

2018 IL App (2d) 170318-U
No. 2-17-0318
Order filed April 24, 2018

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

INTERNATIONAL ASSOCIATION OF FIREFIGHTERS, LOCAL 413, AFL-CIO,)	Appeal from the
)	Illinois State Labor Relations Board.
)	
Petitioner-Appellant,)	
)	
v.)	No. S-CA-15-30
)	
THE CITY OF ROCKFORD and)	
THE ILLINOIS STATE LABOR)	
RELATIONS BOARD,)	
)	
Respondents-Appellees.)	

JUSTICE JORGENSEN delivered the judgment of the court.
Presiding Justice Hudson and Justice Birkett concurred in the judgment.

ORDER

¶ 1 *Held:* The Illinois State Labor Relations Board’s decision to dismiss the Union’s unfair labor practice charge against the City was not clearly erroneous. Affirmed.

¶ 2 Petitioner, the International Association of Firefighters, Local 413, AFL-CIO (the Union), appeals an April 11, 2017, decision by respondent, the Illinois State Labor Relations Board (the Board), rejecting the Union’s unfair labor practice charge against respondent, the City of Rockford (the City). At issue is whether the City repudiated the collective bargaining process when it did not include in the parties’ new collective bargaining agreement medical-certification

changes to a sick-leave policy. The Board found that there was no meeting of the minds as to where the medical-certification would appear and, therefore, it dismissed the Union's charge under the Illinois Public Labor Relations Act (the Act) (5 ILCS 315/10(a)(4), 10(a)(1) (West 2012)). For the following reasons, we affirm the Board's decision.

¶ 3

I. BACKGROUND

¶ 4

A. Events Preceding the 2014 Charge

¶ 5 The City and Union were parties to a collective bargaining agreement (the contract) that was set to expire on December 31, 2011. The contract contained provisions relating to the definition and accrual of sick leave, in addition to severance payments for unused sick leave. However, separate from the contract, the City maintained a policy manual of fire department rules and regulations concerning various aspects of employment, such as proper work conduct, job descriptions, and a sick-leave policy that included rules and procedures for requesting sick leave, as well as the number of consecutive days of sick leave triggering a requirement that the employee provide to the City medical certification (*i.e.*, doctor's notes). The parties' contract gave the City authority to issue such work rules and regulations; however, the contract also provided that, before any new or changed rules would take effect, the City would post the changes and provide the Union president with seven days' notice. Under the contract, the Union was entitled to grieve the reasonableness of a new or changed policy.

¶ 6

On August 18, 2011, the City's fire chief, Derek Bergsten, issued a memorandum announcing intended changes to the existing sick-leave *policy*, which had been established in 1988. Prior to issuing the memorandum, Bergsten discussed the changes with Brad Walker, the Union's then-president and chief negotiator. Further, although the contract required only a seven-day notice of a policy change, the memorandum announced that the changes would

become effective January 1, 2012 (more than four months later). Bergsten explained that the delayed implementation was to allow the Union and City to further discuss the changes. The changed sick-leave policy required an employee to provide medical certification upon return from sick leave if the employee had already taken two sick days within the calendar year. According to Bergsten, the policy change was to address abusive use of sick leave.

¶ 7 Pursuant to the parties' contract, on August 23, 2011, the Union filed a grievance, challenging the reasonableness of the policy change. Thereafter, the City and Union exchanged communications about the proposed change, and, in an attempt to resolve the grievance, the City apparently sought feedback and alternatives from the Union to the proposed policy language. Around the same time, as their contract was set to expire, the parties had begun negotiating a successor contract. Accordingly, on September 23, 2011, Walker wrote to Bergsten, positing that the sick-leave policy should remain unchanged and that, “[a]s we enter into negotiations [for the successor contract,] I feel that this would be the appropriate place to discuss any future changes or ideas concerning the sick[-]leave *policy*.” (Emphasis added.)

¶ 8 On October 26, 2011, a letter from Bergsten to Walker summarized the parties' communications and, in response to the Union's concerns, posed some alternative changes that the City would be willing to make to the policy. The letter noted that, if the proposed remedies were not acceptable, the City would deny the grievance and continue with the original language, but it nevertheless requested that the Union convey any response or alternatives.

¶ 9 Also on October 26, 2011, the City and Union held a contract bargaining session. At that time, the City tendered to the Union a document entitled “2012 Contract Proposals” that included 14 points for discussion. Items one through four identified the specific contract articles wherein those proposals, if adopted, would appear. Items five through nine were each marked as “new

article” or “new section,” as appropriate. In contrast, items 10 through 14 were *not* specifically identified as proposing either new contract sections or changes to existing contract provisions. Item 10, entitled “Adopt the City’s Position on the Sick[-]Leave Procedure Change Grievance,” provided:

“A recent grievance by the union disputes the authority of the Chief to require fire fighters claiming sick leave benefits from verifying an illness when the claimed sick leave day is immediately before or after a scheduled absence for vacation, holiday or Kelly day, or following a hire back. The City requests the grievance be withdrawn and the union support the Chief’s authority to interdict sick[-]leave abuse.”

¶ 10 On December 28, 2011, Walker sent Bergsten two letters. One letter, entitled “Demand to Bargain,” explained that the Union had been advised that the City planned to unilaterally: (1) implement changes to the sick-leave policy; and (2) add a “jump company” without adequate staffing. Walker wrote that both issues were mandatory subjects of bargaining and, therefore, that the Union was demanding to bargain over those issues prior to their implementation. The second letter reflected that the Union did not believe that the sick-leave policy should be changed, that the proposed changes were arbitrary and would change working conditions, and that the Union was requesting the City’s final position on the “sick[-]leave policy grievance.”

