2016 IL App (1st) 140802-U
No. 1-14-0802

THIRD DIVISION
May 25, 2016

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

CHICAGO JOINT BOARD, LOCAL 200, RETAIL, WHOLESALE AND DEPARTMENT STORE UNION, Petitioner-Appellant, v. ILLINOIS LABOR RELATIONS BOARD LOCAL PANEL, CARMELTHIA OTIS, DELCINA ROSADO, CHRISTIANA OHEAR-ENYEAZU, MARSHALL BERRY, GABRIEL NWANDU, BRITTEN McBRIDE, ASHHOK GANDHI, LINDON HAMPTON, DHIRAJLAL JAGATIA, SYNTHIA MILLER, BONIFACE NWANESI and HAYAN RGVAL, Respondents-Appellees.	Petition for Review of Decision and Order of the Illinois Labor Relations Board, Local Panel. Case No. L-CB-06-035
PEOPLE *ex rel.* ILLINOIS LABOR RELATIONS BOARD, LOCAL PANEL, Cross-Petitioner, v. CHICAGO JOINT BOARD, LOCAL 200, RETAIL, WHOLESEALE AND DEPARTMENT	Cross-Petition for Enforcement of an Order of the Illinois Labor Relations Board, Local Panel.

STORE UNION; and CARMELTHIA OTIS, DELCINA ROSADO, CHRISTIANA OHEAR-ENYEAZU, MARSHALL BERRY, GABRIEL NWANDU, BRITTEN MCBRIDE, ASHHOK GANDHI, LINDON HAMPTON, DHIRAJLAL JAGATIA, SYNTHIA MILLER, BONIFACE NWANESI and HAYAN RGVAL,	)	ILRB No. L-CB-06-035
Cross-Respondents.	)	

JUSTICE PUCINSKI delivered the judgment of the court.
Presiding Justice Mason and Justice Lavin concurred in the judgment.

ORDER

¶ 1 *Held:* The local unit of a union for pharmacists failed to demonstrate that the Illinois Labor Relation Board's determination that it was not in compliance with a prior decision by the Board ordering a recalculation and redistribution of a grievance settlement award for an unfair labor practice was clearly erroneous. The local unit failed to calculate and redistribute the amount of the settlement award to the charging parties, and instead attempted to re-litigate the finding of an unfair labor practice and the charging parties' entitlement to any portion of the settlement award, which were issues that were already determined under the law of the case in a prior decision by the Board, which was affirmed on appeal. The local unit also failed to demonstrate that the Board's calculation and redistribution of the settlement proceeds was clearly erroneous as a punitive award rather than a make-whole award or was factually against the manifest weight of the evidence.

¶ 2 BACKGROUND

¶ 3 This case is on appeal from a decision (*Board II*) of the Illinois Labor Relations Board, Local Panel, in a compliance proceeding determining that petitioner, Chicago Joint Board, Local 200, had not complied with the Board's previous decision and order (*Board I*) to implement a remedy to compensate the charging parties for its unfair labor practice and to pay the charging parties a total of $201,141 plus interest from the date of the decision.

¶ 4 Petitioner, Local 200 of the Chicago Joint Board, AFL-CIO (Local 200), is a bargaining unit under section 3(i) of the Illinois Public Relations Act (5 ILCS 315/3(i) (West 2000)) and the

exclusive representative of a bargaining unit comprised of a variety of employees including pharmacists at Stroger Hospital and Provident Hospital. Only this local unit, Local 200, is the petitioner in this case.

¶ 5 The respondent parties, Carmelthia Otis, Delcina Rosado, Christiana Ohear-Enyeazu, Marshall Berry, Gabriel Nwandu, Britten McBride, Ashok Gandhi, Dhirrajlal Jagatia, Boniface Nwanesi, and Nayan Raval (charging parties) are employees of the county under section 3(n) of the Act and are employed as pharmacists.

