ILLINOIS PUBLIC LABOR RELATIONS ACT:

RECENT DEVELOPMENTS

Board and Court Decisions
October 2004 – September 2005

Jacalyn J. Zimmerman, General Counsel
ILLINOIS LABOR RELATIONS BOARD
160 N. LASALLE STREET, SUITE S-400
CHICAGO, ILLINOIS 60601-3103

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STATUTORY AMENDMENTS

- On August 24, 2004, Public Act 93-1006 became effective. It amended the Illinois Public Labor Relations Act to specify the need for perjury complaints under the Uniform Peace Officer Disciplinary Act, against sworn peace officers, to be supported by sworn affidavit.

- On June 1, 2005, Public Act 93-1080 became effective. It amended Section 20 of the Act to give the Board jurisdiction over units of local government that employ five or more public employees. Under the amendment, the Act does not apply to units of local government employing less than five employees except with regard to bargaining units in existence on the effective date of the Act and fire protection districts required by the Fire Protection District Act to appoint a Board of Fire Commissioners.

- On January 1, 2006, Public Act 94-0067, which amends Section 5 of the Act to give the Board jurisdiction over fire protection districts required by the Fire Protection District Act to appoint a Board of Fire Commissioners, will become effective. The amendment specifically gives the Board jurisdiction over units of local government whose total number of employees falls below five after the Board has certified a bargaining unit.

- On January 1, 2006, Public Act 94-0320, which amends Sections 3 and 7 of the Act, will become effective. The legislation amends the definition of public employee to include child and day care home providers who participate in the child care assistance program under Section 9A-11 of the Illinois Public Aid Code. This act specifically excludes personal care attendants and personal assistants from the amended definition of public employees. The amendment also makes the State of Illinois the public employer for said workers. Lastly, Public Act 94-0320 amends Section 7 of the Act. Collective bargaining for child and day care home

providers will be limited to the terms and conditions of employment under the State's control as defined by the amendment.

- On January 1, 2006, Public Act 94-0320, which amends Section 6 of the Act, will become effective. The amendment requires public employers to furnish, upon request, the names and addresses of public employees in a bargaining unit to the exclusive bargaining representative. The amendment further provides that public employers must only provide these lists once per payroll period and that the exclusive bargaining representative shall only use the information for bargaining or representation purposes.

- On January 1, 2006, Public Act 94-0998, which amends Sections 3 and 4 of the Act and adds Section 2.5, will become effective. The amendment grants collective bargaining rights to Illinois official court reporters. It further provides that court reporters shall be divided into three units for purposes of collective bargaining: court reporters employed by the Cook County Judicial Circuit, court reporters employed by the 12th, 18th, 19th and, after December 4, 2006, the 22nd judicial circuits, and one unit comprised of court reporters employed by all other judicial circuits. The amendment grants the chief judge of the judicial circuit that employs a court reporter the authority to hire, appoint, promote, evaluate, discipline and discharge public employees who are court reporters. Lastly, the amendment provides that the salaries of all official court reporters employed by the State shall be paid monthly from moneys appropriated to the State Comptroller for that purpose and that each employer shall make an annual appropriation request to fund court reporters.

I. Jurisdiction

A. Joint employer status

In American Federation of State, County and Municipal Employees, Council 31 v. Illinois Labor Relations Board, State Panel, __ Ill. 2d. __ , 21 PERI __ WL 2456966 (Ill.) (2005), the Illinois Supreme Court reversed the Illinois Appellate Court for the Fifth District and found that the petitioned-for individuals were not public employees. The Illinois Department of Corrections (DOC) contracted with Wexford Health Services, a private company, to provide medical services at its correctional facilities. The Union was the exclusive bargaining representative of Wexford's employees pursuant to a National Labor Relations Board certification, and sought an additional Board certification of the State as a joint employer.

The Supreme Court reinstated the original Board decision, concluded that the State was not a joint employer, and dismissed the petition. The Court noted that joint employer status rests on the actual exercise of control over terms and conditions of employment, and found that Wexford, not the DOC, made hiring decisions and determined its employees' wages. The court further found that DOC had no involvement in approving or denying time off requests, did not conduct performance evaluations and that DOC employees did not have authority to discipline Wexford employees. The court also ruled that the DOC's authority to issue stop orders, which barred individuals from entering the correctional facilities, did not amount to the authority to discharge Wexford employees. The Court found that Wexford could offer these employees other positions within the company and that the fact that the DOC subjected individuals to security regulations did not make it the employer of those individuals. The court concluded that DOC did not share or co-determine the employees' terms and conditions of employment so as to be considered their joint employer.

Finally, the court noted that if Wexford relied upon its connections to DOC to justify a refusal to bargain over certain terms and conditions of employment, or if the Union was unable

to process grievances because the State denied its stewards access to the facilities, the Union could pursue those matters through the National Labor Relations Act's unfair labor practice procedures.

