STATE OF ILLINOIS
ILLINOIS LABOR RELATIONS BOARD
LOCAL PANEL

Derek B. Webb, Charging Party and American Federation of State, County, and Municipal Employees, Council 31, Respondent.	)	Case No. L-CB-19-038

DECISION AND ORDER OF THE ILLINOIS LABOR RELATIONS BOARD
LOCAL PANEL

On July 22, 2019, Executive Director Kimberly Stevens dismissed a charge filed by Charging Party Derek Bing Webb on January 9, 2019. The charge alleged Respondent American Federation of State, County, and Municipal Employees, Council 31 (Union) engaged in unfair labor practices within the meaning of Section 10(b) of the Illinois Public Labor Relations Act (Act), 5 ILCS 315 (2016), as amended, by failing to respond to Charging Party's inquiries regarding three previously filed grievances, refusing to file an unfair labor practice charge against the City of Chicago (Police Department) (Employer), and refusing to file additional grievances on his behalf to retaliate against Charging Party for urging conversion to fair share membership instead of full-fledged membership with the Union.

The Executive Director dismissed portions of the charge on timeliness grounds and the remainder of the allegations on grounds the available evidence failed to raise an issue of fact or law to warrant a hearing. Noting that under Board precedent a union is afforded substantial discretion in deciding to pursue grievances unless the union is motivated by vindictiveness, discrimination, or enmity, the Executive Director observed the Union provided evidence indicating

it had "legitimate reasons" for the actions at issue and concluded the available evidence failed to indicate a causal connection between Charging Party's advocacy of fair share status.

Charging Party timely appealed the Executive Director's dismissal and the Union timely responded.

After reviewing the record, the dismissal, the appeal and the Union's response, we affirm the Executive Director's dismissal.[1] We find the appeal lacks merit for it merely rehashes Charging Party's claims offered during the investigation rather than providing a viable basis to overturn the dismissal. Charging Party challenges the dismissal by referring to additional materials claimed to be included in the appeal but fails to include these materials as the Union correctly observes. Moreover, Charging Party's contentions offered in the appeal fail to sufficiently raise issues for hearing regarding the Union's intentional misconduct or abuse of the Union's considerable discretion in handling grievances.

For the above reasons, we affirm the dismissal for the reasons stated by the Executive Director.

[1] The Union contends Charging Party failed to comply with the services requirements in Section 1200.20(f) of the Board's rules. Upon review of the document purporting to be the appeal, we find Charging Party stated he submitted his appeal "to all the parties listed in [the appeal] on August 2, 2019," with one of the parties listed being the Union. Although this may not be in strict compliance with Section 1200.20(f), we grant a variance for 1) the requirements regarding proper service are not statutorily mandated; 2) no party would be injured by the granting of the variance because the Union admittedly received the appeal and timely responded to it; and 3) strictly adhering to the service rules in this case could be construed as unreasonable considering Charging Party's *pro se* status and the purpose of the rule—to ensure the Union had adequate notice of and opportunity to respond to the appeal—was indeed satisfied.

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 October 8, 2019, written decision approved at the Local Panel's public meeting in Chicago, Illinois on November 14, 2019, and issued on November 18, 2019.

STATE OF ILLINOIS
ILLINOIS LABOR RELATIONS BOARD
LOCAL PANEL

Derek Bing Webb, Charging Party and American Federation of State, County, and Municipal Employees, Council 31, Respondent	Case No. L-CB-19-038

DISMISSAL

On January 9, 2019, Derek Bing Webb (Charging Party) filed a charge in Case No. L-CB-19-038 with the Local Panel of the Illinois Labor Relations Board (Board), in which he alleged that the Respondent, American Federation of State, County, and Municipal Employees (AFSCME), Council 31 (Respondent) engaged in unfair labor practices within the meaning 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. I hereby dismiss this charge for the following reasons.

I. INVESTIGATION

The Chicago Police Department (Employer) employs Charging Party as a Warrant and Extradition Aide (WEA). As such, Charging Party is a member of a bargaining unit (Unit) represented by Respondent. Respondent and the Employer are parties to a collective bargaining agreement (CBA) for the Unit that includes a grievance procedure culminating in final and binding arbitration. Charging Party alleges that Respondent violated Section 10(b)(1) of the Act when it

failed to respond to his inquiries regarding three grievances he had previously filed that were pending arbitration, refused to file an unfair labor practice (ULP) charge regarding the Employer's alleged violation of the NATO Award, and refused to file five grievances on his behalf that he submitted in October and November of 2018 in retaliation for his advocacy for Unit members to convert to fair share members.

