2016 IL App (1st) 153483-U

No. 1-15-3483

Fifth Division
August 12, 2016

IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

OAK LAWN PROFESSIONAL FIREFIGHTERS ASSOCIATION, LOCAL 3405, INTERNATIONAL ASSOCIATION OF FIREFIGHTERS, Petitioner, v. THE ILLINOIS LABOR RELATIONS BOARD, STATE PANEL; JOHN HARTNETT, MICHAEL COLI, JOHN SAMOLIS, KEITH SNYDER, and ALBERT WASHINGTON, the Members of Said Board Their Official Capacity Only; MELISSSA MLYNSKI, Executive Director of Said Board in Her Official Capacity Only; and THE VILLAGE OF OAK LAWN, Respondents.	)	Petition for Administrative Review of a Decision and Order of the Illinois Labor Relations Board, State Panel. No. S-CA-09-007-C

JUSTICE GORDON delivered the judgment of the court.
Presiding Justice Reyes and Justice Lampkin concurred in the judgment.

ORDER

¶ 1 *Held:* A State Panel of the Illinois Labor Relations Board did not err (1) in vacating a compliance officer's order awarding back pay when the compliance officer misinterpreted an arbitrator's award; and (2) in denying a union's motion to strike.

¶ 2 This case involves a labor dispute between a union and an Illinois municipal employer under the Public Labor Relations Act (Act) (5 ILCS 315/10(a) (West 2006)). In 2009, the Illinois Labor Relations Board, State Panel (Board), found that the Village of Oak Lawn (Village) committed an unfair labor practice by refusing to bargain with the Oak Lawn Professional Firefighters Association, Local 3405 (union), over "minimum manning" requirements—a mandatory bargaining subject—and ordered the Village to rescind any changes it made to shift staffing and make whole any employees who incurred losses due to the violation. An arbitrator held a hearing and reviewed the bargaining agreement. The arbitrator ordered the Village to pay $285,866.72 in back pay to the employees it did not call in for overtime to meet the minimum manning requirement.

¶ 3 In 2011, after the union sought enforcement of the arbitration award, a compliance officer found that the Village owed additional back pay and ordered the Village to pay back pay totaling $3,163,801.73. The Village objected to the additional back pay and the union filed a motion to strike the Village's objections, which was denied. On review, an administrative law judge (ALJ) determined that the compliance officer misinterpreted the arbitrator's decision and recommended vacating the order, and the Board adopted her recommended decision and order (RDO). The union now appeals, arguing that: (1) the Board erred by vacating the compliance officer's order directing the Village to pay $3,163,801.73 in back pay and interest to the union, and (2) the Board erred by denying the union's motion to strike. We affirm the Board's decision to vacate the compliance officer's order and its denial of the union's motion to strike.

¶ 4 BACKGROUND

¶ 5 The facts in the instant case are largely undisputed, and come primarily from the parties' stipulated record, filed in lieu of a hearing before an ALJ.

¶ 6 I. Collective Bargaining Agreements

¶ 7 The record on appeal reveals that the parties have a bargaining history dating back to at least January 1, 1992, the effective date of the earliest collective bargaining agreement (CBA). The parties have entered into four succeeding CBAs since that time. In 2003, the union entered into a CBA with the Village on behalf of the Oak Lawn Professional Firefighters Association, which consisted of all firefighters, engineers, and lieutenants employed in the Village's fire department. The agreement had a term from January 1, 2003, through December 31, 2006. Section 7.9 of that CBA addressed minimum staffing requirements for each shift, and provided that:

> "The Village shall exercise its best efforts to maintain the following apparatus minimum manning requirements: four employees to man each engine, two paramedics to man each ALS ambulance, two employees to man each BLS ambulance[1], and three employees to man each squad."