In State of Illinois, Department of Central Management Services, Case No. S-CA-04-172, 21 PERI __ (IL LRB SP 2005), the Board upheld the Executive Director's dismissal of an unfair labor practice charge because the State of Illinois, Department of Central Management Services (State), was not a joint of employer of employees of the Illinois Secretary of State. During collective bargaining agreement negotiations, the Secretary of State had taken the position that the State determined health insurance benefits for bargaining unit members. The Charging Party demanded that both parties negotiate over the issue, and the Executive Director issued a complaint for hearing against the Secretary of State alleging a refusal to bargain. However, he dismissed the charge insofar as it alleged a refusal to bargain by the State, as he found that the State was not a joint employer of the employees of the Secretary of State, and the Board agreed.

B. The six-month limitations period

In Michael Huff v. Illinois Labor Relations Board, State Panel, et al., 20 PERI 172 (2005), the Illinois Appellate Court for the Third District, in an unpublished opinion, upheld the Board's dismissal of the unfair labor practice charges as untimely. Huff's charges alleged that the Employer and Union had failed to comply with a Board order that awarded him backpay and reinstatement after an unlawful discharge. The court agreed with the Board that the limitations period started to run when Huff first became aware of the potential backpay amount, which was less than he believed appropriate, not when he actually received the backpay check.

In State of Illinois, Department of Central Management Services (Corrections), Case No. S-CA-05-097, 21 PERI ___ (IL LRB SP 2005), the Board dismissed as untimely an unfair labor

practice charge filed more than six months after the Charging Party's discharge. The Charging Party asserted that the charge was timely because she was not aware of the Employer's evidence against her until her arbitration hearing, which was held months after her discharge. The Board disagreed, finding that the Charging Party knew of the Employer's charges against her at the time of her discharge and believed that they were not valid, as evidenced by her filing of a grievance contesting her discharge. Therefore, the statute of limitations began to run at that time.

In Village of Richton Park, Case No. S-CA-05-097, 21 PERI ___ (IL LRB SP 2005), the Board upheld the Executive Director's dismissal of an unfair labor practice charge as untimely because the Union did not file the charge until 10 months after the Employer issued an order concerning its employee attendance policy. The Union contended that because the Employer did not categorically refuse to negotiate over the policy until shortly before the charge was filed, it was timely. The Board disagreed, finding that the Employer had never wavered in its stance that it did not have to negotiate over the policy.

In Illinois Nurses Association (Wilkerson), Case No. S-CB-04-024, 21 PERI ___ (IL LRB SP 2005), the Board upheld as untimely the dismissal of the Charging Party's unfair labor practice charge alleging that the Union intentionally misrepresented contract language, illegally settled a grievance, and obstructed the internal process for appealing arbitration decisions when a Union agent reversed a recommendation to advance a grievance to arbitration. The Board agreed with the Acting Executive Director that all of the relevant events occurred more than six months before the charge was filed.

In Chicago Transit Authority, 20 PERI 143 (IL LRB LP 2004), the Board upheld the Acting Executive Director's dismissal of an unfair labor practice charge as untimely. On August 28, 2003, the Charging Party was allegedly informed that she would no longer be employed by

the Respondent and, on August 29, 2003, she was not allowed to return to work. She did not file her charge until March 17, 2004. The Board found that the Charging Party knew or should have known of the alleged unfair labor practice when she was not allowed to return to work. On November 8, 2004, the Charging Party filed a petition for review in the Illinois Appellate Court for the First District, Docket No. 1-04-3307.

II. Card check certification issues

In Champaign-Urbana Public Health District v. Illinois Labor Relations Board, State Panel and the American Federation of State, County and Municipal Employees, Council 31, AFL-CIO, 354 Ill. App. 3d 482, 821 N.E.2d 691, 20 PERI 185 (2004), the Illinois Appellate Court for the Fourth District ruled that the Board improperly adopted emergency rules based on Public Act 93-427, which amended the Act to provide for certification of bargaining agents without elections upon a showing of majority support.

At the outset, the court found that the Employer had standing to contest the certification. It ruled that the Employer would be affected by the certification of a new bargaining representative because the certification bound the Employer and the Union to a collective bargaining relationship.

The court then addressed the Board's use of emergency rulemaking procedures when it certified the Union through the majority interest process. The court ruled that the Board's emergency rulemaking did not comply with the Administrative Procedure Act (APA). That statute mandates that, prior to the adoption of new rules, a state agency must provide the public with 45 days notice of the intended action and must allow for hearings on the issue. It also provides that rules that do not conform with its procedures are invalid and not effective against any person or party. The APA does allow for the adoption of emergency rules without prior

notice or hearing, but only when an agency finds that a situation reasonably constitutes a threat to the public safety or interest.

