Public Labor Relations Act ("Act"), 5 ILCS 315/1 *et seq.,* when it improperly and negligently handled the grievance over his discharge from the Chicago Transit Authority (CTA), resulting in a loss of wages and benefits for over two years.

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 a response.

We note that the Respondent had raised a timeliness issue under Section 11(a) of the Act alleging that the charge was untimely because the charge failed to include any allegations of misconduct during the six month period prior to the filing of the October 5, 2015 charge, or the period between April 5, 2015 and October 5, 2015. We note there were two events that occurred during that time period, a rescheduling of the Charging Party's arbitration and the execution of

the settlement agreement of Charging Party's grievance on September 10, 2015. The Executive Director, construing the facts in the light most favorable to Charging Party, assumed the charge was timely but ultimately dismissed the charge on its merits. After reviewing the record and appeal, we affirm the Executive Director's Dismissal for the reasons stated in that document with modification noting the facts regarding the timeliness issue.

BY THE LOCAL PANEL OF THE ILLINOIS LABOR RELATIONS BOARD

/s/ Robert M. Gierut
Robert M. Gierut, Chairman

/s/ Charles E. Anderson
Charles E. Anderson, Member

/s/ Richard A. Lewis
Richard A. Lewis, Member

Decision made at the Local Panel's public meeting held in Chicago, Illinois, on November 15, 2016; written decision issued in Chicago, Illinois, November 29, 2016.

STATE OF ILLINOIS
ILLINOIS LABOR RELATIONS BOARD
LOCAL PANEL

Jason Monsour, Charging Party and Amalgamated Transit Union, Local 308, Respondent	Case No. L-CB-16-010

DISMISSAL

On October 5, 2015, Jason Monsour (Charging Party) filed an unfair labor practice charge with the Local Panel of the Illinois Labor Relations Board (Board), in Case No. L-CB-16-010, alleging that Amalgamated Transit Union, Local 308 (Union or Respondent) violated Section 10(b) of the Illinois Public Labor Relations Act (Act), 5 ILCS 315 (2014), *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. INVESTIGATION

The Respondent is a labor organization within the meaning of Section 3(i) of the Act and the exclusive representative of a bargaining unit (Unit) of certain Chicago Transit Authority (CTA) employees, including those in the title of Rail Janitor. At all times material, Charging Party is a public employee within the meaning of Section 3(n) of the Act, employed as a Rail Janitor with the CTA.

Charging Party asserts that the negligence of the prior Union administration cost him over two years of lost wages and benefits. Charging Party states that on or about July 2013, he was discharged by the CTA. Charging Party claims that he filed a grievance in a timely manner to challenge his discharge. Charging Party asserts that his grievance sat in someone's office at the Union and did not go through the proper processing. Charging Party states that a new Union administration took office in January 2015 and that after the new Union administration pursued his discharge grievance he was called back to work at the end of September 2015.

Charging Party states that in or about 2012 he ran for the position of 2nd Vice President of the Union against Charlie Peacock and two other candidates. Peacock won the election and took office in or about January 2013. Charging Party asserts that the duties of the 2nd Vice President include the handling of grievances. Charging Party states that he stopped by Union headquarters in or about May 2015 to discuss the status of his grievance with the new Union administration. Charging Party asserts that he had no faith in the past Union administration. Charging Party maintains that he had a conversation with Union Executive Board Member Andre Huff regarding his grievance and that Huff explained that there had been cases with similar circumstances to his involving other Rail Janitors that had been discharged after him and brought back to work before him. Charging Party claims that Huff informed him that there are lawsuits against Peacock in regards to his failure to file grievances properly.

Charging Party asserts that he also spoke to Peacock about his case since Peacock was supposed to file Charging Party's grievance. Charging Party claims he was misled and lied to by Peacock who allegedly told him that his case was over. Charging Party claims that Peacock then tried to further explain how the Union had sent him letters in an attempt to reach out to him to follow up on his grievance. Charging Party asserts that the Union is supposed to send a certified letter to show that they tried to reach out to the grievant. Charging Party asserts that he requested

the certification for the letter regarding his grievance. Charging Party claims that the Union could not produce the certification. Charging Party alleges that his grievance along with many others had been sitting on a desk at the Union for years.

The Union filed a comprehensive response to the unfair labor practice charge. The Union states that Charging Party began working for the CTA on or about July 21, 2008. The Union asserts that as a Rail Janitor, Charging Party was responsible for cleaning and maintaining rapid transit stations and other facilities. The Union maintains that the CTA issued and required Charging Party to carry a mobile phone on his person throughout his shift, equipped with a program that records the phone's location, time spent at a given location, and movement from one location to another. The Union states that the CTA also issued and required Charging Party to carry a CTA identification card, which he used to travel from one rail station to another as he cleaned stations. The Union asserts that CTA's computer system maintains a log of the locations and times at which Charging Party swiped his CTA identification card.