¶ 11 Walker sent Bergsten a third letter in January 2012, expressing that the Union believed that the sick-leave grievance, along with other issues, should be submitted to an interest arbitrator. On January 6, 2012, Bergsten agreed to arbitrate the sick-leave grievance, but noted that the changed rule, having been posted in accordance with the contract, was to become immediately effective. Accordingly, one week later, the Union filed an unfair labor practice

charge against the City over the change to the sick-leave policy (and another issue). The Union listed its sought-after remedy as “cease and desist, return to status quo, and make whole relief.”¹

¶ 12 On January 13, 2012, Bergsten responded to the Union’s “demand to bargain” letter. Bergsten’s letter acknowledged that sick leave was a mandatory subject of bargaining, but noted that the sick-leave policy was a rule *not* contained in the contract and, further, that the City had complied with the contract by adhering to its specified procedures for work[-]rule changes. Specifically:

“This letter is in response to your letter to me dated December 28, 2011, in which you requested to bargain over the [City’s] proposed changes to its sick[-]leave policy and the [City’s] decision to ‘add a jump company’ on the asserted ground that both are mandatory subjects of bargaining. In both instances[,] *the City is exercising its contractual rights during the term of the parties’ existing collective bargaining agreement. As such, the City is under no obligation to bargain over either of these matters.*

Parenthetically, the City recognizes that *the union would have the right to propose modifications to the current contract and the City will honor whatever bargaining obligations it may have in this regard. While the City would concede that sick leave is a mandatory subject of bargaining, the City does not necessarily agree that the ‘jump company’ issue as currently framed is a mandatory subject of bargaining. ***.*

¹ Ultimately, the Board determined that the basis of that charge – the sick leave policy – was also the subject of a grievance that the parties had submitted to arbitration and, therefore, it deferred the charge until that process was complete.

At the outset, it is important to understand that both of the foregoing initiatives arise during the continuing term of the parties' collective bargaining agreement. Thus, although the parties' agreement has a nominal termination date of December 31, 2011, Article 20 provides that 'this Agreement shall remain in full force and effect after any expiration date while negotiations or Resolution on Impasse Procedure are continuing for a new Agreement or part thereof.' As a result, the City continues to possess its contractual rights as set forth in the existing collective bargaining agreement. As explained in greater detail below, the terms of *the parties' existing collective bargaining agreement give the City [the] right to take the actions that the Union has sought to negotiate over. As a result, there is no further obligation to negotiate over these matters during the time that the current contract remains in full force and effect.*

With respect to the sick leave policy, the City is seeking to change a Fire Department rule that is not specifically contained in the contract. Section 13.1 of the contract, however, specifies the procedures that are applicable if the City wants to changes [*sic*] any Fire Department rule. It is the City's position that it has complied with those procedures and, as a result, *it has the right to implement the proposed change.*

* * *." (Emphases added.)

¶ 13 Between April and July 2012, the parties met several times and exchanged various proposals, including concerning the sick-leave policy. In May 2012, the Union provided the City with a document containing the header "IAFF LOCAL 413 PACKAGE PROPOSAL 5.10.12," wherein the Union proposed, under a general heading "Medical Certification," that the City adopt certain language and withdraw its previous proposal (number 10) concerning the sick[-]leave policy; in exchange, the Union would "agree to withdraw the grievance and unfair labor

practice charge regarding unilateral changes to the sick[-]leave policy[.]” The Union’s May 2012 “package proposal” also addressed sick-leave pay upon severance, but under a separate heading that listed the relevant contract section for that topic.

¶ 14 On June 8, 2012, the Union provided another proposal, this time with the header “IAFF Local 413 Proposal to the City of Rockford 2012-2014 Contract June 8, 2012.” This proposal commenced with the same provisions that, if certain “medical certification” language could be agreed upon, the Union would withdraw the grievance and unfair labor practice charge regarding the sick-leave policy.

¶ 15 The parties met on July 11, 2012. Initially, they negotiated through a mediator. However, they eventually dispensed with the mediator and representatives negotiated in a small group. In that session, the parties came to a series of tentative agreements (TAs) on various topics. One of the TAs addressed two issues: (1) “medical certification,” again representing that the Union would withdraw the grievance and unfair labor practice charge regarding the sick-leave policy; and (2) the City’s agreement to not assign non-Union personnel to facilities being used by Union personnel.

¶ 16 On July 13, 2012, the City posted the sick-leave policy, incorporating the language upon which the parties had agreed. The memorandum announced that the City was implementing a revision to the “rules and regulations” on sick leave.

¶ 17 Around one year later, on September 30, 2013, the interest arbitrator issued his opinion and award, incorporating various TAs that the parties had submitted. Specifically, one of the parties’ stipulations for arbitration was that all TAs that were reached during negotiations and that were submitted to the arbitrator would be included in the award. Approximately 10 TAs were submitted to the arbitrator, including the July 2012 medical-certification TA and one

concerning part-time telecommunicators for AFSCME, and all of them referenced, in their headers, the 2012 contract. Nevertheless, the Union (Walker) conceded that, despite the contract header and the fact that it was submitted to the arbitrator, the AFSCME TA was not intended to be included in the successor contract.

¶ 18 B. 2014 Charge and Decisions

¶ 19 On March 3, 2014, the Union filed a grievance regarding the City's "Rules and Regulations and language found in the Collective Bargaining Agreement (*e.g.*, the tentative agreement signed on July 11, 2012) cover[ing] the use of sick leave." The Union asserted that the City was requiring members to obtain medical examinations and incur expenses in a manner that violated the policy *and* the contract. The parties met and eventually settled the dispute.

