STATE OF ILLINOIS
ILLINOIS LABOR RELATIONS BOARD
LOCAL PANEL

Anthony Weeden Charging Party, and Service International Employees Union, Local 73, Respondent.	))))))))))	Case No. L-CB-19-052

DECISION AND ORDER OF THE ILLINOIS LABOR RELATIONS BOARD
LOCAL PANEL

On August 21, 2019, Executive Director Kimberly Stevens dismissed a charge filed on April 22, 2019, by Charging Party Anthony Weeden, an employee of Cook County Facilities Management (Employer) who is represented by Respondent Service Employees International Union, Local 73 (Union). The charge alleged Respondent 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, when it failed to advance Charging Party's discharge grievance to arbitration. [1]

The Executive Director dismissed the charge on grounds the available evidence failed to raise an issue of fact or law warranting a hearing. She observed the record contained insufficient evidence of Respondent's intentional misconduct as there was scant evidence that Respondent was

[1] In relevant part, Section 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.

biased against or harbored any hostility toward Charging Party. Furthermore, the Executive Director found Charging Party failed to establish the necessary causal connection between the alleged bias and Respondent's decision not to pursue the grievance.

On September 4, 2019, Charging Party filed an appeal of the Executive Director's dismissal. Respondent filed a response on September 16, 2019. After reviewing the record, the dismissal, the appeal and the Union's response, we affirm the Executive Director's dismissal as follows:

As a threshold matter, both the appeal and response consider the appeal untimely filed. Charging Party requests the appeal be accepted despite the appeal's late filing and Respondent urges the Board to deny the appeal on timeliness grounds. Applying the Board's service and computation of time rules, however, the appeal was indeed timely filed.

Section 1200.135(a) requires parties appealing Executive Director dismissals to do so within ten days of service of the dismissal. According to the Board's affidavit of service, the dismissal was mailed to the parties on August 21, 2019, by certified mail. Pursuant to Section 1200.30(c), service is presumed complete three days after mailing or in this case, on August 24, 2019. But because August 24, 2019, fell on a Saturday, under Section 1200.30(a), service was not presumed complete until the following Monday, August 26, 2019. Section 1200.30(a) instructs the computation of the ten-day appeal period begins on the day after the "act, event, or default" and ends on the last day of the prescribed time period. Thus, the ten-day time period to file the appeal began to run on August 27, 2019 and ended on September 5, 2019, one day after the filing of the instant appeal.

Turning to the merits of the appeal, we find the appeal lacks merit. As the Executive Director correctly noted, Section 10(b)(1) of the Act requires charging parties to establish that (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.

Charging Party's appeal lacks merit for it provides no viable reason for reversal. The Executive Director aptly noted the available evidence failed to indicate Respondent held any bias or hostility against Charging Party sufficient to raise an issue for hearing on Respondent's alleged intentional misconduct, but the appeal fails to point to any evidence to the contrary. Rather, as Respondent contends, Charging Party repeats his bald assertions that Respondent was biased against him and claims for the first time on appeal that Respondent was biased because of his opposition to the Local President Dian Palmer in the October 2018 election.

Generally, we will not consider evidence or allegations on appeal that a charging party could have presented during the initial investigation of the charge but did not do so. Am. Fed'n of State, Cnty. and Mun. Empl., Council 31 (Russel), 18 PERI ¶ 2036 (IL LRB-SP 2002). We have considered evidence on appeal, however, where an individual charging party appears *pro se* and the investigation was insufficiently designed to elicit information from a *pro se* party relevant to the allegations. See Am. Fed'n of State, Cnty. and Mun. Empl., Council 31

(Russel), 18 PERI ¶ 2036 (Board agent made no personal contact with the *pro se* charging party to afford an opportunity to obtain sufficient facts to assess viability of unfair labor practice charge).

In this case, however, neither circumstance exists. Charging Party was represented by counsel during the investigation of his charge and is currently represented by that same counsel. Despite being represented by counsel, Charging Party fails to provide any evidence on appeal in support of this new claim or explain why this information was not provided during the investigation despite the Board agent's request to Charging Party's counsel for information regarding Respondent's alleged bias against the Charging Party. As Respondent correctly notes, Section 1220.40(a)(1) of the Board's rules requires a charging party to provide all relevant evidence in support of the unfair labor practice charge. 80 Ill. Adm. Code 1220.40(a)(1). Furthermore, Section 1200.135(a)(1) requires parties to submit all supporting materials along with their appeals, but Charging Party failed to submit any evidence in support of this new claim along with his appeal. See 80 Ill. Adm. Code 1200.135(a)(1). Thus, we decline to consider Charging Party's claim concerning his opposition to Palmer in the October 2018 election.

