STATE OF ILLINOIS
ILLINOIS LABOR RELATIONS BOARD
LOCAL PANEL

Ronald Robertson, Jr.,	)	
	)	
Charging Party	)	
	)	
and	)	Case No. L-CB-17-003
	)	
Sheet Metal Workers, Local 73,	)	
	)	
Respondent	)	

ORDER

On July 16, 2019, Administrative Law Judge Anna Hamburg-Gal, on behalf of the Illinois Labor Relations Board, issued a Recommended Decision and Order in the above-captioned matter. No party filed exceptions to the Administrative Law Judge's Recommendation during the time allotted, and at its December 10, 2019 public meeting, the Board, having reviewed the matter, declined to take it up on its own motion.

THEREFORE, pursuant to Section 1200.135(b)(5) of the Board's Rules and Regulations, 80 Ill. Admin. Code §1200.135(b)(5), the parties have waived their exceptions to the Administrative Law Judge's Recommended Decision and Order, and this non-precedential Recommended Decision and Order is final and binding on the parties to this proceeding.

Issued in Chicago, Illinois, this 13th day of December 2019.

STATE OF ILLINOIS
ILLINOIS LABOR RELATIONS BOARD
LOCAL PANEL

/s/ Helen J. Kim
Helen J. Kim
General Counsel

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Ronald Robertson, Sr.,	)	
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	)	Case No. L-CB-17-003
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	)	
Sheet Metal Workers, Local 73,	)	
	)	
Respondent.	)	

ADMINISTRATIVE LAW JUDGE'S RECOMMENDED DECISION AND ORDER

On July 29, 2016, Ronald Robertson, Sr., (Charging Party or Robertson) filed a charge with the Illinois Labor Relations Board's Local Panel (Board) alleging that the Sheet Metal Workers, Local 73 (Respondent or Union) 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 April 13, 2018, the Board's Executive Director issued a Complaint for Hearing. A hearing was conducted on September 14, 2018, in Chicago, Illinois before Administrative Law Judge Michelle N. Owen, 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. The case was administratively transferred to the undersigned. 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. Ronald Robertson (Robertson) is a member of Sheet Metal Workers Local 73 (Respondent or Union).
2. Robertson is employed by the Chicago Transit Authority (CTA or Employer) and works out of the CTA's South Shop.

3. The Union obtained two judgments in the Circuit Court of Cook County (12-M1-11324 and 15-M1-119162) totaling $2,124.00 against Robertson for failing to pay contributions to the Building Fund.
4. Dave Brown (Brown) is a business agent for the Union.
5. On or about June 9, 2016, Brown met with Colleen Brewer, who is a manager at the CTA South Shop, to investigate Robertson's claims.
6. Robertson was not suspended or discharged by the CTA in June 2016.
7. Article VII Section 8.3 of the Collective Bargaining Agreement provides that a grievance must be submitted within fifteen (15) working days of the occurrence or knowledge of the occurrence giving rise to the grievance.
8. On July 6, 2016, Robertson left Brown a voicemail saying he was ready to file a grievance against the CTA.
9. After hearing the voicemail on July 6, 2016, Brown sent an email to Katherine Lunde, an attorney for the CTA, to request a grievance.
10. Katherine Lunde responded to Brown's email stating that June 30, 2016 was the deadline to file the grievance.
11. Brown never discussed the judgments (12-M1-11324 and 15-M1-119162) with Robertson.

II. ISSUES AND CONTENTIONS

The issue is whether the Union breached its duty of fair representation, in violation of Section 10(b)(1) of the Act, when it failed to file a grievance over the discipline Robertson received in June 2016.

Robertson asserts that the Union engaged in intentional misconduct by failing to file a grievance over that disciplinary action. He reasons that he engaged in conduct tending to engender the animosity of Union agents when he refused to pay into the Union's Building Fund, and he further claims that Union agents bore animosity against him because of his race (African American). Robertson argues that the Union acted intentionally to disadvantage him by failing to file a grievance at his request. He asserts that the Union's consistent refusal to represent him on a number of other work place issues constitutes circumstantial evidence that the Union failed to represent him regarding the June 2016 incident because of its agents' animus against him.

The Union argues that it took no actions that were intentionally directed to disadvantage Robertson. It reasons that Union representative Dave Brown initially declined to file a grievance on Robertson's behalf because Robertson told Brown he would get back to him on that matter. It asserts that Brown did not file a grievance later because, by the time Robertson followed up with Brown, the grievance would have been deemed untimely filed. The Union emphasizes that Robertson's failure to pay into the Building Fund was unrelated to Brown's actions regarding Robertson's June 2016 workplace dispute, and notes that Robertson offered no direct evidence linking the two. Finally, the Union notes that it pursued other grievances on Robertson's behalf and investigated every incident he brought to its agents' attention.