The Union states that on or about October 30, 2012, the Office of the Executive Inspector General For the Agencies of the Illinois Governor (OEIG) forwarded to CTA an anonymous complaint, dated March 28, 2012, claiming that Charging Party "clocks in and regularly leaves his assigned area and does not work." The Union states that the CTA investigated the computer generated records from Charging Party's CTA issued cell phone and identification card and determined that, on five work days during the period March 26, 2012 through April 1, 2012, and on nine work days during the period May 5, 2013 through May 17, 2013 (for a total of 14 work days), Charging Party spent hours each day in apartment buildings and other non-CTA locations away from his assigned work locations. As a result of this investigation, on or about July 2, 2013, CTA discharged Charging Party.

The Union asserts that previously, on May 24, 2013, the CTA had issued Charging Party a Corrective Case Interview, three day suspension, and six month probation for excessive absenteeism. The Union states that on or about June 7, 2013, Charging Party completed, and the Union filed on his behalf, a grievance over the discipline issued on May 24th. The Union further states that the CTA denied the grievance at Step 1, but granted the grievance at Step 2 and paid Charging Party three days' pay.

The Union claims that on August 1, 2013, Charging Party completed, and the Union filed on his behalf, a grievance with CTA stating that he was unjustly discharged on July 2nd. The Union asserts that pursuant to the collective bargaining agreement between the Union and CTA, discharge grievances are filed at Step 2 of the grievance procedure. The Union states that its procedure for processing grievances to arbitration following receipt of a Step 2 denial begins with a review of the grievance by the Union's Executive Board. The Union states that bargaining unit members who have filed grievances are sent form letters stating that if the employee wants the Union to take further action then he or she must appear at the Union's Executive Board meeting and that if the employee does not appear or contact the Union, then the grievance will be considered closed and the Union will assume the employee is satisfied with CTA's answer. The Union maintains that its practice is to mail the form letter by regular U.S. mail to the address that the employee puts on the grievance and to retain a copy of the envelope. The Union states that it does not typically retain copies of the form letter.

The Union asserts that employees who appear at the Union's Executive Board meeting are questioned about their grievances and the Union Executive Board votes whether to recommend to the membership that the grievances be taken to arbitration. The Executive Board recommendations are presented at the membership meeting and a vote is taken on whether to accept or reject the recommendations. The Union states that after receiving the September 13, 2013, Step 2 denial of

Charging Party's grievance, on or about September 18, 2013, the Union sent Charging Party a copy of the CTA's Step 2 denial letter to the address on the grievance form. The Union asserts that in that same envelope, the Union sent Charging Party a form letter stating that if he wanted the Union to take further action then he must appear at the Union's Executive Board meeting. The Union claims that the letter further informed Charging Party that if he did not appear before the Union Executive Board or contact the Union, his grievance would be considered closed.

The Union states that Charging Party did not appear at the Union's Executive Board meeting on November 4, 2013, and the Union's Executive Board voted to table the grievance for one month to give Charging Party the opportunity to appear. The Union claims that following the meeting, the Union attempted to get in touch with Charging Party by calling him but he was not responsive. The Union asserts that Charging Party again did not appear at the Union's Executive Board meeting on December 2, 2013. The Union maintains that Huff, the Executive Board member for Rail Janitors, spoke on Charging Party's behalf at the December meeting and the Executive Board voted to recommend arbitrating the grievance, despite the fact that Charging Party did not appear at the Board meetings and had no contact with the Union.

The Union states that on December 10, 2013, the Union's membership concurred with the Executive Board's recommendation to arbitrate the grievance. The Union claims that Charging Party did not attend the December 10, 2013, mass membership meeting where his grievance was called for a vote. The Union states that on or about December 24, 2013, it requested arbitration of the grievance.

The Union claims that in or about January or February 2014, Charging Party called Huff and Huff told Charging Party that he had spoken on Charging Party's behalf during the December 2013 Union Executive Board meeting and that his grievance had been moved to arbitration. The Union states that Huff told Charging Party to call the Union office for more information. The Union

claims that later in 2014, Charging Party again called Huff and Huff told him to call the Union office for more information regarding his grievance. The Union asserts that Charging Party did not call or go to the Union office in 2014. The Union states that its records do not indicate that Charging Party attended any of the Union's mass membership meetings from January 2014 through August 2014.

On or about February 26, 2014, the Union and CTA selected Arbitrator Anita Rowe as the arbitrator to decide Charging Party's grievance. On or about March 11, 2014, Charging Party's grievance was scheduled for arbitration on August 29, 2014. The Union asserts that between June 2013 and August 2014, it was inundated with approximately 70 discharge grievances (51 discharge grievances between January and August 2014). The Union claims that there was a surge of discharge grievances because the CTA had allegedly made the decision to ignore its system of progressive discipline and accelerate to summary discharge discipline for safety violations which had previously been addressed with written warnings or short suspensions.

