

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

Al Wagner,)	
)	
Charging Party,)	
)	
and)	Case No. L-CB-16-036
)	
Automobile Mechanics Union, Local)	
Union #701,)	
)	
Respondent.)	

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

On May 31, 2016, the Illinois Labor Relations Board’s Executive Director, Melissa Mlynski, dismissed the charge filed by Al Wagner (Charging Party) in the above-captioned case. The Charging Party alleged that Automobile Mechanics Union, Local Union #701 violated Section 10(b) of the Illinois Public Labor Relations Act, 5 ILCS 315/1, *as amended*, (Act) when a Union Business Representative contacted Charging Party’s then-employer, Chicago Transit Authority (CTA), to assert that Wagner was not qualified for the position he held with CTA at that time. After investigation, the Executive Director concluded that the charge failed to raise an issue of law or fact sufficient to warrant a hearing, and on May 31, 2016, the Executive Director issued an order dismissing the charge in its entirety. Thereafter, Charging Party timely filed an appeal of the Executive Director’s Dismissal and Respondent timely filed a response, pursuant to Section 1200.135 of the Illinois Labor Relations Board’s Rules and Regulations, 80 Ill. Admin. Code § 1200.135(a).

Based on our review of Charging Party's appeal and the investigatory record to date, we decline to affirm the Executive Director's Dismissal at this time, and instead remand this matter to the Executive Director for further investigation.

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 in Chicago, Illinois on August 9, 2016, written decision issued in Chicago, Illinois on September 20, 2016.

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Automobile Mechanics Union,)	
Local Union #701,)	
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Respondent)	

DISMISSAL

On January 15, 2015, Al Wagner (Charging Party or Wagner) filed an unfair labor practice charge with the Local Panel of the Illinois Labor Relations Board (Board), in the above referenced case, alleging that Automobile Mechanics Union, Local Union #701 (Local 701 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 stated 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 Bus and Truck Mechanics working at Chicago Transit Authority (CTA or Employer). Unit employees perform heavy maintenance on CTA buses and other road vehicles, primarily at CTA's South Shop facility. The Charging Party was a public employee within the meaning of Section 3(n) of the Act, employed as a Bus and Truck Mechanic prior to his separation from employment with the CTA. The Employer and Local 701 are parties to a collective bargaining agreement (CBA) for the Unit that includes a

hiring procedure defining Local 701's rights to refer applicants for temporary employment. Charging Party asserts that Local 701 breached its duty of fair representation when Local 701 Business Representative Mark Utley allegedly questioned Charging Party's qualifications for the position of Bus and Truck Mechanic, resulting in Charging Party's termination from CTA. Charging Party asserts that Utley took this action because Charging Party had previously made an unsuccessful attempt to run against Utley for union office.

In January 2015, Charging Party applied with CTA for a position as a Bus Mechanic.¹ The Bus Mechanic title is represented by Amalgamated Transit Union (ATU), Local 241. As a prerequisite for the Bus Mechanic position, Charging Party took and passed both written and practical skills tests, qualifying him for the position. After a successful interview, CTA placed Charging Party in a pool for consideration when a Bus Mechanic position became available.

During his interview for the Local 241 Bus Mechanic position, Charging Party apparently mentioned his membership in Local 701² and asked the Employer to consider him for a position in the Local 701 bargaining unit. However, the Local 701 Unit does not include the title of Bus Mechanic as the Bus Mechanic position is represented exclusively by ATU, Local 241.

Under the CBA between CTA and Local 701, 50% of "temporary" job openings within the Unit are reserved for applications referred by Local 701. The CBA also requires CTA to post all permanent open positions in the Local 701 Unit and to notify Local 701 of such vacancies in order to give existing Unit members an opportunity to bid and test for those positions.

In March or April 2015, Earl Marshall, CTA employee and Local 701 union steward, contacted CTA's Human Resources to inquire as to the status of Charging Party's application to

¹ The available evidence indicates that Bus Mechanics perform day-to-day preventative maintenance and minor repairs at CTA bus garages.

² Charging Party has been a member of IAM Local 701 since June 1999. He was employed for over 15 years as an automobile mechanic for a Toyota dealership in the Metropolitan Chicago area. In 2015, Charging Party resigned from the dealership to attend training in Wisconsin for a job he had applied for outside the industry. During his leave from the Toyota dealership, Charging Party kept his union dues current.

become a Local 701 Bus and Truck Mechanic.³ In response to Mr. Marshall's inquiry, CTA gave Charging Party a written and practical skills test and he passed both exams.⁴

On or about December 3, 2015, CTA's Human Resources Department contacted Charging Party to offer him a position as a Bus and Truck Mechanic in the Local 701 Unit. CTA officially hired Charging Party into the Bus and Truck Mechanic position effective January 4, 2016.