¶ 8 The parties agree that the Village customarily employs three engines, one squad, three ALS ambulances, and zero BLS ambulances. Therefore, the Village would need to staff a total of 22 employees per shift, including the shift commander, to meet the CBA's requirement. The parties further agree that, beginning in 1998, they mutually decided to reduce the squad minimum from three employees to two employees. Although they never

[1] ALS stands for Advanced Life Support, BLS stands for Basic Life Support.

changed the language in the CBA, the Village maintained minimum shift manning of 21 employees after 1998.

¶ 9 II. Negotiations for 2007 CBA

¶ 10 As the 2003-2006 CBA was about to expire, the parties began bargaining for a successor CBA to begin in 2007. However, they were not able to come to an agreement by December 31, 2006, so the terms of the prior CBA expired, but remained in place to keep the parties' status quo. In December 2007, the Village's fire chief issued a directive that as of January 1, 2008, the fire department would no longer maintain minimum manning of 21 employees per shift, and that any overtime would require his authorization. In January 2008, the union filed a grievance challenging the chief's decision to reduce shift staffing levels, contending that the Village had violated section 7.9 of the 2003-2006 CBA. In March 2008, the parties decided to proceed to arbitration over the successor CBA that was supposed to follow the 2003-2006 CBA. In June, the parties exchanged lists of the issues that were to be included in the arbitration process, but the Village declined to submit the minimum manning dispute to the arbitrator, claiming it was not a mandatory bargaining subject.

¶ 11 A. Unfair Labor Practice Charge

¶ 12 On July 8, 2008, the union filed an unfair labor practice charge with the Board as a result of the Village's refusal to bargain over minimum manning, alleging that the Village violated section 10(a) of the Act (5 ILCS 315/10(a) (West 2006)). The matter proceeded to a hearing before an ALJ. On October 23, 2009, the ALJ issued an RDO, finding that the Village engaged in unfair labor practices and violated the Act by refusing to bargain the issue of minimum manning. The ALJ also ordered the Village to rescind any changes in its staffing practice that it made in or after September 2008, and to make whole any employees who

incurred losses as a result of unilateral changes regarding minimum manning. The Board accepted the recommendation and adopted the RDO. The Board's decision was appealed and we affirmed the Board's decision, thus requiring the Village to submit the minimum manning dispute to the arbitrator and make whole any employees who were damaged by the shift-manning changes the Village made without bargaining. *Village of Oak Lawn v. Illinois Labor Relations Board, State Panel*, 2011 IL App (1st) 103417.

¶ 13 While the mandatory bargaining dispute was ongoing, the parties came to an agreement about the other disputes in their CBA, and the successor CBA—including the same minimum manning language in section 7.9—was adopted and became effective January 1, 2008, through December 31, 2010.[2]

¶ 14 B. Arbitration of Grievance

¶ 15 At the arbitration hearing on July 30, 2008, the union made a formal statement of the issues, which Arbitrator Stanley Kravit accepted as representative of the discussions. The relevant issue posed was:

> "Whether the Village violated section 7.9 of the agreement and/or the parties' past practice by unilaterally modifying the minimum manning requirements below 21 personnel per shift, and in turn, staffing equipment below the contractual requirements? If so, what shall the remedy be?"

¶ 16 The Village argued that the CBA permitted it to reduce shift manning below 21 because it did not require the Village to maintain in service any particular types of equipment, or any total number of firefighters per shift. By contrast, the union argued that the CBA

[2] The language of section 7.9 remained the same, but included a statement that the meaning of that language was currently in dispute.

incorporated the long-established policy of maintaining certain equipment types and numbers: three engines, three ambulances, and one squad, and thus, to meet the requirements for each piece of equipment, 21 employees were needed.