The Union claims that because of the "exceptionally high number of discharge cases," where employees were discharged for incurring a single safety violation even though there were no injuries and no or minimal property damage, the Union decided in the summer of 2014 to give priority in scheduling cases involving such summary discharges. The Union states that given the substantial evidence supporting CTA's claim that Charging Party routinely spent hours in apartment buildings away from his assigned work locations, the Union considered the chances of winning Charging Party's grievance to be very low. The Union further states that based on the merits of Charging Party's grievance, the Union determined that it would not pursue arbitration of the grievance in the summer of 2014 and instead focused on the pending summary discharge grievances which it considered to have more merit.

The Union states that effective January 1, 2015, Charlie Peacock was elected the Union's 1st Vice President, a position for which responsibilities include being Chairman of the Union's grievance committee. The Union further states that prior to that time, effective January 1, 2012, Peacock had been the Union's 2nd Vice President, a position responsible for the day-to-day filing and processing of grievances through the grievance procedure. The Union confirms that Charging Party was in-fact a candidate on the ballot for the position of 2nd Vice President to be effective January 1, 2012.

The Union states that in or about early 2015, it took steps to reschedule Charging Party's grievance. The Union states that on or about March 16, 2015, it requested CTA to reschedule Charging Party's grievance for arbitration. The Union asserts that the previously-selected arbitrator, Rowe, was on sabbatical and the previously appointed CTA attorney, Destiny Woods, had left CTA. The Union states that it and the CTA selected Arbitrator Jonathan Rothstein to decide the grievance and the CTA appointed another attorney. The Union claims Arbitrator Rothstein initially offered dates in April and May, but due to CTA's unavailability on those dates, the hearing was scheduled for September 3, 2015.

The Union asserts that in or about May 2015, Charging Party stopped by the Union office to ask about the status of his grievance. The Union states that Peacock showed Charging Party the CTA's second step response to the grievance. The Union maintains that Peacock did not mislead Charging Party by telling him that his case was over and that in fact, Charging Party's grievance was already scheduled for arbitration at that time. The Union asserts that Charging Party also talked with Huff at the Union office and that Huff mentioned to Charging Party that the Union had been able to resolve other discharge grievances involving Rail Janitors accused of poor work performance. The Union claims that Huff did not tell Charging Party that there are other lawsuits or charges against Peacock regarding an alleged failure to file grievances.

The Union asserts that the other discharge grievances Huff referred to involved three Rail Janitors employed by the CTA. In the first case, the Rail Janitor was discharged on July 3, 2014, for leaving his assigned work location for 43 minutes and for spending a total of three hours in a janitor's closet. In the second case, the Rail Janitor was discharged on August 21, 2014, for spending one hour in the Customer Assistant booth instead of performing Rail Janitor duties. In the third case, the Rail Janitor was discharged on August 21, 2014, for leaving his assigned work location for an extended period of time on July 18, 2014, and July 21, 2014.

The Union asserts that it and the CTA settled these three discharge cases for reinstatement without back pay and subject to six month probation for behavioral violations. The settlement agreement in the first case was executed on June 24, 2015, and the Rail Janitor began the reinstatement process on July 6, 2015. The settlement agreement in the second case was executed on March 12, 2015, and the Rail Janitor began the reinstatement process on March 17, 2015. The settlement agreement in the third case was executed June 24, 2015, and the Rail Janitor began the reinstatement process on June 30, 2015. The Union states that while there are in-fact two other unfair labor practice charges against the Union which include allegations concerning Peacock, (L-CB-16-004) and (L-CB-16-021) those charges were not filed until September 1, 2015, and November 20, 2015, respectively.

The Union states that on September 2, 2015, it, the CTA, and Charging Party settled Charging Party's grievance on the same terms as the three Rail Janitor discharge cases referenced above - reinstatement without back pay and subject to a 6-month probation for behavioral violations. On September 10, 2015, Charging Party and the Union executed the settlement agreement and that Charging Party began the reinstatement process on September 17, 2015. The Union claims that Charging Party was initially scheduled to be reinstated on September 23, 2015, but due to Charging Party's availability he was not reinstated until September 29, 2015. The Union

states that pursuant to the terms of Charging Party's settlement agreement, the grievance was withdrawn upon his reinstatement.

The Union argues that the charge is untimely because the Charging Party makes no allegations that the Union engaged in any misconduct during the six months prior to the filing of the charge on October 5, 2015. The Union maintains that as of April 5, 2015, Charging Party's grievance was already in the process of being rescheduled for an arbitration hearing on September 3, 2015. The Union states that from April 5, 2015, through October 5, 2015, the only action taken by the Union was to reschedule for hearing and settle Charging Party's grievance.

