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2014 IL App (4th) 130304-U

NO. 4-13-0304

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED
March 13, 2014
Carla Bender
4th District Appellate
Court, IL

THE CITY OF CLINTON/DR. JOHN WARNER
HOSPITAL,)
)
Petitioners,)
v.)
THE ILLINOIS LABOR RELATIONS BOARD,)
STATE PANEL, an Administrative Agency; and THE)
AMERICAN FEDERATION OF STATE, COUNTY)
& MUNICIPAL EMPLOYEES, COUNCIL 31,)
Respondents.)

Direct Administrative Review of
Illinois Labor Relations Board,
State Panel
No. SCA11148

JUSTICE HARRIS delivered the judgment of the court.
Justice Holder White concurred in the judgment.
Justice Turner dissented.

ORDER

¶ 1 *Held:* (1) The Board had authority to address the Union's unfair-labor-practice charge and was not required to defer resolution of the parties' dispute to the grievance process.

(2) The Board's decision, ordering reinstatement of an employee pursuant to the terms of the parties' grievance settlement agreement, was not a clear violation of public policy.

¶ 2 Petitioners, the City of Clinton/Dr. John Warner Hospital (Hospital), seek administrative review of a decision of the Illinois Labor Relations Board, State Panel (Board), finding the Hospital committed an unfair labor practice and violated sections 10(a)(4) and (a)(1) of the Illinois Public Labor Relations Act (Act) (5 ILCS 315/10(a)(4), (a)(1) (West 2010)) when

it refused to reinstate an employee pursuant to the terms of a grievance settlement agreement with the American Federation of State, County & Municipal Employees, Council 31 (Union). *American Federation of State, County & Municipal Employees, Council 31, Charging Party and City of Clinton (Dr. John Warner Hospital), Respondent*, 29 PERI ¶ 167, No. S-CA-11-148 (ILRB, State Panel, Apr. 10, 2013) (hereinafter 29 PERI ¶ 167). On review, the Hospital argues the grievance settlement agreement contained terms that were disputed and ambiguous, and the proper forum for determining whether a contractual breach occurred was in the circuit court pursuant to section 16 of the Act (5 ILCS 315/16 (West 2010)). It also contends the Board's decision is against public policy. We affirm.

¶ 3

I. BACKGROUND

¶ 4 The record reflects the underlying facts are essentially undisputed. Michael Short was a maintenance worker for the Hospital and a member of the Union. On September 1, 2010, the Hospital terminated Short's employment. The same date, the Union filed a grievance, alleging Short was discharged without just cause. On September 2, 2010, the Hospital's human resources director denied the grievance, stating Short had recently been arrested after "substantial quantities of cannabis, marijuana, marijuana plants, small Baggies of cannabis, cocaine and other illegal drugs" were found in his residence. The director further noted "several containers with the [Hospital's] label were discovered containing marijuana."

¶ 5

On September 20, 2010, a state criminal complaint was filed against Short. He was charged with unlawful possession of cannabis with intent to deliver, unlawful possession of a controlled substance, unlawful production of cannabis sativa plant, unlawful use of weapons, unlawful use of a dangerous place for the commission of a cannabis offense, and possession of

firearms without the requisite firearm owner's identification.

¶ 6 On September 22, 2010, the Hospital and the Union entered into a grievance settlement, agreeing that Short would be placed on administrative leave without pay. Further, they agreed Short's employment would "be terminated on April 1, 2011, should he fail or be unable to return to work at that time."

¶ 7 On March 29, 2011, the state's criminal charges against Short were dismissed without prejudice; however, on April 1, 2011, the Hospital refused to allow Short to return to work. On April 26, 2011, the Union filed an unfair-labor-practice charge with the Board pursuant to section 10(a) of the Act (5 ILCS 315/10(a) (West 2010)), alleging the Hospital engaged in bad faith bargaining by failing to comply with the terms of the grievance settlement agreement and allow Short to return to work. On July 19, 2011, the Board issued a complaint for a hearing, finding after investigation that the charge involved dispositive issues of law or fact and stating the matter would be set for hearing before an administrative law judge (ALJ).