¶ 6 For some time prior to 2000 there was so much work in the outpatient pharmacy at Provident Hospital that the outpatient pharmacists could not get all of their work done, even working overtime. Provident Hospital pharmacy chief Dan Martin reached an understanding with George Leonard, a Stroger Hospital pharmacist and then-president of Local 200, that Leonard would assemble pharmacists and pharmacy technicians from other Local 200 bargaining unit locations to work at Provident Hospital's outpatient pharmacy on an overtime basis to complete the work. In 2000, Martin decided not to allow non-Provident pharmacists and pharmacy technicians to work at Provident anymore, effective as of May 31, 2000, but the work did not decrease. As a result, managers and supervisors of an independent management group began doing some bargaining unit pharmacist work.

¶ 7 In 2000, Leonard filed a grievance with the county on behalf of all of the bargaining unit members for Local 200, claiming that non-bargaining unit employees were performing bargaining unit pharmacist work in violation of the Union's collective bargaining agreement with the county. The nature of the grievance involved two issues: (1) the fact that members of the management group were performing the tasks performed by Local 200 unit members; and (2) the fact that overtime work previously performed by members of Local 200 who are not on staff at

Provident Hospital was discontinued from May 31, 2000. The hearing officer for the county denied the grievance.

¶ 8 The grievance proceeded to arbitration and, on October 28, 2003, the arbitrator ruled in favor of Local 200, finding that the county had violated the collective bargaining agreement by having individuals other than bargaining unit members do pharmacy work at Provident Hospital without prior notice to or negotiation with the union. The arbitrator ordered the county to cease and desist from having contractors perform bargaining unit work and to make the affected unit member employees whole. The arbitrator directed the parties to confer about the scope and amount of the remedy.

¶ 9 Leonard sought information from bargaining unit employees and the county regarding the number of overtime hours previously worked at Provident Hospital by the employees who were part of the team that regularly worked overtime at Provident Hospital. The county and Local 200, through Leonard, agreed that the county would pay the affected employees $375,000, representing a compromise as to the amount of lost overtime wages suffered by the unit employees who had lost overtime opportunities as a result of the action of management. On September 16, 2005, the arbitrator approved and entered a consent order to the agreement, with an exhibit attached naming only twelve employees who had been harmed and the amount each employee should receive of the agreed settlement sum. Leonard divided $373,314.13 of the settlement award among these twelve unit members and himself. The county paid these employees the amounts specified per the consent order. Leonard did not pay other unit members, beyond the twelve members, any portion of the settlement award. None of the charging parties in this case was included in this consent order and none of them was paid any amount from the settlement award.

¶ 10 On March 28, 2006, the charging parties, all members of Local 200, filed an unfair labor practice charge against the union, claiming that the union breached its duty of fair representation by failing to pay them any of the proceeds of the arbitration settlement. The charge alleged that Leonard was guilty of unfair representation and discrimination against the charging parties and sought a "recalculation of monetary award to include all of the listed pharmacists employed at Provident Hospital." After an investigation, on February 26, 2007, the Board's executive director filed a formal complaint against Local 200, alleging a violation of section 11(c) of the Illinois Public Relations Act (5 ILCS 315/11(c) (West 2000)). The charge alleged, in pertinent part, that Leonard "failed to provide compensation to all pharmacists who are affected by the employer's violation of the agreement" and that he refused to communicate with the charging parties as to why they "were excluded from the distribution of the award." We note that although the arbitration award covered all pharmacists in Local 200, only the charging parties filed grievances to obtain a portion of the arbitration settlement award.

¶ 11 A hearing was held before Administrative Law Judge Sharon Wells (ALJ Wells) on the unfair labor practice charge. At the hearing, ALJ Wells heard evidence that Leonard did not provide notification of the settlement to the charging parties. To determine who had lost income after 1999, Leonard orally advised a union steward at Provident Hospital to compile the W-2 forms of the pharmacists and technicians, including the unit members. Leonard did not also request the W-2 forms in writing from the unit members. Leonard unilaterally decided to give unit members 30 days to turn in the forms, but failed to advise unit members of this 30-day deadline. Leonard claimed that he determined that only the pharmacists and technicians who had seen a decrease in income after 1999 were entitled to a portion of the award. However, he disbursed proceeds to unit members whose income increased after 1999. Stroger Hospital

pharmacist Denise Davis had a salary increase each year after 1999 but was paid more than $66,000 of the settlement award.

