STATE OF ILLINOIS
ILLINOIS LABOR RELATIONS BOARD
LOCAL PANEL

Nicole Williams,	)	
	)	
Charging Party,	)	
	)	
and	)	Case Nos. L-CB-24-015
	)	L-CB-24-021
Amalgamated Transit Union, Local 241,	)	
	)	
Respondent.	)	

DECISION AND ORDER OF THE ILLINOIS LABOR RELATIONS BOARD
LOCAL PANEL

On April 25, 2024, Executive Director Kimberly Stevens dismissed two charges filed by Charging Party Nicole Williams. The charges alleged the Respondent Amalgamated Transit Union, Local 241 ("Local 241" or "Union") engaged in unfair labor practices within the meaning of Section 10(b) of the Illinois Public Labor Relations Act (Act), 5 ILCS 315/1 *et seq.*, by violating its internal bylaws (Case No. L-CB-24-015, filed on January 12, 2024) and by working with the Employer, the Chicago Transit Authority ("CTA"), to intentionally violate the collective bargaining agreement ("CBA") and by failing to pursue hers and other unit members' grievance in retaliation for participating in protected activity (Case No. L-CB-24-021, filed on March 12, 2024). Charging Party timely appealed the Executive Director's dismissal; the Union did not file a response. Upon review of the dismissal order, the record, and appeal, we affirm the Executive Director's dismissal as discussed further below.

The Executive Director dismissed the charge in Case No. L-CB-24-015 on standing and jurisdictional grounds. She dismissed Charging Party's allegations that Respondent violated Section 10(b)(4) because as an individual, Charging Party lacks standing to pursue claims based on the duty to bargain in good faith. The Executive Director dismissed the embezzlement and fraud allegations explaining that those subjects fall outside the Board's jurisdiction. Citing the Board's decision in Fraternal Order of Police, Lodge #7, 22 PERI ¶ 63 (ILRB-LP 2006), the Executive Director likewise dismissed the allegation that the Respondent is failing to abide by its own by-laws because the Board lacks jurisdiction over internal union policies and practices.

Next, the Executive Director dismissed the charge in Case No. L-CB-24-021 on the grounds the available evidence failed to raise issues for hearing on the duty of fair representation and collusion allegations. Regarding the duty of representation, the Executive Director found little evidence of intentional misconduct in its failure to pursue Charging Party's grievances. She observed that Charging Party failed to identify any evidence that Respondent treated her disparately based on animus towards her in its failure to pursue her grievances or that Respondent's grievance handling decisions were based on unlawful reasons. The Executive Director also found little evidence that Charging Party participated in protected, concerted activity to support the allegation that Respondent colluded with the Employer to discriminate against the Charging Party.

On appeal, Charging Party disputes the Executive Director's determinations on the intentional misconduct and collusion allegations but does not address the Executive Director's standing and jurisdictional conclusions. Charging Party asserts that the Union is intentionally failing to process not only her grievances but other unit members' grievances for engaging in protected activity. Charging Party contends the Union's animus towards her stems from her filing grievances against Respondent for assault and her CTA managers for bullying and workplace harassment. In support, she points to material submitted during the investigation and the instant appeal that she contends demonstrates the Union's intentional misconduct. She accuses the Union and Employer of "forg[ing] Arbitrators [sic] names" to "fake" awards, pointing to correspondence containing conflicting information on the status of her grievances.

We find the Charging Party's contentions unavailing as they fail to offer a viable basis for reversal and thus, affirm the dismissal on the grounds stated by the Executive Director. Charging Party fails to raise issues warranting hearing on the allegations that Respondent breached its duty of representation in violation of Section 10(b)(1) of the Act or colluded with the Employer to discriminate against Charging Party in violation of Section 10(b)(3) of the Act.

In duty of fair representation cases, a two-part standard is applied to determine whether a union has committed intentional misconduct within the meaning of Section 10(b)(1) of the Act: 1) the union's conduct must be intentional and directed at the employee; *and* 2) the union's intentional action must have occurred because of and in retaliation for some past activity by the employee or because of the employee's status (such as his or her race, gender, or national origin) or animosity between the employee and the union's representatives (such as that based upon personal conflict or the charging party's dissident union practices). See Metro., Alliance of Police v. Ill. Labor Rel. Bd., Local Panel, 345 Ill. App. 3d 579, 588 (1st Dist. 2003); Am., Fed'n of State, Cnty., and Mun., Emps., Local 2912 (McGoin), 17 PERI ¶ 3001 (IL LRB-LP 2000). 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 Metro., Alliance of Police v. Ill. Labor Rel. Bd., Local Panel, 345 Ill. App. 3d at 588-89. Under Section (d) of the Act, as well as federal and state precedents, 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 Am., Fed'n of State, Cnty., and Mun., Emps., *Council 31(Welch, McGrew, and Widger)*, 25 PERI ¶ 73 (ILRB-SP 2009).