¶ 8 On July 29, 2011, the Hospital filed an answer to the charge. It alleged Short was terminated following his arrest in connection with the discovery of illegal drugs in his residence. It further alleged as follows:

"That at the time of said 'Grievance Settlement,' [the Hospital's] intent was to allow for full reinstatement of [Short] upon the complete removal of any and all charges and/or criminal investigations surrounding his conduct. However, on or about April 1, 2011, while said 'state' charges were 'dismissed' by the 'state circuit court,' [Short] remain[ed] the subject of continuing

criminal investigations by the Federal Drug Enforcement Agency [(DEA)] and Federal District Attorney's Office. Therefore, [Short was] not yet clear of any and all charges of criminal activities and remain[ed] the subject of federal criminal investigations. Consequently, [Short was] NOT able to meet the terms of said 'Grievance Settlement' and therefore unable to be reinstated on April 1, 2011."

The Hospital also maintained that, as a matter of public policy, it was inadvisable for it to reinstate Short, as such action would endanger its ability "to function as the sole Hospital serving the Clinton community and would dangerously impact the public health, safety and welfare of the community."

¶ 9 In lieu of a hearing, the parties submitted a stipulated record and briefs presenting their respective positions. In addition to the aforementioned facts, the parties stipulated that, on March 22, 2012, "the U.S. Department of Justice issued confirmation that, pursuant to a DEA Diversion computation chart, shortage [*sic*] of drugs reported at the *** Hospital were inventoried as being recorded during a search warrant at Short's residence on August 24, 2010." Further, they agreed that, on May 25, 2012, the United States Department of Justice confirmed that Short was the subject of an active continuing investigation into illegal activities related to the state charges against him and the purpose of the dismissal of the state charges had been to allow the federal investigation to continue. The record contains letters from the United States Department of Justice to the Hospital's legal representative supporting both stipulations. Finally, the parties stipulated the Hospital operated "the sole medical hospital and rural health facility for

the residents of the City of Clinton and County of DeWitt, with the City of Clinton serving as the county seat, with an approximate population of 7,400 residents" and the Hospital's "licensure to provide medical/hospital services to the community may be in jeopardy should [the Hospital] reinstate [Short]."

¶ 10 On November 15, 2012, the ALJ issued her recommended decision and order, and concluded the Hospital committed an unfair labor practice when it failed to bargain in good faith by refusing to abide by the terms of an unambiguous and undisputed grievance settlement. She noted previous Board decisions that found a party's refusal to abide by the terms of a grievance settlement was a breach of the collective-bargaining process. *American Federation of State, County & Municipal Employees, Council 31, Charging Party and City of Clinton (Dr. John Warner Hospital), Respondent*, 29 PERI ¶ 167, No. S-CA-11-148 (Administrative Law Judge's Recommended Decision and Order, Nov. 15, 2012) (hereinafter ALJ decision, 29 PERI ¶ 167). The ALJ stated that to establish such a breach, the Union had to demonstrate that there had been a "meeting of the minds" as to the settlement, as evidenced by the parties' objective conduct.

¶ 11 The Hospital argued it abided by the terms of the grievance settlement when it refused to reinstate Short because Short was unable to return to work on April 1, 2011, due to the ongoing federal investigation against him. However, the ALJ found there was no evidence that showed the date on which the Hospital first became aware that (1) Short was the subject of a federal investigation, (2) state charges were dismissed to allow a federal investigation to proceed, or (3) drugs reported in the Hospital's shortages had been found during the search of Short's residence. She noted there was no evidence the hospital knew any of those facts at the time it entered into the grievance settlement and, thus, "no evidence supporting [the Hospital's]

proffered construction of the word 'unable' to include an inability based on the federal investigation or alleged discovery of drug shortages." ALJ decision, 29 PERI ¶ 167. Further, the ALJ pointed out there was also no evidence to support the Hospital's position that its decision not to return Short to work on April 1, 2011, was based either on the pending federal investigation against Short or the discovery at his residence of drugs linked to the Hospital.

¶ 12 The ALJ concluded "[t]he objective conduct of both parties indicates that the parties meant the grievance resolution to foreclose a return to work by Short either if he should fail to return of his own accord, or if the State charges against him had not been satisfactorily resolved in his favor by April 1, 2011." ALJ decision, 29 PERI ¶ 167. She found the Hospital refused and/or failed to comply with an unambiguous settlement agreement. Additionally, the ALJ rejected the Hospital's argument that Short's reinstatement would violate public policy. She found it unclear from the evidence what impact Short's reinstatement would have had on the Hospital's licensure, if any. As a result, she did not find public policy clearly prohibited Short's reinstatement.