¶ 12 On July 1, 2009, ALJ Wells issued a recommended decision and order in favor of the unit members. ALJ Wells concluded that the union, through Leonard, violated the Act by failing in its duty to fairly represent the charging parties in its handling and distribution of the settlement award proceeds. ALJ Wells found that "Leonard deliberately sought to disadvantage Provident pharmacists by not providing them with written notice" regarding "the requirements for establishing lost wages." She found that the charging parties had established that they engaged in activities tending to engender Leonard's animosity, and that he retaliated against them by excluding them from receiving a portion of the arbitration settlement award. ALJ Wells found not credible Leonard's explanation as to why he excluded the charging parties from receiving a portion of the settlement. ALJ Wells also found that Leonard's claim that he had worked over 2,200 hours of overtime in 1999 was "unworthy of belief." ALJ Wells found that Leonard's testimony regarding his methodology for which unit members would receive a portion of the settlement was "bizarre." Additionally, ALJ Wells found that there was "no record evidence that the charging parties worked all of the overtime that they wanted."

¶ 13 The recommended order was that Local 200 and its officers and agents cease and desist from discriminating against public employees "by denying them arbitration awards because they supported a presidential candidate against Local 200 president, George Leonard, opposed a longevity proposal that he supported, and complained to Provident Hospital administrators that Leonard and employees he selected from institutions outside Provident to work overtime at Provident were inefficient." The ALJ's recommended order was for Local 200 to notify all unit members in writing to submit claims if they believed they lost overtime opportunities at

Provident Hospital from 2000 through 2004. The ALJ also recommended that the Board order the union to pay amounts owed to the charging parties after the recalculation, with interest, from the period of the payment of the award in 2006 until the date the union pays the charging parties. The ALJ recommended order was also that the union shall "pay the Charging Parties the amounts owing to them after recalculation of the arbitration award based on the amount originally paid out by the Employer, $375,000."

¶ 14 On May 19, 2010, the Board issued a final administrative decision accepting the ALJ's recommendation and order in *Board I*. The Board agreed that the union violated its duty to fairly represent the charging parties. The Board found that the ALJ's credibility determinations were well-supported and ruled that Local 200, through Leonard, committed an unfair labor practice when it purposely withheld a portion of the settlement from unit members in retaliation for opposing Leonard's candidacy for president, complaining about his work at Provident Hospital, and opposing a pay-raise provision that he had negotiated. The Board rejected Local 200's argument that the grievance remedied lost overtime opportunities at Provident Hospital for Stroger Hospital pharmacists only and that other unit members were not entitled to a portion of the settlement award. The Board found that the arbitrator's decision "includes no such limitation." Rather, the arbitrator's decision covered all pharmacists in the bargaining unit. The Board also rejected Local 200's argument that the charging parties did not timely file their unfair labor practice charge by filing it more than six months after the settlement. The Board found that there was no evidence that any of the charging parties knew or reasonably should have known of the union's conduct before January 2006 and therefore the charge was timely.

¶ 15 The Board's final order directed Local 200 to take the following affirmative action, in relevant part:

"a. notify Charging Parties, in writing, that it will not retaliate against them based on the candidates they choose to support in elections for Union office;

b. notify Charging Parties, in writing, that it will not retaliate against them based on the initiatives they choose to support in ratification votes;

c. notify Charging Parties, in writing, that it will not retaliate against them based on their complaints regarding the work of Leonard, or other pharmacists from Stroger Hospital, when working overtime at Provident Hospital;

d. recalculate, properly and accurately, the distribution of the $375,000 overtime grievance award;

e. pay Charging Parties the amounts due them after proper recalculation of the $375,000 overtime grievance award, including interest thereon at the rate of seven percent per annum, in accordance with Section 11() of the Illinois Public Relations Act, from the date of the payout of the award in 2006, until such time as Charging Parties have been made whole ***."

¶ 16 Local 200 appealed the decision in *Board I* adopting ALJ Wells' recommended disposition and order to this court. On June 22, 2011, we affirmed *Board I*'s final administrative decision and order. See *Chicago Joint Board, Local 200, Retail, Wholesale & Department Store Union v. Illinois Labor Relations Board*, 2011 IL App (1st) 101497. This court held that the decision in *Board I* was not clearly erroneous. This court also affirmed *Board I*'s determination that the unit members timely filed their charge and that there was no evidence that they knew of the execution of the settlement agreement more than six months prior to the date they filed their charge.

