2019 IL App (1st) 182002-U

FIFTH DIVISION
Order filed: August 16,2019

No. 1-18-2002

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

CARLO J. CARLOTTA, Petitioner, v. THE ILLINOIS LABOR RELATIONS BOARD, STATE PANEL, and ILLINOIS COUNCIL OF POLICE, Respondents.	))))))))))	Direct Administrative Review of the Illinois Labor Relations Board, State Panel. No. S-CB-18-021

JUSTICE HOFFMAN delivered the judgment of the court.
Justices Hall and Lampkin concurred in the judgment.

ORDER

¶ 1 *Held*: We affirm the order of the Illinois Labor Relations Board that affirmed the dismissal of the petitioner's unfair labor practice charge because the petitioner forfeited his arguments on appeal by failing to raise them in the proceedings below.

¶ 2 The petitioner, Carlo Carlotta, filed this action for direct administrative review of the final order of the respondent, the Illinois Labor Relations Board, State Panel (the Board),

affirming the dismissal of his unfair labor practice charge against the Illinois Council of Police (the Union), which alleged that the Union violated the Illinois Public Labor Relations Act (Act) (5 ILCS 315/10 (West 2016)). On appeal, the petitioner contends that the dismissal order should be reversed because the Executive Director of the Board failed to conduct an adequate investigation as prescribed by the Act and failed to analyze the petitioner's charge under section 10(b)(1) of the Act. The petitioner also contends that, given the Executive Director's errors, the Board erred by affirming the dismissal of his charge. For the following reasons, we affirm.

¶ 3 The following factual recitation is derived from the pleadings and the exhibits of record. In December 2016, the petitioner was employed as a part-time police officer by the Village of Elburn Police Department (the Village). The Village and the Union were parties to a collective bargaining agreement that included a grievance procedure that culminated in a final and binding arbitration. As a part-time officer, the petitioner was included in a bargaining unit represented by the Union.

¶ 4 On December 3, 2016, the petitioner was allegedly involved in an off-duty incident that occurred in the state of Missouri. In January 2017, the Village began investigating the incident and placed the petitioner on administrative leave. On February 24, 2017, the Village terminated the petitioner's employment. The Union filed a grievance on the petitioner's behalf and an arbitration hearing was set for July 18, 2017. Three business days prior to the hearing, the Union informed the petitioner that, due to recent discoveries, the Union's grievance committee voted to end the grievance procedure. The Union related this information to the petitioner, along with the final settlement offer made by the Village. The Union also informed the petitioner that he could

not proceed with the arbitration proceeding with his own counsel as only the Union had jurisdiction.

¶ 5 On January 9, 2018, the petitioner filed a *pro se* unfair-labor-practice charge with the Board against the Union. On the charge form, the petitioner left blank the box that indicated which subsection of section 10(b) of the Act the Union had violated. However, in another box, the petitioner alleged the following: the Union, which had five months to prepare for the arbitration hearing, notified him three days prior to the hearing that it would not represent him. He further alleged that he asked the Union for an explanation as to why his grievance was terminated, but he did not receive a specific answer.

¶ 6 On March 26, 2018, Kimberly Stevens, the Executive Director of the Illinois Labor Relations Board, State Panel (the Executive Director), dismissed the petitioner's charge without a hearing. In a written order, the Executive Director analyzed the petitioner's charge under section 10(b)(1)(ii) of the Act, which required the petitioner to prove that the Union engaged in "intentional misconduct" when it took an adverse action against him for discriminatory reasons. The Executive Director noted that, under the Act, Unions are afforded "substantial discretion" in deciding whether a particular grievance should be pursued. The Executive Director concluded that the petitioner did not provide "sufficient evidence to show that [the Union] engaged in intentional misconduct due to any animosity toward [him]."

