DECISION AND ORDER OF THE ILLINOIS LABOR RELATIONS BOARD
LOCAL PANEL

On August 23, 2018, Executive Director Kimberly Stevens dismissed a charge filed by Marqueal L. Williams (Charging Party) on March 5, 2018. The charge alleged the Amalgamated Transit Union, Local 241 (Respondent or Union), engaged in unfair labor practices within the meaning of Section 10(b) of the Illinois Public Labor Relations Act (Act), 5 ILCS 315 (2014), as amended, when it failed to successfully negotiate a 40% wage increase for bus maintenance employees in a bargaining unit represented by the Union because the Union’s president, Keith Hill, was biased against those employees.

The Executive Director dismissed the charge on grounds the available evidence failed to raise issues of fact or law to warrant a hearing. Noting established precedent requiring proof of intentional misconduct in breach of the duty of fair representation claims and a union’s broad discretion in negotiations, the Executive Director determined the evidence failed to indicate Respondent took any adverse action against the Charging Party or the maintenance employees, or that Respondent took action based on any bias or animus. Instead, she observed the evidence indicates Respondent advocated for a 40% increase during negotiations despite the employer’s consistent refusals; the maintenance employees received an increase in addition to an across-the-
board increase; there was no evidence the individual Charging Party alleges to have held any bias against maintenance employees tried to thwart the increase; the bargaining committee, which included Charging Party, unanimously approved the package; and the entire agreement was ratified by the membership.

On August 31, 2018, Charging Party filed an appeal of the Executive Director’s dismissal. The Charging Party maintains the Executive Director erred by acknowledging the Hill’s bias but discounting the effect of that bias on the failure of the interest arbitration to go forward. Charging Party asserts a hearing will provide an opportunity for the Board to receive an explanation of his evidence and includes and references material he claims is evidence of Respondent’s misconduct. Respondent did not file a response to the appeal.

After reviewing the dismissal, Charging Party’s appeal, and the record, we find the appeal offers no feasible basis for reversal as it merely provides a rehash of the allegations in the charge and provides no evidence indicating the Union acted unlawfully. The appeal aims to question Respondent’s conduct during events leading up to the parties’ interest arbitration and only provides bald assertions regarding any intentional misconduct on the part of the Respondent.

As the Executive Director correctly notes in her dismissal order, Section 10(b)(1) of the Act requires charging parties to establish (1) a union’s conduct was intentional and directed at the charging party; and (2) the union’s intentional actions were taken because of and in retaliation for some past activity, because of an employee’s status (such as race, gender, or national origin), or because of animosity between the charging party and the union’s representatives. See Metropolitan Alliance of Police v. Ill. Labor Rel. Bd., Local Panel, 345 Ill. App. 3d 579, 588 (1st Dist. 2003). To establish the second part, a charging party must demonstrate unlawful discrimination by showing (1) an employee’s activity or status caused the union’s animosity toward the employee;
(2) the union was aware of such activity or status; (3) the union took an adverse representation action; and (4) the union took such action against the employee for discriminatory reasons. See id. at 588-89.

Here, the charge was dismissed because there was no evidence indicating Respondent took any adverse representation action against the Charging Party or the maintenance employees much less that it did so for discriminatory reasons. Even if Charging Party could prove Hill’s bias against maintenance workers as Charging Party alleges, such evidence alone is insufficient to raise an issue for hearing because the evidence fails to provide a link between the alleged bias and the complained of actions. At the heart of Charging Party’s charge lies his questions regarding the interest arbitration process and his desire to have fully participated in that process, which amounts to a disagreement with Respondent over accepting the arbitrator’s opinions about the viability of parties’ proposals. The Act, however, does not provide any recourse for such disagreement. Moreover, the evidence indicates the bargaining committee, which included Charging Party, unanimously approved proposal in question, and the entire agreement was ratified by the membership.

The Executive Director’s findings and determinations were correct and supported by the available evidence and Board precedent. Charging Party’s appeal identifies no flaw in the Executive Director’s analysis, her findings of fact, or conclusions. Accordingly, we find Charging Party’s appeal lacks merit and the Executive Director appropriately dismissed the charge for the investigation failed to reveal an issue of fact or law requiring a hearing. 5 ILCS 315/11(a).