¶ 20 On September 11, 2014, the City emailed the Union a draft of the negotiated 2012-2014 contract. The contract did not include the medical-certification language from the July 11, 2012, TA. Upon questioning from the Union, the City explained that, although the TA resolved the grievance about the sick-leave policy, it had not agreed to include that language in the successor contract. "Policies may change per the contract and with legislation impacting sick leave quite regularly, [the City does] not believe that including that policy in the [contract] is a best practice."

¶ 21 The Union responded that the parties had agreed that all TAs would be included in the arbitrator's decision and that the sick leave policy was resolved through contract negotiations. The response noted that, in the same TA and as a "*quid pro quo*," the City accepted the Union's proposal (which was included in the contract) about limiting the use of non-Union personnel at Union facilities.

¶ 22 The next day, on September 12, 2014, the Union filed against the City an unfair labor practice charge for failing to include the medical-certification language in the successor contract. After investigation, the Board's executive director issued a complaint for hearing. On August 9, 2016, after a hearing, an administrative law judge (ALJ) issued a recommended decision and order. The ALJ concluded that the City's failure to include the language in the contract constituted a repudiation of the collective bargaining process in violation of the Act.

¶ 23 Both parties filed with the Board exceptions to the ALJ's recommendation and order. On April 11, 2017, after reviewing the record, the Board issued a final administrative decision, rejecting the ALJ's findings and conclusions. The Board determined that an essential term of the agreement, in this case, included *where* the language would appear. Relying on its own precedent, as well as that of the National Labor Relations Board, concerning "meeting of the minds," the Board found that, "while the parties agreed to the medical[-]certification language itself, there was no evidence that the parties agreed on *where* the language would appear," with the evidence demonstrating that each party was reasonable in its own belief as to where the language would be placed.

¶ 24 The Board rejected the five primary bases for the ALJ's contrary conclusion. First, the Board noted that there was testimony at the administrative hearing that it was not unusual for the parties to resolve grievances as part of collective bargaining negotiations and that it was the *Union* that suggested doing so. As such, the Board found that the City's January 13, 2012, letter merely asserted the City's rights under the existing contract as they pertained to the sick[-]leave policy. Further, although the letter noted that sick leave was a mandatory subject of bargaining, it was not inviting the Union to bargain; rather, the letter reflected only the City's position that it was within its contractual rights to change the sick[-]leave policy in its rules and regulations, and

that, to change this, the Union would have to modify the contract. “We find that the letter, together with evidence that the Union initially suggested discussing resolving its grievance during [contract] negotiations, was intended to reassert the [City’s] position regarding the grievance the Union filed regarding changes to the sick[-]leave policy, and not an invitation to bargain as the ALJ concluded.” The Board therefore disagreed that the City’s letter supported the ALJ’s recommendation.

¶ 25 Second, the Board found that the ALJ improperly credited only part of the testimony of the City’s chief negotiator, Patrick Hayes, and that his testimony did not support the ALJ’s recommendation. Specifically, the City’s counsel asked Hayes:

“COUNSEL: Did you ever implore the Union to develop draft contract language on the subject?

HAYES: I did and –

COUNSEL: I’m sorry, Collective Bargaining Agreement language on this subject?

HAYES: No, because we were not interested, again, in restricting the ability to modify the behavior to the collective bargaining process as far as it related to the contract.”

¶ 26 The Board found that the ALJ erred in considering only Hayes’s response, “I did,” to the exclusion of both his immediate clarification and the rest of his testimony, which consistently explained that the City’s intent in discussing medical-certification language pertained only to resolving the grievance as to what was to be included in the rules and regulation, *not* in the contract. For example, although not specifically referenced in the Board’s decision, the rest of Hayes’s testimony included his statements that it was not even a possibility in his mind that the

sick-leave, medical-certification policy would be in the contract: the “parties had already negotiated and included in their [contract] the means by which the [fire department] chief could modify these rules and regulations, and it was not our position that we could accede that language into the contract because it would inhibit the chief’s ability to modify that language.” Further, Hayes explained that, if the Union had made clear it wanted to bargain for the language to be included in the contract, the City would have extracted a “princely” concession in exchange because “limiting the chief’s management rights is a considerable concession.” In contrast, Hayes noted, the 2012 TA showed only that the City received changes to the sick[-]leave policy and the Union received the City’s agreement to exclude non-Union personnel from Union facilities. Notably, there was “nothing to balance us limiting the chief’s authority to change that policy in the [TA] or anywhere else in our set of agreements. We never would have shifted our position that way without some massive discussion in *quid pro quo*. It just would never have happened.” In response to questioning from the Union, Hayes agreed that there was marginal benefit to the City from the Union’s grievance being withdrawn and settled; however, even if the grievance had *not* been withdrawn and had been successful, the outcome would have been merely a return to the status quo policy language.

¶ 27 Third, the Board rejected the ALJ’s finding that the Union’s attorney’s, Margaret Angelucci’s, statements during the small group negotiations on July 11, 2012, provided objective evidence of a meeting of the minds. Angelucci testified that she told Hayes that, with respect to the medical-certification language, the Union was willing to present more restrictive language for its own members because it wished to “lock it down” and get the language in the contract so that the issue would not arise again in the future. She testified that she said, “We just want this done, we want this in the contract so it doesn’t come back and we create this wheel again.”