The court found no threat to the public interest sufficient to justify adoption of the Board's emergency rules. It accepted the Employer's argument that the Union could have obtained representation of the employees through other means. More importantly, the court ruled that the Board failed to present evidence that the public would face a threatening situation absent promulgation of the emergency rules. The court held that agencies may not adopt emergency rules merely to eliminate administrative needs that do not threaten the public interest. Because the Board was unable to demonstrate that it acted in response to such a threat, the court ruled that the emergency rules were invalid and that the subsequent certification of the Union as exclusive representative was ineffective. The Board's petition for leave to appeal to the Illinois Supreme Court was denied.

The Illinois Appellate Court for the Second District reached the same result in County of DuPage and the DuPage County Sheriff v. Illinois Labor Relations Board, State Panel and Metropolitan Alliance of Police, DuPage County Sheriff's Police Chapter No. 126, 358 Ill. App. 3d 174, 830 N.E.2d 709, 21 PERI 77 (2005.) The Board's petition for leave to appeal to the Supreme Court was denied.

In Champaign-Urbana Public Health District v. Illinois Labor Relations Board, State Panel, et. al., 21 PERI ___ (2005), the Illinois Appellate Court for the Fourth District ordered that the Board pay the Employer's attorneys' fees as a result of its successful attempt to invalidate the emergency rules. The court analyzed the community rate for such fees in approving an hourly rate of $125 per hour.

In County of DuPage, et. al. v. Illinois Labor Relations Board, State Panel et. al., 834 N.E.2d 976, 296 Ill. Dec. 171 (2005), the Illinois Appellate Court for the Second District ordered that the Board pay the Employers' attorneys' fees as a result of their successful invalidation of the Board's emergency rules. The Employers petitioned the court for attorneys' fees under Section 10-55(c) of the Illinois Administrative Procedure Act. The Board argued that when a rule has already been invalidated in a prior court decision, as were the rules in question in Champaign-Urbana Public Health District, supra, Section 10-55(c) does not authorize attorneys' fees. The Board relied upon Hansen v. Illinois Racing Board, 179 Ill. App. 3d 353, 534 N.E.2d 658 (1989), and Sutton v. Edgar, 147 Ill. App. 3d 723, 498 N.E.2d 691 (1986). The court disagreed, finding that in the instant case, unlike those relied upon, the Board was still defending the emergency rules and had vigorously opposed the attempts to have them invalidated. The court found that the Board's position was untenable: while arguing that the Champaign case was wrongly decided, it also relied upon that court's invalidation of the rules to argue that no further attorneys' fees should be awarded. The court ordered that the Employers were entitled to a fee award of $62,493.75. A petition for leave to appeal to the Illinois Supreme Court is pending.

In Illinois Labor Relations Board v. County of Monroe et. al., Docket No. 05-CH-13 (Monroe, 2005), and Illinois Labor Relations Board v. City of O'Fallon et. al., Docket No. 05-CH-227 (St. Clair, 2005), the circuit courts issued injunctive relief, pursuant to Section 11(h) of the Act, ordering the Employers to resume bargaining in good faith with their employees' exclusive bargaining representatives. Both Employers were parties to card check certifications issued pursuant to the Board's emergency rules, and once those rules were invalidated, argued that their certifications were also invalid. The courts disagreed, finding that the Employers,

unlike those in Champaign and DuPage, supra, had not challenged the certifications at the time they issued.

III. Representation issues

A. Bar to representation proceedings

(1) Blocking charges

In Sarah D. Culbertson Memorial Hospital, Case Nos. S-RD-05-006 and S-RD-05-008, 21 PERI __ (IL LRB SP 2005), the Board vacated the Executive Director's order blocking a decertification election and remanded the matter for issuance of a supplemental order detailing the reasons for the decision. The blocking order stated that complaints in three unfair labor practice cases should block the decertification petitions, but the Board noted that not all outstanding complaint allegations are sufficient to block. As the Executive Director's order did not specifically identify and explain the complaint allegations that warranted blocking, the Board found that it did not have sufficient information upon which to rule and remanded the case.

In County of Cook, 21 PERI 53 (IL LRB LP 2005), the Board upheld the Acting Executive Director's refusal to block an election where the complained of conduct was not so egregious as to interfere with a free and fair election. The incumbent representative was challenged by another union and alleged that the Employer, in an effort to assist the challenger, restricted access to the hospital and changed the locks on the incumbent's on-site office while providing access to the challenger's representatives. The Director denied the request to block the election because he found that the incidents at issue were either too far removed from prospective election dates or too isolated in frequency, occurrence, or impact to raise legitimate questions as to the fairness of any election. The Director also noted that almost all the Employer's alleged misconduct occurred prior to the filing of the rival petition.

(2) Contract bar

In City of Calumet City, 21 PERI 98 (IL LRB SP 2005), the Board held that a tentative agreement between the Employer and the incumbent union did not bar a rival union's representation petition because that agreement was not signed by the parties' representatives. The Board observed that, pursuant to its adoption of the bright-line test established by the National Labor Relations Board in Appalachian Shale Products, an agreement must be signed by the parties prior to the filing of the rival petition and must contain terms and conditions of employment substantial enough to stabilize the parties' bargaining relationship. The Board stated that the signing requirement placed minimal burdens on the parties and was necessary to protect the integrity of the process by ensuring that the parties reach an agreement. The Board recognized that the parties apparently reached a complete written agreement four days prior to the date the rival union filed its representation petition. However, because neither the Employer nor the incumbent union in any way indicated written assent to the contract, it could not bar the petition.

