SIXTH DIVISION
November 3, 2017

No. 1-16-2628
2017 IL App (1st) 162628-U

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

BREMEN EDUCATIONAL SUPPORT TEAM, IEA-NEA, Petitioner-Appellant, v. ILLINOIS EDUCATIONAL LABOR RELATIONS BOARD and BREMEN COMMUNITY HIGH SCHOOL DISTRICT 228, Respondents-Appellees.	)	Petition for Review of a Decision and Order of the Illinois Educational Labor Relations Board. 2015 CA 0089

JUSTICE CONNORS delivered the judgment of the court.
Justices Cunningham and Delort concurred in the judgment.

ORDER

¶ 1 *Held:* Board's finding that union failed to establish a causal link between employee's discharge and protected union activity was not against the manifest weight of the evidence; and Board's finding that union failed to establish a violation of section 14(a)(5) of the Act for school district's delay in providing information to union was not clearly erroneous.

¶ 2 This is an appeal from a final order of the Illinois Educational Labor Relations Board (Board) that affirmed the recommended decision and order of its Administrative Law Judge (ALJ). The Board determined that Respondent Bremen Community High School District 228 (District) did not commit an unfair labor practice in violation of section 14(a)(1), 14(a)(3), or

14(a)(5) of the Illinois Educational Labor Relations Act (Act) (115 ILCS 5/14(a)(1), (3), (5) (West 2014)), when it discharged Vicki Intoe, a support services secretary for the District and member of Bremen Educational Support Team, IEA-NEA (Union). The Union now appeals, contending that the Board erroneously concluded that the Union failed to establish a *prima facie* case under sections 14(a)(1) and (3) of the Act, the District failed to meet its burden of proof to rebut the Union's *prima facie* case, and the Board erroneously concluded that the Union failed to establish that the District violated section 14(a)(5) of the Act. For the following reasons, we confirm the Board's decision.

¶ 3 BACKGROUND

¶ 4 On May 1, 2015, the Union filed an unfair labor practice charge with the Board against the District, alleging that it had "restrained or coerced employees in violation of Section 14(a)(1) and (3) [of the Act] and refused to bargain in good faith with the [Union] in violation of Section 14(a)(5) [of the Act]." The Union alleged that on November 18, 2014, the District discharged Intoe, the chief negotiator for the Union in bargaining with the District, for discriminatory and bad faith reasons and due to "union animus." The Union further alleged that in August 2014, an employee allegedly filed a complaint of harassment against both Intoe and Danielle "Dee" Fiene, but Fiene was not recommended for termination while Intoe was recommended for termination. The Union also alleged that it had requested information from the District several times in preparation for arbitration, but was not provided the information in a timely manner.

¶ 5 On January 6, 2016, a hearing was held. The Union called Bill Kendall, superintendent of the District, as its first witness. Kendall testified that it was his decision to recommend Intoe for termination. Kendall testified that the Board had made the decision to change Marvenna

Martin's[1] position from a 10-month position to a 12-month position. Kendall testified that he received an email from Martin on August 20, 2013, in which she claimed she was being harassed by Fiene, a secretary in the District's IT department. Martin's email also stated that she was being "bullied" by special education secretaries regarding the decision to make her job a 12-month position.

¶ 6 Kendall testified that at the time he received the email, he was aware that Martin was the president of the Union. Kendall forwarded the email to Dan Goggins, the assistant superintendent for personnel and student services. Kendall testified that he met with Martin before she emailed him, and that she was visibly shaking and crying in her office. He instructed her to write an email explaining the situation, which he then forwarded to Goggins. Kendall testified that he also brought in William Gleason, a Board attorney, to conduct the investigation because Kendall believed "that there were some complications because of Union activity." He stated that he "wasn't quite sure where this would be headed, so [he] figured hav[ing] [Gleason] involved in it early would be better than late."

¶ 7 Kendall further testified that when he made the decision to change Martin's work schedule, the District was engaged in ongoing bargaining with the Union for a collective bargaining agreement. Martin's complaint named four special education secretaries, all of whom were members of the Union, and all of whom denied encouraging anyone to record conversations with Martin or to contact Martin. Kendall testified that Intoe denied investigating why Martin's position had changed, while Fiene admitted to investigating the position change.