The Union argues that there is no merit to Charging Party's allegations that Peacock told him in May 2015, that his grievance was over, and that it would have made no sense for Peacock to tell Charging Party that his case was over, since at that time his grievance had already been scheduled for a hearing on September 3, 2015. The Union asserts that it did not intentionally fail to represent Charging Party and that to the contrary, Charging Party received an extremely favorable settlement of his grievance, given the CTA's significant evidence supporting the allegations that Charging Party consistently spent numerous hours on 14 separate work days in apartment buildings and other non-work locations when he was supposed to be working.

In response to Charging Party's claim that the grievance did not go through the proper process and that the negligence of the last administration cost him over 2 years of lost wages and benefits the Union states that, contrary to Charging Party's allegations, Charging Party, not the Union, failed to follow the proper process with respect to his grievance. The Union asserts that Charging Party did not appear at the Union's Executive Board meetings in 2013 and did not otherwise request that the Union take further action on his grievance. The Union maintains that at that time, it could have withdrawn or refused to arbitrate Charging Party's grievance because of his failure to participate in the procedure. The Union states that despite the fact that Charging Party

neither appeared at its Executive Board meetings, nor asked the Union to take further action on his grievance, the Union's Executive Board voted to arbitrate the grievance on December 2, 2013, on December 10, 2013, the Union's membership ratified that decision and, on December 24, 2013, the Union requested arbitration.

The Union states that if Charging Party had any questions or concerns about the status of his grievance, he never communicated those concerns to the Union and that his claim of negligence on the Union's part is insufficient to state a claim under Section 10(b)(1) of the Act[1]. The Union asserts that even if negligence was actionable under Section 10(b)(1), there is no evidence that the Union's prior administration was negligent, let alone engaged in any intentional misconduct, in representing Charging Party.

The Union asserts that it processed both the grievances Charging Party filed in 2013 through the grievance procedure and to a favorable result. The Union maintains that there is no evidence that it took any adverse action against Charging Party because he ran for the office of 2nd Vice President in 2012.

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

[1] The Union cites a case in which the Board found that: "[N]egligence, even gross negligence, is not sufficient to violate Section 10(b)(1) because intentional misconduct may not be inferred from negligence, whether simple or gross." AFSCME, Local/2912 (McGloin), 17 PERI 3001 (IL LLRB 2000).

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.

In this case, there is insufficient evidence that the Union engaged in intentional misconduct under the Act. Charging Party has supplied some evidence to support that there may be a reason for animosity or acrimony between himself and Union official Peacock who he ran against for the position of 2nd Vice President in 2012. However, there is no evidence that Peacock or the Union took an adverse representation action against Charging Party because of that past history. In fact, the available evidence belies Charging Party's assertion that the Union or Peacock acted in a retaliatory manner. Instead the evidence indicates that even after the 2012 Union elections, the Union processed Charging Party's grievances in a successful manner.

On or about May 24, 2013, the Union filed a grievance over a Corrective Case Interview, three day suspension, and six month probation for excessive absenteeism issued to the Charging Party by the CTA. This grievance was granted by the CTA at Step 2 and Charging Party was paid three day's pay by the CTA. The second grievance filed on or about June 7, 2013, over Charging Party's discharge was pursued by the Union up to arbitration and was settled just prior to the

arbitration hearing. The Union managed to negotiate a reinstatement for Charging Party on similar terms to other members who had been discharged for lesser offenses. At best, Charging Party can point to a delay in the processing of the discharge grievance, but this is insufficient to raise a question for hearing.

Under Section 6(d) of the Act, the exclusive representative has a wide range of discretion in grievance handling, 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).

The Union's decision to pursue other grievances which it believed to be of higher merit before pursuing Charging Party's, falls within the considerable amount of discretion afforded by Section 6(d) of the Act. There is no evidence that the Union deliberately put off pursuing Charging Party's grievances because of a negative history between Charging Party and Peacock.

Furthermore, Charging Party's subsequent dissatisfaction with the terms of the settlement agreement on its own does not raise a violation under Section 10(b)(1) of the Act. Absent any evidence that the Union is singling Charging Party out for discriminatory or disparate treatment in the handling of his grievances, this charge fails to raise a question for hearing.[2]

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 General Counsel of the

[2] Because I find that the available evidence is insufficient to raise a question for hearing, I need not resolve the Union's argument that the charge is untimely. Even if I construe the facts in the light most favorable to the Charging Party and assume the charge is timely filed, the allegations are still insufficient to raise a question for hearing.

Illinois Labor Relations Board, 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 29th day of August, 2016.

STATE OF ILLINOIS
ILLINOIS LABOR RELATIONS BOARD
LOCAL PANEL

Melissa Mlynski
Executive Director