In Cook County (Bureau of Health Services), 21 PERI 51 (IL LRB LP 2005), the Board affirmed the decision of the Acting Executive Director that the representation petition filed by the Petitioner was timely and directed an election. The Employer and the Illinois Nurses Association (Incumbent) were parties to a collective bargaining agreement that expired on November 30, 2004. The Petitioner filed its representation petition on September 1, 2004, the first day of the 90-60 day window for filing representation petitions prior to the expiration of an existing contract. The Incumbent argued that the contract was in effect through the entirety of the last day and actually expired on December 1, 2004, and that the Petitioner's petition was therefore untimely filed. The Acting Executive Director cited National Labor Relations Board

precedent that a contract expires on the last day of the stated term, not the day following, and the Board agreed.

The following non-precedential decision regarding contract bar has issued this past year: State Employee Nurses Association, et. al., 21 PERI 84 (IL LRB SP 2005).

B. Historical bargaining unit

The following non-precedential decision regarding historical bargaining units has issued this past year: Village of Maywood, 20 PERI 23 (IL LRB SP ALJ 2004).

C. Unit determination/appropriateness

In City of Naperville, 20 PERI 184 (IL SLRB SP 2004), the Board upheld the Administrative Law Judge's finding that a petitioned-for unit of police sergeants was an appropriate unit. The Petitioner sought to represent a bargaining unit limited to the Employer's police sergeants. The Employer argued that a separate bargaining unit for sergeants was inappropriate due to its police department's centralized job classification system and a strong community of interest between the sergeants and its police officers. The Board agreed with the Administrative Law Judge that the unit was an appropriate one because the sergeants shared a sufficient community of interest separate from that of the police officers. All of the sergeants were at the same pay grade, paid pursuant to the same wage schedule, and received the same health insurance and other benefits. They also had the same supervision and performed similar tasks, such as overseeing subordinates and reviewing work, which were not performed by the police officers.

In City of Galena, 20 PERI 182 (IL LRB SP 2004), the Board upheld the Acting Executive Director's dismissal of a representation petition on the basis that the petitioned-for unit consisted of one person. The Board agreed that the unit became inappropriate after the

Employer demonstrated that the proposed two-person unit was reduced to one employee as a result of the resignation of one sergeant and the elimination of that vacated position from the budget.

D. Unit clarification

In State of Illinois, Department of Central Management Services (Department of Corrections), 21 PERI 49 (IL LRB SP 2005), the Board reversed the Acting Executive Director's unit clarification order excluding employees as confidential because they had been inadvertently included in the unit. The Board found that the titles at issue were not newly created, the employees had not experienced a substantial change in job duties or responsibilities and no significant statutory or case law changes had occurred since the unit was created. Further and more importantly, the Board found that the employees had been intentionally included in the unit. The matter is pending appeal in the Illinois Appellate Court for the Fourth District, Docket No. 4-05-0277.

In State of Illinois, Department of Central Management Services (Department of Corrections), 21 PERI 48 (IL LRB SP 2005), the Board reversed the Acting Executive Director's decision to issue a unit clarification order because the parties had no basis for claiming that the initial inclusion of the objector was a mistake. The individual's title had been included in the unit since 1996, more than five years before the parties filed the stipulated unit clarification petition that sought to exclude him. The Board found that unit clarification was not appropriate for the situation because the extensive length of time the position had been included in the unit belied the assertion that the inclusion had been a mistake. The Board noted that the argument that an employee should be excluded due to mistake is completely undercut when the record

demonstrates that the parties intentionally included the employee in the unit. The matter is pending appeal in the Illinois Appellate Court for the Fourth District, Docket No. 4-05-0276.

In Forest Preserve District of Cook County, 21 PERI 43 (IL LRB LP 2005), the Board affirmed the Acting Executive Director's decision to issue a unit clarification when the evidence clearly showed that the parties had stipulated to the clarification. The Acting Executive Director determined that the parties had agreed, at the hearing held in Case No. L-CA-03-020, to amend the instant unit clarification petition to include only the newly created title of resource technician in the existing bargaining unit represented by the Union. The Acting Executive Director therefore ordered that the unit be clarified to include the resource technician title. On appeal, the Employer argued that it had not agreed to the petition, but the Board, after examining the evidence, ruled that the parties had clearly stipulated to the amendment.

The following non-precedential decisions regarding unit clarification have issued this past year: City of Bloomington, 21 PERI 47 (IL LRB SP ALJ 2005); Chicago Transit Authority, 21 PERI 95 (IL LRB LP ALJ 2005).