III. FINDINGS OF FACT

Ronald Robertson is a sheet metal worker who works for the CTA at 7801 South Vincennes, also known as the South Shop. He is a member of Sheet Metal Workers Local 73 (Respondent or Union). At all times material Ray Suggs and Dave Brown were agents of the Union. Suggs currently serves as Union president and previously served as Union secretary, treasurer, and business agent. Dave Brown is a business agent for the Union and has served the Union's CTA employees in that capacity since 2012.

1. Robertson's History with the Union

The Union requires its members to pay money into its Building Fund out of pocket. This financial obligation is separate from union dues, which are deducted from employees' pay checks. Robertson is a dues paying member of the Union. However, he stopped paying into the Building Fund in 2003. In 2012, the Union fined Robertson for failing to pay into the Union's Building Fund, as the Union's by-laws required, and it sued Robertson to enforce the fine. Robertson started paying into the Building Fund again because of the law suit, but subsequently stopped making payments again. In 2015, the Union again fined Robertson for failing to pay into the Union's Building Fund and again sued Robertson to enforce the fine. The Union obtained judgements against Robertson totaling $2,124.00. Robertson paid some of the money he owed, but he still owes the Union approximately $500 dollars.

On more than one occasion, Brown and Suggs discussed the fact that Robertson had refused to pay into the Building Fund for many years. These discussions took place sometime between

2012 and 2017. Brown did not know how much money Robertson owed. He was simply aware of the fact that Robertson owed the Union some money. On two or three occasions, Brown delivered a sealed envelope to Robertson from Suggs which contained a notice informing Robertson that he owned the Union money. The last time Brown delivered such an envelope to Robertson was in 2015 or 2016. Brown has never delivered such notices to any other employee.

2. Robertson's Disciplinary and Grievance History, 2014-2018

Michael Green is the General Manager of the South Shop, Colleen Brewer is a manager at that location, and Dave Harlan is a foreman there. Robertson experienced harassment from CTA management and contacted the Union for help on a number of occasions, as discussed below.

On January 28, 2014, Robertson received a write up and one-day suspension for being away from his work area during work time on January 16, 2014. He admitted that he was away from his work area 15 minutes prior to his lunch period, but asserted that the Employer had overstated, by five minutes, the period of time for which he was absent. He also noted that other workers were likewise away from the site at that time but received no discipline. Brown investigated Robertson's claim by interviewing a number of employees at the CTA shop. Suggs told Robertson that the Union would not bring a grievance over this claim. Robertson filed the grievance on his own behalf, and the CTA denied the grievance.

In April 2014, the Union pursued a grievance on Robertson's behalf to the second step. The CTA denied the grievance at the second step and the Union did not pursue the matter further. The record does not disclose the subject of the grievance.[1]

In March 2015, the Union pursued another grievance on Robertson's behalf to the second step. The grievance related to discipline that Robertson received for being on a personal cell phone during work time. The Union filed an identical grievance on behalf of another employee, Michele Bradley, and processed the two grievances together. The CTA denied the grievances at the second step and the Union did not pursue the matter further.

In June 2016, Foreman Harlan assigned Robertson a custom job, but did not give him appropriate directions to complete it. On June 7, 2016, General Manager Green informed

[1] The Respondent provided a copy of the grievance to the ALJ, identified the document, but did not formally move for its admission. Accordingly, it is not in evidence.

Robertson that he intended to write him up for his work performance. On June 8, 2016, Brewer and Green informed Robertson that the CTA would issue him a write up because he took too long to complete the custom job. Robertson informed them that the foreman had given him the incorrect instructions. Green and Brewer told Robertson that he could call his union representative.

Robertson immediately contacted Union representative Brown and left a voicemail asking him to come to the South Shop because he felt CTA management was harassing him. When Brown returned Robertson's call that day, Robertson asked him to come and investigate the alleged harassment and told Brown that he should not have received the write up. Brown said he would come and investigate.

On June 9, 2016, at around 8 a.m., Brown arrived at the shop to conduct his investigation. Robertson told Brown that the write up "has to be taken off my record…this has to be straightened out." Brown responded, "ok."

Brown asked Foreman Harlan and Manager Brewer for a meeting. Brewer stated that she would meet with Brown but that she did not want Robertson to join in that meeting. Brown testified that he has had other such meetings with management where the employee was not present. Brown acknowledged that Robertson could have corrected any misstatements made by Brewer, had he been present. However, Brown asserted that he did not believe the outcome would have been any different.