¶ 17 After this court's decision, Local 200 subpoenaed the county's records of hours worked and overtime during the relevant time period. Local 200 concluded no monies were due to the charging parties pursuant to the *Board I*'s order.

¶ 18 The charging parties then filed a petition for enforcement by the Board of its May 19, 2010 final administrative decision pursuant to section 1220.80 of the Board's administrative rules. 80 Ill. Admin. Code § 1220.80. The charging parties alleged that Local 200 failed to take steps to implement *Board I*'s decision and order to properly recalculate the distribution of the settlement award and pay unit members.

¶ 19 The matter was referred to a Board compliance officer, who investigated the matter. The compliance officer asked Local 200 to provide him with an explanation of its methodology for redistributing the settlement award proceeds. The investigator asked Local 200 to provide him with "all records, reports and other documents necessary to analyze the redistribution." The compliance officer asked for Local 200 to obtain the overtime hours worked by each bargaining unit employee employed at Provident in 1999, the year prior to when the bargaining unit work was performed by non-bargaining unit personnel, as well as the overtime hours each bargaining unit employee worked during the years from 2000 through 2004.

¶ 20 Local 200 provided the compliance officer with a letter dated June 1, 2011 indicating that it asked the unit members for "[a]ny documents, such as W-2s or IRS Tax Returns" that showed they lost money as a result of the county's conduct and any grievances filed from 2000 through 2004 for denial of overtime opportunities. Local 200 argued to the compliance officer that the charging parties lost no overtime opportunities and were not entitled to any proceeds of the settlement award. Local 200 argued that Stroger Hospital pharmacists were not allowed to work overtime at Provident Hospital from 2000 to 2004 and therefore there is at least a minimally

sufficient basis to conclude Stroger pharmacists were impacted by the overtime assignment practices far more than the charging parties. Local 200 also argued that county records indicated that the total overtime hours worked by the charging parties increased from an average of 5,291 hours in 1999 to an average of 5,820 in 2004-08.

¶ 21 The Board compliance officer informed Local 200 that its response was unacceptable and constituted an attempt to relitigate the same arguments from the original unfair labor practice proceedings. The compliance officer concluded that Local 200 did not intend to comply with *Board I*'s order. The Board compliance officer concluded that the Board would determine the methodology for disbursement of the settlement award proceeds to the unit members and instructed Local 200 to obtain from the county the number of overtime hours that the unit members worked prior to 2000, when the county began giving unit work to non-unit members, explaining that this information would be the basis for determining the distribution of the settlement proceeds for the years 2000 through 2004.

¶ 22 The Board compliance officer issued an order on June 28, 2012. In this order, the compliance officer indicated he "advised Respondent that any methodology that Respondent developed to redistribute the proceeds must be fair and equitable to all members of its bargaining unit including Charging Parties and other bargaining unit employees employed at Provident Hospital." The compliance officer also rejected the redistribution formula of the charging parties, based on the participation in the grievance and appeal process, finding that it was "just as inequitable and discriminatory" as Local 200's distribution because it was unrelated to how much overtime was lost by a particular pharmacist. The compliance officer decided to use a projection of average earnings formula to compute the amount that was due to each charging party. The compliance officer stated that this formula was "[t]he most reliable and equitable formula"

because it "assumed all pharmacists lost overtime and could only approximate the amount of overtime lost." The compliance officer found that "[i]n order to achieve equity, a formula that assumed all bargaining unit pharmacists' overtime hours were adversely affected and lost overtime was the most reasonable formula to approximate back pay."

¶ 23 The compliance officer computed the total number of overtime hours worked by all pharmacists in 1999 (the year prior to when non-bargaining unit employees were allowed to work), which was 13,324.2 hours. He then divided the total number of overtime hours by all pharmacists in 1999 by the number of hours worked by an individual employee in 1999 to obtain a percentage of time for each employee. He then multiplied the individual percentage for each charging party by $375,000 to obtain a dollar amount owed to each charging party of the $375,000 total.[1] The compliance order set forth the distribution formula with the sums payable to all unit members in a spreadsheet and directed Local 200 to comply with the order.