Further, she testified that, “I can tell you specifically that I made that statement to the City, that we were basically proposing in some respects worse language for our members in order to get it locked down so we didn’t have to do this again.” However, when the ALJ asked Angelucci whether she made it clear that the Union wanted to include the sick-leave policy language in the *contract*, she answered:

“Yes, I mean, it wasn’t like it was this big discussion where I said this absolutely is in the contract, but I explained that the reason we were willing to give this broader look back window was in order to lock it down in the contract.

At that point, I can tell you that I and nobody on my team was questioning whether this would be contract language, so it wasn’t like this overt this is going to be contract language, but we explained why we were making it more restrictive for our members.”

¶ 28 The Board found that the above testimony, reflecting no “overt” statement that the Union was proposing to include the medical-certification language in the contract, coupled with the vague, “lock it down” statement, did not constitute objective evidence reflecting a meeting of the minds concerning *where* the language would be placed, and, further, that the City was reasonable for believing that the language was to be included in its rules and regulations.

¶ 29 Fourth, the Board found that the ALJ failed to adequately consider the manner in which the City solicited contract proposals from the Union. The Board found that, when the City’s proposals document was viewed in its entirety, it provided objective evidence that the City believed it was discussing resolving the *grievance* over the changes to the sick leave *policy*. Whereas some of the 14 proposals were marked as new contract articles or sections, proposal number 10, the section on medical certification, was not flagged as a new section of the

successor contract. The Board found that the absence of such demarcation reflected evidence that the City was not proposing new contract language. “Similarly, the July 11, 2012, proposal from the [U]nion contained the medical certification language[,] but nowhere in the proposal does it expressly indicate that the medical certification language was to be a new article or a new section of the [contract.]”

¶ 30 Fifth, the Board rejected the ALJ’s determination that the City’s conduct before the interest arbitrator confirmed that the parties had reached a meeting of the minds. Although the parties stipulated that all submitted TAs should be included in the arbitrator’s award, there was evidence that other TAs were also not included in the contract.

¶ 31 In sum, the Board concluded that:

“*** the lack of any specific statements by the Union or the [City] as to where the medical certification language was to be included, in the successor [contract] or in the [City’s] sick leave policy, leads us to find that both sides had a different view of where the medical certification language would be included and failed [to] specifically express that to each other.

It appears that these circumstances could have been avoided had both parties exercised more prudence and specificity in articulating its proposals to the other. *** As both sides share the blame in failing to expressly indicate to the other where the medical certification language would be placed throughout the process, we find the parties failed to reach a meeting of the minds on this essential term of the tentative agreement. Because there was no meeting of the minds, we find that there was no agreement to include the medical certification language in the parties’ successor collective bargaining agreement. Without an agreement, the [City’s] conduct does not constitute a repudiation

of the collective bargaining process, and thus, does not violate Sections 10(a)(4) and (1) of the Act.”

¶ 32 Following the Board’s ruling dismissing the unfair labor practice charge, the Union filed an appeal, seeking direct administrative review in this court.

¶ 33 II. ANALYSIS

¶ 34 A. Standards of Review

¶ 35 Sections 10(a)(1) and 10(a)(4) of the Act make it an unfair labor practice for an employer to “refuse to bargain collectively in good faith” with a union (5 ILCS 315/10(a)(4) (West 2016)) or to interfere with or restrain public employees in the exercise of rights guaranteed by the Act (5 ILCS 315/10(a)(1) (West 2016)). We review the Board’s decision concerning the Act pursuant to the Administrative Review Law (735 ILCS 5/3-101 *et seq.* (West 2014)), and the standard of review applied depends on whether the question presented is a question of fact, a question of law, or a mixed question of fact and law. 5 ILCS 315/11(e) (West 2014); *American Federation of State, County & Municipal Employees, Council 31 v. Illinois State Labor Relations Board*, 216 Ill. 2d 569, 577 (2005) (Council 31).

¶ 36 First, an agreement between two parties requires a “meeting of the minds.” *Paxton-Buckley-Loda Education Ass’n, IEA-NEA v. Illinois Educational Labor Relations Board*, 304 Ill. App. 3d 343, 350 (1999). “The existence of a meeting of the minds is determined by the parties’ objective conduct rather than by their subjective beliefs since a test based on subjective beliefs would enable a party to evade its contractual commitments.” *Id.* As such, whether an agreement exists, and the intent of the parties in entering it, are questions of fact. *Anderson v. Kohler*, 397 Ill. App. 3d 773, 786 (2009); *Paxton-Buckley-Loda*, 304 Ill. App. 3d at 950; *Mulliken v. Lewis*, 245 Ill. App. 3d 512, 516 (1993). In examining the Board’s factual findings, we will not weigh

the evidence or substitute our judgment for that of the Board. *City of Belvidere v. Illinois State Labor Relations Board*, 181 Ill. 2d 191, 204 (1998). Rather, the Board’s factual findings are held to be *prima facie* true and correct, and we will disturb them only if contrary to the manifest weight of the evidence. *Council 31*, 216 Ill. 2d at 577. A finding is contrary to the manifest weight of the evidence only where the opposite conclusion is clearly evident. *Belvidere*, 181 Ill. 2d at 205. In other words, a decision is contrary to the manifest weight of the evidence “only if no rational trier of fact could have reached the challenged conclusion, looking at the evidence in the light most favorable to the Board.” *Chicago Transit Authority v. Amalgamated Transit Union, Local 241*, 299 Ill. App. 3d 934, 941 (1998).

¶ 37 Second, we review *de novo* any questions of law presented by an administrative appeal. *Council 31*, 216 Ill. 2d at 577. However, in the administrative-review setting, we accord deference to the agency’s experience and expertise in interpreting the law or rule at issue. See *Department of Central Management Services/Department of Public Health v. Illinois Labor Relations Board*, 2012 IL App (4th) 110209, ¶ 16.