Even if we were to consider Charging Party's new evidence, the appeal would still be denied. A union has considerable discretion in handling grievances and absent evidence of improper motivation, a union is not required to take all steps to achieve a desired result. See University of Illinois at Urbana, 17 PERI ¶ 1054 (IELRB 2001); Welch, McGrew, and Widger and American Federation of State County and Municipal Employees, Council 31, 25 PERI ¶ 73 (IL SLRB 2009). Here, the appeal fails to identify any evidence, circumstantial or otherwise, to indicate Respondent abused its discretion by deciding against pursuing the grievance to arbitration.

Accordingly, 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 the above reasons, we deny the appeal and affirm the dismissal for the reasons stated by the Executive Director.

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 December 10, 2019, written decision approved at the Local Panel's public meeting in Chicago, Illinois on January 9, 2020, and issued on January 9, 2020.

STATE OF ILLINOIS
ILLINOIS LABOR RELATIONS BOARD
LOCAL PANEL

Anthony Weeden, Charging Party and Service Employees International Union, Local 73, Respondent	Case No. L-CB-19-052

DISMISSAL

On April 22, 2019, Anthony Weeden (Charging Party) filed a charge in Case No. L-CB-19-052 with the Local Panel of the Illinois Labor Relations Board (Board), in which he alleged that the Respondent, Service Employees International Union, Local 73 (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

Cook County Facilities Management (Employer) employed Charging Party as a Janitor II until August 21, 2018. As such, he was a member of a bargaining unit (Unit) represented by Respondent. Respondent and 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 refused to pursue his termination grievance to arbitration.

The Employer terminated Charging Party on August 21, 2018, for being absent without an approved leave. Soon after, Respondent filed a grievance over Charging Party's termination. On January 28, 2019, Respondent notified Charging Party that its Pre-Arbitration Panel determined that his grievance would not be pursued to arbitration. Charging Party submitted an appeal to Respondent within fifteen days to appeal the decision not to pursue his termination grievance to arbitration. On February 23, 2019, Charging Party spoke at a Union meeting, stating that it was an injustice his grievance was not being pursued to arbitration. Soon after, Charging Party went to the Board's Chicago Office to pick up unfair labor practice forms, and, that day, the Union President called and assured Charging Party that Respondent was going to review his case. On March 22, 2019, Respondent's General Counsel sent Charging Party a letter confirming that Respondent was not going to pursue his grievance to arbitration.

Charging Party believes that Respondent is biased against him because he was a known opponent of Respondent's current administration and expressed that he was angry about his lack of representation throughout the grievance process. In addition, Charging Party spoke publicly about his dissatisfaction with Respondent's representation at the February 23, 2019, Union meeting. Charging Party also claims that Respondent was aware that he went to the Board's office to pick up unfair labor practice charge forms because the Union President called him two hours after he left. Therefore, Charging Party believes that Respondent also harbors animus against him because it knew he might be filing an unfair labor practice charge against it.

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 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 this charge, Charging Party failed to establish a causal connection between Respondent's alleged bias towards him and its decision not to pursue his grievance to arbitration. First, Charging Party claims that he is a known opponent of Respondent's current administration but only cites his expressions of dissatisfaction with how Respondent handled his termination grievance as evidence of his opposition. Second, Charging Party makes the bald accusation that Respondent knew that he had picked up unfair labor practice charge forms from the Board's office and was biased against him because it suspected that Charging Party was going to file charges against Respondent. However, the only evidence that Charging Party provides that suggests Respondent knew of his actions was because the Union President called him, probably coincidentally, two hours later.

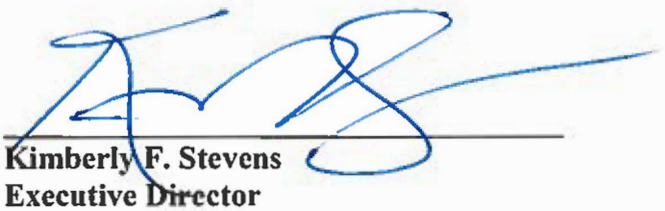
Because there is little evidence that Respondent would have a motive to be biased against Charging Party, and Charging Party fails to demonstrate a nexus between Respondent's alleged bias and its decision to not pursue his grievance to arbitration, this charge fails to raise an issue for hearing.

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 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 21st day of August, 2019.

STATE OF ILLINOIS
ILLINOIS LABOR RELATIONS BOARD
LOCAL PANEL



Kimberly F. Stevens
Executive Director