We will not second guess a union's administrative decision regarding grievance handling unless there is compelling evidence of intentional misconduct. Am., Fed'n of State, Cnty., and Mun., Emps., Council 31 (Jackson), 33 PERI ¶ 34 (IL LRB-SP 2016). Evidence that a union engaged in fraud, deceit, or dishonesty will help support a charging party's claim of intentional misconduct but does not satisfy the test standing alone. Id. at n. 9; Am., Fed'n of State, Cnty., and Mun., Emps., Local 1111 (Murry), 14 PERI 3009 (IL LLRB 1998).

Here, we find the Executive Director correctly found no evidence indicating that Respondent engaged in intentional misconduct in violation of Section 10(b)(1) of the Act. Nothing in the appeal's supporting materials or the materials submitted during the investigation indicates that the Respondent's failure to process Charging Party's grievances was due to animus toward her complaints against the Union or against her managers, or fraud or dishonesty. It appears that Charging Party's complaints stem from her misunderstanding of the CBA's grievance procedure. For example, in the first grievance Charging Party references, Grievance No. 20-0158, she claims the Union provided "fraudulent documents" because one of the documents from the CTA stated that the "grievance had no merit" but the Respondent had indicated that the grievance was pending arbitration. The other examples are based on a similar contradiction. Charging Party assumes the Employer's denial of her grievance means the grievance cannot be advanced to arbitration. But the CBA's grievance procedure does not support Charging Party's allegations that the Respondent and Employer were engaged in any fraudulent activity. Article 16 of the CBA between the Respondent and the CTA contains a three-step grievance procedure, with the last step, Step 3, being arbitration. If the grievance is not resolved at Step 1 or 2, the grievance may then be submitted to arbitration. According to the documents submitted by the Charging Party, the Respondent decides which grievances to pursue to arbitration though an internal process. To the extent the Respondent failed to pursue Charging Party's grievances or other members' grievances, there is little evidence indicating that such failure was based on anything other than the exercise of Respondent's considerable discretion in deciding which grievances to pursue.

Regarding the collusion allegations, the Executive Director determined there was little evidence that Charging Party participated in protected, concerted activity to support the allegation that Respondent colluded with the Employer to discriminate against the Charging Party. Section 10(b)(3) of the Act provides that it is an unfair labor practice for a labor organization "to cause, or attempt to cause, an employer to discriminate against an employee in violation of subsection (a)(2)." 5 ILCS 315/10(b)(3). Section 10(a)(2) of the Act provides that it is an unfair labor practice for an employer "to discriminate in regard to hire or tenure of employment or any term or condition of employment in order to encourage or discourage membership in or other support for any labor organization." 5 ILCS 315/10(a)(2). The language in Section 10(b)(3) of the Act is consistent with the language in Section 8(b)(2) of the National Labor Relations Act ("NLRA"), 29 U.S.C. § 158. Am. Fed ' n of State, Cnty., and Mun. Empls., Local Council 31 (Jones), 33 PERI ¶ 59 (IL LRB-SP 2016). Under Section 8(b)(2) of the NLRA a union commits an unfair labor practice when it attempts to cause an employer to discriminate in order to retaliate against an employee for protesting the union's policies, questioning the official conduct of union agents, or incurring the personal hostility of a union official. Radio Officers v. NLRB, 347 U.S. 17 (1954). Even though the alleged adverse action, if taken by the employer alone, would not be a violation of the NLRA because it was not illegally motivated, a violation may occur if the union was illegally motivated to induce the employer to take the adverse action. Carpenters Local 2205 (Graves Granite), 229 NLRB 56 (1977).

On appeal, Charging Party does not point to any evidence that she engaged in protected activity. To the extent that Charging Party is contending that her grievances against the CTA constitutes protected activity, there is little evidence that Respondent colluded with the Employer to discriminate against her. Charging Party's contentions suffer from the same flaw resulting in the dismissal of the Section 10(b)(1) allegations discussed above—the failure to point to evidence indicating that the Respondent failed to process her grievances due to intentional misconduct, *i.e*, improper motive, sufficient to overcome Respondent's considerable discretion in grievance handling.

For the above reasons, we affirm the dismissal for the reasons stated by the Executive Director.

BY THE LOCAL PANEL OF THE ILLINOIS LABOR RELATIONS BOARD

/s/ Lynne O. Sered
Lynne O. Sered, 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 July 18, 2024; written decision approved at the Local Panel's public meeting in Chicago, Illinois, on August 8, 2024, and issued on August 12, 2024.

This Decision and Order is a final order of the Illinois Labor Relations Board. Aggrieved parties may seek judicial review of this Decision and Order in accordance with the provisions of Section 11(e) of the Act and the Administrative Review Law. Petitions for review of this Decision and Order must be filed within 35 days from the date the Decision and Order is served upon the party affected by the decision. 5 ILCS 315/11(e).