¶ 38 Third, mixed questions of fact and law occur where the historical facts are admitted or established, the rule of law is undisputed, and the issue is whether the law as applied to the established facts was violated. *Council 31*, 216 Ill. 2d at 577. The Board’s decision on mixed questions of fact and law will be disturbed only if clearly erroneous. *Id.* A decision is clearly erroneous when we are left with the definite and firm conviction that a mistake has been committed. *Id.* at 577-78. Whether an employer has committed an unfair labor practice is generally a mixed question of law and fact reviewed for clear error. See *City of Belvidere*, 181 Ill. 2d at 205; *City of Loves Park v. Illinois Labor Relations Board*, 343 Ill. App. 3d 389, 393 (2003).

¶ 39

B. Union's Statement of Facts

¶ 40 Preliminarily, we address the Board's assertion that the Union's statement of facts contains argument and improper record citations, violating Illinois Supreme Court Rule 341(h)(6) (eff. July 1, 2017) and should be stricken.

¶ 41 When an appellant's brief improperly includes argument, conclusions, or inappropriate record citations, we may, in our discretion, strike or disregard those portions of the brief. *Hubert v. Consolidated Medical Laboratories*, 306 Ill. App. 3d 1118, 1120 (1999). However, where the violations are not "so flagrant as to hinder or preclude review," striking a brief in whole or in part may be "unwarranted." *Id.* Here, to the extent that the Union's statement of facts is improperly argumentative or provides improper citations, it is nevertheless not so misleading as to hinder our analysis. The properly-asserted facts, coupled with the City's and Board's factual recitations, are sufficient to permit our review of this appeal. We will not strike portions of the Union's brief, but we will simply disregard any portions that we believe violate the supreme court rules.

¶ 42

C. The Board's Decision

¶ 43 We turn now to the merits of the Union's appeal. The Union asserts that the Board's decision is clearly erroneous. First, the Union contends that the objective evidence reflects that the parties had agreed to include the sick-leave language in the contract. In sum, the objective evidence upon which the Union relies is: (1) the City's tendered contract proposals in October 2011, which included sick leave, as well as its solicitation to the Union to make contract proposals, as evidenced by Hayes's testimony; (2) the City's January 13, 2012, letter in which it acknowledged an obligation to bargain sick leave; (3) the Union's July 11, 2012, statements, made by Angelucci; (4) the agreement to incorporate the July 2012 TA into the interest

arbitration award; (5) the City's actions in processing, without objection, the Union's 2014 grievance; and (6) the parties' past practice of settling grievances. The Union next asserts that the foregoing record evidence, as well as case law, supports the ALJ's findings of fact and law. Further, the Union argues that finding no meeting of the minds leads to an absurd result. Moreover, the Union contends that the Board's decision does not comply with the Act and, finally, that the language in the July 2012 TA is unambiguous and supports the ALJ's finding that the City acted in bad faith.

¶ 44 For the reasons that follow, we cannot find that the Board's findings were contrary to the manifest weight of the evidence such that the opposite conclusion is clearly apparent. We are not left with a firm and definite conviction that a mistake has committed. Therefore, the Board's decision to dismiss the unfair labor practice charge was not clearly erroneous.

¶ 45 1. The Objective Evidence

¶ 46 The Union argues first that the ALJ correctly determined that the "objective evidence" reflects a meeting of the minds. We disagree. Preliminarily, the ALJ is charged with making only recommendations to the Board, which is then free to accept or reject any part or all of the ALJ's recommendation in making its own, final decision. See, e.g., *Gounaris v. City of Chicago*, 321 Ill. App. 3d 487, 492 (2001). We review the Board's decision, not the ALJ's. See, e.g., *Starkey v. Civil Service Commission*, 97 Ill. 2d 91, 100-01 (1983); see also, *Parikh v. Division of Professional Regulation*, 2012 IL App (1st) 121226, ¶ 31 ("It is the final decision of the agency that is reviewed in an administrative review proceeding, and it is the agency's findings of fact that are entitled to deference, not the findings of a hearing officer or an ALJ). Further, although the Union is correct that a meeting of the minds is determined by the parties' objective conduct, whether the objective conduct reflects that an agreement existed and, if so, the intent of the

parties in entering it, are questions of fact. *Anderson*, 397 Ill. App. 3d at 786; *Paxton-Buckley-Loda*, 304 Ill. App. 3d at 950; *Mulliken*, 245 Ill. App. 3d at 516. As such, accepting the Union's argument here would require us to re-weigh the Board's factual findings. In contrast, reviewing the Union's proffered objective evidence in the light most favorable to the Board reveals that the Board's findings concerning the evidence were not such that an opposite conclusion is clearly evident.

¶ 47 Specifically, the Union argues first that the City tendered contract proposals in October 2011, which included a sick-leave proposal that contained language different from the City's August 2011 memorandum announcing policy changes. As such, the Union contends, the proposal was objectively one for new and different *contract* language. The Board's decision rejecting this argument was not contrary to the manifest weight of the evidence. Regardless of whether proposal number 10, unlike the August 2011 memorandum, made reference to "vacation, holiday, Kelly days, or hire backs," it *clearly* concerned the sick-leave *policy* changes. Further, and as noted by the Board, unlike other proposals, proposal number 10 did not reference any articles or sections of the contract that it would be modifying or adding anew. Rather, proposal number 10's title explicitly referenced "the Sick Leave Procedure Change Grievance." Further, the proposal was introduced by referencing the "recent grievance" by the Union concerning illness verification, and the proposal concluded with the City's request that the Union support the Chief's authority to implement the changes and withdraw its grievance.