¶ 17 On September 23, 2008, arbitrator Kravit issued a decision, concluding that "[b]ased on contract language, testimony regarding the original negotiations, and past practice, the Union has proved that the parties intended and maintained for 15 years under five contracts a mutual commitment to assign 21 employees per shift." The arbitrator noted that "despite the fact that [the 2003-2006 CBA] is the fifth contract to state that each squad is to be manned by three employees, for the last ten years the minimum manning for a squad has been two by virtue of an agreement between the parties." The arbitrator found that "[t]he actual number and kinds of equipment maintained by the Fire Department has been stable as well until the beginning of 2008. Each shift has three engines—requiring 12 employees; 3 ambulances—requiring 6 employees; and one squad manned by two employees. These 20 are supplemented by the Battalion Chief as Shift Commander." The arbitrator found that the language in the CBA actually stood for the mutual agreement to staff 21 employees per shift. The arbitrator supported this conclusion by noting that "according to [battalion chief] BC Hojek, the agreement to reduce the squad to two and the assigned number to 21 occurred about 10 years ago." Furthermore, the arbitrator noted that battalion chief Hojek verified that, prior to the unilateral changes the Village made in 2008, employees were called in on overtime whenever the assigned shift manning fell below 21. Thus, the arbitrator found that the Village had violated the CBA when it reduced shift manning levels below 21 employees by removing a squad from service or reducing engine manning to three employees.

¶ 18 The arbitrator ordered the Village to pay employees for overtime work they would have performed between January 2008 and September 2008 if the Village had called them to work when shift manning fell below 21 employees. This amounted to $285,866.72.

¶ 19 On December 22, 2008, the Village filed a motion with the circuit court to vacate or modify the arbitrator's award pursuant to sections 12 and 13 of the Uniform Arbitration Act (710 ILCS 5/12, 13 (West 2006)). See 710 ILCS 5/15 (West 2006) ("application to the court under this Act shall be by motion"). Section 12 permits the court to vacate an award where the award was procured by undue means, where there was evident partiality by the arbitrator, or where the arbitrator exceeded his powers. 710 ILCS 5/12 (West 2006). Section 13 permits the court to modify or correct an award where there was an evident miscalculation or mistake in the award. 710 ILCS 5/13 (West 2006).

¶ 20 On April 27, 2009, the union filed its answer and counterclaim to confirm the award. The circuit court denied the Village's motion to vacate the award. The Village appealed this denial to the appellate court, which affirmed the circuit court's decision, finding the arbitrator's reasoning to be sound and not outside his authority. *Village of Oak Lawn v. Oak Lawn Professional Firefighters Ass'n, Local IAFF*, No. 1-09-3575 (2011) (unpublished order under Supreme Court Rule 23).

¶ 21 On December 26, 2008, the union sent the Village a letter to "inform it that the union would, effective immediately, begin enforcing the clear language in the Agreement, which arbitrator Kravit found requires twenty-two employees per shift and three employees on a squad." As noted, the arbitrator had found that the language in the CBA required three employees per squad, but based on past practice, the parties mutually agreed to reduce the squad from three employees to two, and so only 21 total employees had been required. On

appeal, the union argues that the purpose of the letter was to terminate that mutual agreement based on past practice, and enforce the CBA language requiring 22 employees per shift.

¶ 22 C. Petition for Enforcement

¶ 23 On August 18, 2011, the union filed a petition for enforcement of the Board's October 2009 order requiring the Village to rescind any unilateral changes the Village had made in its staffing practice and make whole any employers who had incurred losses due to the unfair labor practice. In the Village's response to the union's petition for enforcement, the Village claimed that it had complied because it engaged in the bargaining process over minimum manning levels, rescinded the changes it made to minimum manning by returning the minimum to 21 employees—per arbitrator Kravit's award—and asserted that "the employees did not incur any losses" because the Village had rescinded those changes. Further, the Village claimed that all proceedings had been suspended while the order was pending on appeal of the unfair labor practice decision.

¶ 24 Despite this delay, on June 4, 2012, after we confirmed the Board's order, the Village complied with the arbitrator's award and paid back pay totaling $285,866.72 for unpaid overtime during the period between January 1, 2008, and October 15, 2008.