¶ 13 On December 11, 2012, the Hospital filed exceptions to the ALJ's decision, arguing the parties had not reached a "meeting of the minds" with respect to the specific terms of the grievance settlement and that it had been aware of the ongoing federal investigation when it refused to reinstate Short on April 1, 2011. It also challenged the ALJ's finding that Short's reinstatement was not clearly prohibited by public policy.

¶ 14 On April 1, 2013, the Hospital filed a motion for leave to amend its exceptions. It alleged, on March 26, 2013, felony charges were filed against Short, alleging he stole and converted Hospital property worth \$5,000 to his own use. It attached a copy of the charging

instrument to its filing. The Hospital further alleged, on March 28, 2013, Short pleaded guilty to the federal charges and was sentenced to six months in prison. It also attached a copy of Short's plea agreement to its motion, showing Short admitted that, between 2005 and 2010, he stole expired pharmaceutical drugs from the Hospital.

¶ 15 On April 10, 2013, the Board issued its decision. 29 PERI ¶ 167. It denied the Hospital's motion for leave to amend its exceptions and adopted the ALJ's recommended decision and order. The Board stated as follows:

"The grievance settlement entered by [the Hospital] provides that *** Short's employment would terminate April 1, 2011, 'should he fail or be unable to return to work at that time.' We need not ascertain the exact parameters of the set of circumstances contemplated by the parties to determine Short's ability to work since nothing in the record prevented that on April 1, 2011. The fact that Short was under federal criminal investigation for unlawful manufacture and possession of cannabis and other related substances was not even known by [the Hospital] at the time it refused to reinstate him." 29 PERI ¶ 167.

The Board agreed with the ALJ's determination that the Hospital refused to abide by the grievance settlement and its refusal violated section 10(a) of the Act (5 ILCS 315/10(a) (West 2010)). It ordered the Hospital to reinstate Short as provided by the parties' grievance resolution and make him whole for all losses incurred as a result of its failure to reinstate him from April 1, 2011, "up to the date of his reinstatement or the date he fails to or becomes unable to return to

work[.]" 29 PERI ¶ 167.

¶ 16 Two Board members disagreed with the majority's adoption of the ALJ's decision and dissented, stating the appropriate forum for enforcement of a grievance settlement agreement was in the circuit court and asserting, "Board enforcement of grievance settlement agreements is limited to circumstances where there is no good faith dispute as to the meaning and application of the agreement, such that a party's failure to comply amounts to a repudiation of the grievance resolution process itself." 29 PERI ¶ 167. They found the agreement between the Hospital and the Union was disputed and ambiguous and, thus, its interpretation and enforcement should be left to the circuit court and not the Board.

¶ 17 This appeal followed.

¶ 18 II. ANALYSIS

¶ 19 On appeal, the Hospital adopts the position of the dissenting Board members and argues that, because the grievance settlement agreement contained disputed and ambiguous provisions, the appropriate forum for specific enforcement of the agreement was in the circuit court rather than with the Board. It argues the proper function of the Board is to police the collective-bargaining process and not the collective-bargaining agreement. The Hospital maintains the Board's decision in the instant case runs counter to this "long established" function and, therefore, is clearly erroneous.

¶ 20 Pursuant to section 11(e) of the Act (5 ILCS 315/11(e) (West 2010)), judicial review of the Board's decision is had in accordance with the Administrative Review Law, which provides that review "shall extend to all questions of law and fact presented by the entire record before the court" (735 ILCS 5/3-110 (West 2010)). "The applicable standard of review depends

upon whether the question presented is one of fact, one of law, or a mixed question of fact and law." *American Federation of State, County & Municipal Employees, Council 31 v. Illinois State Labor Relations Board, State Panel*, 216 Ill. 2d 569, 577, 839 N.E.2d 479, 485 (2005) (hereinafter *AFSCME*). "Questions of law are reviewed *de novo*" while "the court will ascertain only if the [Board's] findings of fact are against the manifest weight of the evidence." *AFSCME*, 216 Ill. 2d at 577, 839 N.E.2d at 485. However, "[m]ixed questions of fact and law are subject to reversal only when deemed 'clearly erroneous.'" *AFSCME*, 216 Ill. 2d at 577, 839 N.E.2d at 485.