For these reasons, we affirm the dismissal for the reasons stated by the Executive Director.
Decision made at the Local Panel’s public meeting held in Chicago, Illinois, on December 11, 2018; written decision approved at Local Panel’s public meeting held in Chicago, Illinois, on January 8, 2019, and issued on January 9, 2019.
DISMISSAL

On March 5, 2018, Marqueal L. Williams (Charging Party) filed a charge in Case No. L-CB-18-020 with the Local Panel of the Illinois Labor Relations Board (Board), in which he alleged that the Respondent, Amalgamated Transit Union (ATU), Local 241 (Respondent) engaged in unfair labor practices within the meaning of the Illinois Public Labor Relations 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. I hereby dismiss this charge for the following reasons.

I. INVESTIGATION

Respondent is a labor organization within the meaning of Section 3(i) of the Act. The Chicago Transit Authority (Employer) employs Charging Party in the job classification or job title of Mechanic. As such, Charging Party is a member of a bargaining unit (Unit) represented by Respondent. Charging Party also serves as Respondent’s Business Agent for the Maintenance Department. Respondent and Employer are parties to a collective bargaining agreement (CBA)
that culminates in final and binding arbitration. Charging Party alleges that Respondent violated the Act when it failed to successfully negotiate a 40% wage increase for the maintenance employees in the Unit to address a wage disparity because the president of Local 241 was biased against the mechanics.

Historically, ATU Locals 241 and 308 negotiate a CBA together with the Employer. ATU Local 701, a trade local, separately negotiates its CBA with the Employer. Between 1997 and 2000, Local 701 machinists’ wage rates exceeded and steadily outpaced those of the mechanics in Locals 241 and 308 because wages for Local 701 machinists had to be set in accordance with the Illinois Prevailing Wage Rate, while wages for mechanics in Locals 241 and 308 did not. By 2017, mechanics in Locals 241 and 308 received wages that were roughly 40% less than wages received by Local 701’s machinists.

The parties’ previous CBA expired on December 31, 2015. Official negotiations for the successor agreement began in 2015. Locals 241 and 308 submitted over 70 proposals to the Employer at the start of negotiations, including a proposal for a 40% wage increase for the mechanics and proposals for equity increases for other classifications. During negotiations, the Employer consistently rejected any proposals for equity increases. Regarding the Employer’s rejection of the proposal to provide the mechanics a 40% wage increase, the Employer argued that there was a skill differential between mechanics and machinists, that mechanics had the opportunity to earn increases through the EXCEL Program (this program grants increases based on skill level), and that this increase was expensive and would cost $12 million for one year. The Employer compared the cost of the mechanics’ increase to the cost of a 3% across-the-board increase for all 8,000 members and stated that it was not prepared to agree to such an increase for the 600 mechanics at the expense of the rest of the members of the bargaining units.
Respondent argues that it advocated for equity increases for the mechanics to the best of its ability. Respondent continued to propose the 40% wage increase proposal for mechanics with only minor modifications throughout negotiations, even though it withdrew nearly all of its other proposals regarding equity increases. Local 308 also had an equity proposal for its Customers Service Assistants (CSAs) who were making less than $15 per hour, and, similar to the mechanics’ wage proposal, this proposal was also estimated to cost millions of dollars. The Employer consistently rejected this proposal, but Local 308 decided to keep it on the table.

The parties were scheduled to begin interest arbitration during the week of January 15, 2018, and the parties had reached a tentative agreement except with respect to across-the-board wage increases, equity increases for CSAs, and equity increases for mechanics. The Employer held the position that, if the parties proceeded to interest arbitration, all issues, even those on which the parties had reached tentative agreement, would be subject to arbitration.

Prior to interest arbitration, the Employer made a full package proposal that included a retroactive $2.00 to $6.00 per hour increase on the pay scale for mechanics. When Respondent rejected this package, the Employer recommended that the arbitrator attempt to mediate the parties’ differences. Charging Party made a presentation to the arbitrator on the mechanics’ wage proposal, and, after the arbitrator had a discussion with the Employer, he returned and stated that the Employer was not willing to move on the issues of mechanics’ wages. He continued that the Employer offered an expensive package and that, if the parties proceeded to arbitration, there were no assurances that Respondent would receive any additional gains and/or losses. Overall, the arbitrator recommended that Respondent reconsider the Employer’s last package offer.

Both committees of the Locals 241 and 308, which included Charging Party, met and decided unanimously to agree to the Employer’s last package proposal. The parties then
tentatively agreed to the Employer’s most recent package proposal, and, on February 8, 2018, the
members of Locals 241 and 308 ratified the contract.

