STATE OF ILLINOIS
ILLINOIS LABOR RELATIONS BOARD
STATE PANEL

Tonette Elder,	)	
	)	
Charging Party,	)	
	)	
and	)	Case No. S-CB-19-028
	)	
American Federation of State, County, and Municipal Employees, Council 31,	)	
	)	
Respondent.	)	

DECISION AND ORDER OF THE ILLINOIS LABOR RELATIONS BOARD
STATE PANEL

On July 16, 2019, Executive Director Kimberly Stevens dismissed a charge filed on March 26, 2019, by Charging Party Tonette Elder (Charging Party), an employee of the Illinois Department of Children and Family Services (Employer) who is represented by Respondent American Federation of State, County, and Municipal Employees, Council 31 (Union). The charge alleged the 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 inadequately handled her discharge grievance due to the Union's bias against her. [1]

The Executive Director dismissed the charge on timeliness grounds and on the grounds the available evidence failed to raise an issue of fact or law warranting a hearing. First, the Executive

[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.

Director determined the charge was filed outside the Act's six-month limitation period. She observed the Charging Party was aware of the alleged unlawful conduct in July 2012, more than six years before the instant charge was filed in March 2019.

Next, the Executive Director, noting under Board precedent that a union is afforded substantial discretion in deciding to pursue grievances, found Charging Party failed to identify any Union bias, hostility or motive against Charging Party when it failed to acknowledge or accept documentation of Charging Party's promotion in handling her discharge grievance. The Executive Director also determined Charging Party failed to raise an issue for hearing as to Union's abuse of its discretion in handling grievances.

On February 8, 2019, Charging Party timely filed an appeal of the Executive Director's dismissal. Respondent did not file a response.

After a review of the record, the dismissal, and appeal, we find the appeal without merit and affirm the dismissal. The Executive Director's findings and determinations were correct and supported by the available investigatory record and Board precedent. Charging Party's appeal lacks merit for it identifies no flaw in her analysis, findings of fact, or conclusions that would provide a 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).

In her appeal, Charging Party fails to identify any evidence, circumstantial or otherwise, to indicate her charge was timely filed or that the Union abused its discretion in failing to acknowledge her promotion in handling her grievance. Furthermore, as the Executive Director aptly noted, the available evidence failed to indicate the Union held any bias or hostility motivation against m sufficient to raise an issue for hearing on the Union's alleged intentional misconduct. 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 reasons set forth above, we affirm the dismissal for the reasons stated by the Executive Director.

BY THE STATE PANEL OF THE ILLINOIS LABOR RELATIONS BOARD

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

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

/s/ Kendra Cunningham
Kendra Cunningham, Member

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

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

Decision made at the State Panel's public meeting in Chicago, Illinois on December 10, 2019, written decision approved at the State Panel's public meeting in Chicago and Springfield, Illinois (via videoconference) on January 9, 2020, and issued on January 9, 2020.

STATE OF ILLINOIS
ILLINOIS LABOR RELATIONS BOARD
STATE PANEL

Tonette Elder, Charging Party and American Federation of State, County, and Municipal Employees, Council 31, Respondent	Case No. S-CB-19-028

DISMISSAL

On March 26, 2019, Tonette Elder (Charging Party) filed a charge in Case No. S-CB-19-028 with the State Panel of the Illinois Labor Relations Board (Board), in which she 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 issue this dismissal for the following reasons.

I. INVESTIGATION

The Illinois Department of Children and Family Services (IDCFS) (Employer) employed Charging Party as an Information Systems Analyst II until July 12, 2012. As such, she 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 the

Act when it misled her by stating that it did not have knowledge of a recent promotion that she accepted with another agency while it was processing her grievance over her discharge. Charging Party believes that Respondent's local representatives were biased against her because she was hired in the position they wanted or because her salary was higher than theirs.

On June 28, 2012, Charging Party was offered and accepted a position as a Public Service Administrator (PSA), Option 1 with the Illinois Department of Human Services (IDHS). Charging Party's start date with IDHS was July 16, 2012. On July 3, 2012, Charging Party was verbally notified that she was suspended pending discharge. On July 12, 2012, Charging Party was discharged from her current position as Information Systems Analyst II at the IDCFS.