Manager Brewer and Brown met in Brewer's office. Brewer explained to Brown that General Manager Green had asked Robertson to make a custom piece, that Green felt it was taking him too long to do it, and that Robertson did not follow the instructions. Brewer did not issue Robertson a suspension, dock his pay, or discharge him. However, she stated the CTA would issue Robertson a written documentation of a verbal reprimand. Brown told Brewer that he disagreed with Brewer's disciplinary decision. Brewer said the Union could grieve it.

After the meeting, Brown and Robertson met again on the shop floor. Brown informed Robertson that Brewer had made her decision on the disciplinary issue. Some aspects of the conversation that followed between Brown and Robertson are undisputed. For example, both witnesses agree that Robertson initially told Brown that he wanted to file a grievance over the disciplinary action and that Brown stated, at least initially, that he would file one.

However, Brown offered further credible testimony about the remainder of the conversation, which Robertson did not recall. Brown testified that he told Robertson that he would

file a grievance if Robertson wanted him to, but that he did not believe there was anything to gain from it because Robertson had not received a suspension. According to Brown, Robertson responded that the verbal reprimand could nevertheless cause problems for him if he received any discipline in the future. Brown acknowledged this possibility, but said that the Union could fight the issue then. Although Robertson did not recount these aspects of the conversation, they are consistent with Robertson's subsequent assertion that he would report the incident to the EEO Department. Indeed, Robertson likely would not have mentioned a different avenue for relief had Brown not first explained the marginal benefit of filing a grievance over this issue.

The witnesses also offer conflicting testimony about how the meeting ended. I credit Brown's testimony that Robertson stated he would get back to Brown about filing a grievance and that Brown replied, "all right, let me know what you want me to do and we'll take it from there." This consistent with the parties' stipulation that Robertson called Brown in July 2016, stating, "I'm ready to file a grievance." Had Robertson expressed his readiness to file at the close of the conversation on June 9, 2016, as he claimed, he would not have announced that he was "ready" in July. He likely would have used different wording had his July 2016 contact with Brown represented a follow-up of an earlier, unequivocal request.

In addition, Brown's testimony is also consistent with the actions he took after speaking with Robertson. Brown contacted CTA attorney Lunde via email, informed her that Robertson had asked him to inquire about whether it was too late to file a grievance, and explained that Robertson had already filed a complaint with the EEO Department, but had not received a response.[2] Robertson contended that he filed his EEO complaint only after Brown informed him that a grievance would be deemed untimely, but this is not credible where Robertson admitted that he unequivocally announced his intent to report the matter to the CTA's EEO Department a full month earlier.

Robertson did not have any contact with Brown until July 6, 2016, when he called Brown and left him a voicemail that stated, "I'm ready to file a grievance." Brown returned Robertson's call 10 minutes later. Robertson asked Brown whether he had filed the grievance yet. Brown said

[2] The Respondent identified an email for the record documenting Brown's communication with Lunde. The Respondent also laid a foundation for its admission and submitted it in a binder to the ALJ, but neglected to formally move it into evidence. Accordingly, I rely on Brown's testimonial description of these actions.

he hadn't. Robertson told him to "jump on it." Brown said he would look into the matter and call Robertson back.

Brown was generally aware that the Union needed to file a grievance within 15 days of the disciplinary action. However, as a business agent, Brown is responsible for employees of approximately 12 different production shops that each have their own contracts. He does not know the wording of each contract. If he receives a question about a contact, he reviews the contract's terms. Brown asserted that the Union has 4400 members and that he does not keep track of each member and how many days each member may have to file their respective grievances.

Accordingly, after Brown spoke to Robertson, he reviewed the contract covering the South Shop employees and realized that any grievance the Union filed over Robertson's discipline would be past the 15-day deadline. Approximately 20 minutes after the first phone call, Brown called Robertson and informed him that it was too late to file a grievance. Robertson asked Brown when he knew it was too late to file. Brown responded that he had learned of it that day. Robertson then asked Brown to inquire about obtaining an extension to file the grievance.

In response to Robertson's request, Brown sent an email to Katharine Lunde, an attorney at the CTA. He explained that Robertson had filed a complaint with the CTA's EEO department, but had not received a response from them and had therefore asked Brown to file a grievance over the issue. Brown noted that the grievance was untimely, but asked whether he could still file it. Lunde responded that any grievance would be deemed untimely filed. Brown called Robertson after he received the response from Lunde and told him the grievance could no longer be filed. Robertson and Brown never discussed the judgements that the Union had obtained against Robertson related to his failure to pay into the Building Fund.