E. Labor organization status

In County of Cook (Oak Forest Hospital), 21 PERI 94 (IL LRB LP 2005), the Board remanded proceedings on the union's representation petition where the incumbent union challenged the petitioning union's status as a labor organization within the meaning of Section 3(i) of the Act. The Board affirmed the Executive Director's decision to proceed with the election, but ordered the ballots impounded pending a determination as to the petitioner's status. The Board remanded the case to the Executive Director.

F. Section 3(n) independent contractors

The following non-precedential decision regarding independent contractor status has issued this past year: State of Illinois, Department of Central Management Services, 21 PERI 41 (IL LRB SP ALJ 2005).

G. Section 3(c) confidential employees

In State of Illinois, Department of Central Management Services and State of Illinois Labor Relations Board, State Panel, et. al., Docket No. 4-04-1001, 21 PERI ___ (2005), the Illinois Appellate Court for the Fourth District, in an unpublished order, affirmed the Board's decision that individuals in the title of Internal Auditor I were not confidential employees. The court agreed with the Board that the petitioned-for employees were not confidential employees based on their duties at the time of the hearing. The Employer, however, asserted that the employees' duties would change as a result of a consolidation of auditing functions and urged the Board to employ the "reasonable expectation" test to exclude them as confidential based on those future duties. The court agreed with the Board that the reasonable expectation test allows an examination of an employee's current duties to determine whether they are likely to include confidential responsibilities with the onset of collective bargaining, but that the test should not be extended to allow an employer to argue confidential status based upon evolving changes in duties as a result of a restructuring.

In Village of Bolingbrook and Illinois Labor Relations Board and Metropolitan Alliance of Police, 20 PERI 186 (2004), the Illinois Appellate Court for the Third District, in an unpublished decision, upheld the Board's finding that the Employer's lieutenants were not confidential employees as defined by the Act. The Employer argued that the lieutenants' role in the grievance procedure gave them access to confidential information about the collective bargaining process, because one lieutenant had once consulted an Employer attorney, and the

Employer's Director of Public Works, to resolve a grievance. The court found that this evidence fell far short of what was required to prove confidential status.

In City of Naperville, 20 PERI 184 (IL LRB SP 2004**),** the Board upheld the Administrative Law Judge's finding that the internal affairs sergeant was not a confidential employee under either the authorized access or the labor nexus test. The Administrative Law Judge found that, despite the fact that the sergeant summarized grievances filed by unit members, he neither made recommendations on how the Employer should deal with those grievances nor did he have access to, or participate in, the process of developing the Employer's grievance responses or its bargaining proposals. Further, although the sergeant had access to confidential investigation files about officers suspected of wrongdoing, the Board found that mere access to confidential personnel information does not confer confidential employee status upon an employee.

The Board also upheld the Administrative Law Judge's conclusion that there was no evidence that the sergeant had ever assisted the Chief of Police in labor negotiations, nor had the sergeant been present during bargaining sessions in which collective bargaining strategies, proposals, the labor-management relationship or possible grievance resolutions were discussed. Because the sergeant did not work with the Chief in any confidential capacity, the Board found that the sergeant was not a confidential employee.

The following non-precedential decisions regarding confidential employee status have issued this past year: City of Alton, 21 PERI 108 (IL LRB SP ALJ 2005); Village of Hoffman Estates, 21 PERI 15 (IL LRB SP ALJ 2005).

H. Section 3(j) managerial employees

The following non-precedential decision regarding managerial employee status has issued this past year: City of Alton, 21 PERI 108 (IL LRB SP ALJ 2005).

I. Section 3(r) supervisory employees

In Metropolitan Alliance of Police v. Illinois Labor Relations Board and Village of Bellwood, 354 Ill. App. 3d 672, 820 N.E.2d 1107, 21 PERI 162 (2004), the Illinois Appellate Court for the First District affirmed the Board's ruling that the Employer's sergeants and lieutenants were supervisory employees because they had the authority to discipline subordinates through the issuance of personal incident reports (PIRs) which were recorded in the employees' personnel files and affected future discipline levels for similar violations. The Union argued that the employees' ability to issue the PIRs did not require the use of independent judgment because the Employer's rules required them to report rules violations by fellow officers, but the court found that the employees did exercise independent judgment because they had the ability to issue PIRs in lieu of verbal reprimands. The court further found that the mere existence of a PIR was evidence that disciplinary action had been taken against an officer. The court also noted that a PIR remained in an officer's file for six to 12 months and had the requisite effect on the officers' terms and conditions of employment because they formed the basis for more severe discipline. Because the employees had the ability to issue discipline with the requisite independent judgment, the court upheld the Board's finding that they were supervisors.

In State of Illinois, Department of Central Management Services, 21 PERI 46 (IL LRB SP 2005), the Board upheld the Administrative Law Judge's finding that two employees were not supervisory because they did not perform any supervisory functions with the requisite independent judgment. The Board found that the employees lacked disciplinary authority

because neither had ever disciplined a subordinate, nor had they been informed that they had disciplinary authority.