Charging Party served as AFSCME Local 654 Vice President from January 2009 through January 2011 and as AFSCME Local 654 President from January 2012 through November 2017. In May 2018, Charging Party became a fair share member, and then he became a non-member in June 2018.

The Employer employs about 170 employees in the Field Services Section/Unit 166. Approximately half of these employees are sworn police officers (PO), who are on limited duty or restrictive duty status. The remaining employees in Unit 166 are civilian employees that are AFSCME bargaining unit members in the job titles of Senior Data Entry Operator, WEA, Criminal History Analyst, and Clerk IV. The POs perform some of the same work as the civilians in the Unit.

In 2012, the North Atlantic Treaty Organization (NATO) held its summit in Chicago. In anticipation of the summit and in order to respond to protestors, 30 POs were assigned overtime in the Field Services Section in case they were needed and called out to protest areas; the remaining POs were assigned at a temporary processing center or on a logistics team. Civilian employees in the Field Services Section were not offered overtime. Respondent filed a grievance over the Employer's decision not to offer overtime to the civilian Unit employees. An arbitrator ruled on the matter and determined that the POs worked out of classification on a temporary basis during the NATO Summit. The arbitrator continued that, although POs are allowed to complete some of the same work as the civilian employees in order to keep them in pay status, the Employer had never scheduled these POs to perform only out-of-classification work on an overtime basis. The

arbitrator stated that POs are considered on-call and available to perform their duties at all times, and, for that reason, POs receive duty assignment pay. Therefore, the arbitrator reasoned that, instead of completing civilian work for an overtime rate on this date, the POs could have been on-call. The arbitrator concluded that the Employer had the right to schedule the 30 POs for overtime work in the Field Services Section, but these POs' performance of bargaining unit work deprived civilian employees from overtime opportunities in this case. Therefore, the arbitrator awarded unit members monetary relief but denied Respondent's request for a "cease and desist" order. Respondent and Charging Party refer to this arbitration decision as the NATO Award.

On December 29, 2015, Charging Party filed grievance #01-15-57-0157 alleging that, on December 27, 2015, the Employer allowed a PO to work overtime at the Extradition Desk when Charging Party should have been awarded the overtime according to Sections 16.6 and 16.7 of the CBA. On February 12, 2016, Union Steward Darlene Jones (Jones) filed grievance #01-16-57-0168 on Aaron Pulling's (Pulling) behalf alleging that, on February 7, 2016, Pulling called the Employer to find out if the Field Services Section was short staffed and offered to come into work, and the Employer informed Pulling that a PO was asked to work overtime and he was not needed. The grievance claimed that Pulling should have been awarded the overtime according to Sections 16.6 and 16.7 of the CBA. On April 12, 2016, Charging Party filed grievance #01-16-57-0178 alleging that, on April 10, 2016, the Employer allowed a Detective to work overtime at the Extradition Desk when Charging Party should have been awarded the overtime according to Sections 16.6 and 16.7 of the CBA.

On July 15, 2017, Charging Party sent an email to AFSCME Council 31 Counsel Thomas Edstrom, AFSCME Regional Director Joseph Bella (Bella), and AFSCME Staff Representative Eugene Boatright (Boatright) asking why the three overtime grievances, as described in the previous paragraph, had not been submitted to arbitration and requesting that an unfair labor practice (ULP) charge be filed over the issue. That same day, Charging Party sent a separate email

to Bella indicating that the issues regarding the assignment of overtime were unresolved and requesting that an unfair labor practice (ULP) charge be filed over the issue. On July 15, 2017, Bella responded to Charging Party that he had previously told Charging Party that Respondent was working on its strategy for arbitration regarding the erosion and overtime issue and that Bella would check on the grievances Charging Party asked about. On July 25, 2017, Bella responded to Charging Party again, stating that he did not believe that a ULP charge would be the best strategy to resolve the overtime matter and mentioned that Respondent proposed language in the current round of negotiations attempting to limit the Employer's use of POs for the extradition desk and overtime. Bella also mentioned that Respondent may have a better chance of achieving these limitations on the Employer through arbitration. Bella continued that he and Boatright would reach out to Charging Party to further plan strategy.

Respondent indicated that Charging Party was included in strategy discussions regarding unit erosion and overtime assignments throughout 2017 and 2018. Respondent informed Charging Party that the three grievances in question were part of the Respondent's overall strategy to address the above-mentioned issue and were not advanced arbitration because another grievance on a similar issue was more meritorious, and this grievance led to the Nielsen Award. In the Nielsen Award, issued March 23, 2018, the arbitrator again refused to issue a "cease and desist" order regarding other classifications working the warrant desk but determined that Criminal History Analysts (CHA) could only staff the warrant desk in exigent circumstances and then defined what constituted an exigent circumstance.