After the ratification of the contract, Charging Party filed an unfair labor practice charge
because he was dissatisfied with the increase that Respondent had negotiated for the mechanics.
According to Charging Party, on January 16, 2018, the Employer offered Respondent its final
package proposal, and, after a discussion, Respondent decided it would not agree to the package.
Then, Local 241 President Keith Hill (Hill) agreed to the arbitrator mediating with the parties in
order to get a better wage offer for the mechanics. Charging Party presented the mechanics’
proposal to the arbitrator, and the arbitrator responded that the Employer had some explaining to
do about the wage disparity. The arbitrator then consulted with the Employer and returned. The
arbitrator stated that he did not receive an answer about the wage disparity between the machinists
and mechanics but urged Respondent to take the agreement. After the rejection of several more
proposals, Hill and Local 308 President Kenneth Franklin decided to accept the agreement.

Charging Party states that he was not in agreement with the arbitrator taking on the role of
mediator, and he thinks that the parties should have proceeded to arbitration. He believes that
Respondent agreed to the Employer’s final proposal too quickly because the arbitrator was
scheduled to return and that the parties could have used that time to continue negotiating or proceed
to arbitration.

Charging Party believes that Hill was biased against the maintenance workers because, in
the fall of 2017, Hill allegedly stated that he was not concerned with maintenance workers
receiving a fair wage because there were so few of them compared to bus operators and they did
not vote for him.
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 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 charging party 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.

Furthermore, it is well settled that under Section 6(d) of the Act, and various federal and state precedents, that an exclusive representative has a broad range of discretion in negotiations, and a union's failure to take all the steps it might have taken to achieve the results desired by a
particular employee or group of employees 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. *Air Line Pilots v. O'Neill*, 499 U.S. 65, 77, 136 LRRM 2721, 2725 (1991).

Here, Charging Party does provide support indicating that a person in a leadership position for the Respondent, Hill, may have been biased against maintenance workers. However, Respondent provides sufficient evidence to demonstrate that its actions were not motivated by any sort of vindictiveness or bias, and Charging Party is unable to show that Respondent took adverse action against him or the mechanics. First, Respondent shows that it advocated vehemently for a large equity increase for the mechanics. Respondent maintained a proposal for a 40% equity increase for mechanics throughout negotiations, even when the Employer consistently refused to agree to it. This proposal was also one of the remaining proposals for interest arbitration, and members of both locals' committees advocated for it until they finally agreed to the Employer's final package proposal. Second, the mechanics did receive an increase above the-across-the-board increases due to Respondent's insistence on this issue. Third, Hill was not in a position to thwart the mechanics' equity increase proposal by himself, and Charging Party does not present evidence that Hill engaged in such an activity. Respondent was not planning to accept the Employer's final package proposal until the arbitrator urged it to do so. Then, the entire committee unanimously approved the package – a committee that included Charging Party himself. Furthermore, the tentative agreement was ratified by Local 241's and 308's membership.

Because there is no evidence that Respondent took an adverse action against Charging Party or the mechanics or that Respondent took any action based on any bias or vindictiveness, this charge fails to raise an issue for hearing.
III. ORDER

Accordingly, this charge is hereby dismissed. The Charging Party may appeal this dismissal to the Board any time within 10 calendar days of service of this dismissal. Such appeal must be in writing, contain the case caption and numbers, and must be addressed to the General Counsel of the Illinois Labor Relations Board, 160 North LaSalle Street, Suite S-400, Chicago, Illinois, 60601-3103 or filed electronically at ILRB.Filing@Illinois.gov in accordance with Section 1200.5 of the Board’s Rules and Regulations, 80 Ill. Admin. Code §§1200-1300. The appeal must contain detailed reasons in support thereof, and the Charging Party must provide it to all other persons or organizations involved in this case at the same time it is served on the Board. Please note that the Board’s Rules and Regulations do not allow electronic service of the other persons or organizations involved in this case. The appeal sent to the Board must contain a statement listing the other parties to the case and verifying that the appeal has been provided to them. The appeal will not be considered without this statement. If no appeal is received within the time specified, this dismissal will be final.

Issued at Springfield, Illinois, this 23rd day of August, 2018.

STATE OF ILLINOIS
ILLINOIS LABOR RELATIONS BOARD
LOCAL PANEL

Kimberly F. Stevens
Executive Director