The Board further found that neither employee had the authority to direct his subordinates because there was no record evidence as to how the first employee made his assignments and the record did not indicate that the second employee regularly chose between two or more significant courses of action when making his assignments. Furthermore, the record did not support a finding that either employee used independent judgment in reviewing subordinates' work. The Board also upheld the Administrative Law Judge's conclusion that the employees did not have supervisory authority to grant time off or overtime because time off was routinely granted and both employees could only recommend overtime in emergency or special situations. The Administrative Law Judge also found that the alleged supervisors' evaluations did not affect their subordinates' terms or conditions of employment. Finally, the Board upheld the Administrative Law Judge's conclusion that because neither employee had been presented with a formal grievance, neither had the statutory authority to adjust grievances. Because the employees did not exercise supervisory authority, the Board upheld the Administrative Law Judge's conclusion that they were not supervisory employees as defined by the Act.

In Village of Bolingbrook v. Illinois Labor Relations Board and Metropolitan Alliance of Police, 20 PERI 186 (2004), the Illinois Appellate Court for the Third District, in an unpublished order, upheld the Board's finding that the Employer's lieutenants were not supervisory employees as defined by the Act. Although the employees' principal work was substantially different from that of their subordinates, the court upheld the Board's finding that the employees did not exercise supervisory authority with independent judgment. Although the lieutenants could issue counseling letters to subordinates, the record failed to indicate that they could lead to

more severe forms of discipline and were, therefore, not evidence of supervisory authority. The court further found that employees could not effectively recommend more severe discipline. The court also noted that none of the employees had ever issued a suspension.

With respect to the supervisory authority to direct, the court upheld the Board's conclusion that the employees lacked such authority because their assignment of work and approval of training requests were based on advice and guidance from superiors. Moreover, they did not exercise supervisory authority when correcting their subordinates' performance deficiencies because the work was routine in nature. The court also concluded that their approval of time off and overtime was done in a routine and clerical manner.

Finally, the court found that although the lieutenants were involved in the first step of the grievance process, they did not have supervisory authority to adjust grievances, as they did not consistently exercise independent judgment in adjusting grievances.

In City of Naperville, 20 PERI 184 (IL SLRB SP 2004), the Board upheld the Administrative Law Judge's determination that police sergeants were not supervisory because they did not exercise any supervisory authority with the requisite independent judgment. Although the sergeants could issue verbal reprimands and counseling letters, those did not have any effect on their subordinates' terms and conditions of employment and the sergeants did not believe that the verbal reprimands constituted discipline. The record was devoid of any instance in which a sergeant issued a written reprimand or suspension absent the approval of a superior officer. Additionally, only one sergeant had issued a suspension and the paucity of the record on the issue made it impossible to determine whether the sergeants possessed the authority to suspend.

The Administrative Law Judge further found that the sergeants did not exercise independent judgment when directing subordinates. Assignments were based on the proximity of subordinates to ongoing situations, task lists provided by superior officers and caseloads. Time off and overtime matters were clerical and routine in nature. The lieutenants routinely returned performance evaluations to the sergeants for clarification. Therefore, the Administrative Law Judge found that the sergeants lacked independent judgment in their alleged direction of subordinates.

The Board also agreed with the Administrative Law Judge that the sergeants did not exercise independent judgment when adjusting grievances. The Administrative Law Judge found that the sergeants could not adjust grievances without the approval of a superior officer and that the sergeants frequently responded to grievances based upon direction received from their superiors.

The Administrative Law Judge also found that the sergeants lacked the ability to make effective recommendations on supervisory matters. The sergeants' recommendations on rewards, written reprimands and more severe forms of discipline were not accepted as a matter of course. Additionally, while the record indicated that sergeants had the authority to issue written reprimands, those reprimands were not routinely followed. The Administrative Law Judge further found that the sergeants' training recommendations were not accepted as a matter of course.

The following non-precedential decisions regarding supervisory employee status have issued this past year: City of Alton, 21 PERI 108 (IL LRB SP ALJ 2005); City of Bloomington, 21 PERI 47 (IL LRB SP ALJ 2005); City of Harvey, 21 PERI 39 (IL LRB SP ALJ 2005); Village of Hoffman Estates, 21 PERI 15 (IL LRB SP ALJ 2005); State of Illinois, Department

of Central Management Services, 20 PERI 171 (IL LRB SP ALJ 2004); Chicago Transit Authority, 20 PERI 173 (IL LRB LP ALJ 2004).

