2013 IL App (3d) 120036-U

Order filed March 7, 2013

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IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

A.D., 2013

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| LARRY KIBBONS, | ) | Appeal from the Circuit Court |
| | ) | for the 21st Judicial Circuit, |
| Plaintiff-Appellant, | ) | Kankakee County, Illinois, |
| | ) | |
| v. | ) | Appeal No. 3-12-0036 |
| | ) | Circuit No. 07 LM 315 |
| THE CITY OF KANKAKEE, | ) | |
| | ) | The Honorable |
| Defendant-Appellee. | ) | Michael J. Kick, |
| | ) | Judge, Presiding. |

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JUSTICE McDADE delivered the judgment of the court.
Justices O'Brien and Carter concurred in the judgment.

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**ORDER**

¶ 1 Held: Section 5 of the Illinois Public Labor Relations Act confers exclusive jurisdiction on the Illinois State Labor Relations Board over matters involving collective-bargaining agreements.

¶ 2 Plaintiff, Larry Kibbons, appeals from the circuit court's judgment denying his claim against defendant, the City of Kankakee, for accrued sick leave and accrued vacation pay. We

dismiss plaintiff's appeal and find the circuit court's judgment void for lack of subject matter jurisdiction.

¶ 3 FACTS

¶ 4 Plaintiff was employed by the Kankakee Metropolitan Sewer Utility, an agency of defendant. Prior to his termination on June 13, 2006, plaintiff's employment status was "medical leave without pay." During his employment, plaintiff was a member of the International Union of Operating Engineers Local 399 (the Union). Defendant and the Union had a collective bargaining agreement (the CBA) in effect at all relevant times. The CBA provides for the payment of the accumulated dollar value of a member's accrued sick leave and accrued vacation pay upon termination of employment.

¶ 5 During his employment, plaintiff was on employment leave several times due to work-related injuries. Plaintiff's relevant instance of employment leave began on August 1, 2002. It is the policy of defendant to pay its employees their full salary and benefits while they are temporarily disabled and then use the employees' temporary total disability (TTD) payments from its disability insurer to reimburse itself for payments it forwarded to its employees.

¶ 6 On December 3, 2003, plaintiff was notified by defendant that forwarding of his salary and benefits would cease because defendant had not been reimbursed for these payments by its workers compensation carrier between January 20 and December 2, 2003. Specifically, the carrier decided to disallow plaintiff's claim for TTD during this time period on the grounds that plaintiff was not entitled to TTD beyond January 20, 2003. However, pursuant to its own policy, defendant had forwarded plaintiff his salary and benefits during this time period. The total overpayment by the city to plaintiff was alleged by defendant to be $39,335.

¶ 7 Richard Simms, the superintendent of the municipal utility, determined that plaintiff should be terminated and that defendant should charge the non-reimbursed payments against the accumulated vacation and sick pay earned by plaintiff during his employment. These amounts were $5,614.60 in accrued vacation pay and $20,112.00 in accrued sick time – a total of $25,726.60.

¶ 8 Laura Brady, the financial officer for the municipal utility, informed plaintiff by letter dated December 3, 2003, that defendant had decided to apply plaintiff's accumulated vacation pay in an effort to cover the losses it had incurred as a result of forwarding non-reimbursed TTD payments to plaintiff between the time period of January 20, 2003 and December 2, 2003. Defendant terminated plaintiff's employment, effective December 16, 2003.

¶ 9 Shortly after Brady's letter was sent to plaintiff, Simms was contacted by Red Baskin, a representative and agent of the Union. Baskin stated that he was concerned about plaintiff's termination. Simms and Baskin reached an oral agreement that defendant would reinstate plaintiff under the status of "medical leave without pay" in exchange for the Union agreeing not to grieve the application of plaintiff's vacation pay towards satisfying the non-reimbursed TTD payments. As a result of the agreement, plaintiff remained eligible to apply for temporary disability payments and to stay on the city's medical insurance policy, although he would be personally responsible for premiums. The agreement also established that all future TTD payments were to be made directly to plaintiff. Plaintiff was subsequently "notified" of this agreement by letter of December 19, 2003, and he was reinstated to employment with the city.

¶ 10 Plaintiff complained to Baskin and to the Union's attorney about defendant stripping him of his vacation pay. Baskin allegedly told plaintiff: "I'll get back to you," but according to

plaintiff, Baskin never did. In addition to e-mail correspondence with the union's attorney, plaintiff forwarded his complaint to the president of the national Union, however, the president merely referred him back to Baskin.