¶ 21 "Mixed questions of fact and law are 'questions in which the historical facts are admitted or established, the rule of law is undisputed, and the issue is whether the facts satisfy the statutory standard, or to put it another way, whether the rule of law as applied to the established facts is or is not violated.' [Citation.]" *AFSCME*, 216 Ill. 2d at 577, 839 N.E.2d at 485. "An agency decision will be reversed because it is clearly erroneous only if the reviewing court, based on the entirety of the record, is 'left with the definite and firm conviction that a mistake has been committed.'" ' [Citations.]" *Board of Trustees of University of Illinois v. Illinois Labor Relations Board*, 224 Ill. 2d 88, 97-98, 862 N.E.2d 944, 950-51 (2007). In this instance, the parties agree that the Board's decision is subject to a clearly erroneous standard of review.

¶ 22 Pursuant to section 11(a) of the Act (5 ILCS 315/11(a) (West 2010)), the Board is required to investigate unfair-labor-practice charges. Following its investigation, the Board may find a hearing warranted and issue a complaint for hearing (80 Ill. Adm. Code 1220.40(a)(3), amended at 27 Ill. Reg. 7436 (eff. May 1, 2003)), set the matter for hearing before an ALJ (80

Ill. Adm. Code 1220.50(a), amended at 27 Ill. Reg. 7436 (eff. May 1, 2003)), and review the ALJ's decision upon a party's timely filing of exceptions (80 Ill. Adm. Code 1200.135(b)(4), added at 27 Ill. Reg. 7365 (eff. May 1, 2003)).

¶ 23 Under the Act, it is an unfair labor practice for an employer or its agents to do the following:

"(1) to interfere with, restrain or coerce public employees in the exercise of the rights guaranteed in this Act or to dominate or interfere with the formation, existence or administration of any labor organization or contribute financial or other support to it; provided, an employer shall not be prohibited from permitting employees to confer with him during working hours without loss of time or pay; [or]

* * *

(4) to refuse to bargain collectively in good faith with a labor organization which is the exclusive representative of public employees in an appropriate unit, including, but not limited to, the discussing of grievances with the exclusive representative[.]" 5 ILCS 315/10(a) (West 2010).

"[T]he breach of the settlement agreement or the bad-faith negotiation of the settlement agreement *** constitutes a violation of sections 10(a)(1) and 10(a)(4) of the Act." *City of Burbank v. Illinois State Labor Relations Board*, 185 Ill. App. 3d 997, 1005, 541 N.E.2d 1259, 1265 (1989); see also *City of Loves Park v. Illinois Labor Relations Board State Panel*, 343 Ill.

App. 3d 389, 395, 798 N.E.2d 150, 155-56 (2003) ("When an employer's conduct demonstrates a disregard for the collective bargaining process, evidences an outright refusal to abide by a contractual term, or prevents the grievance process from working, that conduct constitutes repudiation and violates section 10(a)(4).").

¶ 24 As stated, the Hospital argues the appropriate forum to address its alleged violation of the parties' agreement was in the circuit court and not with the Board. We note section 16 of the Act (5 ILCS 315/16 (West 2010)) provides that "[a]fter the exhaustion of any arbitration mandated by th[e] Act or any procedures mandated by a collective bargaining agreement, suits for violation of agreements *** may be brought by the parties to such agreement in the circuit court ***." To support its position, the Hospital relies on previous Board decisions.