Between December 2017 and February 2018, Robertson contacted Union President Suggs on four occasions and asked him to file grievances on his behalf. In each case, Brown investigated the underlying occurrence by speaking with members of management and other employees. In each case, Suggs informed Robertson of the Union's decision.

In December 2017, Robertson asked Suggs to file a grievance because the foreman was belligerent with him three times for no reason; Robertson asserted that this constituted harassment. Suggs did not file a grievance and did not explain that decision to Robertson.

In that same month, Robertson asked Suggs to file a grievance over the General Manager's decision to deny Robertson's request to use vacation time for FMLA leave, even though the

foreman had initially allowed it. Suggs told Robertson that he would file a grievance over this matter, but ultimately did not take any action on Robertson's behalf.

Later that month, Robertson asked Suggs to file a grievance over the CTA's instruction that he clean up a mess created by another employee, and described the incident to Suggs in writing. Suggs told Robertson that he would file a grievance. When Robertson later contacted Suggs about the status of the grievance, Suggs informed Robertson that he had lost Robertson's written description of the incident and asked him to provide another. Robertson never provided another written description, and Suggs never filed a grievance over this matter.

In February 2018, Robertson asked Suggs to file a grievance over the CTA's decision to dock him a day's pay for allegedly misusing a sick day. Suggs stated that he would file a grievance on Robertson's behalf and informed Robertson that the grievance was proceeding to arbitration. However, Robertson did not receive any further information about the grievance and believes it did not proceed to arbitration.

IV. DISCUSSION AND ANALYSIS

The Respondent did not violate Section 10(b)(1) of the Act when it declined to file a grievance over the discipline Robertson received in June 2016.

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 the 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. Id. To demonstrate intentional misconduct by a union within the meaning of Section 10(b)(1), a charging party must satisfy the following standard: 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 his 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). Metropolitan Alliance of Police v. State of Illinois Labor Relations Board, Local Panel, 345 Ill. App. 3d 579, 587-89 (1st Dist. 2003); 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).

In Am. Fed'n of State, Cnty., and Mun. Empl., Council 31, (Robertson), the Board for the first time set forth the procedural steps and evidence necessary to establish a violation of Section 10(b)(1) of the Act. Am. Fed'n of State, Cnty., and Mun. Empl., Council 31, (Robertson), 18 PERI ¶ 2014. It modeled the analysis upon the standard used in cases arising under Section 10(a)(1) of the Act, reasoning that intentional discrimination was required to prove both types of violations. Am. Fed'n of State, Cnty., and Mun. Empl., Council 31, (Robertson), 18 PERI ¶ 2014. To that end, the Board articulated a four-part test outlining a charging party's prima facie burden, which encompasses both elements of the intentional misconduct standard outlined in the paragraph above. Id.

The Board held that to establish a prima facie case in duty of fair representation cases, the charging party must demonstrate, 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;[3] 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. 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. 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

[3] 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.

of State, Cnty., and Mun. Empl., Council 31, (Robertson), 18 PERI ¶ 2014 n. 20 (citing City of Burbank v. Illinois State Labor Relations Bd., 128 Ill. 2d 335 (1989). In assessing the critical causation element, the Board considers whether the Union's conduct was intentional, invidious, and directed at the charging party. Id. (charging party failed to establish causation element where she did not show that the union acted to disadvantage her or that it did so because of its agents' personal hostility toward her). The elements of Robertson's prima facie case are addressed in turn below.

Here, Robertson engaged in activities tending to engender the animosity of Union agents because he ceased paying into the Union's Building Fund and still owes the Union money. Indeed, the Union initiated legal action against Robertson on two occasions, first in 2012 and then in 2015. The Union obtained judgements against Robertson totaling $2,124.00, but Robertson has still not paid the entirety of that obligation. Seafarers Int'l Union, 202 NLRB 657, 659 n. 13 (1973) (Union's refusal to register employee as a "'B' seniority seaman" because of his refusal to pay union fine supported a finding that union breached its duty of fair representation); Norris Indus., Thermador Div. (Stove Workers, Local 54), 190 NLRB 479, 480-81 (1971) (Union acted unlawfully where it caused employer to terminate employee's employment because she refused to pay a fee that was neither an initiation fee nor a periodic dues payment).

Contrary to Robertson's contention, there is no evidence that Robertson's race (African American) may have caused the animosity of union agents. There is no direct evidence of racial animus and no evidence of disparate treatment by the Union on the basis of race. To prove disparate treatment, a charging party must demonstrate that the respondent treated him differently than similarly situated employees who are not members of the protected group. Reeise v. State Dept. of Human Rights, 295 Ill. App. 3d 364, 367 (3d Dist. 1998) (addressing alleged disparate treatment on the basis of race in employment discrimination case arising under the Human Rights Act); Am. Fed. of State, Cnty. and Mun. Empl., Council 31, 175 Ill. App. 3d 191, 200 (1st Dist. 1988) (addressing alleged disparate treatment on the basis of protected activity under arising under the Illinois Public Labor Relations Act); City of Decatur, 14 PERI ¶ 2004 (IL SLRB 1997)(same).