¶ 7 On April 9, 2018, the petitioner appealed the Executive Director's dismissal to the Board. In his appeal, the petitioner made several new allegations against the Union. Specifically, he argued that the Union, through its appointed attorney, ignored evidence that would have exonerated the petitioner, failed to communicate with him regarding his grievance over the

course of five months, and ultimately withdrew from representing him at the "proverbial 11th hour." He further alleged that the Union discriminated against him in this manner due to his status as a part-time employee. According to the petitioner, the Union's attorney told him on several occasions that he was "lucky" that the Union was representing a part-time employee. He maintained that these facts were sufficient to allege intentional misconduct by the Union as required by section 10(b)(1)(ii) of the Act.

¶ 8 In support of his appeal to the Board, the petitioner attached several emails he sent to his Union attorney, in which he expressed disappointment with the Union's level of communication. He also attached copies of text messages from the individual who filed the complaint against him in Missouri, which he maintains were produced during discovery. He contends that the text messages were inappropriately redacted before he received them and that, when he informed his Union attorney of this, he was ignored. Lastly, he attached the email from his Union attorney, which explained that the Union's grievance committee voted to end his grievance and informed him of the Village's final settlement offer. The Union did not file a response to the Board.

¶ 9 On August 15, 2018, the Board issued a written decision, in which it adopted the Executive Director's decision and affirmed the dismissal of the petitioner's unfair labor charge against the Union. The petitioner timely filed a petition for review with this court.

¶ 10 On appeal, the petitioner contends that the Executive Director committed two reversible errors: (1) failing to conduct an adequate investigation of the petitioner's charge as required by section 11(a) of the Act and (2) failing to analyze the petitioner's charge under section 10(b)(1) of the Act. He also contends that, given the aforementioned errors, the Board erred by affirming the Executive Director's dismissal.

¶ 11 Section 11(a) of the Act requires the Board to investigate charges of unfair labor practices. 5 ILCS 315/11(a) (West 2016). When investigating such a charge, the Board is analogous to a grand jury. *Murry v. American Federation of State, County & Municipal Employees, Local 1111,* 305 Ill. App. 3d 627, 633 (1999). Like a grand jury, the Board assesses the credibility of witnesses; draws inferences from the facts; and, in general, decides whether there is enough evidence to support the charge. *Murry*, 305 Ill. App. 3d at 633. If the Board finds an issue of law or fact sufficient to warrant a hearing, the Board will issue a complaint setting forth the issues that warrant a hearing. 5 ILCS 315/11(a) (West 2016); 80 Ill. Adm. Code 1220.40(a)(3) (2016). However, the Board will dismiss the charge if the charge fails to state a claim on its face or the investigation reveals no issue of law or fact sufficient to warrant a hearing. 80 Ill. Adm. Code 1220.40(a)(4) (2016).

¶ 12 As a preliminary matter, however, we must first address the Board's argument that the petitioner failed to raise any of the arguments he now raises on appeal before the Board and, as a result, has forfeited consideration of these issues on appeal. The petitioner acknowledges that he failed to raise these issues below, but he nevertheless urges us to consider the issues because he was a *pro se* litigant.

¶ 13 As a general rule, issues or defenses not raised before the administrative agency will not be considered for the first time on administrative review. *Carpetland U.S.A., Inc. v. Illinois Department of Employment Security*, 201 Ill. 2d 351, 396-97 (2002). Although the petitioner was not represented by counsel either in the proceedings before the Executive Director or during briefing in front of the Board, principles of forfeiture apply equally to *pro se* litigants. *Porter v. Urbana-Champaign Sanitary District*, 237 Ill. App. 3d 296, 299 (1992). We conclude, therefore,

that the petitioner has forfeited consideration of his claims on appeal by failing to raise them before the Board.

¶ 14 In so holding, we recognize that waiver is a limitation on the parties rather than on this court's jurisdiction, and that the doctrine of waiver may be relaxed when necessary to maintain a uniform body of precedent, or where the interests of justice so require. *American Federation of State, County & Municipal Employees, Council 31 v. County of Cook*, 145 Ill. 2d 475, 480 (1991)). This is not such a case.

¶ 15 For the reasons stated, the judgment of the Board is affirmed.

¶ 16 Affirmed.