¶ 25 In particular, the Hospital cites *American Federation of State, County & Municipal Employees, Council 31, Charging Party and State of Illinois, Departments of Corrections and Central Management Services, Respondent*, 4 PERI ¶ 2043, No. S-CA-88-70, Oct. 19, 1988 (ISLRB 1988) (hereinafter 4 PERI ¶ 2043). There, the Board recognized its previous holding "that the Board does not have jurisdiction, through its unfair labor practice provisions, to enforce collective bargaining agreements *** where the refusal is based on a good faith disagreement as to the interpretation of the agreement." 4 PERI ¶ 2043. However, the Board found the case before it distinguishable from such situations, stating it was not required to interpret an agreement between the parties and, instead, was "faced with a party's complete and outright refusal to honor a grievance settlement." 4 PERI ¶ 2043. The Board further stated as follows:

"[U]nder certain circumstances, conduct which violates an agreement between an employer and the representative of its employees may also be sufficiently lacking in good faith so as to violate Section 10(a)(4) of the Act. The circumstances of this case present an example of a contract breach which gives rise to an independent violation of the duty to bargain in good faith.

Our conclusion herein is consistent with our [previous] holding *** that the courts, not the Board, have jurisdiction over simple breach of contract matters. However, while it is the courts' function, pursuant to the legislative policy of the Act, to police collective bargaining *agreements*, it remains our function to police the collective bargaining *process*. A party's boldface refusal to abide by a grievance settlement agreement, the terms of which are undisputed and unambiguous, is a breach of that process as well as a breach of the agreement. It therefore constitutes a violation of Section 10(a)(4) and Section 10(a)(1) of the Act. That the parties' bargain herein may also be enforced by the courts pursuant to Section 16 of the Act does not take it out of the realm of our jurisdiction." (Emphases in original.) 4 PERI ¶ 2043.

¶ 26 Here, the Board committed no error in addressing the Union's unfair-labor-practice charge rather than finding the matter more appropriate for resolution through the

grievance process and, pursuant to section 16 of the Act, the circuit court. First, the record shows the Board did not actually interpret the parties' agreement. Second, the Board is not required, but has discretion, to defer resolution of an unfair-labor-practice charge that involves interpretation or application of the parties' agreement to the grievance and arbitration procedures contained in the parties' collective-bargaining agreement.

¶ 27 Initially, although the Board adopted the decision of the ALJ, who interpreted the parties' intentions and agreement, the Board found it unnecessary to "ascertain the exact parameters of the set of circumstances contemplated by the parties to determine Short's ability to work." 29 PERI ¶ 167. The Board found nothing in the record prevented Short's ability to work on April 1, 2011, and pointed out that the fact that Short was under federal criminal investigation was not known by the Hospital when it refused to reinstate him pursuant to the grievance settlement agreement. Thus, even accepting the Hospital's position as true, that Short was unable to work if he was under any criminal investigation, the Hospital was unaware of the circumstances that would have caused Short to be unable to work on that asserted basis at the time it refused to reinstate him. As a result, the Hospital's conduct amounted to a refusal to abide by the terms of the parties' agreement.

¶ 28 The dissent references the Hospital's answer filed on July 29, 2011, in which the Hospital averred Short remained the subject of an ongoing criminal investigation as of April 1, 2011, and argues the letters from the Department of Justice in March and May 2012, and the reasonable inferences to be drawn from them, establish the veracity of the Hospital's answer. We do not dispute this point. However, nothing in the record affirmatively establishes the Hospital was aware of an ongoing federal criminal investigation *as of April 1, 2011*, approximately four

months preceding its answer, and therefore there is no evidence it served as the basis for refusing to reinstate Short.

¶ 29 Additionally, pursuant to both the Illinois Administrative Code (Code) and the Act, the Board had discretion to defer resolution of the unfair-labor-practice charge, even one involving the interpretation or application of the parties' agreement, to the grievance process. The Code provides that "[t]he Board *may*, on its own motion or the motion of a party, *defer* the resolution of an unfair labor practice charge to the grievance arbitration procedure contained in a collective bargaining agreement." (Emphases added.) 80 Ill. Adm. Code 1220.65(a), added at 27 Ill. Reg. 7436 (eff. May 1, 2003). Moreover, the Act provides that "[i]f an unfair labor practice charge involves the *interpretation or application* of a collective bargaining agreement and said agreement contains a grievance procedure with binding arbitration as its terminal step, the Board *may defer* the resolution of such dispute to the grievance and arbitration procedure contained in said agreement." (Emphases added.) 5 ILCS 315/11(i) (West 2010).