Here, however, Robertson has not satisfied these requirements. Robertson contends that the Union treated employee Jim Christopher more favorably than it treated him and another African American employee, Michelle Bradley, but there is no indication from the record that Christopher was not also African American. Even assuming that Christopher is white, as

Robertson claims on brief, differences in the results that the Union obtained for Robertson and Christopher cannot be attributable to racial animus. Christopher was not similarly situated to Bradley and Robertson because Christopher's workplace issue concerned vacation time whereas Robertson and Bradley violated the Employer's work rules. Notably, Robertson's counsel himself agreed that race played no role in the disputed action when he asserted in his opening statement, "we're not here today on a race discrimination claim…we're not contending that at this point, certainly not against the Union."

Turning to the issue of knowledge, Union agents were aware that Robertson had failed to pay into the Union's Building Fund and that he owed the Union money. The Union's leadership knew of Robertson's failure to pay because they initiated legal action against him in 2012 and 2015 to recover the fines they levied against him for his non-payment. They also knew that Robertson had not satisfied his financial obligations to the Union. More specifically, Union representative Brown and Union President Suggs knew that Robertson had failed to pay into the Union's Building Fund. Brown and Suggs discussed Robertson's failure to pay into the Building Fund on more than one occasion. While the precise date of these discussions is not entirely clear from the record, the record strongly indicates that they occurred prior to 2016. Brown explained that he had delivered notices to Robertson from the Union related to Robertson's financial obligations, and Brown noted that the last time he delivered such an envelope to Robertson was in 2015 or 2016. Accordingly, Brown knew, prior to the alleged adverse representation action in this case, that Robertson had failed to pay into the Union's Building Fund and that he still owed the Union money.

Next, the Union took an adverse representation action against Robertson when Brown declined to file a grievance over Robertson's June 2016 verbal reprimand. Automobile Mechanics' Local 701, IAM, 35 PERI ¶ 63 (IL LRB-LP 2018) (union's refusal to process grievance is an adverse representation action); see also International Brotherhood of Teamsters. Local 700 (Eberhardt), 29 PERI ¶ 77 (IL LRB-SP 2012). Notably, no other purported adverse representation actions are considered as the basis for the alleged unfair labor practice. The complaint is not amended herein to include them as a separate basis for the charge because Robertson did not move to amend the complaint, though he was represented by counsel, and Robertson does not reference these other matters with any specificity on brief. Amalgamated Transit Union, Local 241 (Spratt), 31 PERI ¶ 121 (IL LRB-LP 2015) (an ALJ may amend the complaint *sua sponte*, but is not

obligated to do so). Moreover, at least one of the adverse representation actions mentioned at hearing cannot serve as the basis for the Charging Party's charge because it occurred in January 2014, more than six months prior to the date on which Robertson filed his charge with the Board. Am. Fed'n of State, Cnty., and Mun. Empl., Local 1111 (Murphy), 9 PERI ¶ 3025.

Turning to the final element, Robertson's prima facie case fails because he has not demonstrated that the Union declined to process his grievance because he owed the Union money or that the Union took such action to intentionally disadvantage him. There is no direct evidence that Robertson's failure to pay into the fund motived Brown's decision on the grievance. Indeed, Brown and Robertson never discussed the judgments that the Union had obtained against Robertson. There is also insufficient evidence that Brown and Robertson ever discussed Robertson's debt to the Union more generally. Brown did not even know how much money Robertson owed. cf. Metropolitan Alliance of Police (Cunigan), 18 PERI ¶ 3013 (IL LRB-LP 2002), aff'd Metropolitan Alliance of Police, 345 Ill. App. 3d at 587-88 (finding direct evidence of union's animus toward charging party); cf. American Federation of State, County and Municipal Employees, Council 31 (Hughes), 20 PERI ¶ 88 (IL LRB-SP 2004)(same).

