

**STATE OF ILLINOIS
ILLINOIS LABOR RELATIONS BOARD
STATE PANEL**

Thomas Tate and Carmelita Terry,)	
)	
Charging Parties,)	
)	
and)	Case No. S-CB-19-016
)	
Illinois Municipal Police Association #1)	
)	
Respondent.)	

**DECISION AND ORDER OF THE ILLINOIS LABOR RELATIONS BOARD
STATE PANEL**

On May 13, 2019, Executive Director Kimberly Stevens dismissed a charge filed by Charging Parties Thomas Tate (Tate) and Carmelita Terry (Terry) on December 4, 2018. The charge alleged Respondent Illinois Municipal Police Association #1 (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, when it withdrew and refused to enter into settlement discussions regarding the grievance Charging Parties filed over their failure to be promoted to the rank of sergeant. Charging Parties claim the Union refused to settle the grievance so that members of its leadership could be promoted instead of them.

The Executive Director dismissed the charge on grounds the available evidence failed to raise an issue of fact or law warranting 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 concluded Charging Parties failed to demonstrate that the Union acted in a discriminatory manner and found the Union provided evidence demonstrating “justifiable reasons” for withdrawing and refusing to settle Charging Parties’ promotion grievance.

Charging Parties timely appealed the Executive Director's dismissal. The Union did not respond to the appeal but instead filed a Motion for Sanctions to which the Charging Parties filed a Motion to Strike and/or Stay the Union's Motion for Sanctions until Appellate Process has been exhausted.

After a review of the record, the dismissal, and appeal, we affirm the dismissal for the reasons discussed below:

Motion for Sanctions

The Union seeks sanctions against the Charging Parties for engaging in frivolous litigation and to increase the costs of litigation under Section 1220.90 of the Board's Rules. Respondent contends Charging Parties engaged in frivolous litigation to harass the Union and increase the costs of litigation because certain allegations and/or incidents of frivolous litigation in the charge were not made in good faith or did not represent a "debatable" position, citing City of Markham, 11 PERI ¶ 2019 (IL SLRB 1995); County of Cook, 15 PERI ¶ 3001 (IL LLRB 1998); County of Cook and Sheriff of Cook County, 12 PERI ¶ 3008 (IL LLRB 1996). It contends the "facts surrounding the Charge" fully demonstrate the Union's actions were not unlawful and that Charging Parties ignored legal standards in filing the instant charge.

Pursuant to Section 11(c) of the Act, the Board may award sanctions based on the Board's rules and regulations if "[a] party has made allegations or denials without reasonable cause and found to untrue or has engaged in frivolous litigation for the purpose of delay or needless increase in the cost of litigation. 5 ILCS 315/11(c); 80 Ill. Adm. Code 1220.90. The Board has considerable discretion in awarding sanctions and courts will apply an abuse of discretion standard and find abuse of discretion where the underlying decision is arbitrary, fanciful, or unreasonable. Illinois Troopers Lodge No. 41. v. Illinois Labor Relations Board, State Panel, 2018 IL App (1st) 171382,

¶ 31, citing City of Bloomington v. Illinois Labor Relations Board, State Panel, 2011 IL App (4th) 100778, ¶ 17 and Seymour v. Collins, 2015 IL 118432, ¶ 41.

In this case, we deny the Union's Motion on grounds the motion does not comply with Section 1220.90(f) of the Board's rules which requires parties seeking sanctions for frivolous litigation to first make the request to the Executive Director. See 80 Ill. Adm. Code 1220.90(f). Section 1220.90(f) section states:

A party may not request sanctions from the Board for alleged *frivolous litigation for the purpose of delay or needless increase in the cost of litigation* before the Executive Director or Administrative Law Judge, unless it requested sanctions from the Executive Director or Administrative Law Judge as to such alleged incident of *frivolous litigation*.

80 Ill. Adm. Code 1220.90(f) (emphasis in original) whereas Section 1220.90(e) of the Board's rules requires no such prior request where sanctions are sought for allegations or denials made without reasonable cause and found to be untrue. See 80 Ill. Adm. Code 1220.90(e).

Although the Union points to certain allegations that it claims are "wholly unsupported by the factual circumstances," the Union's Motion clearly seeks sanctions for frivolous litigation and is thus governed by Section 1220.90(f). Furthermore, none of the allegations and/or denials that the Union identifies as being made without reasonable cause have been found to be untrue by the Executive Director in her dismissal order. Thus, under Section 1220.90(f), the Union was required to seek sanctions from the Executive Director before requesting them from the Board but there is no indication that sanctions were requested from the Executive Director or considered by her as evidenced by the fact that her dismissal made no mention of a request for sanctions.