¶ 25 The petition for enforcement was assigned to the Board's compliance officer for investigation. The compliance officer issued an order on February 5, 2015, finding that the Village had failed to comply with the Board's order to make the damaged parties whole, and ordered the Village to pay the union a total of $3,163,801.73 in back pay to affected employees. The compliance officer stated:

> "The back pay award in this compliance case is almost exclusively the result of the Village's failure to maintain the required staffing levels on a shift by

> reducing the number of employees on the types of equipment or the number of employees on a squad for reasons including taking equipment or a squad out of service. It is this conduct which caused a change in staffing levels to less than 21 employees on a shift (22 employees by including the battalion chief) that is the essence of the conduct the Board found was not bargained and violated the Act."

Thus, the compliance officer's calculations found that the Village was not in compliance from 2008 until the present when only 21 employees were being staffed, and that 22 were required when counting the battalion chief.

¶ 26 The compliance order also states that, while the parties continued to dispute the arbitrator's initial award and the Board's order, the effective CBA expired and the parties began bargaining a successor CBA for the term of January 1, 2012, through December 31, 2014. The parties were unable to settle their disputes and proceeded to arbitration before arbitrator Ed Benn (the second arbitrator). The Village sought to change the language of section 7.9 to expressly identify the daily shift staffing requirement to be 21 employees, but arbitrator Benn rejected the proposal and upheld the union's request to maintain the status quo on minimum manning. The compliance officer found this proposal by the Village to formally reduce the minimum to 21 employees to be "most telling as to what the parties agreed to in the prior contract," in that the parties had previously agreed that the minimum staffing requirement was 22 employees.

¶ 27 D. Objections to the Compliance Order

¶ 28 On March 3, 2015, the Village filed written objections to the compliance order requiring additional back pay. The Village argued that the Board should defer to Kravit's award, which required the Village to pay back pay for the period between September 1 and October 15,

2008, but should not require it to pay the additional amount ordered by the compliance officer. The union filed a motion to strike the Village's objections to the compliance order or, in the alternative, to narrow the issue for hearing on the basis that the Village was attempting to relitigate the merits of the grievance and that their objections contained "gross misrepresentations of fact." The Village's objections and the union's motion to strike were submitted to an ALJ. In her RDO issued on June 12, 2015, the ALJ recommended that the union's motion to strike be denied, finding that the Village did not attempt to relitigate the merits of the unfair labor practice proceeding, and determined that the only issues previously litigated were whether minimum manning was a mandatory subject of bargaining and whether the Village had failed to bargain. By contrast, the Village was now arguing that it was only required to man the shift with 21 employees.

¶ 29 Further, the ALJ found the Village did not misrepresent the fact that only two members were required on the squad. The Village had conceded that the *language* in the CBA required three employees to a squad, and wanted that language revised to reflect the actual agreement as demonstrated by past practices between the parties.

¶ 30 In her RDO, the ALJ also found that the Village owed no additional back pay, as the compliance officer had directed, but that it did owe unpaid interest in the amount of $21,939.06 on the back pay it paid for the period between September 1, 2008, and October 15, 2008.

¶ 31 The ALJ found that "the plain language of the Kravit award requires the Respondent to staff a shift with a total of only 21 employees per shift and not 22, as stated by the compliance officer." Since the compliance officer incorrectly interpreted the arbitrator's award, the ALJ concluded that he was mistaken when he ordered additional back pay. The

ALJ attributed this misinterpretation to the fact that "Kravit did not base his calculation solely on apparatus manning numbers listed in the CBA. He also considered the parties' bargaining history and past practice, most notably, their long-standing agreement to change apparatus manning by reducing the number of employees on a squad from three (3) to two (2)."

¶ 32 The ALJ also found that judicial estoppel barred the union from asserting that the Kravit award required 22 employees per shift, because when the union sought to confirm the award, it "asserted that its grievance concerned the Respondent's decision to operate with less than a total of 21 personnel." The ALJ concluded that the union's ultimate success on those facts "precludes the union from advancing a description of the Award in this forum that is inconsistent to the one it presented to the court."