According to the Respondent, on or about January 6, 2016, Unit members began to contact Local 701 Business Representative Mark Utley reporting that they had heard rumors that a new Bus and Truck Mechanic was to start on Monday. The employees were concerned that the position had not been posted and therefore Unit employees had not been given the opportunity to test for it. Utley, who was not aware of any new hires, contacted the union stewards at the work location who also claimed to be unaware of the new hire. Utley then contacted Katharine Lunde, CTA General Manager of Contract and Labor Relations, who reported that she was not aware of any new hires either but would investigate. On January 8, 2016, Utley received a standard monthly report from CTA showing transfers in and out of the bargaining unit, new hires and current employees. The report did not indicate any new hires, but did include Charging Party's name as a current employee with a start date of January 4, 2016.

The available evidence indicates that after investigating the circumstances surrounding Charging Party's hire, Lunde determined that CTA's Human Resources Department had erred when it hired Charging Party because it had not followed the provisions of the CBA including: 1) the position was not posted, either internally or on CTA's website before being offered to anyone outside the Local 701 Unit, and 2) Charging Party had not been referred by Local 701.

³ It is unclear whether Charging Party had submitted an official application for the Bus and Truck Mechanic position at that point, or whether he had just inquired about the possibility of obtaining a job in the Local 701 Unit.

⁴ According to the Respondent, Marshall, as a union steward, had no authority to refer external applicants for consideration for positions in the Local 701 bargaining unit and CTA Human Resources should not have assumed that Charging Party was a Local 701 referral based solely on Marshall's call.

Upon determining that CTA had mistakenly given Charging Party the Bus and Truck Mechanic position without notifying Local 701 or posting the vacancy, CTA instead offered Charging Party the ATU Local 241 Bus Mechanic position for which he had originally applied. There is no evidence that Local 701 played any role in the CTA's decision to follow this course of action. Charging Party declined the position. Because Charging Party refused to accept the Local 241 position, CTA administratively separated Charging Party from his employment with CTA, which did leave Charging Party eligible for future employment with CTA.

II. DISCUSSION AND ANALYSIS

Section 10(b)(1) of the Act provides “that a labor organization or its agents shall commit an unfair labor practice . . . in duty of fair representation cases only by intentional misconduct in representing employees under this Act.” Because of the intentional misconduct standard, demonstration of a breach of the duty to provide fair representation, and a violation of Section 10(b)(1), requires a charging party to “prove by a preponderance of the evidence that: (1) the union’s conduct was intentional, invidious and directed at charging party; and (2) the union’s intentional action occurred because of and in retaliation for some past activity by the employee or because of the employee’s status (such as race, gender, or national origin), or animosity between the employee and the union’s representatives (such as that based upon personal conflict or the employee’s dissident union practices).” Metro. Alliance of Police v. Ill. Labor Relations Bd., Local Panel, 345 Ill. App. 3d 579, 588 (1st Dist. 2003).

To prove unlawful discrimination, which is necessary to establish the second element of a Section 10(b)(1) violation, a charging party must demonstrate, by a preponderance of evidence, that: (1) the employee has engaged in activities tending to engender the animosity of union agents or that the employee’s mere status, such as race, gender, religion or national origin, may have caused animosity; (2) the union was aware of the employee’s activities and/or status; (3)

there was an adverse representation action taken by the union; and (4) the union took an adverse action against the employee for discriminatory reasons, i.e. because of animus towards the employee's activities or status. *Id.* at 588-89.

There appears to be no dispute that Utley questioned CTA's hiring of Charging Party, alleging that it violated the CBA. Further, Charging Party has supplied some motive for Utley to harbor a grudge or bias against him in that Charging Party apparently ran against Utley for union office. However, there is insufficient evidence that Utley questioned Charging Party's hiring *because* he harbored a bias or grudge against him. Instead, the available evidence indicates that Utley questioned Charging Party's hiring because he believed it violated the CBA between Local 701 and the CTA. Apparently CTA agreed with Utley's assessment, which is why they first offered Charging Party a different position, and when he declined, separated him from employment with the CTA.

As the exclusive representative of the Unit, it is Local 701's responsibility to administer the CBA and notify the Employer of a potential breach of the CBA. In doing so, Utley did not violate the Act, even if it led to an unfortunate result for the Charging Party.

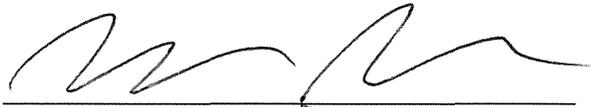
III. ORDER

Accordingly, the instant charge is dismissed in its entirety. The Charging Party may appeal this Dismissal, to the Board any time within 10 days of service hereof. Such appeal must be in writing, contain the case caption and number, and must be addressed to the General Counsel of the Illinois Labor Relations Board, at 160 North LaSalle Street, Suite S-400, Chicago, Illinois, 60601-3103. The appeal must contain detailed reasons in support thereof, and be served upon all other persons or organizations involved in this case at the same time it is served on the Board. A statement asserting that all other parties have been served must accompany an appeal, or the

board will not consider it. If the Board does not receive an appeal with the specified time, the Dismissal will be final.

Issued at Springfield, Illinois, this 31st day of May, 2016.

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

Melissa Mlynski, Executive Director