In May and June of 2018, Charging Party became a fair share member and then a non-member. Charging Party indicated that he advocated for other members of the bargaining unit to either change to fair share members or become non-members, creating an animus between him and Respondent.

In November and December of 2018, Charging Party submitted five grievances to Respondent, requested that Respondent file a ULP over the overtime issue and continuing violations of the NATO Award, and asked Respondent to apprise him of the status of grievance numbers 01-15-57-0157, 01-16-57-0168, and 01-16-57-0178. Charging Party alleges that Respondent did not respond to his inquiries and refused to file the grievances and a ULP because it is biased against him for encouraging members to switch to fair share and then non-members.

Respondent alleges that it had already explained to Charging Party why it was not going to file a ULP regarding the overtime issue and that it filed the five grievances for Charging Party. Respondent provided copies of the five grievances with corresponding grievance numbers and documentation evidencing that they were pending at the second level of the grievance procedure. Respondent also argues that, because Charging Party was part of the strategy to address bargaining unit erosion and overtime assignments outside the unit during 2017 and 2018, Charging Party was already aware that the three grievances that he inquired about were not being pursued to arbitration.

II. DISCUSSION AND ANALYSIS

The available evidence indicates that portions of the charge are untimely filed. Section 11(a) of the Act provides that "... 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 and the service of a copy thereof upon the person against whom the charge is made." In July of 2017, Respondent explained why it would not be filing a ULP alleging that Employer violated the NATO Award or about related overtime issues. Further, Charging Party was a participant in the strategy discussions that took place in 2017 and 2018 regarding unit erosion and overtime. Therefore, Charging Party was aware at this time that Respondent did not plan on pursuing grievance numbers 01-15-57-0157, 01-16-57-0168, and 01-16-57-0178 to arbitration. Consequently, Charging Party had knowledge of Respondent's conduct at issue sometime during a period of time beginning in or around July 2017 to May of 2018 when Charging Party opted out of the Union. Charging Party

filed this charge on January 9, 2019. Because Charging Party filed this charge more than six months after he had knowledge of Respondent's actions that allegedly violated the Act, these portions of the charge are untimely filed. *See* State of Illinois. Dept. of Central Management Services (Eugene Brown), 19 PERI ¶105 (ILRB-SP 2003).

Moreover, Charging Party has not provided sufficient evidence to obtain a complaint on the merits of his charge. 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 unit member or because of the unit member's status (such as race, gender, or national origin), or animosity between the unit member 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) he or she has engaged in activities tending to engender the animosity of union agents or that his or her mere status, such as race, gender, religion or national origin, may have caused animosity; (2) the union was aware of his or her activities and/or status; (3) there was an adverse representation action taken by the union; and (4) the union took an adverse action against him or her for discriminatory reasons, i.e. because of animus towards a unit member's activities or status. Id. at 588-89.

In addition, under Section 6(d) of the Act, a labor organization has a wide range of discretion in contract interpretation and grievance handling, and as the Board has previously held, a union's failure to take all the steps it might have taken to achieve the results desired by a particular employee does not violate 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).

Respondent provided legitimate reasons for its actions that Charging Party alleged violated the Act. First, Respondent explained to Charging Party that it did not believe that filing a ULP charge alleging the Employer violated the NATO agreement was the best strategy for resolving the overtime issue. As stated above, Respondent indicated that it was trying to resolve this issue through contract negotiations and arbitration. Respondent further argued during the investigation that it did not believe that a ULP charge alleging that the Employer violated NATO Award would be successful because the ruling was for the specific overtime situation of the NATO Summit, and nothing prohibits the Employer from assigning POs to completing the duties of civilian employees. Respondent also explained that, during the strategy discussions in 2017 and 2018, it determined that grievance numbers 01-15-57-0157, 01-16-57-0168, and 01-16-57-0178 lacked sufficient documentation, were unmeritorious, and would not be submitted to arbitration. Finally, Respondent provided documentation that it did, indeed, file the five grievances that Charging Party submitted in October and November of 2018.

Although Charging Party provided a motive for Respondent to be biased against him, namely, his attempts to cause other members to leave the Union, he failed to provide evidence of a causal connection between his activities that may have engendered the animosity of Respondent and Respondent's actions that allegedly violated the Act. Because Charging Party fails to

demonstrate a causal connection and Respondent provided legitimate, non-discriminatory reasons for its actions, this charge does not 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 hereof. 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 22nd day of July, 2019.

STATE OF ILLINOIS
ILLINOIS LABOR RELATIONS BOARD
LOCAL PANEL

Kimberly F. Stevens
Executive Director