There is also insufficient circumstantial evidence that the Union declined to process Robertson's grievance because he owed the Union money. First, Brown's inaction on Robertson's grievance between June 9 and July 6, 2016 does not warrant the inference that Brown acted intentionally to disadvantage Robertson because Brown, at that time, was merely following Robertson's expressed wishes. The Board will not find that a Union agent's conduct is unlawfully motivated where he acts in accordance with an employee's expressed wish. American Federation of State, County, and Mun. Empl., Council 31, (Robertson), 18 PERI ¶ 2014. Here, Brown declined to file a grievance between June 9 and July 6, 2016 because Robertson conveyed that he did not wish to file yet. Robertson told Brown at the close of their conversation that he wished to file a complaint with the EEO Department and that he would "get back" to Brown on the matter of the grievance. Brown in turn replied that he would await further instruction, "let me know what you want me to do and we'll take it from there." Although Robertson had earlier expressed outrage at the disciplinary action and had asked the Union to take action, Robertson expressed a change in his position by the end of the meeting, and Brown was entitled to rely on Robertson's latest representation of his wishes. Am. Fed. of State, Cnty. and Mun. Empl., Council 31, (Robertson), 18 PERI ¶ 2014 (a "Union cannot be expected to read its members' minds").

Likewise, Brown's conduct in investigating the underlying June 2016 work place incident does not warrant the inference of unlawful motive. To prevail on a Section 10(b)(1) claim, the charging party must present substantial evidence of fraud, deceitful actions, or dishonest conduct by the Union. County and Municipal Employees, Council 31 (Segrest), 16 PERI ¶ 2003 (citing Hoffman v. Lonza, Inc., 658 F.2d 519, 522 (7th Cir. 1981)). 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) of the Act unless the union's conduct appears to have been motivated by vindictiveness, discrimination, or enmity. International Brotherhood of Teamsters, Local 700 (Brassel), 31 PERI ¶ 5 (IL LRB-LP 2014) (affirming Executive Director's dismissal, which contained this analysis). Even gross negligence does not satisfy the Section 10(b)(1) standard; rather, the Union must take action with the intent to disadvantage the charging party. Amalgamated Transit Union, Local 241 (Jackson), 29 PERI ¶ 134 (IL LRB-SP 2013). Here, Brown's investigation was not so deficient as to warrant the inference that the deficiency was intentional. Although Brown failed to speak with General Manager Green, the individual with personal knowledge of Robertson's alleged misconduct, he did demonstrate diligence in other respects. Specifically, he returned Robertson's call the day he received it and he reported to the South Shop the following morning to investigate the incident. He spoke with Robertson about the incident and then spoke to Manager Brewer, who was present when the CTA first informed Robertson of the disciplinary action. He also advocated on Robertson's behalf during the meeting with Brewer by telling her that he disagreed with the disciplinary decision. Under these circumstances, Robertson's failure to interview Green is simply evidence of negligence as opposed to evidence of unlawful motive.

Likewise, there is no merit to Robertson's contention that Brown demonstrated unlawful motive by failing to object to Brewer's decision to exclude Robertson from that meeting. Most notably, Robertson has not demonstrated that he had a right to be present at that meeting or that Brown treated him differently from other employees by consenting to his exclusion from the meeting. American Federation of State, County and Municipal Employees, Council 31, 33 PERI ¶ 34 (IL LRB-SP 2016) (Union's exclusion of charging party from steps of grievance procedure did not demonstrate intentional misconduct absent evidence of disparate treatment or evidence that charging party had a right to be present).

Next, Brown's failure to file a grievance on Robertson's behalf later, when Robertson made his desire clearly known on July 6, 2016, likewise does not demonstrate unlawful motive. Section

6(d) of the Act states, "nothing herein shall be construed to limit an exclusive representative's right to exercise its discretion to refuse to process grievances of employees that are unmeritorious." 5 ILCS 315/6(d). Thus, unions under the Act are accorded significant discretion in deciding whether to pursue a grievance. Illinois Nurses Association, 21 PERI ¶ 138 (IL LRB-SP 2005). A Union may properly exercise discretion in handling a grievance by considering criteria such as the likelihood of success in any action based thereon, the cost of prosecuting such an action, or the possible benefit to the union membership as a whole. Illinois Nurses Association, 21 PERI ¶ 138 (citing Norman Jones v. IELRB, 272 Ill. App. 3d 612, 622-23 (1st Dist. 1995)). Here, any grievance filed by the Union on July 6, 2016 would have been deemed untimely filed and therefore would have been unsuccessful. Indeed, Brown confirmed that fact with CTA attorney Lunde. The Union thereby rested its determination on a permissible criterion.

