FIRST DIVISION
November 24, 2014

No. 1-13-2644
2014 IL App (1st) 132644-U

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

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| RODNEY FINLEY,<br><br>Petitioner-Appellant,<br><br>v.<br><br>CHICAGO BOARD OF EDUCATION, CHICAGO TEACHERS UNION, and ILLINOIS EDUCATIONAL LABOR RELATIONS BOARD,<br><br>Respondents-Appellees. | ) | Appeal from the Opinion and Order of the Illinois Educational Labor Relations Board.<br><br>Nos. 2013-CA-0026-C & 2013-CA-0004-C |

JUSTICE CONNORS delivered the judgment of the court.
Presiding Justice Delort and Justice Harris concurred in the judgment.

**ORDER**

*Held:* Illinois Educational Labor Relations Board's decision was not against the manifest weight of the evidence where there was evidence in the record to support its finding that petitioner's charges of unfair labor practices were time-barred.

¶ 1 Petitioner Rodney Finley appeals from an order dismissing his unfair labor practice charges filed against the Chicago Teachers Union (Union) and the Chicago Board of Education (CBE). On March 27, 2013, the Executive Director of the Illinois Educational Labor Relations

Board (Board) issued a recommended decision and order dismissing both of petitioner's claims. On July 18, 2013, the Board issued a final order and opinion, affirming the dismissal of all charges. Petitioner now appeals alleging that his claims were not time-barred, and that he sufficiently pled a cause of action for collusion which warranted a hearing. For the following reasons, we affirm.

¶ 2 This case is properly before this court based on section 16(a) of the Educational Labor Relations Act (115 ILCS 5/16(a) (West 2012)) (Act), which states in pertinent part that any person aggrieved by a final order of the Board may apply for judicial review of an order in accordance with the provisions of the Administrative Review Law, except that such judicial review "shall be taken directly to the Appellate Court."

¶ 3 At the outset, we note that petitioner's brief fails to comply with Illinois Supreme Court Rule 342(a) (eff. Jan. 1, 2005), which states that the appellant's brief shall include a table of contents to the appendix, a copy of the judgment appealed from, any opinion entered by any administrative agency, any pleadings from the record which are the basis of the appeal or pertinent to it, the notice of appeal, and a complete table of contents, with page references, of the record on appeal. Petitioner's brief contains none of these required elements. "Compliance with Supreme Court Rule 342(a) is not an inconsequential matter." *People v. Wrobel*, 266 Ill. App. 3d 761, 765 (1994). This court has inherent authority to dismiss an appeal for noncompliance where an appellant's brief fails to comply with its rules. *Id.*; *Collier v. Avis Rent A Car System, Inc.*, 248 Ill. App. 3d 1088, 1095-96 (1993) (appeal dismissed for failure to comply with Supreme Court Rules 341 and 342). We have nonetheless chosen to address petitioner's arguments rather than dismiss this appeal, but the following background was constructed from our independent review of the record.

¶ 4 Petitioner had been told after the 2008-2009 school year that his position was not being renewed. A "do-not-hire" designation was therefore placed on his personnel file. The grievance was denied. On October 6, 2009, the Union filed a grievance with the Board on behalf of petitioner, a former CBE teacher. In the grievance, the Union argued that during the 2008-2009 school year petitioner was not evaluated in conformity with an agreement between the CBE and the Union, and that he should have been retained for the next school year.

¶ 5 In April 2010, petitioner filed an unfair labor practices charge against the Union, alleging that it failed to continue his grievance into arbitration. In December 2010, the Board recommended that petitioner drop his unfair labor practices charge and allow the Union to take up his grievance into arbitration.

¶ 6 On November 2, 2010, the Union re-filed a grievance on behalf of petitioner, again alleging that certain circumstances surrounding petitioner's termination were in violation of the agreement between the CBE and the Union. The grievance was denied.

¶ 7 On January 28, 2011, the Union filed an arbitration demand. The parties selected an arbitrator and the arbitration hearing was scheduled for October 17, 2011. Prior to the hearing, however, settlement negotiations were commenced, effectively postponing the arbitration hearing. In his brief, petitioner contends that "in August, 2011, before a final hearing and ruling by the Arbitrator on the merits of the grievance filed, a 'Settlement Agreement' was reached (or proposed) between the CBE, the [Union], and [petitioner]." The proposed settlement agreement offered, in exchange for petitioner withdrawing all pending claims: (1) removal of the "do-not-hire" designation on petitioner's personnel file, (2) removal of the lowered performance rating he received in 2008-2009, (3) reinstatement as a third-year probationary teacher, and (4) restoration of his sick day bank if he was rehired within one year after execution of settlement agreement.

