STATE OF ILLINOIS
ILLINOIS LABOR RELATIONS BOARD
STATE PANEL

Beverly Jackson,	)	
	)	
Charging Party,	)	
	)	
and	)	Case No. S-CB-16-013
	)	
American Federation of State, County and Municipal Employees, Council 31,	)	
	)	
Respondent.	)	

DECISION AND ORDER OF THE ILLINOIS LABOR RELATIONS BOARD
STATE PANEL

On May 31, 2016, Executive Director Melissa Mlynski dismissed a charge filed by Beverly Jackson (Charging Party) alleging that American Federation of State, County and Municipal Employees, Council 31 (Respondent or Union) violated Section 10(b) of the Illinois Public Labor Relations Act, 5 ILCS 315 (2014), *as amended* (Act). Following investigation, the Executive Director determined that Charging Party had failed to raise an issue of fact or law sufficient to warrant a hearing on her charge that the Union had violated its duty of fair representation under the Act. Charging Party filed a timely appeal of the dismissal. Respondent did not file a response to the appeal.

After reviewing the appeal and the record, we affirm the Executive Director's Dismissal for the reasons stated therein.

BY THE STATE OF THE ILLINOIS LABOR RELATIONS BOARD

/s/ John J. Hartnett
John J. Hartnett, Chairman

/s/ Michael G. Coli
Michael G. Coli, Member

/s/ John R. Samolis
John R. Samolis, Member

/s/ Keith A. Snyder
Keith A. Snyder, Member

/s/ Albert Washington
Albert Washington, Member

Decision made at the State Panel's public meeting in Chicago, Illinois on August 9, 2016; written decision issued in Chicago, Illinois on August 12, 2016.

STATE OF ILLINOIS
ILLINOIS LABOR RELATIONS BOARD
STATE PANEL

Beverly Jackson, Charging Party and American Federation of State, County and Municipal Employees, Council 31, Respondent	)	Case No. S-CB-16-013

DISMISSAL

On November 25, 2015, Beverly Jackson (Charging Party) filed an unfair labor practice charge with the State Panel of the Illinois Labor Relations Board (Board), in the above referenced case, alleging that American Federation of State, County and Municipal Employees, Council 31 (Union or Respondent) violated Section 10(b) 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 and hereby issue this dismissal for the reasons stated below.

I. INVESTIGATION

At all times material, the Charging Party was a public employee within the meaning of Section 3(n) of the Act and was employed by the State of Illinois at the Department of Human Services (Employer) as a Human Services Caseworker (Caseworker). The Respondent is a labor organization within the meaning of Section 3(i) of the Act and the exclusive representative of a bargaining unit (Unit) that includes employees in the title of Caseworker. Respondent and the

Employer are parties to collective bargaining agreement for the Unit that includes a grievance procedure culminating in final and binding arbitration.

During her probationary period as a Caseworker, Charging Party felt that that the Union supported her immediate supervisor, also a Union member, rather than her, therefore denying Charging Party fair representation. Charging Party also asserts that her local Union steward, Safiya Felters, encouraged Charging Party's supervisor to draft a "Corrective Action Plan" and then the Corrective Action Plan was utilized by the Employer as the basis for Charging Party's discharge. Charging Party further asserts that the Union did not provide her with representation after she was discharged by the Employer. Charging Party maintains that inadequate training and age discrimination resulted in her discharge. Charging Party also asserts age discrimination as the basis for the Union's unfair treatment towards her. Finally, Charging Party asserts that the Union violated the Act by not allowing her to attend the 3rd Level and the pre-arbitration level[1] of the grievance procedure and by not presenting documentation that would have supported her case.

On July 8, 2015, the Employer issued an Inter-Office Memorandum intended to assist Charging Party in the performance of her job duties. The memorandum listed Charging Party's assigned job duties and required that Charging Party submit daily and weekly report logs of her completed tasks to her supervisor. Then the Employer issued Charging Party a 2-month Corrective Action Plan (CAP), effective July 15, 2015. The CAP summarized Charging Party's alleged inability to perform daily assigned duties. The CAP identified her job responsibilities, objectives and performance indicators. The CAP identified the Charging Party's alleged inability to complete work assignments including information on caseload size of the average Caseworker.

[1] Presumably, the pre-arbitation level is synonymous with the 4th level of the grievance procedure.

In the documentation gathered during the investigation of this unfair labor practice charge, there are numerous emails between the Charging Party and Felters in which Felters is giving Charging Party advice and explaining various issues applicable to this situation, including the purpose of a CAP as well as the process for seeking assistance from the Union and filing a grievance.

On or about October 1, 2015, the Employer held a pre-disciplinary meeting with the Charging Party. A summary of the meeting indicates that the Employer was considering a charge of "Failure to Complete Probationary Period." Charging Party had Union representation at this meeting, and the Union submitted a written rebuttal on her behalf. In this rebuttal, the Union asserts that Charging Party did not receive adequate training during her probationary period.