¶ 24 Local 200 challenged this compliance order and requested a hearing. Local 200 argued that: the original decision of the Board (*Board I*) had not determined that the charging parties in fact must receive a financial award; the charging parties were given an opportunity to submit evidence that they had lost overtime opportunities but the evidence demonstrated that none of the charging parties were harmed; and that the charging parties were in the same position as if Local 200 had not committed its unfair labor practice. Local 200 argued that the charging parties are owed nothing from the settlement amount. The charging parties also objected to the compliance officer's recalculation as "speculative" and argued that the settlement award should be split equally between the charging parties.

[1] At the time of the compliance order, charging parties Linda Hampton and Nayan Raval withdrew their claims, and charging party Synthia Miller left Provident Hospital and her name was dropped by the remaining charging parties when the petition for enforcement was filed.

¶ 25 A compliance hearing was held before administrative law judge Michelle Owen (ALJ Owen). At this hearing, Local 200 presented the testimony of Denise Davis, a pharmacist who had worked at the Provident Hospital outpatient pharmacy during the relevant time period. Davis testified that any pharmacist regularly assigned to Provident, including the charging parties, could work all the overtime he or she wanted. The charging parties did not offer any witnesses in rebuttal. On October 17, 2013, ALJ Owen issued a recommended compliance decision and order concluded that the compliance officer was correct. ALJ Owen further rejected Local 200's argument that the charging parties were not entitled to any of the arbitration settlement proceeds as "without merit" because "the arbitration decision had expressly covered all pharmacists in the bargaining unit." Thus, payment of the proceeds of the arbitration award was owed to the charging parties.

¶ 26 Local 200 filed exceptions to ALJ Owen's recommended compliance decision and order with the Board. On February 13, 2014, the Board adopted ALJ Owen's recommended compliance decision and order (*Board II*), finding that Local 200 had not complied with the initial *Board I* order and directing that Local 200 pay the charging parties in accordance with ALJ Owen's recommended decision and order.

¶ 27 This appeal by Local 200 followed. The Board cross-petitioned for enforcement of its decision in *Board II*.

¶ 28 Local 200 argues that the Board erred in finding in *Board II* that it had not complied with the Board's decision and order in *Board I*. The respondent charging parties have adopted and incorporated by reference the same argument made by the ILRB in its brief on appeal before us. The respondent charging parties request that we grant the ILRB's petition and order the Chicago

Joint Board to comply with the order of the ILRB and pay the respondent charging parties in accordance to the order, with interest from the date of the order.

¶ 29 ANALYSIS

¶ 30 Judicial review of an Illinois State Labor Relations Board (Board) decision is governed by the provisions of the Administrative Review Law (735 ILCS 5/3-101 *et seq*. (West 2010)). *Freeport v. Illinois State Labor Relations Board*, 135 Ill. 2d 499, 507 (1990). "The purpose of administrative review is 'to make certain the agency has acted within its judicial bounds defined by law, to guard those statutory and constitutional rights guaranteed to one subject to administrative action, and to ascertain whether the record supports the order issued.' " *Marozas v. Board of Fire & Police Commissioners*, 222 Ill. App. 3d 781, 791 (1991) (quoting *Edwards v. City of Quincy*, 124 Ill. App. 3d 1004, 1012 (1984)).

¶ 31 Section 11(c) of the Act empowers the Board to issue an order requiring the party determined to have violated the Act "to take such affirmative action *** as will effectuate the policies of the Act." 5 ILCS 315/11(c) (West 2012). The Board must fashion a remedy in an unfair labor practice case to "make whole" the parties, placing them "in the same position they would have been in had the unfair labor practice not been committed." (Citation omitted.) *Paxton-Buckley-Loda*, 304 Ill. App. 3d 343, 353 (1999). The amount necessary to constitute make-whole relief is decided at the compliance stage. 80 Ill. Adm. Code § 1220.80. The Board "may adopt all, part or none of the recommended decision and order." 80 Ill. Admin. Code § 1200.35(b)(4). We review the Board's decision, not the ALJ's recommendation. *County of Cook v. Illinois Labor Relations Board*, 351 Ill. App. 3d 379, 385 (2004).