There is insufficient evidence that warrants additional scrutiny of the Union's decision-making process in this instance. The Board considers all the evidence to determine whether the situation presented by the charging party is "so extraordinary" that the Board should not defer to the Union's discretion in grievance handling. Cnty. of Boone and Boone Cnty. Sheriff and International Union, United Automobile Aerospace and Agricultural Implement Workers of America, Local 1761 (Martenson), 31 PERI ¶ 120 (IL LRB-SP 2015). However, the Board does not second guess a Union's assessment of whether a grievance has merit absent compelling evidence of intentional misconduct. Illinois Council of Police, 35 PERI ¶ 38 (IL LRB-SP 2018); International Brotherhood of Teamsters, Local 700 (Eberhardt), 29 PERI ¶77 (IL LRB-SP 2012); American Federation of State, County and Municipal Employees, Council 31 (Segrest), 16 PERI ¶ 2003; cf. Metropolitan Alliance of Police (Cunigan), 18 PERI ¶ 3013 (Board did not defer to Union's discretion where union president told charging party that the Union "does not pursue grievances for individuals who are working for other unions") aff'd, 345 Ill. App. 3d 579 (1st Dist. 2003); cf. American Federation of State, County and Municipal Employees, Council 31 (Hughes), 20 PERI ¶ 88 (Board did not defer to union's discretion where union informed charging party that it would not pursue her grievance because she testified against the union; noting that union's discretion was not unlimited).

Here, there is insufficient evidence to warrant deviation from the general rule that accords unions substantial discretion in grievance processing. Robertson has offered no evidence of disparate treatment because he presented no cases in which the Union filed grievance for

employees absent an unambiguous request to do so by the employee. Robertson has also presented insufficient evidence that the Union had ever filed a grievance for an employee once the deadline had passed.

Next, Robertson has not shown that the Union offered shifting or inconsistent reasons for the adverse representation action. Rather, Union representative Brown consistently asserted that he did not file the grievance prior to July 6, 2016 because Robertson did not give him clear instruction to do so. Although Brown also testified that he did not believe that it was worthwhile to advance a grievance where there was no monetary loss; this is consistent with his statements to Robertson on June 9, 2016, in which he conveyed his reservations about filing. Likewise, Brown consistently asserted that he did not file the grievance after July 6, 2016 because it would have been deemed untimely had he filed it at that time.

There is no merit to Robertson's claim that Brown demonstrated an unlawful motive by failing to inform him of the relevant deadline for filing a grievance. A union's failure to promptly and accurately communicate with an employee is not sufficient to establish a causal connection between any alleged animosity and an adverse representation action. Amalgamated Transit Union, Local 241 (Spratt), 31 PERI ¶ 121. Moreover, the duty of fair representation "does not require the [Union] to provide information or suggest options that [a] [c]harging [p]arty should have access to or be aware of. Village of Riverdale, 35 PERI ¶ 153 (IL LRB-SP 2019) (union's failure to inform employee of deadline for applying for disability pension did not violate duty of fair representation). Brown's general awareness of the deadline does not change this analysis where Robertson has presented insufficient evidence that Brown failed to mention the deadline to disadvantage Robertson. In fact, Brown's failure to apprise Robertson of the deadline appears solely a result of negligence. Although Brown is responsible for employees of approximately 12 different production shops, each governed by its own contract, Brown does not keep track of grievance deadlines for each employee.

Next, Robertson provided insufficient evidence that the Union targeted him for adverse representation actions. Although the Union did not act diligently on each issue Robertson brought to its attention, it did process two grievances on Robertson's behalf after the Union sued him for refusing to pay the fines they assessed against him, and it took those grievances to the second step. The Union's failure to obtain a favorable outcome on the grievances it processed for Robertson does not warrant the inference that the Union engaged in intentional misconduct when it declined

to process the grievance at issue in this case. As discussed above, unions must be afforded substantial discretion in deciding whether, and to what extent, a particular grievance should be pursued; and the Board will not second guess a union's administrative decisions on grievance handling absent compelling evidence of intentional misconduct. See cases supra. Here, Robertson has offered no evidence that the Union's actions in processing his 2014 and 2015 grievances evidenced anything other than a good faith determination that the grievances lacked merit. There is no evidence of disparate treatment with respect to these grievances, as Robertson suggests on brief. The evidence concerning the circumstances of the first grievance is sparse, and the evidence presented regarding the second grievance demonstrates that the Union in fact treated Robertson the same as it treated another employee (Bradley), who did pay into the Union's Building fund.[4] Indeed, the Union failed to process either of their grievances past the second step.

There is no merit to Robertson's claim that the Union's earlier refusal to file a grievance on Robertson's behalf in 2014 demonstrates that the Union acted unlawfully in declining to file a grievance over the discipline Robertson received in June 2016. In that case, Robertson admitted to the misconduct. And although the employer had not disciplined other employees who had been away from their work area on that date, the Union reasonably concluded that the grievance was weak, given Robertson's admission. In fact, the Employer shared this perspective because after Robertson filed the grievance on his own, the Employer denied it.

