STATE OF ILLINOIS
ILLINOIS LABOR RELATIONS BOARD
LOCAL PANEL

Glenn E. Jones,	)	
	)	
Charging Party	)	
	)	
and	)	Case No. L-CB-19-020
	)	
Amalgamated Transit Union, Local 241,	)	
	)	
Respondent.	)	

DECISION AND ORDER OF THE ILLINOIS LABOR RELATIONS BOARD
LOCAL PANEL

On February 28, 2019, Executive Director Kimberly F. Stevens dismissed a charge filed by Glenn E. Jones (Charging Party) on October 1, 2018, which alleged that 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 (2010), as amended.[1] The Charging Party is a bus servicer for the Chicago Transit Authority, and is a member of a bargaining unit represented by the Union. The charge alleges that the Union breached its duty of fair representation by failing to seek enforcement of the contract's wage provisions for the bus servicers, and only pursuing such a grievance on behalf of mechanics and car repairers. The Charging Party further alleges that the Union negotiated a contract with the CTA that was unfavorable to the bus servicers.

[1] In relevant part, Sections 10(b) of the Act provides as follows:

> Sec. 10. Unfair labor practices.
> (b) It shall be an unfair labor practice for a labor organization or its agents:
> (1) to restrain or coerce public employees in the exercise of the rights guaranteed in this Act, provided,
> *****
> iii. that a labor organization or its agents shall commit an unfair labor practice under this paragraph in duty of fair representation cases only by intentional misconduct in representing employees under this Act.

The facts briefly are these: On January 16, 2018, the CTA and the Union executed a tentative agreement on the wage progression rate applicable to bus mechanics and car servicers.[2] Sometime prior to ratification, the Union provided its members with a summary of the tentative agreement which contained the broad statement that the wage progression would apply to maintenance employees. On February 8, 2018, the Union's members ratified an agreement on a successor contract that included the tentative agreement on the wage progression, referenced above. On March 6, 2018, employees filed grievances claiming that the CTA had failed to pay any employees in accordance with the agreed-upon wage progression provision. In August 2018, the Union and the CTA resolved the grievances, and the Union announced that resolution to its members. Mechanics and car servicers received money as a result of the Union's efforts, while bus servicers did not. Consequently, the Charging Party filed his charge in this case.

The Executive Director dismissed all aspects of the Charging Party's charge. She stated that the Charging Party failed to present any evidence that the Union had engaged in any intentional misconduct when it declined to pursue a settlement on behalf of bus servicers. She noted that Unions are granted a wide range of discretion in contract interpretation and grievance handling, and that the Charging Party presented no evidence that the Union had acted in bad faith or that its position was unreasonable. She asserted that part of the charge was untimely filed to the extent that it alleged that the Union negotiated a contract that was unfair to the bus servicers. She concluded that even if the charge on this allegation were deemed timely filed, the Charging Party

[2] **Progression for Bus Mechanics and Car Services**

> All newly hired employees in the bus mechanic and car repairer classifications shall be paid at the 80% progression rate at the time of hire, at the 90% progression rate upon completion of one year of employment, and at the 100% progression rate upon completion of two years of employment. All currently employed persons in these classifications will if necessary have their progression rates increased to correspond to the schedule of increases in the proceeding sentence.

had nevertheless failed to raise issues of fact or law for hearing absent evidence that the union representatives who negotiated the contract had acted out of self-interest or any other improper motive.

On March 5, 2019, the Charging Party filed a timely appeal of the Executive Director's Dismissal. The Respondent filed no response.

We affirm the Executive Director's dismissal because the Executive Director correctly determined that the Charging Party failed to raise issues of fact or law for hearing on any of the allegations, as outlined below.

First the Executive Director correctly determined that the Charging Party failed to present evidence that the Union engaged in intentional misconduct when it declined to seek enforcement of the contract's wage provision for the bus servicers. The Board will not second guess a union's administrative decision regarding grievance handling unless there is compelling evidence of intentional misconduct. American Federation of State, County and Municipal Employees, Council 31 (Jackson), 33 PERI ¶ 34 (IL LRB-SP 2016). In duty of fair representation cases, a two-part standard is utilized to determine whether a union has committed intentional misconduct within the meaning of Section 10(b)(1) of the Act: 1) the union's conduct must be intentional and directed at the employee; *and* 2) the union's intentional action must have occurred because of and in retaliation for some past activity by the employee or because of the employee's status (such as his or her race, gender, or national origin) or animosity between the employee and the union's representatives (such as that based upon personal conflict or the charging party's dissident union practices). Am. Fed'n of State, County and Municipal Employees, Local 2912 (McGoin), 17 PERI ¶ 3001 (IL LRB-LP 2000).