¶ 32 In this case, the Board adopted the ALJ's recommended order and disposition finding that Local 200 did not comply with *Board I* and ordering Local 200 to "recalculate, properly and

accurately, the distribution of the $375,000 overtime grievance award." We review only *Board II*'s determination of non-compliance and order to accurately and properly recalculate and distribute the grievance settlement award.

¶ 33 Under the Administrative Review Law, our scope of judicial review extends to all questions of law and fact presented by the record before the court. 735 ILCS 5/3-110 (West 2010). "No new or additional evidence in support of or in opposition to any finding, order, determination or decision of the administrative agency shall be heard by the court." 735 ILCS 5/3-110 (West 2010).

¶ 34 Local 200 argues that our review of *Board II's* determination concerning Local 200's noncompliance with *Board I* constitutes a "reading of its own precedent" and presents purely a question of law for which the standard of review is *de novo* (*City of St. Charles v. Illinois Labor Relations Board*, 395 Ill. App. 3d 507, 509 (2009)). Here, the question is not purely one of law. The Board's decision in *Board II* determined that Local 200 did not comply with *Board I* in its implementation. The decision in *Board II* is only in this discrete case, and so it is not precedent. The federal authority cited by Local 200 refers only to misinterpretation of a "statute, regulation, or constitutional provision, misread[ing of] its own precedent, appli[cation of] the wrong legal standard, or fail[ure] to exercise its discretion." *Adebowale v. Mukasey*, 546 F. 3d 893, 896 (2008). The only thing that was interpreted by the Board in its decision in *Board II* is the Board's interpretation of and finding of Local 200's non-compliance with *Board I*. No statute, regulation, constitutional provision, precedent, or legal standard is at issue.

¶ 35 The Board argues, on the other hand, for an abuse of discretion standard because *Board II* was a remedial decision, citing to *Metropolitan Alliance of Police v. Illinois Labor Relations Board, Local Panel*, 345 Ill. App. 3d 579, 593 (2003), and *Board of Education, Granite City*

Community Unit School District No. 9 v. Sered, 366 Ill. App. 3d 330, 340 (2006). However, the Board's citations do not support an abuse of discretion standard of review of a compliance determination. Both *Metropolitan Alliance of Police* and *Sered* reference the Board's discretion in fashioning a remedy in the first place in an initial decision, not to review any subsequent Board decision determining non-compliance with an ordered remedy, as in this case. See *Metropolitan Alliance of Police*, 345 Ill. App. 3d at 593.

¶ 36 Neither party is correct regarding the standard of review in this case. Rather, the familiar deferential clearly erroneous standard is appropriate, as we are faced with review of a mixed question of law and facts, because we review the Board's determination in *Board II* that Local 200 did not comply with *Board I*.

¶ 37 In reviewing an administrative agency's decision, the applicable standard of review depends upon whether the question raised on appeal is one of fact, one of law, or a mixed question of fact and law. *Cinkus v. Village of Stickney Municipal Officers Electoral Board*, 228 Ill. 2d 200, 210 (2008); *City of Belvedere v. Illinois State Labor Relations Board*, 181 Ill. 2d 191, 205 (1998).

¶ 38 An administrative agency's conclusions regarding questions of law are not subject to deference; rather, the court's review is independent and not deferential. *Cinkus*, 228 Ill. 2d at 211; *City of Belvidere*, 181 Ill. 2d at 205. We exercise independent review of questions of law. *Dow Chemical Company v. Illinois Department of Revenue*, 224 Ill. App. 3d 263, 265 (1991).

¶ 39 However, the clearly erroneous standard of review is proper when reviewing a decision of the ILRB where the decision represents a mixed question of fact and law. *City of Belvidere*, 181 Ill. 2d at 205. 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. 735 ILCS 5/3-110 (West 2010); *Board of Trustees of University of Illinois v. Illinois*, 224 Ill. 2d 88, 97-98 (2007).

