

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

James Cochran,)	
)	
Charging Party,)	
)	
and)	Case No. S-CB-20-008
)	
American Federation of State, County, and Municipal Employees, Council 31,)	
)	
Respondent.)	

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

On September 23, 2019, Executive Director Kimberly Stevens dismissed a charge filed on August 27, 2019, by Charging Party James Cochran, an employee of the Illinois Department of Veterans' Affairs (Employer) represented by Respondent American Federation of State, County, and Municipal Employees, Council 31. 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 timely pursue his grievance because he was not a dues-paying member of the Respondent. 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 found Charging Party failed to identify any

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.

evidence Respondent failed to pursue his grievance to discriminate against him. The Executive Director noted Charging Party failed to submit evidence Respondent processed dues-paying members' grievances more efficiently than those of non-dues paying members and that Charging Party advised Respondent that he did not want the grievance filed when Respondent's steward attempted to file the grievance within the contractual time period.

On September 24, 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.

Charging Party claims in his appeal that the Executive Director misapprehended the basis for his charge. Charging Party asserts Respondent failed to represent him regardless of his status as a “non-paying member” as opposed to a “non-dues paying member” as noted in the dismissal. Charging Party’s claim, however, lacks merit. There is no material difference in the way the Executive Director construed the basis of the charge—discrimination based on dues payment status—and Charging Party’s contention that his charge is based on the failure to fairly represent him due to his “non-paying member” status or his status as a “non-fair share paying member.” Either case requires some indication or evidence that Respondent was treating Charging Party differently or more favorably based on the alleged status. The Executive Director may have only considered the lack of evidence of discrimination based on “non-dues paying member” status but Charging Party’s appeal fails to identify any evidence, circumstantial or otherwise, to indicate Respondent failed to pursue his grievance based on his claimed “non-paying member” status. The appeal merely pointed to the same evidence submitted during the investigation and provided no other evidence in support of his contentions. Accordingly, we find Charging Party’s appeal to be meritless, 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**

James Cochran,

Charging Party

and

American Federation of State, County, and
Municipal Employees, Council 31,

Respondent

Case No. S-CB-20-008

DISMISSAL

On August 27, 2019, James Cochran (Charging Party) filed a charge in Case No. S-CB-20-008 with the State Panel of the Illinois Labor Relations Board (Board), in which he alleged that the Respondent, American Federation of State, County, and Municipal Employees, Council 31 (Respondent) engaged in unfair labor practices within the meaning of the Illinois Public Labor Relations 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

Respondent is a labor organization within the meaning of Section 3(i) of the Act. The Illinois Department of Veterans' Affairs (Employer) employs Charging Party in the job classification or job title of Reproductive Service Technician 1. As such, Charging Party is a member of a bargaining unit (Unit) represented by Respondent. Respondent and Employer are parties to a collective bargaining agreement (CBA) 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 provide him fair representation because Charging Party was not a dues-paying member of the union.

On July 19, 2019, Charging Party sent an email to Union Representative Erik Hostetter (Hostetter) providing him with details of a work-related complaint and Charging Party's intent to file a grievance. Hostetter responded to Charging Party that he forwarded Charging Party's email to the Union President, Anne Hutson (Hutson). On August 2, 2019, Charging Party emailed Hostetter, informing Hostetter that Hutson had not contacted him. On August 5, 2019, Charging Party received an email from Union Steward Cynthia Planitz (Planitz), and the two corresponded to establish a meeting time. On August 6, 2019, Charging Party sent Planitz an email that included information about his grievance for Planitz to review before their meeting. According to Charging Party, Planitz did not appear for the meeting scheduled that day. On August 7, 2019, Charging Party emailed Planitz to inquire about her absence, which Planitz indicated was due to illness. Charging Party responded by stating that he understood and proceeded to schedule another meeting with Planitz. Later that day, Planitz emailed Charging Party and informed him that she would not be able to attend the rescheduled meeting due to a family emergency.

On August 8, 2019, Charging Party emailed Planitz his availability for the day. Planitz responded and asked Charging Party for his availability on August 9, 2019. In response, Charging Party stated his availability for August 9 and cited language from Article 5 Section 2 of the CBA to remind Respondent of the fifteen-day timeframe to submit a grievance. Charging Party also mentioned that he informed his supervisor, section supervisor, chief of staff, and director's office of his complaint prior to contacting Hostetter and Planitz. On August 13, 2019, Planitz informed Charging Party that she would submit his grievance based on the information he provided. On

August 14, 2019, in response to Planitz's email, Charging Party warned her that submitting the grievance would constitute misrepresentation because they had not discussed the grievance in-person and threatened to file a grievance against the Union. On August 15, 2019, Planitz informed Charging Party via email that she was not trying to misrepresent him but was attempting to speed the process along because she was under the impression that he wanted her to help resolve his issue. She mentioned that she had not yet filed a formal grievance and that she would transfer his case to another steward. On August 15, 2019, Hostetter emailed Charging Party regarding the situation with Planitz and informed him Respondent would assign him another steward. On August 22, 2019, Charging Party received an email from Hutson informing him that Respondent assigned Union Steward Ken Erewele (Erewele) to Charging Party's case. On September 3, 2019, Charging Party stated that he has not yet heard from Erewele.

II. DISCUSSION AND ANALYSIS

Charging Party believes that Respondent has failed to pursue his grievance with due diligence due to the fact that Charging Party is not a dues-paying member of the union. Charging Party contends that Planitz intended to misrepresent him by attempting to submit a grievance on his behalf without meeting with him in-person to discuss it. In addition, Charging Party alleges that Respondent violated the grievance time limits set forth by the CBA when it did not file his grievance with his supervisors within fifteen days.

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 charging party 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 this charge, Charging Party failed to support his claim that Respondent took an adverse representation action or engaged in any inaction in order to discriminate against him. During the investigation of this charge, Charging Party did not provide evidence that the Union engaged with and/or processed dues-paying members' grievances more efficiently than non dues-paying members' grievances. Additionally, Charging Party failed to indicate how the Respondent submitting a claim on his behalf without meeting with him in-person constitutes misrepresentation, especially given that Charging Party provided information about his complaint to multiple representatives who were authorized to submit grievances on behalf of an employee. In addition, Charging Party notified Respondent that he did not want a grievance filed when a union steward

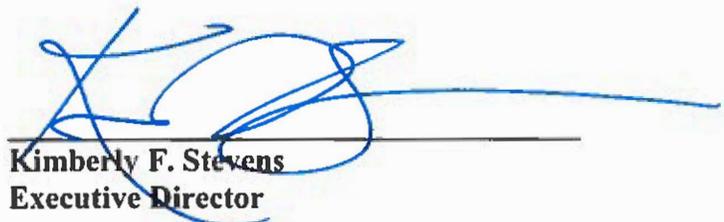
tried to submit it within the fifteen-day timeframe. Therefore, Charging Party has failed to provide evidence establishing that Respondent engaged in intentional misconduct with regard to its interactions with him. As such, this charge fails to raise an issue for hearing and is dismissed.

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 of this dismissal. 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 23rd day of September, 2019.

**STATE OF ILLINOIS
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STATE PANEL**



**Kimberly F. Stevens
Executive Director**