¶ 33 Finally, the ALJ concluded that by January 1, 2009, the Village had returned to meeting the minimum manning requirement of 21 employees per shift, so no additional back pay was owed for the subsequent months. However, she found that the Village did owe interest on the back pay for the period between September 1, 2008, and October 15, 2008, which amounted to $21,939.16.

¶ 34 The Board accepted the ALJ's RDO and vacated the compliance officer's award. The Board did not accept the RDO with respect to the ALJ's determination that the charging party waived its right to object to the compliance order by failing to timely file its objections. The Board found "merit in the objection that the compliance officer erroneously failed to award interest on the back pay principal." The Board adopted the ALJ's analysis that the Village must pay $21,939.06 in interest.

¶ 35 The union now appeals the Board's decision to adopt the ALJ's order vacating the compliance officer's award of over $3 million. The union also appeals the Board's decision to deny the union's motion to strike the Village's objections to the compliance order.

¶ 36 ANALYSIS

¶ 37 On appeal, the union claims that: (1) the Board erred by vacating the compliance officer's order directing the Village to pay $3,163,801.73 in back pay and interest, and (2) the Board erred by denying the union's motion to strike. For the reasons set forth below, we affirm the Board's decision to vacate the compliance officer's order and its denial of the union's motion to strike.

¶ 38 I. The Board's Decision to Vacate the Compliance Order

¶ 39 First, we find that the Board did not err in adopting the ALJ's RDO to vacate the compliance officer's order because the union could not unilaterally modify the agreement and the Board's decision was consistent with the intent of arbitrator Kravit's award.

¶ 40 A. Standard of Review

¶ 41 Under the Administrative Review Law (735 ILCS 5/3-101 *et seq.* (West 2008)), the Illinois Labor Relations Board's decisions are subject to judicial review directly to the appellate court. The Board's findings of fact are "held to be prima facie true and correct" (735 ILCS 5/3–110 (West 2008)) and will be disturbed on review only if they are against the manifest weight of the evidence. *Service Employees International Union, Local 73 v. Illinois Labor Relations Board*, 2013 IL App (1st) 120279, ¶ 43 (citing *City of Belvidere v. Illinois State Labor Relations Board*, 181 Ill. 2d 191, 204 (1998)). We will determine that a finding is against the manifest weight of the evidence "only if the opposite conclusion is clearly evident." *Slater v. Department of Children & Family Services*, 2011 IL App (1st) 102914,

¶ 30 (citing *Abrahamson v. Illinois Department of Professional Regulation*, 153 Ill. 2d 76, 88 (1992)).

¶ 42 The Board's conclusions of law are reviewed *de novo*. *Cinkus v. Village of Stickney Municipal Officers Electoral Board*, 228 Ill. 2d 200, 210 (2005). On a *de novo* review, we perform the same analysis a trial court would perform. *Khan v. BDO Seidman, LLP*, 408 Ill. App. 3d 564, 578 (2011).

¶ 43 In the case at bar, the union requests review of the make-whole remedy ordered by the Board; the Board's remedial orders are reviewed under an abuse of discretion standard. *Metropolitan Alliance of Police v. Illinois Labor Relations Board*, 345 Ill. App. 3d 579, 593 (2003). An abuse of discretion will only be found when "no reasonable person would take the view adopted by the [Board]." *Foley v. Fletcher*, 361 Ill. App. 3d 39, 46 (2005).

¶ 44 The Board derives its authority from section 5 of the Act (5 ILCS 315/5 (West 2008)). To remedy an unfair labor practice, the Board has authority to order make-whole relief to place the parties in the position they would have been in had there been no unfair labor practice. *Paxton-Buckley-Loda Education Ass'n, IEA-NEA v. Illinois Education Labor Relations Board*, 304 Ill. App. 3d 343, 353-54 (1999). The Board has broad discretion in determining the appropriate remedy to make the damaged party whole. 5 ILCS 315/11 (West 2008).