¶ 40 Regarding any factual questions, "[t]he findings and conclusions of the administrative agency on questions of fact shall be held to be *prima facie* true and correct." 735 ILCS 5/3-110 (West 2010). For factual findings, we are limited to ascertaining whether those findings are against the manifest weight of the evidence. *Cinkus*, 228 Ill. 2d at 210; *City of Belvidere*, 181 Ill. 2d at 205.

¶ 41 Local 200 argues that *Board II* incorrectly interpreted *Board I* as requiring that each charging party must receive a monetary award, regardless of whether the party actually lost any overtime. Local 200 argues that the *Board I* order "contained no such directive" and that "there is no law of the case that demands such a result." Local 200 argues that such a result would be "contrary to the established law and the policies of the Illinois Public Labor Relations Act." Local 200 states that it does not dispute that *Board I* found that it had committed an unfair labor practice, nor does it dispute that *Board I* ordered it to take remedial action. Rather, according to Local 200, it was free to review the documentation and determine that the charging parties in fact did not lose any overtime and were not entitled to any money from the settlement award. Local 200 argues that the charging parties were required to show that the alleged unfair labor practice in fact caused them economic harm. Local 200 also argues that the charging parties are not entitled to any portion of the award proceeds without showing that Local 200, as opposed to the county as employer, caused the county's breach of the parties' collective bargaining agreement. Local 200 further argues that the Board's compliance decision was against the manifest weight of the evidence because it did not consider Local 200's evidence demonstrating that the charging parties did not lose overtime opportunities. In its reply brief, Local 200 also argues that

Provident employees were treated differently than non-Provident employees, and that there were more "unit members" than the charging parties who were affected.

¶ 42 Local 200's arguments regarding the original decision that Local 200 committed an unfair labor practice and that the charging parties are not entitled to any remedy ordered by the Board in *Board I* are an improper attempt to relitigate issues that have already been decided and so we do not address them. We already upheld the decision of the Board in *Board I* in our decision in *Chicago Joint Board, Local 200, Retail, Wholesale & Department Store Union v. Illinois Labor Relations Board*, 2011 IL App (1st) 101497, holding that the Board's decision and remedy were not clearly erroneous. The law of the case doctrine bars relitigation of an issue that has already been decided in the same case such that the resolution of an issue presented in a prior appeal is binding and will control upon remand in the circuit court and in a subsequent appeal before the appellate court. *American Service Insurance Co. v. China Ocean Shipping Co. (Americas) Inc*., 2014 IL App (1st) 121895, ¶ 17 (Citations omitted). Where an issue has been litigated and decided, a court's unreversed decision on that question of law or fact settles that question for all subsequent stages of the suit. *People ex rel. Madigan v. Illinois Commerce Commission*, 2012 IL App (2d) 100024, ¶¶ 33-35.

¶ 43 Under the law of the case doctrine, all of the above arguments made by Local 200 were already heard, litigated, and decided. The Board had already determined in *Board I* that the charging parties lost overtime due to the unfair labor practice and that they were wrongfully excluded from receiving their share of the arbitration settlement award and deserved to be paid a portion of the settlement amount. On appeal, we affirmed. Also, Local 200's argument regarding any unit members beyond the charging parties could have been addressed and litigated below. Arguing that Local 200 may be liable to more employees does nothing to undermine Local 200's

liability to the charging parties. The prior determination in *Board I* applied to the charging parties and judged that the charging parties were owed a portion of the settlement award, thus establishing that they were in fact denied overtime opportunities. The law of the case doctrine applies to questions of law and fact and encompasses a court's explicit decisions, as well as those decisions made by necessary implication. *CNA International, Inc. v. Baer*, 2012 IL App (1st) 112174, ¶¶ 38-39.

¶ 44 Local 200 acknowledges the law of the case doctrine, but argues that the doctrine does not foreclose relitigating questions of fact and the merits which were not decided in the prior decision. Local 200 argues that *Board I* "never reached the question of how much, *if any*, money was due to [the] Charging Parties." (Emphasis added.) Contrary to Local 200's argument, in *Board I* the Board determined that the charging parties were each owed a portion of the settlement proceeds due to Local 200's unfair labor practice, and we affirmed. There is no open question whether any money is due. The only issue that remained undecided in *Board I* was the amount due to each charging party. The fact that Local 200 committed an unfair labor practice and that the charging parties are owed a portion of the settlement proceeds was already decided and under the law of the case cannot be relitigated.

