STATE OF ILLINOIS
EDUCATIONAL LABOR RELATIONS BOARD

In the Matter of:	)	
	)	
Charles Brown,	)	
	)	
Charging Party,	)	
	)	
and	)	Case No. 2007-CB-0005-C
	)	
Service Employees International Union, Local 73,	)	
	)	
Respondent.	)	

OPINION AND ORDER

On March 30, 2007, the Executive Director issued a Recommended Decision and Order in this case. The Executive Director determined that the Charging Party, Charles Brown, had not established an unrebutted prima facie case that Service Employees International Union, Local 73 ("Union") had violated Section 14(b)(1) of the Illinois Educational Labor Relations Act, 115 ILCS 5/1 et seq. ("Act"). Accordingly, he dismissed the unfair labor practice charge.

Brown filed timely exceptions to the Executive Director's Recommended Decision and Order. The Union filed a timely response to the exceptions. For the reasons in this Opinion and Order, we affirm the Executive Director's Recommended Decision and Order.

I.

Brown was employed by Aurora West School District 129 ("District") as a custodian from 1995 until on or around October 30, 2005. At a meeting in October 2005, Brown was informed that a recommendation for the termination of his employment would be made. After the meeting, Brown told the Union Chief Steward, Leon,[1] that he wanted to file a grievance.

Brown also spoke to Union Representative Catharine Schutzius in or around early November 2005. According to Brown, Schutzius told him that she would see what she could do. According to the Union, Brown informed Schutzius that he did not want to file a grievance. Brown disagrees that he made this statement.

Brown did not hear from the Union for seven months. According to Brown, he went to the Union's office in or about May 2006. At the Union's office, Brown discussed his situation with Union Secretary Treasurer Matt

[1] Leon's surname is unknown.

Brandon. According to the Union, the meeting occurred in July 2006. Brown asserts that he did not hear from the Union again. According to the Union, Brandon left voice mails for Brown.

According to Brown, he and Leon had disagreements during Brown's employment with the District. Brown asserts that, shortly after he began working for the District, Leon threatened to kill him. According to Brown, Leon would frequently say, "I don't even know why they hired you anyway, we don't need anybody here from Chicago."

II.

Brown contends that the Union violated its duty of fair representation toward him. Section 14(b)(1) of the Act prohibits unions, their agents or representatives, and educational employees from

> restraining or coercing employees in the exercise of the rights guaranteed under this Act, provided 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.

We conclude that Brown has not established a prima facie issue of law or fact the Union violated Section 14(b)(1).

Section 14(b)(1) specifically provides that a union does not violate its duty of fair representation unless it engages in intentional misconduct. In order to establish that a union has engaged in intentional misconduct, a charging party must present "substantial evidence of fraud, deceitful action, or dishonest conduct" or "deliberate and severely hostile and irrational treatment," *Paxton-Buckley-Loda Education Association v. IELRB*, 304 Ill.App.3d 343, 710 N.E.2d 538 (4th Dist. 1999), *quoting Hoffman v. Lonza*, 658 F.2d 519 (7th Cir. 1981), *citing Amalgamated Ass'n of Street Electric Ry. & Motor Coach Employees of America v. Lockridge*, 403 U.S. 274 (1971). Thus, intentional misconduct is more than mere negligence. *Chicago Teachers Union (Oden)*, 10 PERI 1135, Case No. 94-CB-0015-C (IELRB, November 18, 1994). Even if a union is grossly negligent and incompetent, that is not sufficient to show intentional misconduct. *United Mine Workers of America (Dearing)*, 16 PERI 1033, Case Nos. 99-CB-0003-S et al. (IELRB, March 8, 2000); *NEA, IEA, North Riverside Education Ass'n (Callahan)*, 10 PERI 1062, Case No. 94-CB-0005-C (IELRB, March 29, 1994); *NEA, IEA, Rock Island Education Ass'n (Adams)*, 10 PERI 1045, Case No. 93-CB-0025-C (IELRB, February 28, 1994).

Brown has not made a prima facie showing that the Union's failure to file a grievance on his behalf constituted intentional misconduct. While Union Chief Steward Leon's alleged threat to kill Brown was clearly hostile, this alleged threat occurred 10 years before Brown's termination. Therefore, the alleged threat was too remote in time to indicate the Union's motivation in failing to file a grievance. *See Hardin County Education*

Association v. IELRB, 174 Ill.App.3d 168, 528 N.E.2d 737 (4th Dist. 1988) (remarks that occurred nearly four years before discharge too remote to support claim of discriminatory discharge). Brown has not shown that Leon's other alleged comments ever rose to the level of demonstrating fraud, deceitful action, dishonest conduct or deliberate and severely hostile and irrational treatment. *See Lyman (Timko)*, 23 PERI 64, Case No. 2007-CB-0009-C, 2007-CB-0011-C (IELRB, May 9, 2007). A union has discretion in determining whether to file a grievance. *NEA, IEA, Champaign Educational Services Personnel (Rhodes)*, 10 PERI 1055, Case No. 93-CB-0008-S (IELRB, March 10, 1994); *see Jones v. IELRB*, 272 Ill.App.3d 612, 650 N.E.2d 1092 (1st Dist. 1995).

Brown asserts that the Union and the District were working together against him. However, Brown has provided no support for this assertion. Unsupported assertions do not demonstrate intentional misconduct. *Lyman*; *IFT/AFT Local 504 (Sharif-Johnson)*, 13 PERI 1001, Case No. 96-CB-0004-C (IELRB, October 16, 1996).

We conclude that Brown has not made a prima facie showing that the Union violated Section 14(b)(1) of the Act. The charge against the Union is dismissed. The Executive Director's Recommended Decision and Order is affirmed.

III. Right to Appeal

This is a final order of the Illinois Educational Labor Relations Board. Aggrieved parties may seek judicial review of this Order in accordance with the provisions of the Administrative Review Law, except that, pursuant to Section 16(a) of the Act, such review must be taken directly to the appellate court of the judicial district in which the Board maintains an office (Chicago or Springfield). "Any direct appeal to the Appellate Court shall be filed within 35 days from the date that a copy of the decision sought to be reviewed was served upon the party affected by the decision," 115 ILCS 5/16(a).

Decided: September 11, 2007
Issued: September 11, 2007
Chicago, Illinois

/s/ Lynne O. Sered
Lynne O. Sered, Chairman

/s/ Ronald F. Ettinger
Ronald F. Ettinger, Member

/s/ Bridget L. Lamont
Bridget L. Lamont, Member

/s/ Michael H. Prueter
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/s/ Jimmie E. Robinson
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