¶ 8 Kendall testified that he recommended Intoe for termination based on the facts that she directed an investigation into whether Martin attended a union event, directed an investigation into Martin's purported change of position, and actively encouraged or directed other employees

[1] Martin is a District special education secretary.

to undertake this investigation. Kendall testified that he based these findings on conversations he had with Goggins and Gleason. Kendall also testified that he based his decision to discharge Intoe on the fact that Intoe was dishonest during the investigation.

¶ 9 On cross-examination, Kendall testified that Martin had a 10-month contract but had worked 12 months for the District the previous year. However, she did not receive the benefits that a 12-month secretary under the collective bargaining agreement would receive, so Kendall recommended to the Board that her position be changed in that regard.

¶ 10 Kendall testified that on the day Martin was crying at her desk, he told her she could go home, and that if she wanted to file a formal complaint she should do so in writing. Kendall confirmed that one of Martin's complaints was that people were audio-taping conversations with her. Martin also stated in her complaint that Intoe told her she had violated a statute, would go to prison for five years for committing the violation, and Intoe would file criminal charges against her if she did not resign.

¶ 11 Kendall testified that he did not encourage Martin to file a complaint against Fiene, did not direct the investigation to be conducted because of Intoe's or Fiene's position in the Union, and did not recommend Intoe be terminated based on her position in the Union. Rather, his decision was based on the items listed in his letter, including that she harassed another employee and lied during an investigation.

¶ 12 Kendall testified that John Maniatis, a former social studies teacher in the District who was not an executive board member of a union (although all members of Bremen High School are part of a union), was recommended for termination because he was being insubordinate and dishonest during an investigation. Kendall also testified that Dr. David Wilson, a former

principal in the District who was not a union member, was recommended for termination when he was harassing an employee.

¶ 13 Kendall further testified that Paul Dorney, a former science teacher in the District who was not a union officer, was recommended for termination because he was dishonest during an investigation, and insubordinate. Kendall also testified that Dr. Richard Mitchell, a former superintendent of the District and therefore not a union member, was discharged because he "hazed and harassed" teachers.

¶ 14 Kendall also testified that Fiene received a remediation plan while Intoe was recommended for termination because Fiene was honest to Goggins during the investigation, while Intoe was not. Kendall also testified that Fiene had only one conversation with Martin, and therefore the harassment was on a smaller scale. Kendall testified that there were five proposed progressive discipline steps, and that number four was a remediation plan, while number five was "discipline up to and including dismissal."

¶ 15 Intoe testified next at the hearing. She stated that she was formerly employed by the District as a student services secretary, a position she had held for 17 years. Intoe testified that she was a Union member since the date she was hired, and that she held positions of president, vice president, grievance officer, chief negotiator, and IPACE chair over the years. Intoe testified that bargaining started for the current contract in May 2013, and at the time of her termination in November 2014, bargaining was still ongoing. Intoe testified that Fiene was her colleague and a Union officer. Fiene was the treasurer for the Union at the time in question, but had been the vice president of the Union before that.

¶ 16 Intoe further testified that she knew Martin, who replaced her as the Union president. Intoe testified that she did not encourage anyone to harass Martin, did not record any

conversations of Martin's, did not encourage anyone else to record conversations with Martin, and did not tell Martin that her conversations were recorded by others. Intoe further testified that as an association, the Union received several reports of alleged recording of Martin, and she and others voiced those concerns to Martin during their Union meeting. Intoe testified that any knowledge of recordings was information that was reported to the Union leadership from the members and was never pursued because there was no proof.

¶ 17 Intoe further testified that she was interviewed by Goggins with Gleason present. Goggins asked her about an occurrence at a Union meeting. Intoe testified that it was her understanding that attempts by the Union to have Martin relinquish her position as president were what led to her termination.

¶ 18 On cross-examination, Intoe testified that on August 18, 2014, she contacted the association president, Martin, as the chief negotiator, to ask a question regarding a potential violation of the collective bargaining agreement. Intoe testified that she become aware that Fiene had conducted an investigation into these matters.

¶ 19 Intoe testified that Dee Hawker approached her and told her that a meeting had taken place, which Martin facilitated, and at the end of the meeting the special education secretaries, all of whom were Union members, decided to ask Martin, the Union president, questions regarding the change in position that was posted on the Board agenda. To her knowledge, there was never a recording of the meeting.