¶ 11 On May 15, 2007, plaintiff filed a complaint in the circuit court demanding $25,726 in accrued sick leave and vacation pay. Defendant moved to dismiss, claiming that plaintiff's failure to grieve any alleged violations under the CBA mandates dismissal. Defendant's motion was granted. Plaintiff filed an amended complaint, which was also dismissed. Plaintiff subsequently filed a second amended complaint, which is the operative pleading in the instant matter. It alleges, in pertinent part:

> "5. At all times relevant, there existed a work agreement, hereinafter referred to as Collective Bargaining Agreement (CBA) between the City of Kankakee and the Union.
>
> 6. Section 5 of the CBA deals with grievance procedure. A grievance, is defined as: 'a claim by an employee, or the union that an express or specific term of the agreement has been violated, or a question concerning the proper application or interpretation of an express or specific term of this agreement.'
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> 7. The CBA provides for the payment of the accumulated dollar value of the employee's accrued sick leave and accrued vacation pay upon termination of employment.
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> 8. There is no provision in the CBA that allows the city to take the accumulated dollar value of the employee's sick time

and/or vacation time and use it to pay compensation to the employee if the employee is injured in the line of duty.

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19. By reason of the above acts and omissions, defendant violated the Illinois Wage Payment and Collection Act (820 ILCS 115/1 *et seq.* (West 2010)).”

¶ 12 The matter proceeded to trial where plaintiff conceded that he was aware that the Union had made an agreement with defendant regarding his accrued sick leave and accrued vacation pay. However, plaintiff stated that the Union did not have the authority to enter into such an agreement. While acknowledging that a grievance under the CBA was never filed regarding the matter, plaintiff claimed that he attempted to get the Union to pursue such an action, however, it chose not to do so.

¶ 13 Ultimately, the circuit court denied plaintiff’s second amended complaint. Specifically, the court stated:

“Since plaintiff was not eligible for TTD during the time period in question, if the salary paid to him by the City is not applied to earned [vacation] time, the plaintiff will receive a windfall based on a mistake by the City; that is, he would receive a double recovery. Is that somehow different from a bank mistakenly depositing too much money in your account or the IRS giving you too large of a refund? In those situations would you get

to keep that money because those entities made a mistake? Of course not.

The evidence shows that plaintiff was paid more in salary in 2003 than he seeks to recover in this lawsuit, [$25,725]. The plaintiff has the burden of proving he's entitled to be paid more. The evidence is overwhelmingly to the contrary. Because the plaintiff has failed to meet his burden of proof, the second amended complaint is denied."

¶ 14 Plaintiff filed a timely notice of appeal and both parties submitted briefs on the merits. We subsequently, *sua sponte*, ordered supplemental briefing. Specifically, our order stated:

"On the Court's own motion, this appeal is continued to the December [2012] oral arguments call. The parties are ordered to brief the issue of whether this court has subject matter jurisdiction to decide this case. We call the attention of the parties to *Cessna v. City of Danville*, 296 Ill. App. 3d 156 (1998) and the cases cited to therein. The appellant is ordered to file his supplemental brief on or before October 29, 2012. The appellee is ordered to file its supplemental brief on or before November 8, 2012. The appellant may file a supplemental reply brief on or before November 13, 2012."[1]

¶ 15 ANALYSIS

[1] Both parties filed timely supplemental briefs.

¶ 16 At the outset, we consider whether we have jurisdiction to consider plaintiff's appeal. It is well established that a reviewing court must *sua sponte* inquire into its jurisdiction, and if it determines that jurisdiction is lacking, the reviewing court must decline to proceed. *Taylor v. Industrial Commission*, 221 Ill. App. 3d 701, 703 (1991).

¶ 17 The merits of plaintiff's appeal are dependent upon interpretation of the CBA. Because the Illinois Public Labor Relations Act (Act) (5 ILCS 315/1 *et seq.* (2010)), confers exclusive jurisdiction on the Illinois State Labor Relations Board (Board) over matters involving collective-bargaining agreements, we dismiss plaintiff's appeal and find the circuit court's judgment void for lack of subject matter jurisdiction.