We also find the criteria for a variance under Section 1220.90(e) of the Board's rules are not met: 1) the requirement regarding prior requests for sanctions only in cases of frivolous litigation is not statutorily mandated; but 2) the Charging Parties would be injured by the granting

of the variance because sanctions would be awarded against them; and 3) strictly adhering to the rules could not be construed as unreasonable in this case, considering the purpose of the rule, to require parties seeking sanctions based on frivolous litigation brought for the purposes of delay or needlessly increasing litigation costs, is to ensure that the request is brought at the appropriate juncture in the case.

Even if we were to find all three criteria satisfied and grant a variance, we deny the request for sanctions on the merits. As discussed above, Section 11(c) provides for sanctions at the Board's discretion where a party "has made allegations or denials without reasonable cause and found to be untrue or has engaged in *frivolous litigation for the purpose of delay or needless increase in the cost of litigation.*" 5 ILCS 315/11(c) (emphasis added). The instant charge was investigated and dismissed a little more than six months from the date the charge was filed which militates against finding the offending instances identified by the Union delayed the investigation of the charge or *needlessly* increased the costs of litigation. Furthermore, the Executive Director did not make any findings in her dismissal order regarding the reasonableness or veracity of the charge's allegations. Moreover, the cases cited by the Union, City of Markham, 11 PERI ¶ 2019 (IL SLRB 1995); County of Cook, 15 PERI ¶ 3001 (IL LLRB 1998); County of Cook and Sheriff of Cook County, 12 PERI ¶ 3008 (IL LLRB 1996), involved sanctions after hearings were conducted, *i.e.*, where a significant amount of litigation occurred. Finally, a grant of sanctions after the Executive Director's dismissal of a charge under these circumstances, could have a chilling effect on the filing of future charges by individuals against their exclusive representative.

Charging Parties' Appeal

We affirm the dismissal for the reasons given by the Executive Director. Charging Parties' appeal lacks merit for it provides no viable basis to overturn the dismissal.

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. 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).

Charging Parties contend the Executive Director misapprehended the charge's allegations by concluding that the available evidence failed to indicate the Union acted in a discriminatory manner. Charging Parties claim that they are not alleging the Union discriminated against them, rather, they are alleging the Union breached their duty of fair representation by not only refusing to pursue their promotion grievance but by working against them to ensure members of the Union leadership would be promoted instead of them.

Charging Parties, however, appear to misapprehend the Executive Director’s analysis. The Executive Director focused on whether the Union acted in a discriminatory manner because she, correctly, relied on Metro. Alliance of Police v. Ill. Labor Relations Bd., in which the court held charging party must prove unlawful discrimination in duty-of-fair representation cases to establish intentional misconduct. See Metro. Alliance of Police v. Ill. Labor Relations Bd., 345 Ill. App. 3d. at 588-89. Furthermore, Charging Parties fail to identify any caselaw distinguishing this case or provide any authority contradicting the court’s holding.

For the reasons set forth above, we find the Charging Party’s appeal lacks merit and affirm the dismissal for the reasons stated by the Executive Director.

BY THE STATE PANEL OF THE ILLINOIS LABOR RELATIONS BOARD

/s/ John S. Cronin
John S. Cronin, Member

/s/ Kendra Cunningham
Kendra Cunningham, Member

/s/ Jose L. Gudino
Jose L. Gudino, Member

/s/ William E. Lowry
William E. Lowry, Chairman

/s/ J. Thomas Willis
J. Thomas Willis, Member

Decision made at the State Panel’s public meeting in Chicago and Springfield, Illinois (via videoconference) on September 10, 2019, written decision approved at the State Panel’s public meeting in Chicago and Springfield, Illinois (via videoconference) on October 8, 2019, and issued on October 9, 2019.