¶ 20 Intoe further testified that Goggins requested a meeting with her, at which time she was told that Martin had filed a complaint against her. Intoe stated that she was asked about an investigation into Martin at the meeting, and said she was not aware of it. Intoe testified that she

was directed not to attend the hearing on her termination, and that she believed the Board was just going to rubber-stamp whatever Dr. Kendall recommended.

¶ 21 On redirect, Intoe testified that as chief negotiator for the Union at that time, she believed that the issue of the position of special education secretary was an issue of mandatory bargaining.

¶ 22 Dan Goggins, the assistant superintendent for personnel and student services, testified that he was assigned by Kendall to an investigation on August 18, 2014. Kendall forwarded him an email, whereupon he set up a time to meet with Martin. Martin told him that on the morning of August 18, 2014, she had received a phone call from Intoe, whereby Intoe was questioning her change in employment, and told her she had committed an unfair labor practice. Goggins testified that Martin stated that after that phone call, Fiene came into Martin's office and began asking questions about her attendance at a Union event, and about her change in position. Martin also mentioned that that afternoon, she attended a special education secretaries meeting where other secretaries were questioning her about the change in position, and felt as though they had been directed to do so. Martin also told Goggins that Intoe told her after the meeting that she knew Martin had lied because the conversation she had with the other secretaries had been recorded.

¶ 23 Goggins testified that Martin told her that at a Union meeting on August 21, 2014, Intoe threatened her with going to prison or being fined if she did not resign from her position as Union president. Goggins testified that he then interviewed Intoe in the presence of Gardner. When asked whether she was aware of any investigation into conduct by Martin, or her attendance at a Union meeting, Intoe said she was not aware of any. Intoe also explained that Fiene had informed her that Bethany Lizkiewicz had recorded a conversation at a special education meeting, which she shared with Martin. Goggins testified that Intoe told him that at the

Union meeting on August 21, 2014, she told Martin that if Martin did not resign, she would pursue criminal action against her whereby she could be sent to jail for five years and fined.

¶ 24 Goggins testified that he also met with Fiene, and that Val Gardner, the Union representative, was present. Goggins testified that at that time, Fiene told him she was directed to conduct an investigation by the Union's executive board, including Intoe. Fiene told him that Intoe was aware of the investigation. The subject of the investigation was Martin's change in position from 10 months to 12 months. Goggins also testified that Fiene stated that Intoe told Martin that if she did not resign that she was going to pursue criminal action against her and that the consequences were five years in prison and a fine.

¶ 25 Goggins testified that he also interviewed the following coworkers of Intoe's: Dee Hawker, Bethany Lizkiewicz, Janet McGrath, and Nancy Gorney. Upon completion of his investigation, Goggins compiled a written memo to Kendall, and provided testimony at a Board meeting. The Board deliberated the termination of Intoe outside of Goggins' presence.

¶ 26 Fiene testified that she was the data and inventory specialist at the administration center of the District, and that her current position in the Union was that of treasurer. Fiene testified that she was not directed to conduct an investigation of Martin in August 2014.

¶ 27 Fiene further testified that she spoke to Martin on August 18, 2014, about the position that had been posted on the District website. Fiene testified that she spoke to Intoe because Martin said she did not know anything about a promotion. Fiene testified that she sent an email to Intoe and Gardner, with notes from the meeting she had. She titled it "investigatory meeting," but testified that it was in reference to something else that was being investigated, not the position change. She copied Goggins on the email. Fiene testified that Intoe had no idea what questions Fiene was going to ask Martin, nor did she direct her to ask any questions, but that

Intoe was aware that Fiene was asking Martin questions, based on her email. Fiene testified that although one of the special education secretaries had said she wished she recorded Martin, Fiene was not aware that anyone had actually recorded a conversation.

¶ 28 Fiene testified that at the Union meeting, Intoe accused Martin of committing a violation of the duty of fair representation, on behalf of the entire executive team. Fiene testified that they "had all made comments about [penalties], there were fines, there were [*sic*] possible jail time, that came from IEA Springfield." Fiene testified that Intoe communicated that to Martin on behalf of the Union.