On or about October 20, 2015, the Employer placed Charging Party on a suspension pending discharge based on alleged failure to meet the assignments as required for her position as Caseworker. On or about November 18, 2015, the Employer discharged the Charging Party. The Union filed a grievance challenging this discharge.

There appears to be some confusion over whether Charging Party completed her probationary period prior to discharge. Although the original documentation indicates that the Employer intended to terminate the Charging Party during her probationary period, it is unclear whether the actual termination came before or after she completed her probationary period. The available documentation indicates that the Union took the position that the discharge occurred four days after Charging Party completed her probationary period.

In any event, the Union processed the grievance challenging the discharge up through the 4th Step of the grievance procedure found in the CBA. In a letter dated April 22, 2016, the Union notified Charging Party that "after careful review of the facts and evidence concerning your discharge from the State of Illinois and the resulting grievance, the Union has determined that

your case cannot be successfully argued at arbitration." The letter indicates that the "the Union determined, based on the merits of the case, not to purse your grievance further." However, the letter also notified Charging Party that the Union was able to negotiate a settlement of the grievance in which the Employer agreed to remove all reference to the discharge from her personnel record if Charging Party agreed to resign. A copy of the fully executed settlement agreement was enclosed in the Union's April 22, 2016 letter. It is unclear whether the Charging Party chose to resign as a result of this settlement agreement.

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 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; (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.

In the instant case, there is insufficient evidence that the Union took an action against the Charging Party because it harbored any bias or animosity towards her, nor is there evidence that the Union discriminated against Charging Party based on her age or for any other improper reason. As noted above, there are numerous documents in the investigatory file that demonstrate Union steward Felters attempted to advise and assist Charging Party throughout her short tenure with the Employer. Even if Felters did have some hand in encouraging Charging Party's supervisor to draft a CAP (and there is insufficient evidence that she did), this would not be enough to raise a question for hearing. A CAP can be a useful tool that identifies deficiencies in an employee's work performance, and sets forth a plan to correct those deficiencies. It would not violate the Act for a Union Steward to suggest the use of a CAP.

Further, there is no evidence that the Union failed to provide Charging Party with representation. To the contrary, the Union represented Charging Party at the pre-disciplinary meeting and filed a grievance challenging her discharge. The Union then pursued this grievance through Step 4 of the contractual grievance procedure. The Union ultimately chose not to pursue this grievance to arbitration, but the Charging Party provided insufficient evidence that the Union based this decision on any improper or discriminatory motivation.

Charging Party asserts that the Union excluded her from the 3rd and 4th Step of the grievance procedure, but there is no evidence that Charging Party had a right to attend these grievance meetings or that the Union treated Charging Party different than any other similarly situated employee by not allowing her to attend. Further, Charging Party claims that the Union failed to utilize documents at the grievance hearing(s) that would have supported her case. The

Act gives the Union considerable discretion in grievance handling. The Union does not violate the Act by presenting the grievance in a manner that differs from how Charging Party wanted to the grievance presented.

Section 6(d) of the Act states that nothing in the Act "shall be construed to limit an exclusive representative's right to exercise its discretion to refuse to process grievances of employees that are unmeritorious." Accordingly, a union must be accorded substantial discretion in deciding whether, and to what extent, a particular grievance should be pursued. 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 Section 10(b)(1), 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). Unless there is compelling evidence of intentional misconduct, the Board will not second guess a union's administrative decision regarding grievances handling. See Benny Eberhardt and International Brotherhood of Teamsters, Local 700, 29 PERI ¶77 (ILRB-SP 2012); Amalgamated Transit Union, 2 PERI ¶3021 (IL LLRB 1986). Absent any such compelling evidence in this case, the charge fails to raise a question for hearing.

III. ORDER

Accordingly, the instant charge is dismissed in its entirety. The Charging Party may appeal this Dismissal, to the Board any time within 10 days of service hereof. Such appeal must be in writing, contain the case caption and number, and must be addressed to the General Counsel of the Illinois Labor Relations Board, at 160 North LaSalle Street, Suite S-400, Chicago, Illinois, 60601-3103. The appeal must contain detailed reasons in support thereof, and be served upon all other persons or organizations involved in this case at the same time it is served on the Board. A

statement asserting that all other parties have been served must accompany an appeal, or the board will not consider it. If the Board does not receive an appeal with the specified time, the Dismissal will be final.

Issued at Springfield, Illinois, this 31st day of May, 2016.

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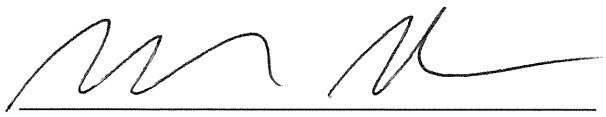

Melissa Mlynski, Executive Director