**STATE OF ILLINOIS
ILLINOIS LABOR RELATIONS BOARD
STATE PANEL**

Thomas Tate and Carmelita Terry,
Charging Parties
and
Illinois Municipal Police Association #1,
Respondent

Case No. S-CB-19-016

DISMISSAL

On December 4, 2018, Thomas Tate and Carmelita Terry (Charging Parties) filed a charge in Case No. S-CB-19-016 with the State Panel of the Illinois Labor Relations Board (Board), in which they alleged that the Respondent, Illinois Municipal Police Association #1 (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 City of Berwyn Police Department (Employer) employs Thomas Tate (Tate) as a Detective and Carmelita Terry (Terry) as a Patrol Officer. As such, Charging Parties are members 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 Parties allege that Respondent violated Section 10(b)(1) the Act when it refused to engage in settlement discussions regarding their promotion grievance in order to ensure union leadership was instead promoted.

On March 2, 2006, the Employer published an eligibility list for promotion to Sergeant on which Tate ranked sixth and Terry ranked eighth. Pursuant to 65 ILCS 5/10-2.1-15, this list was valid for three years and expired on March 2, 2009. In 2009, Respondent and the Employer were engaged in negotiations over a successor agreement and discussions included changing the promotional testing process for the rank of sergeant. On August 20, 2009, the Employer requested funding to promote one lieutenant and two sergeants to fill vacancies created by retirements. On August 24, 2009, the Employer's City Council deferred the request to fund these positions to the budget committee.

In late 2009, the Employer began promotional examinations. On December 30, 2009, the Employer published the preliminary promotional list. In January 2010, Respondent discovered that there were errors in the testing process, and, after an audit of the testing process and scores, the final promotional list was published on January 20, 2010. Thirteen patrol officers were promoted to the rank of sergeant from this list. The Employer conducted promotional exams in 2013 and promoted seven patrol officers to the rank of sergeant from this list. The Employer conducted additional promotional exams in 2016 and promoted four patrol officers from this list. Charging Parties declined to participate in all the promotional exams since 2006, and, therefore, were not eligible for these promotions.

Charging Parties argue that they should have been promoted in 2009, when the Employer requested appropriations for two sergeant positions because they were next on the 2006 sergeants' list. On July 9, 2018, Charging Parties filed a grievance asserting these allegations. On July 10, 2018, the grievance was referred to Step 3, Chief of Police. After consulting with Respondent's legal counsel, Union President James Kenney (Kenney), advised Charging Parties that Respondent would not be supporting the grievance. On July 12, 2018, the Chief of Police issued an opinion stating that the "grievance holds merit and my recommendation would be to attempt to settle the grievance." However, he continued that, because Respondent refused to participate in the

grievance, it must be denied. Charging Parties also note that, at the time of the grievance, Kenney, Union Treasurer Casey Stefano (Stefano), and Union Trustee Brian Koski (Koski) were all patrol officers. Later that year, they all were promoted to sergeant. Charging Parties allege that Respondent failed to provide a valid reason to withdraw their grievance and did so to ensure that Respondent's local leadership would be promoted.

Respondent maintains that it withdrew Charging Parties' grievance for legitimate reasons. First, Respondent argues that the grievance was untimely because Charging Parties assert that they should have been promoted in 2009, nine years prior to the filing of the grievance in question. Second, the 2006 promotional list expired on March 2, 2009, and there were no open sergeant positions at that time. Further, on August 20, 2009, when the Employer requested to fill the vacant sergeant positions, the 2006 promotional list had expired, and, therefore, Respondent did not believe that it had a valid claim that the Employer violated a contractual provision or any type of law in regards to Charging Parties' grievance. Respondent also evidences that some members of its leadership team, namely, Kenney, Stefano, and Koski, were appropriately promoted in accordance with the most recent promotional list.

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 Ill. 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).

On June 18, 2018, Respondent sent an email to Charging Parties explaining why their potential grievance did not have merit, but the Charging Parties independently filed their grievance with the Employer on July 9, 2018. When Charging Parties were asked why they believed Respondent's reasons for not pursuing their grievance were untrue or invalid, they only responded that Respondent's reasons were not legitimate. Because Respondent provided sufficient evidence to demonstrate that it withdrew Charging Parties' grievance and did not engage in settlement discussions for justifiable reasons, and Charging Parties failed to demonstrate that Respondent

acted in a discriminatory manner towards them, this charge does not raise an issue for hearing and is dismissed.

III. ORDER

Accordingly, this charge is hereby dismissed. The Charging Parties 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 Parties 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 13th day of May, 2019.

**STATE OF ILLINOIS
ILLINOIS LABOR RELATIONS BOARD
STATE PANEL**



**Kimberly F. Stevens
Executive Director**