IV. Employer unfair labor practices

A. Section 10(a)(1) restraint, interference and coercion

In Chicago Transit Authority v. Illinois Labor Relations Board and Amalgamated Transit Union, 358 Ill. App. 3d 83, 830 N.E.2d 630, 21 PERI 76 (2005), the Illinois Appellate Court for the First District vacated and remanded the Board's ruling that the Employer violated Section 10(a)(1) of the Act by threatening employees and denying the union access to its property to conduct an election, in retaliation for the union's strike authorization vote. The parties were negotiating a successor bargaining agreement when union members voted to authorize a strike during an internal union election conducted on Employer property. The Union never formally notified the Employer that it intended to strike and no strike ever took place. The Board determined that the Union's strike authorization vote was lawful because Section 17 of the Act allows transit employees the right to strike and found that the Union did not violate the Act when it took actions in furtherance of a strike.

The court found that, in rejecting the Employer's contention that bargaining unit employees were prohibited from striking, the Board failed to acknowledge Section 17's five-part test that must be met for a lawful strike by public employees. Specifically, the court found that the Board omitted any reference to the Act's requirement that parties must not have agreed to submit their disputed issues to final and binding arbitration in order to lawfully strike. The parties' prior bargaining agreement, if still applicable at the time of the strike authorization vote, raised a question as to whether the parties agreed to submit their disputed issues to final and binding arbitration. The court ruled that a remand was necessary for the Board to consider

whether the actions taken in furtherance of the strike would be considered protected under the Act.

In Palatine Rural Fire Protection District (Delatorre), 21 PERI 107 (IL LRB SP 2005), the Board reversed the Administrative Law Judge's finding that the Respondent's refusal to allow the Charging Party to return to work for two weeks was retaliation for his grievance filing. The Respondent removed the Charging Party, a firefighter, from active duty in order to conduct a medical examination. The Respondent allowed the Charging Party to return to work once its physician had released him, approximately two weeks after the examination. The collective bargaining agreement between the Respondent and the Charging Party's exclusive representative allowed the Respondent to order a fitness-for-duty exam for any employee and stated that employees were only allowed to return to work upon release by the Respondent's physician.

The Administrative Law Judge found that the initial order for the exam was not illegally motivated, but that the refusal to allow the Charging Party to return to work for two weeks after the exam was based on illegal animus. The Board agreed with the Administrative Law Judge that the order for exam was not retaliation, but reversed the Administrative Law Judge's finding that the two week delay was so motivated. The Board found that the two week delay was not unusual and that the Respondent's physician had not delayed the Charging Party's release for any unlawful reason.

In Rockford Township Highway Department (Rivera), 21 PERI 37 (IL LRB SP 2005), the Board upheld the Acting Executive Director's dismissal of an unfair practice charge that the Employer violated the Act when it discharged the Charging Party. The Charging Party alleged that the Employer discharged her on the basis of her sex, but the Director found that the Board lacked jurisdiction over the charge because it was couched in general gender discrimination

language. The Director further found that the Charging Party's filing of two EEOC charges was not protected concerted activity because she was acting only on her own behalf and not on behalf of fellow employees. Therefore, the Director found that the Board lacked jurisdiction over the case and dismissed the charge. On March 10, 2005, the Charging Party filed a petition for review in the Illinois Appellate Court for the Second District, Docket No. 2-05-0242.

In Chicago Transit Authority (Wiggins), 21 PERI 124 (IL LRB LP 2005), the Board affirmed the decision by the Administrative Law Judge to dismiss all but one allegation in the Charging Party's complaint and dismissed the remaining allegation as well. The Charging Party alleged that the Employer violated the Act when it discharged him, allegedly in retaliation for making a request for union representation during an investigatory interview. An arbitrator rejected a grievance raising the same issue and the Board upheld the Administrative Law Judge's finding that the arbitrator's decision had disposed of the issue. The Board then dismissed the remaining allegation that a supervisor threatened a union representative, even though deferral of this issue was technically improper because the arbitrator failed to consider and resolve it. The Board ruled that the threat allegation was minimal at best and the Charging Party did not file any exceptions to the Administrative Law Judge's recommendation.

In Pace Heritage Division (Ento), 21 PERI 70 (IL LRB LP 2005), the Board upheld the Acting Executive Director's dismissal of the Charging Party's charge that the Employer violated the Act by discriminating against her and ignoring her seniority while distributing extra work assignments. It agreed that while the Charging Party was disciplined, there was no evidence of anti-union animus or that the manner in which the Employer made the assignments constituted an unfair practice.

In City of Chicago (Cooper), 20 PERI 138 (IL LRB LP 2004), the Board upheld the Acting Executive Director's dismissal of an unfair labor practice charge when the Charging Party failed to state a cause of action under the Act and did not supply the Board with sufficient information in support of his charge.

The following non-precedential decisions regarding Section 10(a)(1) restraint, interference and coercion have issued this past year: North Shore Sanitary District, Case No. S-CA-03-229, 21 PERI __ (IL LRB SP ALJ 2005); Village of Elk Grove Village, 21 PERI 13 (IL LRB SP ALJ 2005); County of Vermillion, 21 PERI 12 (IL LRB SP ALJ 2005); City of Effingham, 21 PERI 11 (IL LRB SP ALJ 2005); County of Cook, Cook County Hospital, Case No. L-CA-03-045, 21 PERI __ (IL LRB LP ALJ 2005); Chicago Transit Authority, 21 PERI 95 (IL LRB LP ALJ 2005); County of Cook, Cook County Hospital, 21 PERI 50 (IL LRB LP ALJ 2005); Chicago Transit Authority, 21 PERI 38 (IL LRB LP ALJ 2005).