¶ 18 The stated purpose of the Act is to:

> "[R]egulate labor relations between public employers and employees, including the designation of employee representatives, negotiation of wages, hours, and other conditions of employment, and resolution of disputes arising under the collective[-]bargaining agreements." 5 ILCS 315/2 (West 2010).

¶ 19 Illinois courts have interpreted section 5 of the Act as conferring exclusive jurisdiction on the Board over matters involving collective-bargaining agreements. *Proctor v. Board of Education*, 392 F. Supp. 2d 1026, 1031 (2005); *Cessna*, 296 Ill. App. 3d at 163; *Foley v. American Federation of State, County, & Municipal Employees*, 199 Ill. App. 3d 6, 10 (1990). Section 5 of the Act states, in pertinent part:

"(a) There is created the Illinois Labor Relations Board. The Board shall be comprised of 2 panels, to be known as the State Panel and the Local Panel.

(a-5) The State Panel shall have jurisdiction over collective bargaining matters between employee organizations and the State of Illinois, excluding the General Assembly of the State of Illinois, between employee organizations and units of local government and school districts with a population not in excess of 2 million persons, and between employee organizations and the Regional Transportation Authority.

* * *

(b) The Local Panel shall have jurisdiction over collective bargaining agreement matters between employee organizations and units of local government with a population in excess of 2 million persons, but excluding the Regional Transportation Authority."[2] 5 ILCS 315/5 (West 2010)

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[2] We acknowledge section 5 does not contain the word "exclusive" in conferring jurisdiction on the Board. However, the supreme court's decision in *Board of Education v. Compton*, 123 Ill. 2d 216 (1998), illustrates that use of the word "exclusive" is not dispositive of the issue. We note that *Compton* affirmed a decision of the Fourth District (*Board of Education v. Compton*, 157 Ill. App. 3d 439, 510 N.E.2d 508, 109 Ill. Dec. 640 (1987)), finding that the Illinois Educational Labor Relations Board (IELRB) had exclusive jurisdiction over claims involving arbitration awards, despite absence of the word "exclusive."

¶ 20 A finding of exclusive jurisdiction in the Board is consistent with the " 'comprehensive regulatory scheme from public sector collective bargaining in Illinois' " (*Foley*, 199 Ill. App. 3d at 10-11 quoting *Chicago Board of Education v. Chicago Teachers Union*, 142 Ill. App. 3d 527, 530 (1986)). Allowing an employee to pursue a claim dependent on the interpretation of a collective-bargaining agreement in the circuit court would undermine the Act's stated purpose and frustrate the legislature's intent to provide a uniform body of law in the field of labor-management relations to be administered by those who have the required expertise in this area. *Cessna*, 296 Ill. App. 3d at 167. "Concurrent jurisdiction in the circuit courts would allow inconsistent decisions and forum shopping, which would undermine the goal of uniformity sought to be achieved by the Act." *Cessna*, 296 Ill. App. 3d at 163.

¶ 21 Plaintiff's second amended complaint alleges that the CBA requires that employees be paid any accrued sick leave and vacation pay at the time of termination without exception. The complaint claims that the defendant wrongfully deprived him of his accrued sick leave and accrued vacation pay. These allegations cannot be addressed by the circuit court without interpreting the CBA and viewing the defendant's alleged actions in light of this interpretation. These are matters that fall within the expertise of the Board. Thus, we hold that the circuit court lacked subject-matter jurisdiction over plaintiff's second amended complaint and exclusive jurisdiction lies with the Board.

¶ 22 In coming to this conclusion, we reject plaintiff's argument that the present action is grounded upon the Illinois Wage Payment and Collection Act (Payment Act) (820 ILCS 115/1 *et seq.* (West 2010) and not the CBA. While we acknowledge that the second amended complaint generically references the Payment Act, the allegations contained in the complaint all revolve

around the conduct of the parties in light of their rights as expressed in the CBA. Moreover, a "collective-bargaining agreement defines the rights and liabilities of the parties subject to the agreement and the manner in which contractual obligations may be enforced." *Zelenka v. City of Chicago*, 152 Ill. App. 3d 706, 714 (1987).

¶ 23 For the foregoing reasons, we dismiss plaintiff's appeal and find the circuit court's judgment void for lack of subject matter jurisdiction.[3]

¶ 24 Appeal dismissed.

[3] A void judgment is one that was entered without jurisdiction of the parties or the subject matter. *People v. Harvey*, 196 Ill. 2d 444, 458 (2001).