2022 IL App (4th) 200519

NO. 4-20-0519

FILED
January 7, 2022
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

THE CITY OF SULLIVAN, Petitioner, v. THE ILLINOIS LABOR RELATIONS BOARD, STATE PANEL; KIMBERLY STEVENS, in Her Official Capacity as Executive Director of The Illinois Labor Relations Board; and INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL 51, Respondents.	)	Petition for Review of the Order of The Illinois Labor Relations Board, State Panel ILRB No. S-DD-21-001

JUSTICE CAVANAGH delivered the judgment of the court, with opinion.
Presiding Justice Knecht and Justice Holder White concurred in the judgment and opinion.

OPINION

¶ 1 This matter is before us on the petition of the City of Sullivan (City) to review the order of the Illinois Labor Relations Board, State Panel (Board), granting the declaration of disinterest petition filed by the International Brotherhood of Electrical Workers, Local 51 (Union). The Board previously certified the Union as the exclusive bargaining representative for certain employees of the City. The result of the Board's decision terminated the Union's representation of this group of employees.

¶ 2 The City asserts (1) the statutory and regulatory framework mandates the Board conduct an investigation when such a petition is filed, (2) the Board failed to conduct an investigation before granting the Union's petition, and (3) if the Board had conducted an investigation, it would have discovered the relief requested by the Union was not proper based in

part on other matters pending before the Board. The Board argues (1) the City does not have standing to bring this appeal, (2) even if the City had standing, the City cannot rely on documents not contained in the administrative record, and (3) the City cannot show the Board acted improperly.

¶ 3 For the reasons that follow, we reverse and remand with directions.

¶ 4 I. BACKGROUND

¶ 5 In 2015, the Board certified the Union as the exclusive bargaining unit for a certain group of employees of the City. On September 3, 2020, the Union filed with the Board a declaration of disinterest petition stating, *inter alia*, that the Union sought to waive and disclaim any right to represent the aforementioned employees, pursuant to the Illinois Public Labor Relations Act (Act) (5 ILCS 315/9 (West 2020)). On September 9, 2020, the Board advised the City that the Board found the requisite 12 months had passed since the Board had certified the Union as the bargaining representative for the employees "and that the petition is otherwise appropriate." Thus, the Board revoked the certification for the Union to represent the employees. The record on appeal contains no findings or other evidence supporting the Board's conclusion, and does not disclose whether the Board conducted any investigation prior to granting the Union's request to revoke its certification to represent the employees.

¶ 6 This appeal followed.

¶ 7 The City asks us to take judicial notice of two matters pending before the Board at the time of the filing of the declaration of disinterest petition, and one matter filed the day the Board advised the City of its decision, respectively: (1) a petition seeking to sever two of the employees in the subject group from the bargaining unit; (2) a petition filed by another of the employees in the group seeking to dissolve the bargaining unit; and (3) a petition seeking to

represent the two employees the Union had filed the petition to sever above. The City previously filed a motion seeking to supplement the record on appeal with documents reflecting the above, which we denied. For the reasons stated below, we do not reach the request to take judicial notice.

¶ 8 II. ANALYSIS

¶ 9 A. Standard of Review

¶ 10 We will reverse the Board's findings of fact only if they are against the manifest weight of the evidence. *Champaign-Urbana Public Health District v. Illinois Labor Relations Board, State Panel*, 354 Ill. App. 3d 482, 487 (2004). We review the Board's conclusions of law *de novo*. *Id.* Because it represents a mixed question of fact and law, we will reverse the Board's determination only if it is clearly erroneous. *SPEED District 802 v. Warning*, 242 Ill. 2d 92, 112 (2011). To so reverse, we must be convinced the Board committed a mistake. *Id.* However, we will not defer entirely to the Board's determination. *Id.*

¶ 11 B. The City Has Standing to Pursue This Appeal

¶ 12 The Board argues the City lacks standing because the City has not suffered injury to any legally cognizable interest. We disagree.

¶ 13 The Act provides an aggrieved party may pursue judicial review of an order of the Board, in the appellate court, relating to issues of recognition of a bargaining representative. 5 ILCS 315/9(i) (West 2020). The City's interests are implicated by the Board's order because the effect of the order was to sever the City's collective-bargaining relationship with the Union. *Champaign-Urbana Public Health District*, 354 Ill. App. 3d at 486. Because the Act provides for judicial review, and the City's interests are affected by the Board's order, the City has standing to appeal. *Id.* at 487.