¶ 48 Further, the Union asserts that the City's January 2012 letter, acknowledging an obligation to bargain over sick leave, equates to a meeting of the minds that, in fact, the medical-certification language would ultimately be placed in the contract. The Union asserts that there is no inconsistency between the City's position that it had no obligation to negotiate changes to the

sick-leave policy under the *current* contract, while acknowledging that it was obligated to bargain modification to sick leave in the *successor* contract. The Board rejected this characterization, finding that the entirety of the letter reflected only that, while sick leave is a mandatory subject of bargaining, the sick-leave policy *grievance* concerned the parties' rights under the current contract, which permitted the City to change a work rule. The Board found that the letter as a whole was not an *invitation* to bargain; rather, in response to the Union's demand to bargain over sick leave and another unrelated topic, the City presented its position concerning its rights to implement the changes.

¶ 49 We find the Board's reading of the letter sound. The parties' contract addressed sick-leave accrual and severance payments for unused sick leave, but it did not provide regulations or specific parameters for the use of sick leave or medical certification. As such, when the City made changes to those parameters, it did so by following the contract's procedure for announcing changes to rules. The letter, read as a whole, reflects the City's agreement that sick leave generally is a mandatory subject of bargaining, but that the sick leave *policy* was changed by the City within its rights under the current contract. The City's acknowledgement that sick-leave bargaining could occur for the successor contract does not equate to a recognition that any agreement concerning changes to language that arose out of the policy change and grievance would go into the successor contract. We agree with the Board's finding that the letter did not reflect objective evidence of the City's intent to bargain for medical-certification language in the parties' successor contract.

¶ 50 Similarly, we disagree with the Union's position that the Board erred in crediting Hayes's "entire testimony" and ignoring that Hayes was clear that he solicited contract language from the Union about sick leave. The Union asserts that the word "contract," as posed by City counsel

when questioning Hayes, was unambiguous, and that Hayes only “flip flopped” his testimony after leading and improper intervention by counsel. Again, the testimony at issue is:

“COUNSEL: Did you ever implore the Union to develop draft contract language on the subject?

HAYES: I did and –

COUNSEL: I’m sorry, Collective Bargaining Agreement language on this subject?

HAYES: No, because we were not interested, again, in restricting the ability to modify the behavior to the collective bargaining process as far as it related to the contract.”

¶ 51 We disagree with the Union’s position that Hayes “flip flopped” his testimony such that the Board’s failure to find that the City solicited the Union to make contract proposals based upon this testimony was contrary to the manifest weight of the evidence. Indeed, the manifest weight of Hayes’s testimony was that he did *not* solicit contract proposals concerning medical certification, as including that language in the contract was not, in the City’s perspective, an option; in fact, it appears that the *only* testimony that he uttered to the contrary were the two words, “I did,” which he answered but immediately clarified when counsel explained that, by the “contract,” he meant the collective bargaining agreement. The Union argues, essentially, that Hayes “slipped up” and went off script, with those two words being sufficient to undo the remainder of his testimony. To the contrary, reading an answer in total isolation is seldom advisable, and Hayes testified repeatedly that the City did not anticipate putting the medical-certification language in the contract. Indeed, interpreting Hayes’s two-word statement alone as reflecting that the City had solicited medical-certification contract proposals from the Union

would literally ignore the entirety of Hayes's remaining testimony that it was not even a possibility in his mind that the sick-leave policy language would be inserted into the contract and that, in exchange for such a result, the City would have extracted a "princely" concession.

¶ 52 Next, the Board's finding that the Union's July 11, 2012, statements, made by Angelucci, did not objectively reflect a meeting of the minds is not contrary to the manifest weight of the evidence. Again, although Angelucci testified that she expressed that the Union was presenting restrictive sick-leave policy language in order to "lock it down" so that the issue could not arise again, the Board was not unreasonable in finding that the clarity of Angelucci's position *as expressed to the City* was insufficient to reflect that, objectively, the parties had reached a meeting of the minds as to where the language would appear. Indeed, when asked whether she had made clear that the Union wanted the language to appear in the *contract*, Angelucci responded "yes," but also that "it wasn't like it was this big discussion where I said this absolutely is in the contract" and "it wasn't like this overt this is going to be contract language[.]" The Union nevertheless argues that Angelucci's statement that the Union wished to "lock it down" makes no sense unless it is considered in the context of putting the language in the contract because, if the language simply changed the policy, the City could unilaterally change the language again. Further, the Union contends that the City never presented evidence to contradict the accuracy of Angelucci's testimony concerning the statements she made in the meeting.

¶ 53 Notably, however, Angelucci and Walker both testified that neither side prefaced every proposal handed over to the other side as language to be included in the contract or not included in the contract. The Union argues that this was because there was no need for such statements because the parties were there to negotiate a successor contract. However, regardless of whether

the parties were there to negotiate a successor contract, the Board did not err in finding that the evidence reflects that, with respect to the medical-certification language, each side had a different understanding of where that language would be placed. Indeed, Angelucci also stated that, at the meeting on July 2012, nobody on her team was even questioning whether the medical-certification language would be placed in the contract. In contrast, Hayes testified that the City never considered that the sick leave proposals *would* be part of the contract. Therefore, it was not contrary to the manifest weight of the evidence for the Board to find that any statements by Angelucci at the meeting in July 2012 were either vague or were viewed by the City through its lens of considering the language for the policy only, not the contract. Therefore, the Board's finding that Angelucci's testimony was insufficient to reflect that a meeting of the minds took place is not contrary to the manifest weight of the evidence.