¶ 45 B. Contract Modification

¶ 46 The union first claims that the Board erred by vacating the compliance officer's order, arguing that the compliance officer correctly determined that the minimum manning requirement was 22 employees, not 21. On December 26, 2008, the union sent the Village a letter to "inform it that the union would, effective immediately, begin enforcing the clear language in the Agreement, which Kravit found requires twenty-two employees per shift and

three employees on a squad." The union claims that the letter served as notice that the minimum manning requirement was now returning to 22 employees. However, this is a mischaracterization of arbitrator Kravit's award. The Kravit award found that, although the language in the CBA required 22 employees, the parties had mutually agreed to reduce the squad from three employees to two, and so the status quo was 21 employees per shift, not 22. In other words, the parties had modified the minimum manning requirement. Thus, this letter was an attempt at a unilateral modification, and it did not have an effect on the status quo established through the parties' mutual agreement. "[I]n deciding whether to give effect to an attempted contract modification, the analysis does not depend on the nature of the contractual provision at issue. One party to a contract may not unilaterally modify a contract term—whether it is an arbitration clause, a disclaimer of incidental and consequential damages, a liquidated damages clause, or any other term." *Kinkel v. Cingular Wireless LLC*, 223 Ill. 2d 1, 14-15 (2006).

¶ 47 According to arbitrator Kravit, the language in the CBA, when interpreted in light of the parties' past practices, actually constituted an agreement to staff 21 employees per shift. In his award, Kravit noted that "the parties have consistently referred to the minimum manning issue as 21 assigned to each shift each day and I shall do so as well. *** According to [battalion chief] BC Hojek, the agreement to reduce the squad to two and the assigned number to 21 occurred about 10 years ago." Further, battalion chief Hojek verified that, prior to the unilateral changes the Village made in 2008, employees were called in on overtime whenever the assigned shift manning fell below 21.

¶ 48 When evidence of prior conduct is admitted to show that a subsequent oral agreement modified a written contract, "the question of the final agreement of the parties is usually a

question of fact." *Midway Park Saver v. Sarco Putty Co.*, 2012 IL App (1st) 110849, ¶ 22 (citing *E.A. Cox Co. v. Road Savers International Corp.*, 271 Ill. App. 3d 144, 152 (1995)). Arbitrator Kravit acted as the fact finder and determined that the parties agreed to a 21 employee minimum manning requirement. Furthermore, the arbitrator's interpretation of a contract is binding and will not be overturned unless it presents a manifest disregard of the agreement between the parties. *Board of Trustees of Community College District No. 508, Cook County v. Cook County College Teachers Union, Local 1600, AFT, AFL/CIO*, 74 Ill. 2d 412, 421 (1979). Thus, if the union was attempting to change this agreement, it needed to do more than send a letter unilaterally "terminating the past practice." Moreover, this court affirmed the ALJ's prior finding that minimum manning is a mandatory subject of bargaining, and bargaining is a two-way street that prevents either party from making a unilateral change. *County of Cook v. Licensed Practical Nurses Ass'n of Illinois*, 284 Ill. App. 3d 145, 154 (1996) (finding the unilateral implementation by the employer of drug testing certain employees constituted unfair labor practices). Therefore, the letter did not have an effect on the parties' agreement.

¶ 49 C. Compliance Officer's Award

¶ 50 Additionally, the compliance officer who awarded the $3 million back pay based his award on an incorrect interpretation of the Kravit award. The compliance officer interpreted arbitrator Kravit's award to require 21 employees *plus* the battalion chief, thus totaling 22. However, arbitrator Kravit explicitly finds in his award, "The actual number and kinds of equipment maintained by the Fire Department has been stable as well until the beginning of 2008. Each shift has three engines—requiring 12 employees; 3 ambulances—requiring 6 employees; and one squad manned by two employees. These 20 are supplemented by the

Battalion Chief as Shift Commander." This makes it clear that Kravit interpreted the parties' agreement to require 21 total members. Again, an arbitrator's interpretation of a contract is binding. *Board of Trustees of Community College District No. 508, Cook County*, 74 Ill. 2d at 421.