¶ 30 The Board has the statutory authority to address unfair-labor-practice charges. As provided in the Act, even when resolution of a charge involves interpreting an agreement between the parties, the Board has discretion to defer resolution of the dispute to the grievance process. Nothing in the Act or the Code requires deferral. Even the Board's previous decisions contemplate that resolution of a dispute may be appropriate as both an unfair-labor-practice charge and through the grievance process outlined in a collective-bargaining agreement. See 4 PERI ¶ 2043 ("That the parties' bargain herein may also be enforced by the courts pursuant to Section 16 of the Act does not take it out of the realm of our jurisdiction [to address unfair-labor-practice charges].").

¶ 31 In this instance, the Hospital neither requested that the Board defer resolution of the charge, nor raised the issue in any manner before the ALJ or the Board. We note an argument is generally forfeited on review when it was not raised before the Board (*Moehring v. Illinois Labor Relations Board, State Panel*, 2013 IL App (2d) 120342, ¶ 24, 989 N.E.2d 1131); however, because the issue of the proper forum for resolution of the parties' dispute was considered by the Board, we have chosen to address the merits of the Hospital's claim. For the reasons discussed, the Board's decision to address the Union's unfair-labor-practice charge was not clear error.

¶ 32 On review, the Hospital also argues reinstatement of Short while he was the subject of an ongoing federal criminal investigation violates public policy. It contends Illinois has "a well defined dominant public policy favoring the ability to provide health care services to the rural public." The Hospital notes the parties stipulated that it "operates the sole medical services facility for the rural residences of the City of Clinton and surrounding DeWitt County," with "a population of 7,400 residents." It maintains its licensure would "clearly" be jeopardized should Short be reinstated retroactive to April 1, 2011.

¶ 33 "An arbitration award in contravention of paramount considerations of public policy is not enforceable." *American Federation of State, County & Municipal Employees v. State*, 124 Ill. 2d 246, 260, 529 N.E.2d 534, 540 (1988) (hereinafter *AFSCME I*). "[T]o vacate an arbitral award upon these grounds, the contract, as *interpreted* by the arbitrator, must violate some explicit public policy." (Emphasis in original.) *American Federation of State, County & Municipal Employees v. Department of Central Management Services*, 173 Ill. 2d 299, 307, 671 N.E.2d 668, 673 (1996) (hereinafter *AFSCME II*). "[T]he exception is a narrow one and is

invoked only when a contravention of public policy is clearly shown." *AFSCME II*, 173 Ill. 2d at 307, 671 N.E.2d at 673. "While there is no precise definition of public policy, it is to be found in the Constitution, in statutes and, when these are silent, in judicial decisions." *AFSCME I*, 124 Ill. 2d at 260, 529 N.E.2d at 540.

¶ 34 On appeal both the Board and the Union point out that this case does not involve an arbitration award but, rather, a decision by the Board ordering reinstatement of an employee pursuant to the terms of a grievance settlement agreement. However, "[a] court's refusal to enforce an arbitrator's award under a collective-bargaining agreement because it is contrary to public policy is a specific application of the more general doctrine, rooted in the common law, that a court may refuse to enforce contracts that violate law or public policy." *Board of Education of School District U-46 v. Illinois Educational Labor Relations Board*, 216 Ill. App. 3d 990, 998, 576 N.E.2d 471, 476 (1991). Thus, although this case does not involve an arbitrator's award, we may nevertheless address whether the Board's decision, ordering Short's reinstatement pursuant to the terms of the parties' grievance settlement agreement, violates public policy.

¶ 35 Here, although the Hospital has provided authority for the proposition that Illinois has a public policy in favor of providing for the health, safety, and welfare of its citizens (Ill. Const. 1970, preamble); protecting the public health (210 ILCS 85/2(a) (West 2010)); and, more specifically, ensuring access to health care services in rural areas (410 ILCS 65/2 (West 2010)), it has failed to establish a clear violation of public policy as a result of the Board's order that Short be reinstated retroactive to April 1, 2011, at a time when he was the subject of an ongoing federal investigation. The Hospital asserts its licensure would have been in jeopardy by Short's

reinstatement. However, as noted by the Board on appeal, "the Hospital cites to no statute, regulation, or other authority that might indicate that reinstating Short could affect its license in any way" and "[i]nstead, it continues to make only vague statements about possible detrimental effects of reinstating Short." We agree with the Board's assessment and note the cases relied upon by the Hospital are distinguishable from the present case.