¶ 54 We further disagree that the fact that the parties' agreement to incorporate all TAs, including the July 2012 medical-certification TA, into the interest arbitration award reflects that they agreed to include the July 2012 medical-certification TA into the *contract*. The Union's argument on this point is premised on the following authority: for firefighters, "all terms decided upon by [an interest arbitrator] shall be included in an agreement to be submitted to the public employer's governing body ***" (5 ILCS 315/14(n) (West 2016)) and, if those terms are not rejected by the public employer's governing body, the award "shall become a part of the parties' collective bargaining agreement" (80 Ill. Adm. Code 1230.110(d) (2016)). The Union contends that, if the City did not have a meeting of the minds with the Union on contractual medical-certification language, "this would have been the time to raise the issue. Instead, however, the City stipulated that the TA would be incorporated into the Arbitrator's award and, therefore, the contract."

¶ 55 However, not *all* TAs that were incorporated into the arbitration award were, in fact, included in the contract. For example, the TA concerning telecommunication AFSCME employees was also submitted to the arbitrator and made part of the award, but it was not included in the contract. The Union argues that this was an exception because it concerned matters that could not properly be included in a contract between the Union and the City. Be that as it may, it still undermines the Union’s argument that, based on statutory authority, the City and Union both had a meeting of the minds that all TAs submitted to the arbitrator would, without question, go into the contract. Further, as noted by the City, the arbitrator here did not “decide upon” the issue; the parties settled this issue in July 2012, more than one year prior to the September 2013 arbitration award. The Union notes that the City *did* include the other TAs, or at least the intent of the other TAs, in the successor contract. However, the Board was tasked with considering whether the objective evidence reflected that the parties intended for the *medical-certification* language to become contractual. Its finding that the agreement to submit the TA for inclusion in the arbitration award was insufficient to reflect that the parties had a meeting of the minds as to where the agreed-upon medical-certification language would ultimately *appear* is not contrary to the manifest weight of the evidence.

¶ 56 The Union next asserts as objective evidence of a meeting of the minds that the City processed, without objection, the Union’s March 2014 grievance that noted violations of the sick-leave rules *and* contract provision as agreed upon by the July 2012 TA. The Union argues that the grievance notified the City that the Union viewed the sick-leave rule as having been incorporated into the contract, and that, since only contract issues can be grieved, processing the grievance without objection reflects objectively that the City knew it had agreed to incorporate the medical-certification language into the contract. This argument is weak. Further, the Union

cites no caselaw to support it. The parties' contract provided a grievance procedure allowing for the Union to challenge any violations or changes to work rules. That the Union did, in fact, pursue under the contract a grievance about the City's alleged violation of the sick leave policy, even if described in the grievance as both a regulation and a contract provision, does not mean that the City's processing of that grievance objectively reflected that it had previously agreed to incorporate the policy language into the contract.

¶ 57 Finally, the Union contends that the parties' past practice of settling grievances reflects that the City knew that the July 2012 TA was not merely settlement of a grievance but, rather, an agreement on contract language. The Union presented as an example a document with the header "Settlement over IAFF Grievance Dated June 5, 2015," explaining that grievance settlements do not state a specific contract term. As such, the Union argues that the July 2012 TA, which had a contract term in the header, reflects objectively that the City bargained over a contract provision, not just to settle the Union's grievance.

¶ 58 The existence of grievance-settlement forms that do not state a contract term is not surprising, as we presume that not *all* grievances are settled during contract negotiations. Here, however, what is relevant is that the grievance arose when contract negotiations were pending and the Union suggested resolving it during contract negotiations. The Board noted that there was testimony at the administrative hearing that it was not unusual for the parties to resolve grievances as part of collective[-]bargaining negotiations. The Board's failure to mention this specific evidence in its decision does not mean that it did not consider it, nor does it reflect that its overall conclusions were contrary to the manifest weight of the remaining evidence.

¶ 59 In sum, the Board's findings that the above evidence did not objectively reflect that the City agreed to include sick-policy language in the successor contract are not contrary to the manifest weight of the evidence.

¶ 60 2. Caselaw

¶ 61 The Union next argues that the foregoing evidence, as well as certain case law, supports the ALJ's decision.

¶ 62 Again, the Union's argument here asserts that the ALJ's findings were superior, thereby asking us to re-weigh the Board's factual findings. We again decline the Union's invitation to credit the ALJ's findings over the Board's. Further, although we do not repeat them here, to the extent that the Union's assertions in support of this argument overlap with those we rejected above, we continue to reject them.

¶ 63 Further, we disagree that the case law that the Union offers warrants a conclusion that the Board's decision here is clearly erroneous. First, although we consider questions of law *de novo*, we will not analyze here the out-of-state labor board decisions that the Union cites. They are not precedential and, in any event, the Board here relied upon its own precedent concerning meeting of the minds and unfair labor practices. We accord deference to the agency's experience and expertise in interpreting its decisions concerning the law or rule at issue. See *Department of Central Management Services*, 2012 IL App (4th) 110209, ¶ 16.

¶ 64 The remaining cases cited by the Union are distinguishable, based upon the Board's findings here. For example, the Union cites *Midland Hotel Corp. v. Rueben H. Donnelley Corp.*, 118 Ill. 2d 306, 313 (1987), for the proposition that, for parties to have a valid agreement, it is not necessary that they have the same subjective understanding of the contract terms but, rather, it is sufficient if the parties' conduct indicates an agreement to the contractual terms. However,

these concepts are not in dispute. Instead, the Board found that, *objectively*, the evidence did not show an agreement as to where the sick-leave terms would be placed. As discussed above, the Board's findings were not contrary to the manifest weight of the evidence.

