

2012 IL App (2d) 110438-U
Nos. 2-11-0438 & 2-11-0439, cons.
Order filed January 11, 2012

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

COUNTY OF MCHENRY and MCHENRY COUNTY CORONER,)	Petition for Review of Order of the Illinois Labor Relations Board, State Panel.
)	
Petitioners-Appellants,)	
)	
v.)	ILRB Case No. S-CA-11-017
)	
ILLINOIS LABOR RELATIONS BOARD, STATE PANEL and SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 73,)	
)	
Respondents-Appellees.)	

)	
CITY OF MARENGO,)	Petition for Review of Order of the Illinois Labor Relations Board, State Panel.
)	
Petitioner-Appellant,)	
)	
v.)	ILRB Case No. S-CA-11-045
)	
ILLINOIS LABOR RELATIONS BOARD, STATE PANEL and INTERNATIONAL BROTHERHOOD OF TEAMSTERS, LOCAL 700,)	
)	
Respondents-Appellees.)	

JUSTICE SCHOSTOK delivered the judgment of the court.
Justices Zenoff and Hudson concurred in the judgment.

ORDER

Held: As the orders of the Board being appealed were not final orders and the employers were not “aggrieved” by those orders, the appellate court lacked jurisdiction over the appeal.

¶ 1 The first of the two Illinois Labor Relations Board (State panel) proceedings before us, No. S-CA-11-017, involves a bargaining unit of deputy coroners in McHenry County. In April 2008 the Labor Relations Board (Board) certified the bargaining unit, to be represented by Local 73 of the Service Employees International Union. In the second proceeding, No. S-CA-11-045, the Board certified in July 2007 a bargaining unit comprising certain civilian employees of the City of Marengo, to be represented by Local 700 of the International Brotherhood of Teamsters. In both cases, the unions began negotiations with the municipal employers but the two sides could not reach agreement on the terms of an initial collective bargaining agreement.

¶ 2 In 2009, the Illinois General Assembly enacted P.A. 96-0598, which permits interest arbitration at the request of either party when the bargaining unit contains fewer than 35 public civilian employees and the parties have been unable to reach an initial collective bargaining agreement within a certain period of time. The enactment, which amended section 7 of the Illinois Public Labor Relations Act (Act) (5 ILCS 315/7 (West 2010)), took effect on January 1, 2010. Prior to that time, the only labor action available to newly-organized public employees was a general strike.

¶ 3 During 2010 in both cases, after negotiations had again stalled despite mediation, the unions served the municipal employers with demands for interest arbitration under the amended section 7 of the Act. Both municipal employers refused to arbitrate, adopting the position that the amendments to section 7 did not apply “retroactively” to the negotiations at issue, which were commenced before the effective date of the amendments. Both of the unions filed charges with the

Board, arguing that the employers' refusal to arbitrate was an unfair labor practice. The executive director of the Board heard the charges. On October 7, 2010, the executive director issued an order dismissing the charges in case No. S-CA-11-017, the McHenry County case, on the ground that it did not raise an issue for hearing because an unfair labor practice charge was not the appropriate vehicle for challenging an employer's decision not to submit to interest arbitration. On October 28, 2010, the executive director issued a similar order in case No. S-CA-11-045, noting that the parties had requested that the case be decided on the same basis as the McHenry County case because of the factual similarities between the two cases.

¶4 The unions in both cases appealed the dismissals to the Board. On April 18, 2011, the Board issued orders in both cases that upheld the dismissals of the charges on the ground that the employers had a good-faith basis for their refusal to arbitrate, *i.e.*, their position on the applicability of the amendments to section 7. The Board also addressed the issue that formed the basis for the charges of unfair labor practice, that is, the applicability of the interest arbitration procedure granted by the amended section 7 to the parties' negotiations. The Board held that the amendments to section 7 clearly applied to the negotiations between the parties, which were still ongoing at the time those amendments went into effect, based on the legislature's use of the word "whenever" in the following passage of the amended Act:

"Notwithstanding any other provision of this Section, whenever collective bargaining is for the purpose of establishing an initial agreement following original certification of units ***, the following [schedule and rights, including interest arbitration] apply:". 5 ILCS 315/7 (West 2010).

The Board reasoned that the use of "whenever" indicated that the specified procedures should be applied to any negotiations for the purpose of reaching an initial agreement that were still in progress

on the effective date of the amendments. It therefore directed that, in each case, “a panel of arbitrators be provided to the parties *** as the Charging Party [the union] had requested.” The Board later issued an order denying the employers’ request for a stay pending appeal.

¶ 5 The employers in both cases filed with this court timely notices of appeal from the Board’s orders. We consolidated the cases for the purposes of appeal, and permitted the Illinois Public Employer Labor Relations Association to file an *amicus curiae* brief in support of the municipal employers. The unions filed a motion to dismiss the appeal, arguing that we lacked jurisdiction over the appeal. We denied the motion.

¶ 6 In its brief, the unions reassert their argument that we are without jurisdiction to hear this appeal. We have an independent duty to determine whether we have jurisdiction, and we may reconsider our prior rulings on this issue at any time before the disposition of the appeal. See *In re Marriage of Waddick*, 373 Ill. App. 3d 703, 705 (2007). Accordingly, we reconsider the unions’ argument concerning jurisdiction.