¶ 29 On May 5, 2016, the ALJ issued a recommended decision and order. In his order, the ALJ stated that the "evidence proves, and the District did not dispute, that Intoe engaged in a great variety of activities protected by the Act" including filing grievances on behalf of other employees, serving as the Union's chief negotiator, and serving as the local Union president for approximately 10 years. The ALJ stated that the District was "plainly aware of Intoe's protected activity because of her prominences in the local Union and at the negotiating table." The ALJ found that there was no dispute that the District took adverse action against Intoe, "as it terminated her employment on November 6." The ALJ found, however, that the Union's claim failed because "the evidence does not indicate that the complained-of act, the termination of her employment, was committed against her because of, or in retaliation for, the exercise of rights protected under the Act." The ALJ noted that although the District punished Fiene to a lesser extent, it was not evidence of disparate treatment, but rather, was a result of Fiene's honesty with Goggins and the fact that her interaction with Martin was limited to one conversation on August 18. The ALJ noted that Fiene was placed on a 90-day remediation plan, which is the discipline option available to the District "immediately short of termination."

¶ 30 The ALJ found that the Union's section 14(a)(3) claim was flawed in the same manner as its 14(a)(1) claim in that the Union had to establish by a preponderance of the evidence that the District took the adverse action against Intoe as a result of her involvement in union activity in order to discourage union membership or support. The ALJ found that there was no evidence of a causal connection between Intoe's union activity and her termination.

¶ 31 Finally, the ALJ found that the District did not violate section 14(a)(5) of the Act for failing to timely provide the Union with certain information, which it asserted was both relevant and necessary for the proper performance of its duties as the exclusive representative of a bargaining unit of the District's employees. The ALJ found that viewing the entirety of the parties' interactions with regards to the requests and surrounding circumstances, there was no indication of unreasonable delay or bad faith by the District.

¶ 32 The Union filed timely exceptions to the ALJ's recommended decision and order, and the District filed cross-exceptions. The District challenged some of the ALJ's findings of fact. The Board adopted the ALJ's findings of fact "with minor modifications that [did] not change the outcome of this case." It also adopted the ALJ's credibility determinations. The Board found that the Union did not provide evidence that Intoe was discharged because of her union activity, and presented no evidence of disparate treatment. The Board concluded that the Union failed to establish a *prima facie* case that the District violated sections 14(a)(1) and (3) of the Act by discharging Intoe. The Board similarly found that the District did not violate sections 14(a)(1) and (5) of the Act when it delayed in providing information to the Union. Accordingly, the Board affirmed the ALJ's recommended decision and order. The Union now appeals.

¶ 33 ANALYSIS

¶ 34 On appeal, the Union contends that the Board erroneously concluded that the Union failed to establish a *prima facie* case under sections 14(a)(1) and (3) of the Act; the District failed to meet its burden of proof to rebut the Union's *prima facie* case; and the Board erroneously concluded that the Union failed to establish that the District violated section 14(a)(5) of the Act. For the following reasons, we affirm.

¶ 35 Standard of Review

¶ 36 Section 16(a) of the Act states that 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 of an order of the Board entered under this Act in accordance with the provisions of the Administrative Review Law (735 ILCS 5/3-101 *et seq*. (West 2014)). 115 ILCS 5/16(a) (West 2016). Under the Administrative Review Law, the scope of judicial review encompasses all questions of law and fact presented by the record. 735 ILCS 5/3-110 (West 2014). The applicable standard of review depends on whether the issue presented is one of law, fact, or a mixed question of law and fact. *Board of Education of City of Chicago v. Illinois Educational Labor Relations Board*, 2015 IL 118043, ¶ 14.

¶ 37 For questions of law, this court reviews the Board's conclusion *de novo*. *Id*. ¶ 15. In contrast, "[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 2014). A reviewing court, therefore, will not reweigh the evidence, or substitute its judgment for that of the Board; instead, the court simply determines whether the findings of fact are against the manifest weight of the evidence. *Board of Education of City of Chicago,* 2015 IL 118043, ¶ 15.

¶ 38 The clearly erroneous standard of review is proper when reviewing a decision of the Board because the decision represents a mixed question of fact and law. *Board of Trustees of the*

University of Illinois v. Illinois Labor Relations Board, 224 Ill. 2d 88, 97-98 (2007). 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." *Id*.