¶ 51 In conclusion, we agree with the Board that when the Village returned staffing to 21 employees in 2008, it was in compliance with the Board's order. The union's argument that the letter established 22 employees as the minimum manning requirement, and that therefore the Village had not complied with the order by staffing 21 employees, is not persuasive because the status quo, as stated in the Kravit award, remained at 21 employees, and the union's letter on December 26 could not unilaterally terminate past practices that had been in place for 15 years. Furthermore, the compliance officer's order was based on an erroneous interpretation of arbitrator Kravit's award. Accordingly, we affirm the Board's order vacating the compliance officer's award of an additional $3 million plus in back pay.

¶ 52 II. The Union's Motion to Strike

¶ 53 The union also argues that the Board erred in denying the union's motion to strike. The union made a motion to strike the Village's objections to the compliance order on the basis that the Village was attempting to relitigate the merits of the unfair labor practice proceeding.

¶ 54 A. Standard of Review

¶ 55 Parties are entitled to file objections to a compliance order under the Administrative Code. 80 Ill. Admin. Code 1220.80(e). Further, any party to an unfair labor practice may move for sanctions, which must specifically allege the incidents of frivolous litigation subject to sanctions. 80 Ill. Admin. Code 1220.90(d). Once filed, the party subject to sanctions has 14 days to respond or withdraw the position that is the basis for the motion. 80 Ill. Admin.

Code 1220.90(d). Under the Administrative Code, the Board's decision whether to impose a sanction is reviewed under an abuse of discretion standard. 80 Ill. Admin. Code 1220.90(a). Deciding to strike an offensive pleading is one form of a sanction which the Board has the discretion to impose. 80 Ill. Admin. Code 1220.90(c); *Cedric Spring & Associates, Inc. v. N.E.I. Corp.*, 81 Ill. App. 3d 1031, 1035 (1980) ("One of the sanctions which a court may impose against a non-complying party under Rule 219(c) is the striking of the offending party's pleadings"); *Illinois Environmental Protection Agency v. Celotex Corp.*, 168 Ill. App. 3d 592, 597 (1988) ("This court is mindful that the dismissal of a party's claim is a drastic sanction and should be employed sparingly."). As noted, the Board abuses its discretion only if no reasonable person would take the view adopted by it. *Foley*, 361 Ill. App. 3d at 46.

¶ 56 B. Denial of the Union's Motion

¶ 57 We "will not permit parties to relitigate the merits of an issue once decided by an appellate court [and] the proper remedy for a dissatisfied party is by petition for rehearing or by petition for leave to appeal to the Illinois Supreme Court." *Turner v. Commonwealth Edison Co.*, 63 Ill. App. 3d 693, 698 (1978). Here, the Village's objections to the compliance officer's order raised different issues than the issues that had been decided in the underlying unfair labor practice grievance. The Board previously decided only whether the minimum manning issue was a mandatory bargaining subject, not the specific minimum the parties agreed to. While the Board also ordered the Village to rescind any unilateral changes it had made regarding minimum manning, it did not set forth a concrete number for the parties to follow. Given our analysis of the minimum manning requirement, *supra*, the Village's objections to the compliance order were valid. Although the Board had the discretion to

strike the Village's objections and impose sanctions for frivolous litigation, we cannot find that the Board abused its discretion by determining that Village was not attempting to relitigate the merits and a sanction was not needed.

¶ 58 CONCLUSION

¶ 59 For the foregoing reasons, we affirm the Board's decisions. First, because the compliance officer misinterpreted arbitrator Kravit's award and calculated the wrong minimum manning requirements, we find that the Board was correct to vacate the compliance order directing the Village to pay $3,163,801.73 in back pay to the union. Second, the Board did not err in denying the union's motion to strike the Village's objections to the compliance order because the Village was not relitigating the merits by arguing a specific minimum number of employees per shift.

¶ 60 Affirmed.