¶ 65 Similarly, the Union cites *Bud's Cooling Corp. and Bud Antle, Inc.*, 138 NLRB 596, 601 (1962), for the concept that the failure of one party to articulate its understanding of an agreement, when it knows the other party's position, undermines a claim of ambiguity. Further, citing *Colfax Envelope Corp. v. Graphic Communications Local 458-3M*, 20 F.3d 750 (7th Cir. 1994), the Union argues that, if one party can be assigned the greater blame for a misunderstanding, or if its interpretation is less reasonable, then the disagreement over the contract should be resolved against it. Again, both propositions may be true, but are inapplicable here, where the Board found that the objective evidence did not reflect that the City was aware that the Union believed negotiations concerned sick-leave language for the *contract*, as opposed to language for the sick-leave *policy* that could resolve the Union's grievance. The Board did not find that one party could be assigned greater blame here; rather, it expressed that both sides were reasonable in their beliefs, with the result being that there was nonetheless no meeting of the minds. The Board's findings, as discussed above, were not contrary to the manifest weight of the evidence.

¶ 66 3. No Absurd Result

¶ 67 The Union asserts that the Board's decision leads to an absurd result. Namely, the Union asserts that, if the language were not meant to be placed in the contract, then it "bargained away a better situation for its members basically in exchange for nothing. If the parties agreed on policy language and not on contract language, as the City alleges, the City is free to change the medical[-]certification policy whenever it chooses." The Union notes that its proposals

increased the window period during which absences would require certification and it withdrew various proposals in an attempt to get the language added to the contract. “Why would a Union place its members in a worse position under a policy than what the City itself had proposed if it was only going to allow the City to alter that policy at will in the future?”

¶ 68 However, the evidence does not reflect that the Union received nothing in exchange for the changes to the sick-leave policy language. The 2012 TA reflects that, while the City received changes to the sick leave policy, the Union received the City’s agreement to exclude non-Union personnel from Union facilities. Further, we are not persuaded by the Union’s suggestion that the City will or can simply alter the policy at will. The City has the authority to make changes, but it is contractually required to first provide notice so that, if necessary, the Union may grieve and arbitrate the reasonableness of the changes. Indeed, that is how the parties previously operated, and the prior sick leave policy was apparently in effect from 1988 through 2011 without the City implementing any, let alone frequent, unilateral revisions.

¶ 69 As to the Union’s suggestion that it did not receive anything of value in exchange for leaving the language *out* of the contract, this argument can also be reversed, if one considers what the City purportedly would have received in exchange for putting the language *into* the contract. In other words, if the Union is correct and the language was supposed to go into the contract, what did the City receive in exchange for bargaining away the discretion of the fire chief to make changes to rules and regulations? As Hayes explained, “limiting the chief’s management rights is a considerable concession” and the City would have extracted a “princely” compromise in exchange for that result. Hayes noted, “We never would have shifted our position that way without some massive discussion in *quid pro quo*,” and he explained that, although there was marginal benefit to the City from the Union’s grievance being withdrawn and

settled, that result would not equate to the concession of limiting the Chief's discretion. Indeed, even if the grievance had *not* been withdrawn and had been *successful*, the outcome would have been a merely return to the sick-leave language that preceded the proposed changes.

¶ 70 In sum, looking at the evidence as a whole, the Board's finding that the objective evidence did not reflect a mutual intent to include the medical-certification language in the contract was not nonsensical.

¶ 71 4. Compliance with the Act

¶ 72 The Union next re-asserts its argument that the Board's decision does not comply with the Act, given that the parties agreed that all TAs submitted to the interest arbitrator, including the July 2012 TA, would be made part of the award, and "all terms decided upon by [an interest arbitrator] shall be included in an agreement to be submitted to the public employer's governing body ***" (5 ILCS 315/14(n) (West 2016)) and, if those terms are not rejected by the public employer's governing body, the award "shall become a part of the parties' collective bargaining agreement" (80 Ill. Adm. Code 1230.110(d) (2016)). We rejected this argument above and do so again here for the same reasons.

¶ 73 5. The July 2012 TA

¶ 74 Finally, the Union argues that the July 2012 TA was unambiguous and clearly supported the ALJ's finding that the City acted in bad faith. We disagree.

¶ 75 Again, the only language in the agreement that the Union points to in support of its contention is the TAs header that noted "2012-2014 Contract." However, other TAs, such as the telecommunicators AFSCME TA, also bore this heading, but were not included in the contract. The Union notes that the July 2012 TA containing the medical-certification language also contained, below that section, a paragraph reflecting that the City would not assign non-Union

personnel to Union facilities. That section apparently *was* included in the contract, while the medical-certification language, which appeared on the same document with the “2012-2014” contract header, was not. This seemingly reflects a contradiction, but it nevertheless remains that the Board considered the manifest weight of the evidence as a *whole* and reasonably found that the medical-certification language was not the result of a *mutual* goal to include *that provision* in the contract.

¶ 76 In sum, we cannot find that the Board’s findings were contrary to the manifest weight of the evidence such that the opposite conclusion is clearly apparent. We are not left with a firm and definite conviction that a mistake has committed. Therefore, the Board’s decision to dismiss the unfair labor practice charge was not clearly erroneous.

¶ 77

III. CONCLUSION

¶ 78 For the reasons stated, we affirm the decision of the Illinois Labor Relations Board.

¶ 79 Affirmed.