¶ 36 The Hospital further argues it is against public policy to reinstate Short as of April 1, 2011, when, as evidenced by his federal guilty plea, he admitted he stole from the Hospital. As stated, the public policy exception is a narrow one. *AFSCME II*, 173 Ill. 2d at 307, 671 N.E.2d at 673. Based upon the specific circumstances presented by this case, we disagree.

¶ 37 Here, the Hospital knowingly and voluntarily entered into a grievance settlement agreement with the Union regarding Short's employment status. Short did not admit to stealing from the Hospital until well after the relevant time period set forth in the parties' agreement (April 1, 2011). (We note the Board actually denied the Hospital's motion to amend its exceptions to the ALJ's decision with information that Short was subject to federal charges and pleaded guilty in March 2013.) The Hospital may not support its failure to abide by the terms of the grievance settlement agreement with circumstances occurring long after its decision not to reinstate Short was made and acted upon. We note public policy favors collective bargaining (*City of Decatur v. American Federation of State, County, & Municipal Employees, Local 268*, 122 Ill. 2d 353, 364, 522 N.E.2d 1219, 1224 (1988)), and the retroactive application of facts not in existence during the relevant time period would violate that public policy.

¶ 38 Again, we emphasize that, in this case, the Hospital chose to enter into a negotiated agreement with the Union, even though it had other means of addressing Short's

conduct, and then repudiated the agreement it knowingly and voluntarily entered into. Under these circumstances, we find the Hospital failed to establish a clear violation of public policy. However, we note there is nothing in the Board's decision that prevents the Hospital from reassessing the status of Short's employment based upon information it possessed on or after April 1, 2011. In particular, the Board did not interpret the parties' agreement, and its decision orders the Hospital to make Short "whole for all losses he incurred as a result of [its] failure to reinstate him, from April 1, 2011, *up to* the date of his reinstatement or *the date he fails to or becomes unable to return to work.*" (Emphases added.) 29 PERI ¶ 167.

¶ 39

III. CONCLUSION

¶ 40

For the reasons stated, we affirm the Board's decision.

¶ 41

Affirmed.

¶ 42 JUSTICE TURNER, dissenting.

¶ 43 I respectfully dissent. In this case, the entirety of the record leaves me with a definite and firm conviction the Board committed a mistake in ordering the Hospital to reinstate Short to his position with back pay to April 1, 2011, together with interest calculated at 7% per annum. Accordingly, the Board's decision was clearly erroneous and should be reversed.

¶ 44 The record shows the Union's unfair-labor-practice charge against the Hospital was filed on April 26, 2011. The Board's complaint for hearing was issued on July 19, 2011. Ten days later, on July 29, 2011, the Hospital filed its answer. In its answer to the charge it had engaged in bad-faith bargaining, the Hospital averred that, although state charges had been dismissed against Short, he remained the subject of ongoing federal criminal investigations and thus was "unable to be reinstated on April 1, 2011." By stipulation, the parties later agreed the United States Department of Justice confirmed via letters dated March 22, 2012 (joint Exhibit H), and March 25, 2012 (joint Exhibit I), that (1) the Hospital drug shortages were located in Short's residence and (2) the dismissal of the state charges facilitated the ongoing federal investigations of Short's activities.

¶ 45 From the above mix of pleadings, allegations, and evidence, the Board concluded the Hospital had negotiated in bad faith. The Board concluded "[t]he fact that Short was under federal criminal investigation for unlawful manufacture and possession of cannabis and other related substances was not even known by Respondent [(Hospital)] at the time it refused to reinstate him." I disagree. In my view, it cannot reasonably be disputed the letters from the United States Department of Justice and the reasonable inferences which may be drawn from them establish the veracity of the Hospital's answer. I find it incredulous the Hospital would

have filed an answer, in which it cited the "criminal federal investigations" as its reason for not reinstating Short, without the Hospital actually knowing about the investigations. Similarly, it is unreasonable to conclude the Hospital fortuitously became aware of the investigations in time to file its answer, but it did not know about the investigations on April 1, 2001. Thus, I would reverse the Board's judgment because its conclusion the Hospital bargained in bad faith is totally unsubstantiated.