Soon after her termination, Charging Party met with Respondent's counsel, Helen Thornton (Thornton), to discuss grieving her discharge. During this meeting, Charging Party alleges that Thornton would not accept any documentation regarding her promotion to PSA, Option 1 with IDHS and insisted that they were unaware of any such action. Respondent grieved Charging Party's discharge and entered into a settlement agreement on her behalf on January 3, 2013. The settlement agreement allowed Charging Party to resign and all documentation regarding her discharge would be removed from her file.

Charging Party alleges that Respondent misled her when Thornton told her that she had no knowledge of Charging Party's promotion. Charging Party provided a portion of the CBA that states that the Employer shall notify the Respondent of new hires, promotions, demotions, etc. once a month. In addition, Charging Party states that, when she requested her attendance records and paystubs from IDCFS, on January 9, 2019, the documents she received in response demonstrated that she was coded as a PSA, Option 1 on July 5, 2012. Therefore, Charging Party believes that the Employer notified Respondent of her promotion at the time of her discharge.

Charging Party alleges that the leadership of Respondent's Local 2018 were biased against her because she was either hired into a position that they wanted or because she made more money than they did. Charging Party indicated that when she first met Union Steward Denise Marrgerum-Luckett (Marrgerum-Luckett), Marrgerum-Luckett commented "oh, you're the one that got my job." Charging Party also mentions that when she informed Union President Edward Schwartz (Schwartz) of some concerns she had with her job description and work location, he responded that, for the money she was making, she should keep quiet and do whatever management asked her to do.

II. DISCUSSION AND ANALYSIS

The available evidence indicates that this charge is 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." Charging Party alleges that Respondent refused to consider or acknowledge her promotion to PSA, Option 1 with IDHS in July of 2012, while this charge was filed on March 26, 2019, more than six years after the alleged incident. Although Charging Party cites a January 9, 2019, occurrence where she received records that demonstrated she was coded as a PSA, Option 1 on July 5, 2012, she was already aware that, in 2012, Respondent claimed to have not to have knowledge of and would not consider this promotion when grieving her discharge. In July of 2012, Charging Party notified and attempted to provide documentation of her promotion to Respondent and had access to the section of the CBA that required the Employer to notify Respondent of promotions on a monthly basis. As such, Charging Party had knowledge of the events that predicated this charge in 2012, and this charge was filed untimely. See State of Illinois. Dept. of Central Management Services (Eugene Brown), 19 PERI ¶105

(ILRB-SP 2003).

Even if this charge were timely filed, it fails to raise a question for hearing under the Act. 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 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) 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.

Furthermore, an exclusive representative has significant discretion in grievance handling; it is not required to take every grievance to arbitration. University of Illinois at Urbana (Rochkes),

17 PERI 1054, Case Nos. 2000-CB-0006-S, 2001-CA-0007-S (IELRB Opinion and Order, June 19, 2001). A union's decision not 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 the union was motivated by bias, discrimination, or vindictiveness. Welch, McGrew, and Widger and American Federation of State, County, and Municipal Employees, Council 31, 25 PERI ¶73 (SLRB 2009).

In this case, Charging Party has not presented sufficient evidence to raise a question for hearing for a violation of Section 10(b)(1). Although, Charging Party presents evidence that some members of the local leadership may have been biased against her for personal reasons, Respondent's counsel, Thornton, handled Charing Party's grievance over her discharge, and it was Thornton who told Charging Party that Respondent had no record of her promotion. Charging Party fails to provide any motive for Thornton to be biased against her, and no evidence was presented to suggest that Thornton engaged in intentional misconduct against her. Moreover, Charging Party has not provided evidence establishing a causal link between any action that Respondent took with respect to her grievance handling and any improper motivation on the part of Respondent or its agents.

First, this charge is untimely filed. Second, nothing suggests that Thornton harbored animus towards Charging Party and that Respondent took an adverse action against Charging Party with regard to its representation of her due to such animus. Therefore, this charge 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 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 16th day of July, 2019.

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Kimberly F. Stevens
Executive Director