¶ 45 Our review in this case is limited solely to whether the Board's decision in *Board II*, that Local 200 was not in compliance with its decision in *Board I*, was clearly erroneous and whether the Board's method of recalculation of the distribution of settlement proceeds was clearly erroneous.

¶ 46 Local 200 claims that it complied with *Board I* because it gave unit members the opportunity to make claims for lost wages. However, Local 200 continued to challenge the charging parties' entitlement to any of the settlement award and never complied with the *Board*

I's explicit order that it properly and accurately recalculate the distribution of the settlement award to the charging parties. Local 200 has failed to show any compliance with the directive in *Board I* that it properly and accurately recalculate the amount of the settlement award and distribute the amounts to the charging parties.

¶ 47 As to Local 200's argument that the decision by the Board ratifying the compliance officer's calculation did not account for the fact that 21.76% of the initial $375,000 settlement award distribution was to four pharmacy technicians, Local 200 failed to present this argument to the compliance officer and to the Board, thereby waiving it. If a party disagrees with the compliance officer's order, the party may file objections, which shall be heard by an ALJ. 80 Ill. Admin. Code § 1220.80(e), (f). Local 200 does not cite to any part of the record showing that it filed any objections to the compliance officer's calculation on the ground that it was not reduced to account for the prior award to the four pharmacy technicians. If a party fails or refuses to respond to a compliance officer's request for information, the compliance officer shall make the determinations based on the evidence presented. 80 Ill. Admin. Code § 1220.80(d).

¶ 48 There is only one relevant argument made by Local 200 in this appeal. Local 200 argues that the portion of the settlement award calculated for each charging party by the Board does not seek to make the parties whole but, rather, are punitive, and that the award of back pay was against the manifest weight of the evidence. We determine that the Board's adoption of the ALJ's method of calculation and redistribution of the settlement award was a projection based on the relative percentage of overtime worked by each charging party prior to the unfair labor practice and so was based on documented evidence. Local 200 argues that the compliance officer's calculation based on work history does not apply where the charging parties were not prohibited from working overtime and the evidence showed that the number of overtime hours actually

increased. Local 200 thus merely repeats the same arguments regarding any entitlement of the charging parties to the award, which was already determined in *Board I*. Local 200 did not offer any other calculation for redistribution, instead continuing to challenge any distribution. The Board's finding and calculation were not clearly erroneous, nor was the calculation factually against the manifest weight of the evidence. As the Board argues, Local 200 does not explain in what respect the recalculation by the Board of the redistribution of the $375,000 settlement is punitive. We therefore hold that Local 200 has failed to demonstrate that the Board's determination and calculation are either clearly erroneous or against the manifest weight of the evidence.

¶ 49 CONCLUSION

¶ 50 Local 200 failed to demonstrate *Board II*'s determination that Local 200 was not in compliance with the directive in *Board I* was clearly erroneous. Local 200 failed to properly and accurately calculate and redistribute the amount of the settlement award to the charging parties. Local 200 also failed to demonstrate that the Board's calculation and redistribution of the settlement proceeds was clearly erroneous as a punitive award rather than a make-whole award or was factually against the manifest weight of the evidence. In so concluding, we grant the Board's cross-petition for enforcement of its final compliance order given Local 200's intransigence in complying with the directive in *Board I*. See, *e.g., Central City Education Ass'n, IEA/NEA v. Illinois Educational Labor Relations Board*, 149 Ill. 2d 496, 528 (1992) ("where the Board has cross-appealed for enforcement of its order in a cause already under review by the appellate court, the court may issue such an order without violating the constitution"); Ill. S. Ct. R. 335(h) (eff. Jan. 1, 2016); see also *Village of Franklin Park v. Illinois*

State Labor Relations Board, 265 Ill. App. 3d 997, 1007 (1994) (affirming and enforcing the Board's determination).

¶ 51 Affirmed and enforced.