¶ 7 The employers assert that we have jurisdiction over these appeals pursuant to section 11(e) of the Act, which reads in pertinent part as follows:

“A charging party or any person aggrieved by a final order of the Board granting or denying in whole or in part the relief sought may apply for and obtain judicial review *** in accordance with the provisions of the Administrative Review Law [735 ILCS 5/3-101 *et seq.* (West 2010)] ***, except that such judicial review shall be afforded directly in the appellate court for the district in which the aggrieved party resides or transacts business ***.” 5 ILCS 315/11(e) (West 2010).

The unions argue that the April 18, 2011, orders of the Board, affirming the dismissal of the unfair labor practice charges against the employers and directing the selection of an arbitration panel for

each case, do not confer jurisdiction under section 11(e) for two reasons. First, they were not final orders under the Administrative Review Law, and second, the employers were not “aggrieved” by the orders, which upheld the dismissal of the unfair labor practice charges against them.

¶ 8 We agree with both of the unions’ arguments. The orders entered by the Board in these cases essentially had two holdings: the affirmance of the dismissal of the unfair labor practice charges against the employers, and the determination that the amended section 7 applies to the cases, with the result that the cases should proceed to interest arbitration. The first holding was undisputedly in favor of the employers and therefore they cannot appeal it, as they were not “aggrieved” by the dismissal of the charges against them. 5 ILCS 315/7 (West 2010); *Gillmore v. Illinois Department of Human Services*, 218 Ill. 2d 302, 313 (2006). Indeed, it is clear that the employers do not seek review of this portion of the orders. Rather, the sole issue raised by the employers on appeal is the correctness of the Board’s decision to apply the amended section 7 of the Act and direct the arbitration of the negotiations. However, we have no jurisdiction to review this second holding of the orders, because it is not a “final order of the Board” within the meaning of section 11(e).

¶ 9 Although this court has the constitutional authority to review the final orders of a circuit court, our review of the decisions of an administrative agency is limited and we have only the power of review granted to us by the legislature. *People ex rel. Madigan v. Illinois Commerce Comm’n*, 231 Ill. 2d 370, 387 (2008). In this case, the applicable statute granting us that power is section 11(e), which requires both that the order being appealed be a final order of the Board and that the appealing party have been “aggrieved” by the order. 5 ILCS 315/11(e) (West 2010). That section also provides that any judicial review must be in accordance with the Administrative Review Law (735 ILCS 5/3-101 *et seq.* (West 2010)). We therefore turn to the provisions of the Administrative

Review Law in determining whether the orders of the Board which the employers seek to appeal are “final” orders.

¶ 10 Like section 11(e) of the Act, the Administrative Review Law permits judicial review only of a “final decision” of the administrative agency. 735 ILCS 5/3-102 (West 2010). Section 101 of the Administrative Review Law defines “decision” or “administrative decision” as “any decision, order or determination of any administrative agency *** which affects the legal rights, duties or privileges of parties and which terminates the proceedings before the administrative agency.” 735 ILCS 5/3-101 (West 2010). Applying this definition to the cases at hand, we must conclude that the Board’s orders of April 18, 2011, are not final decisions that are appealable under the Administrative Review Law because they do not terminate the proceedings before the Board. To the contrary, the orders expressly contemplate further proceedings—arbitration of the differences between the parties. The Board is intimately involved in that arbitration process, as it is responsible for establishing the arbitration panel, assigning some of the arbitrators, and overseeing the arbitration process. See 5 ILCS 315/14 (West 2010). Because the portion of the orders which the employers seek to appeal is merely one ruling in an ongoing dispute, we have no jurisdiction to review it under either the Administrative Review Law or section 11(e) of the Act.

¶ 11 We also note that the structure of the Act contemplates that the decision to proceed to arbitration will not be appealable until after the arbitration is complete. The amendments to section 7 of the Act state that, upon the request of either party, “the parties shall be required to participate in the impasse arbitration procedures set forth in Section 14 of this Act.” 5 ILCS 315/7 (West 2010). There is no provision for any immediate appeal of the decision to proceed to arbitration in either section 7 or section 14. To the contrary, section 14 provides that one of the grounds upon which an arbitrator’s decision may be challenged in the circuit court is “that the arbitration panel was without

or exceeded its statutory authority.” 5 ILCS 315/14(k) (West 2010). This is the sole opportunity identified in the Act for a party to argue that arbitration was not appropriately required, given the posture of the dispute at the time.

¶ 12 The above analysis requires that we dismiss the appeals for lack of jurisdiction, and we need not go further. In the interests of addressing all of the parties’ arguments, however, we note that we are not persuaded that the employers were truly “aggrieved” by the Board’s application of the amendments to section 7 of the Act. The amendments provide a new procedure—arbitration before a neutral panel of arbitrators—that may be used by either party to resolve differences that remain unresolved despite their attempts to reach an initial collective bargaining agreement. Nothing in the amendments explicitly favors either employers or employees, and we can certainly envision situations in which it might be the employer, rather than the employees, that seeks interest arbitration to resolve points of disagreement. The fact that the municipal employers in these cases perceive the possibility of interest arbitration as disadvantageous does not mean that they have a cognizable injury. See *Landgraf v. USI Film Products, Inc.*, 511 U.S. 244, 269 (1994) (a statute does not produce retroactive harm merely because it “upsets expectations based in prior law”).

¶ 13 For all of the foregoing reasons, we dismiss the appeals for lack of jurisdiction.

¶ 14 Appeals dismissed.