¶ 39 Sections 14(a)(1) and 14(a)(3) of the Act

¶ 40 The Union's first argument on appeal is that it established a *prima facie* violation of sections 14(a)(1) and (3) of the Act. Section 14, entitled "Unfair Labor Practices," provides in pertinent part:

> "(a) Educational employers, their agents or representatives are prohibited from:
>
> (1) Interfering, restraining or coercing employees in the exercise of the rights guaranteed under this Act.
>
> * * *
>
> (3) Discriminating in regards to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any employee organization." 115 ILCS 5/14(a)(1), (a)(3) (West 2014).

¶ 41 It has been held that section 14(a)(1) refers to adverse action taken against an employee as a result of any protected concerted activity, while section 14(a)(3) refers specifically to discrimination based on union activity. *Bloom Township High School District 206 v. Illinois Educational Labor Relations Board*, 312 Ill. App. 3d 943, 957 (2000). Where, as here, an alleged violation of sections 14(a)(1) and 14(a)(3) stems from the same conduct, the section 14(a)(1) violation is said to be derivative of the section 14(a)(3) violation. *SPEED District 82 v. Warning*, 242 Ill. 2d 92, 112 (2011). A *prima facie* case of a section 14(a)(3) violation requires proof that the employee was engaged in activity protected by section 14(a)(3); that the District was aware

of that activity; and that the employee was discharged for engaging in that protected (Union) activity. *Id*. In the case at bar, both parties concede that Intoe engaged in protected (Union) activity and that she suffered an adverse action when she was discharged. However, the Union challenges the Board's decision that the Union failed to present sufficient evidence to show that there was a causal connection between Intoe's discharge and the protected activity.

¶ 42 A causal connection is established if the employee's protected activity was a substantial or motivating factor for the discharge or other adverse action taken against the employee. *Id*. Since motive is a question of fact, a Board's finding as to motive can only be set aside if it is against the manifest weight of the evidence. *Id*. Here, the Union contends that a causal connection was shown where the District, in discharging Intoe, relied on the following: a phone call that Intoe made to Martin regarding Union matters; Union communications between Intoe, Fiene, and other bargaining unit members regarding concerns about Martin as president of the Union; and conversations and events that took place at a Union meeting on August 21, 2014. The Union also alleges that the there was disparate treatment towards Intoe because of her Union activity.

¶ 43 Where an employer is charged with an unfair labor practice because of the discharge of an employee engaged in a protected activity, the charging party must first show, by a preponderance of the evidence, that the adverse employment action was "based in whole or in part on antiunion animus – or *** that the employee's protected activity was a substantial or motivating factor in the adverse action." *NLRB v. Transportation Management Corp*., 462 U.S. 393, 401 (1983). Since motive is a question of fact, the Board may infer discriminatory motivation from either direct or circumstantial evidence, and because motive involves a factual

determination, the Board's finding must be accepted if supported by substantial evidence. *City of Burbank v. Illinois State Labor Relations Board*, 128 Ill. 2d 335, 345 (1989).

¶ 44 Antiunion motivation may be reasonably inferred from a variety of factors, such as an employer's expressed hostility towards unionization or grievance filing, together with knowledge of the employee's protected activities; proximity in time between the employee's protected activities and the disciplinary action; inconsistencies between the proffered reason for discipline and other actions of the employer; shifting explanations for the discipline or discharge of the employee; and disparate treatment of employees or a pattern of conduct which targets union supporters for adverse employment action. *Id*. at 346.

¶ 45 Here, we find that the Board's determination that that there was no causal connection between Intoe's discharge and her Union activity is not against the manifest weight of the evidence. It is apparent to us that the District relied on Intoe's dishonesty during the harassment investigation in discharging her. Dishonesty is not a protected activity. See *The Hertz Corp. and Odell Johnson*, 326 NLRB 1097 (1998); see also *Central City Education Ass'n v. Illinois Education Labor Relations Board*, 149 Ill. 2d 496, 515 (1992) (finding it is appropriate for Illinois courts to consider federal authority interpreting National Labor Relations Act for guidance in resolving issues involving section 14(a) of the Act). In fact, the District pointed out several other employees that were investigated for misconduct, and whose dishonesty in the course of those investigations led to disciplinary action. Additionally, the District relied on Intoe's harassment of Martin in reaching its decision to discharge her. Harassment is also not a protected activity. See *NLRB v. Arkema, Inc.*, 710 F.3d 308 (5th Cir. 2013) ("[h]arassment and intimidation are not protected union activities") Accordingly, while all parties agree that Intoe engaged in protected activity by her involvement in the Union, it was not her mere involvement