The Union's subsequent failure to file a number of grievances on Robertson's behalf between December 2017 and February 2018 is likewise insufficient to demonstrate that Brown acted with an unlawful motive when he declined to file a grievance over the June 2016 incident. A charging party must demonstrate unlawful motive and intentional misconduct with a substantial showing of fraud, deceitful actions, or dishonesty by the Union. 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. Here, as a threshold matter, Robertson has offered insufficient evidence that the Union acted in a dishonest manner in those cases because the evidence equally supports a finding that the Union was merely negligent. For example, in one instance, Union President Suggs simply lost the paperwork that Robertson had provided him. In two instances Suggs informed Robertson that he would file a grievance, but then took no further

[4] It is reasonable to infer that Bradley paid into the building fund because Brown testified that he only ever delivered notices of financial delinquency to Robertson.

action. In yet another instance, Suggs informed Robertson that his grievance had proceeded to arbitration, but failed to follow up with Robertson on the matter. However, Robertson has not demonstrated that Suggs intentionally misled him in any of these cases, and based on the evidence presented, it is equally likely that Suggs was sincere in his statements at the time he made then, but then negligently failed to follow through. Amalgamated Transit Union, Local 241 (Jackson), 29 PERI ¶ 134 (negligence is insufficient to prove intentional misconduct).

Even if the Union's actions with respect to these later cases demonstrate a suspect motive with respect to *those* cases, there is nothing to link that motive to the Union's earlier determination regarding Robertson's 2016 discipline grievance, at issue here. That causation element is key, and even if animus factored into some of the union's actions, it cannot logically be presumed that animus tainted every action by the Union that adversely affected the Charging Party. City of Chicago, 5 PERI ¶ 3029 (IL SLRB 1989) (applying principle to charge against employer).

Indeed, such an inference is especially unwarranted here where Brown, the Union agent who took the complained-of action in this case, was not the Union agent responsible for the Union's subsequent adverse representation actions, described above. The Board has held that evidence of animus must be specifically linked those individuals whose decisions are alleged as being discriminatory; otherwise the evidence is not material to establishing the causal connection. City of Springfield and Director of Public Safety for the City of Springfield, 6 PERI ¶ 2004 (IL SLRB 1989) (addressing charge against employer) (citing County of Menard, 3 PERI ¶ 2043 (IL SLRB 1987), reversed in part and remanded on other grounds, 177 Ill. App. 3d 139 (4th Dist. 1988)). Such a link may be proven by showing that a decisionmaker has taken an adverse action against an employee "based upon and in direct response" to a report tainted by the animus of a respondent's agent.[5] State of Illinois, Secretary of State, 31 PERI ¶ 7 (IL LRB-SP 2014) (addressing charge against employer); City of Harvey, 18 PERI ¶ 2032 (IL LRB-SP 2002); County of Menard, 3 PERI ¶ 2043. Assuming that Suggs's actions demonstrate animus toward Robertson, that animus is not attributable to Brown, who took the adverse representation action at issue in this case. Brown was not the decisionmaker in the subsequent cases. In addition, there is insufficient

[5] 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 Section 10(a)(1). Am. Fed'n of State, Cnty., and Mun. Empl., Council 31, (Robertson), 18 PERI ¶ 2014 (modeling Section 10(b)(1) analysis on cases arising under Section 10(a)(1) cases alleging adverse employment actions).

evidence that Brown was involved in Suggs's decision-making process. Although Brown investigated the proposed grievances, there is no evidence in the record describing the information he conveyed to Suggs, or whether and to what extent it factored into Suggs's decision-making process. Accordingly, Suggs's actions cannot be used to color Brown's earlier decision regarding Robertson's June 2016 grievance.

Finally, the proximity between Brown's failure to file a grievance over Robertson's June 2016 verbal reprimand and Robertson's continuous refusal to pay the Union, is insufficient to satisfy Robertson's prima facie burden, standing alone. Am. Fed'n of State, County & Mun. Employees, Council 31, AFL-CIO, 175 Ill. App. 3d at 200 (close timing was "not controlling" on question of unlawful motive; applying principle to charge against employer).

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

V. CONCLUSIONS OF LAW

1. The Respondent did not violate Section 10(b)(1) of the Act when it declined file a grievance over the verbal reprimand Robertson received on June 9, 2016.

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 the General Counsel 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 16th day of July, 2019

STATE OF ILLINOIS
ILLINOIS LABOR RELATIONS BOARD
LOCAL PANEL

/S/ *Anna Hamburg-Gal*

Anna Hamburg-Gal
Administrative Law Judge