¶ 14 C. The Insufficient Record

¶ 15 The Act provides when a party files a petition with the Board relating to elections or recognition of a bargaining representative that the Board "shall investigate [the] petition" and proceed "in accordance with such regulations" promulgated by the Board. 5 ILCS 315/9(a) (West 2020). The Board's rules specify a union that has been previously certified by the Board as the exclusive bargaining representative may file a "Declaration of Disinterest petition," which seeks to terminate its certification. 80 Ill. Adm. Code 1210.65 (2003). The rules further provide the "Board shall investigate the petition." *Id.* If more than 12 months have passed since the Board so certified a union, and "the petition is otherwise appropriate" the Board "shall" approve the petition and revoke the certification. *Id.*

¶ 16 The record on appeal is entirely devoid of anything evidencing a Board investigation. The Board submits more than once in its brief that the record contains the documents required by the Illinois Supreme Court rules, implying that is the end of the inquiry. However, it is not.

¶ 17 The Board must follow its own rules, as those rules have force of law. *Department of Central Management Services/Illinois Commerce Comm'n v. Illinois Labor Relations Board, State Panel*, 406 Ill. App. 3d 766, 771 (2010). Further, the City rightfully insists the Board comply with its own rules. *Id.* The problem facing us is that, based on the record, we cannot determine if the Board conducted an investigation such that we can review the Board's action.

¶ 18 For this reason, the Board, like any other administrative agency, is obligated to create and provide a record sufficient to permit judicial review of its decisions. *Miles v. Housing Authority,* 2015 IL App (1st) 141292, ¶ 23. We can hold the absence of a complete record against such an agency, even when the agency is not the party appealing. *Id.* An administrative body must not only provide the reviewing court with the entire record of proceedings, but also a record of the

evidence the agency considered. *Id.* The body must do so in order for the court to undertake judicial review. *Id.* As in *Miles,* because of the state of the record, "our ability to conduct a meaningful judicial review has been thwarted." *Id.* ¶ 29. Given the Board's decision is subject to judicial review, it is appropriate the Board provide an adequate record so that we can undertake our review. *Id.* ¶ 24.

¶ 19 In matters such as this one, it is appropriate for a reviewing court to reverse and remand to the administrative agency to detail its findings supporting its conclusions. *Soto v. Board of Fire & Police Commissioners,* 2013 IL App (2d) 120677, ¶ 32. Our responsibility is to ensure the board acted in compliance with the appropriate "legal parameters," which we cannot do because there are no findings. *Id.* Among other inquiries, we need to determine whether the Board relied on improper factors when granting the petition. *Id.* ¶ 27.

¶ 20 The Union's disclaimer is only appropriate if it is "clear, unequivocal, and made in good faith," which is not the case if the Union proceeded, before or after, in a manner that would contradict the Union's stated intent to disclaim. *City of Highland Park & International Brotherhood of Teamsters, Local 714,* 13 PERI ¶ 2010 (ISLRB 1997) (stating the Union's disclaimer was not unequivocal because of subsequent letter revoking). As the City has urged, the Union's disclaimer may not have been made in good faith. However, for clarity, we do not reach whether the Union's disclaimer was made in good faith. Doing so would require us to engage in speculation based on what is in the record, and we will not guess why the Board reached the conclusion it did. See *Soto*, 2013 IL App (2d) 120677, ¶¶ 27, 31.

¶ 21 We simply cannot determine whether the Board's factual findings are against the manifest weight of the evidence, as there are no substantive findings. *Id.* ¶ 23. Likewise, we cannot

determine whether the Board's decision is lawful because we do not know the basis for the Board's conclusions. *Id.* ¶ 32.

¶ 22 III. CONCLUSION

¶ 23 For the foregoing reasons, we reverse the Board's decision and remand for further proceedings. On remand, the Board is directed to (1) make factual findings regarding its ultimate decision; (2) reopen and/or conduct an investigation, if it deems necessary to accomplish the foregoing; (3) conduct a hearing, if it deems that necessary; (4) detail the basis for its conclusions, based on the record; and (5) create a record of the foregoing.

¶ 24 Reversed and remanded with directions.

No. 4-20-0519

Cite as:	*City of Sullivan v. Illinois Labor Relations Board, State Panel*, 2022 IL App (4th) 200519
Decision Under Review:	Petition for review of order of Illinois Labor Relations Board, State Panel, No. S-DD-21-001.
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Attorneys for Appellee:	Kwame Raoul, Attorney General, of Chicago (Jane Elinor Notz, Solicitor General, and Valerie Quinn, Assistant Attorney General, of counsel), for respondents Illinois Labor Relations Board and Kimberly Stevens. No brief filed for other respondent.