in the Union that caused her discharge. Rather, it was her harassment of another employee, as well as her dishonesty during the investigation of that harassment. Just because her misconduct revolved around Union matters does not elevate it to a protected activity. Accordingly, it was not against the manifest weight of the evidence for the Board to find that there was not a causal connection between Intoe's protected activity and her discharge.

¶ 46 Moreover, there was no disparate treatment shown by the District to establish an antiunion animus. The Union contends that there was evidence of disparate treatment where the District did not discharge Fiene, Hawker, Liskiewicz, McGrath, or Gorney. However, as noted in the Board's decision, Goggins found Intoe's behavior more egregious than the other Union members because she instigated an investigation into Martin's position change, and then was dishonest about it to Goggins during the investigation. Fiene, who also placed a call to Martin, was honest in the investigation, and received a 90-day remediation purely based on her harassment. However, as noted by the Board, a 90-day remediation plan was the final step in disciplinary action before discharge. This, therefore, does not show disparate treatment, but rather, shows that the District took action based not only on harassment of its employees, but also on dishonesty. There appears to be no correlation between the District's level of discipline and the level of Union activity of its employees. Accordingly, in finding that the Board properly determined that the Union did not establish its *prima facie* case, we need not discuss whether the Board properly rebutted the *prima facie* case.

¶ 47 Section 14(a)(5) of the Act

¶ 48 The Union also contends on appeal that the District violated section 14(a)(5) of the Act (115 ILCS 5/14(a)(5) (West 2014)) when it delayed in providing information to the Union. Section 14(a)(5) of the Act prohibits educational employers from refusing "to bargain

collectively in good faith with an employee representative which is the exclusive representative of employees in an appropriate unit." 115 ILCS 5/14(a)(5) (West 2014). An educational employer's duty to bargain in good faith with the union includes the duty to provide the union with relevant and reasonably necessary information upon the union's request. *Chicago School Reform Board of Trustees v. Illinois Educational Labor Relations Bd.*, 315 Ill. App. 3d 522, 528 (2000). A reasonable good-faith effort to respond to the request as promptly as circumstances allow is required. See *Silver Brothers Co., Inc.*, 312 NLRB 1060 n.9 (1993). We review this issue for clear error, as it presents a mixed question of law and fact. See *Thornton Fractional High School District No. 215 v. Illinois Education Labor Relations Board*, 404 Ill. App. 3d 757, 763 (2010). We will overturn the Board's decision only when we are left with the "definite and firm conviction that a mistake has been made." *Board of Education of Chicago*, 2015 IL 118043, ¶ 16.

¶ 49 In the case at bar, the District promptly responded to the Union's initial information request, explaining that due to the volume of material requested, it would need more time to respond. The arbitration date was set for May 21, 2015. The Union then sent a second request to the District on March 27, 2015, and did not get a response. On April 9, 2015, the Union sent a third request, asking to be provided the materials by April 23, 2015. However, on April 20, 2015, the Union requested to postpone the arbitration hearing due to serious health issues affecting Intoe's mother. The arbitrator granted the Union's request and set a new hearing date for October 8, 2015. On September 22, 2015, the District provided the Union with the requested information, and on September 29, 2015, the parties jointly requested that the arbitrator continue the arbitration hearing until sometime after November 20, 2015. To date, the arbitration regarding Intoe's termination has not been held or rescheduled.

¶ 50 We are unwilling to find that the Board clearly erred in finding that the District did not violate section 14(a)(5) of the Act in this case. There is simply no evidence that the District's actions were made in bad faith or that there was an unreasonable delay, especially in light of the circumstances of this particular case where the arbitration hearing has yet to take place.

¶ 51 CONCLUSION

¶ 52 For the foregoing reasons, we confirm the Board's decision.

¶ 53 Confirmed.