Here, the Charging Party has not presented evidence that the Union has taken any action directed to disadvantage him. The Charging Party emphasizes three facts on appeal, but none of them support the Charging Party's position, even when viewed in a light most favorable to him. The Charging Party observes that the third vice president "came from the mechanics ranks," but this does not show that the Union failed to seek enforcement of the contract's wage provisions for the bus servicers to disadvantage the Charging Party. The Charging Party next asserts that the Union leadership negotiated the elimination of a seniority program favorable to bus servicers but unfavorable to mechanics. However, the Charging Party presented no evidence that the Union's elimination of this provision was intentionally directed to disadvantage him, or indeed, the bus servicers as a group. "The duty of fair representation is not automatically breached when a union takes a position contrary to the interest of some of its members." Moore v. Illinois State Labor Relations Bd., 206 Ill. App. 3d 327, 333 (4th Dist. 1990). Indeed, there are "inevitabl[e] differences" that arise in the manner and degrees to which the terms of any negotiated contract affect different classes of employees. Ford Motor Co. v. Hoffman, 345 US 330, 338 (1953). Finally, the Charging Party contends that the Union circulated a description of the tentative agreement prior to ratification that did not reflect the agreement's true terms. However, the Charging Party has not presented evidence that this inaccuracy was directed at him or that the Union's misstatement was intentional as opposed to a mere negligent misrepresentation. International Brotherhood of Electrical Workers, Local 134, 14 PERI ¶ 3001 (IL LLRB 1997) (requiring evidence of more than mere negligence to obtain a complaint).

More critically, the Charging Party has failed to present evidence of a causal connection between any purported animus that the Union's agents may have harbored against him and the Union's failure to seek enforcement of the contract's wage provision for the bus servicers. There

is no evidence that the Union's agents bore any personal animosity toward the Charging Party or that they bore animus against him because of his status or prior activities. Even if the actions referenced above could be construed as evidence of animus toward the Charging Party, there is nothing to link those earlier actions to the Union's later determination regarding the wage progression grievance. In fact, the ratified contract plainly applied the wage progression benefit solely to mechanics and car servicers, and the Union's failure to pursue enforcement of the wage progression provision for the bus servicers is a reasonable interpretation of the agreement's terms. Amalgamated Transit Union, Local 241, 35 PERI ¶ 116 (IL LRB-LP 2019) (affirming dismissal absent evidence of causation between animus and adverse representational action).

We likewise affirm the Executive Director's dismissal of the Charging Party's allegation that the Union breached its duty of fair representation by entering into a contract that was unfair to the bus servicers. Although we decline to adopt the Executive Director's finding that the allegation was untimely filed,[3] we find that the Executive Director correctly determined that the Charging Party has raised no issues of fact or law for hearing on the merits. We add to the Executive Director's analysis only to note that the Union's overly broad characterization of the tentative agreement's wage progression provision is not, without more, sufficient to justify a hearing. Indeed, there is nothing to indicate that this misstatement was intentional and directed at the Charging Party as opposed to simply a negligent oversight, and the Charging Party has presented no evidence that this misstatement was unlawfully motivated. AFSCME Local 2912 (McGloin), 17 PERI ¶ 3001.

[3] The Charging Party presented at least some documentary evidence in support of his claim that he had no reason to know of the agreement's actual terms at the time of ratification, and there is ambiguity over whether he reasonably should have become aware of the agreement's terms outside the limitation period.

Finally, we decline to address the new issues raised by the Charging Party for the first time on appeal. The Board's rules require the Charging Party to submit to the Board or its agents "all evidence relevant to or in support of the charge." 80 Ill. Admin. Code 1220.40(a)(1). The Board has relied on this rule in refusing to consider evidence or allegations on appeal that the charging party could have raised but did not raise during investigation. American Federation of State, County and Municipal Employees (Mercer), 30 PERI ¶ 69 (IL LRB-LP 2013). Notably, the Board's investigator in this case repeatedly engaged with the *pro se* Charging Party, both over the phone and in writing, and there was no flaw in the investigative process that warrants deviation from this rule. Cf. Am. Fed'n of State, Cnty. and Mun . Empl., Council 31, 18 PERI ¶ 2036 (IL LRB-SP 2002) (remanding where Board agent had no personal discussion/contact with the *pro se* charging party).

Accordingly, we affirm the Executive Director's dismissal.

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/ Angela C. Thomas
Angela C. Thomas, Member

Decision made at the Local Panel's public meeting in Chicago, Illinois on June 11, 2019, written decision approved at the Local Panel's public meeting in Chicago, Illinois on July 9, 2019, and issued on July 10, 2019.

STATE OF ILLINOIS
ILLINOIS LABOR RELATIONS BOARD
LOCAL PANEL

Glenn E. Jones, Charging Party and Amalgamated Transit Union, Local 241, Respondent	Case No. L-CB-19-020

DISMISSAL

On October 1, 2018, Glenn E. Jones (Charging Party) filed a charge in Case No. L-CB-19-020 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 Bus Servicer. As such, Charging Party is a member of a bargaining unit (Unit) represented by Respondent. Respondent and Employer are parties to a collective bargaining agreement (CBA) culminating in final and binding arbitration. Charging Party alleges that Respondent violated the

Act when it procured back wages for individuals employed by the Employer as mechanics according to the recently negotiated wage progression but did not do so for the bus servicers.