¶ 8 Apparently that settlement agreement was never signed because petitioner did not agree with its terms. On March 23, 2012, the Union's grievance department director, Sara Echevarria, sent an email to petitioner stating that the Union would withdraw its demand for arbitration by the close of business day that day, and that if he wished to sign the settlement agreement, he must do so before the end of the day.

¶ 9 On March 30, 2012, the attorney for the Union sent a letter to the arbitrator advising him of the Union's withdrawal of petitioner's case from arbitration. On April 4, 2012, the Union sent an email to petitioner which included the arbitration withdrawal letter that had also been sent to the arbitrator.

¶ 10 On October 4, 2012, petitioner filed two separate cases with the Board, charging both the Union and CBE with unfair labor practices in connection with the failure to bring his case to arbitration. On March 27, 2013, the Board dismissed petitioner's charges against both the Union and CBE in their entirety, stating that the charges were untimely filed, and that they did not raise an issue of law or fact warranting a hearing. Petitioner now appeals.

¶ 11 On administrative review, it is not a court's function to reweigh the evidence or make an independent determination of the facts.[1] *Abrahamson v. Illinois Department of Professional Regulation*, 153 Ill. 2d 76, 88 (1992). Rather, the court's function is to ascertain whether the findings and decision of the agency are against the manifest weight of the evidence. *Id*. An administrative agency decision is against the manifest weight of the evidence "only if the opposite conclusion is clearly evident." *Id*. "The mere fact that the opposite conclusion is reasonable or that the reviewing court might have ruled differently will not justify reversal of the administrative findings." *Id*. "If the record contains evidence to support the agency's decision, it

[1] Petitioner contends that the standard of review is "clearly erroneous." However, the citation he provides is not the correct citation of either the case name he provides or the proposition of law.

should be affirmed." *Id*. Here, we find that the record contains evidence to support the Board's findings.

¶ 12 First, the Board found that petitioner's unfair labor practice charges were not timely filed. The Act specifically states: "No order shall be issued upon an unfair practice occurring more than 6 months before the filing of the charge alleging the unfair labor practice." 115 ILCS 5/15 (West 2012). The six-month filing period begins to run when the charging party became aware of, or should have become aware of, the actions which allegedly constituted a violation of the Board. *Jones v. Illinois Educational Labor Relations Board*, 272 Ill. App. 3d 612, 620 (1995). "Moreover, the filing period begins to run even if the charging party does not know the legal significance of the acts which constitute the alleged unfair labor practice." *Id*. (citing *Moore v. Illinois State Labor Relations Board*, 206 Ill. App. 3d 327, 335 (1990)).

¶ 13 Here, the record indicates that petitioner filed his unfair labor practices charges on October 4, 2012. Accordingly, both parties agree that the alleged unfair labor practices would have to have occurred on or after April 4, 2012, in order to be considered timely. Petitioner contends that he first became aware of the unfair labor practices on April 4, 2012, when he received an email from the Union with an attached arbitration withdrawal letter. Petitioner contends that prior to April 4, 2012, his grievance had been in arbitration, and that the terms of the settlement agreement had been unsatisfactory to petitioner, which is why he refused to sign the settlement agreement. Petitioner acknowledges, however, that he received a letter on March 23, 2012, indicating that the Union would withdraw his grievance from arbitration by the close of the business day.

¶ 14 Petitioner contends, relying on *Board of Education of Sesser-Valier Community Unit School District No. 196 v. Illinois Educational Labor Relations Board*, 250 Ill. App. 3d 878

(1993), that the March 23, 2012, email was not an "unambiguous announcement," and therefore did not begin the six-month tolling period. In *Sesser-Valier*, the court found that the time the party was put on notice will be "the date the change is unambiguously announced, not the date the change is implemented." *Id*. at 884. We find that there is evidence in the record to support the Board's finding that petitioner knew of the unfair labor practices that formed the basis of his complaint on March 23, 2012, and that the email was an unambiguous announcement.

¶ 15 The March 23, 2012, email clearly stated: "This email serves as official notice that the Chicago Teachers Union is withdrawing our demand for arbitration in your case * * * at the close of business day today." Regardless of whether petitioner signed the settlement agreement, he was put on official notice that his grievance was being withdrawn from arbitration that very day. Accordingly, the Board's finding that petitioner knew of the alleged unfair labor practices before April 4, 2012, outside the six-month limitations period, was supported by the record, and thus not against the manifest weight of the evidence. *Abrahamson*, 153 Ill. 2d at 88.

¶ 16 Because we find that petitioner's unfair labor practices charges were time-barred, we do not need to reach the issue of whether or not petitioner's charges sufficiently raised an issue of law or fact to warrant a hearing. For the foregoing reasons, we affirm the judgment of the Board.

¶ 17 Affirmed.