On February 14, 2018, Respondent and Employer ratified a successor CBA. Charging Party cites a version of the tentative agreement (TA) for the CBA that states:

> The progression for *maintenance* employees shall be changed so employees shall receive 80% at time of hire and 90% after one-year and 100% after two years. This applies to all current and new employees.

On March 6, 2018, Respondent filed a grievance because the mechanics had not been provided back pay in accordance with the above-cited language. In August of 2018, the mechanics received $2.4 million in back wages.

Charging Party argues that, because the agreement indicated that this new wage progression was for maintenance employees, bus servicers should also receive back wages and be moved to the appropriate wage progression step. Charging Party argues that the maintenance workers' Union representative is a mechanic, and, for this reason, he does not properly represent the interests of bus servicers, as in this case.

Respondent indicated that the draft of the TA that Charging Party cites in his charge was not the final version of the language in question. Respondent provided the signed, ratified version of the CBA, which states:

> All newly hired employees in the *bus mechanic* and *car repairer* classification shall be paid at the 80% progression rate at the time of hire, at the 90% progression rate upon completion of one year of employment, and at the 100% progression rate upon completion of two years of employment. All currently employed persons in these classifications will, if necessary, have their progression rates increased to correspond to the schedule of increases in the preceding sentence.

Respondent argues that this language did not apply to the bus servicers, so a grievance was not filed on their behalf, and they were not entitled to back pay in accordance with this language.

Respondent continues that it attempted to negotiate wage adjustments for bus servicers, but the Employer consistently rejected these proposals.

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.

Charging Party mistakenly argues that Respondent harmed the bus servicers by failing to file a grievance on their behalf to procure back pay in accordance with the new wage progression language, when, in fact, this wage progression language, by its terms, did not apply to bus servicers. Charging Party bases his argument on an unratified version of the TA. According to the signed, ratified version of the CBA, the bus servicers were not identified as a classification to receive the new wage progression. Therefore, even if Respondent filed a grievance on behalf of the bus servicers in congruence with the mechanics, it would likely have been unsuccessful and likely would not have resulted in a back-pay settlement. Under Section 6(d) of the Act, a labor organization has a wide range of discretion in contract interpretation and grievance handling. Accordingly, 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 the Act, 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). Therefore, because Charging Party failed to present any evidence that Respondent engaged in intentional misconduct when it declined to pursue a grievance on behalf of the bus servicers, this charge does not raise an issue for hearing.

In addition, Charging Party failed to provide a reason or motive for the Respondent to engage in intentional misconduct against him or the other bus servicers. As the United States Supreme Court recognized, "[i]nevitably differences arise in the manner and degree to which the terms of any negotiated agreement affect individual employees and classes of employees. The mere existence of such differences does not make them invalid. The complete satisfaction of all who are represented is hardly to be expected. A wide range of reasonableness must be allowed a

statutory bargaining representative in serving the unit it represents, subject always to complete good faith and honesty of purpose in the exercise of its discretion." Ford Motor Co. v. Huffman, 345 U.S. 330, 338 (1953). In this case, the available evidence demonstrates does not demonstrate that Respondent's actions were undertaken in bad faith or that they were unreasonable.[1] Moroever, any claims that Respondent failed to negotiate a fair contract for the bus servicers are untimely because such negotiations and ratification of the CBA occurred more than six months prior to the filing of this charge.[2] As such, this charge fails to raise an issue for hearing and is dismissed.

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

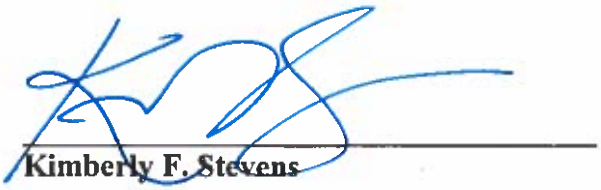
[1] Moreover, the Board has previously dismissed charges alleging favoritism of one group of employees within a bargaining unit over another unless there is some evidence that the union representative involved acted out of self-interest or was improperly motivated. See AFSCME Local 2258 (Agorianitis), 15 PERI ¶ 2044 (ISLRB 1999).

[2] Pursuant to Section 11(a) of the Act, "no complaint shall issue based upon any unfair labor practice occurring more than six months prior to the filing of a charge with the Board... unless the person aggrieved thereby did not reasonably have knowledge of the alleged unfair labor practice."

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 28th day of February, 2019.

STATE OF ILLINOIS
ILLINOIS LABOR RELATIONS BOARD
LOCAL PANEL



Kimberly F. Stevens
Executive Director