B. Section 10(a)(2) discrimination

In County of Cook and Sheriff of Cook County (Zacarro), 21 PERI 125 (IL LRB LP 2005), the Board affirmed the Administrative Law Judge's dismissal of the complaint. The Board agreed with the Administrative Law Judge that although the Charging Party had demonstrated that he had engaged in protected concerted activities and had been denied workers' compensation, he had failed to demonstrate that the Employer knew of his activities or that there existed a causal relationship between those activities and the adverse employment action.

In Sarah D. Culbertson Memorial Hospital, 21 PERI 6 (IL LRB SP 2005), the Board upheld the Acting Executive Director's dismissal of the unfair labor practice charge where the Charging Party failed to present sufficient evidence of disparate treatment against bargaining unit members. Nine days after the Charging Party filed majority interest petitions to represent three

separate bargaining units, the Respondent announced changes in its employee health and dental benefits. The Charging Party alleged that the unilateral change constituted retaliation for the employees' signing of the majority interest cards. However, the Board found that the Charging Party failed to present evidence that non-union employees were treated differently. The evidence showed that the Respondent had increased the health and dental costs for all its employees, not solely for bargaining unit members. The Board found that the Respondent made the change for no other reason than rising health care costs, and the mere fact that the change was made within nine days of the representation filings was insufficient to demonstrate illegal motive.

In City of Evanston, 20 PERI 167 (IL LRB SP 2004), the Board upheld the dismissal of a police officer's charge that his discharge was motivated by retaliation for his union activities. Instead, the Board found that the Charging Party was discharged after he was arrested for driving under the influence of marijuana and attempted to commit suicide.

In Pace Heritage Division (Ento), 21 PERI 70 (IL LRB LP 2005), the Board upheld the Acting Executive Director's dismissal of the Charging Party's unfair labor practice charge. The Director found that while the Charging Party was disciplined, there was no evidence indicating that the discipline was based on her grievance filing activity.

In County of Cook, 21 PERI 53 (IL LRB LP 2005), the Board upheld the dismissal of an Incumbent Union's charge that the Employer, in an effort to assist a challenger, restricted its access to the facility, changed the locks on the Incumbent's on-site office, and provided access to the challenger's representatives. The Director acknowledged that the Incumbent, as an exclusive bargaining representative, had engaged in activities designed to further the rights of its membership and that the Employer knew of these activities. However, the Director found that the Incumbent had failed to provide evidence that any of its supporters suffered discrimination.

The Director found that the only evidence of animus was the close timing between the filing of the petition and the Employer's actions and that mere timing is insufficient evidence of animus.

The following non-precedential decisions regarding Section 10(a)(2) employer discrimination have issued this past year: State of Illinois, Department of Central Management Services (Human Services) (Davis), 21 PERI 86 (IL LRB SP ALJ 2005); Village of Elk Grove Village, 21 PERI 13 (IL LRB SP ALJ 2005); County of Winnebago (Kramp), and County of Winnebago (Ricotta); 20 PERI 141 (IL LRB SP ALJ 2004); Village of Bolingbrook, 20 PERI 140 (IL LRB LP ALJ 2004).

C. Section 10(a)(4) refusal to bargain

(1) In general

In Sarah D. Culbertson Memorial Hospital, 21 PERI 6 (IL LRB SP 2005), the Board upheld the dismissal of a charge alleging that the Employer violated the Act by unilaterally changing bargaining unit members' health and dental benefits during the time period between the filing of majority interest petitions and the Board's certification of the units. The Union contended that under the new majority interest procedure, the Employer's duty to bargain arose upon the filing of the petitions rather than issuance of the certifications.

The Board found, however, that in majority interest as well as traditional representation cases, the duty to bargain attaches upon certification by the Board. Under the Act, the duty to bargain extends only to the "exclusive bargaining representative," which the Act defines as a representative so designated by the Board. Thus, "exclusive representative" status attaches only when a union is certified as such by the Board. The Board also noted that nothing in the majority interest language changed the statutory provisions controlling when the duty to bargain attaches. The Board looked to Section 9(a)(5) of the Act, which states that if either party provides

evidence to the Board that the authorization cards are fraudulent or were obtained though coercion, the Board shall conduct an election rather than certify the union through the majority interest mechanism. The Board noted that if representative status were to attach when a union provides evidence of majority support, the employer would not have an opportunity to provide evidence of fraud or coercion. Thus, the Board ruled that statutory language made it plain that certification is required before the bargaining obligation attaches and the charge was properly dismissed.

In County of Cook, 21 PERI 53 (IL LRB LP 2005), the Board upheld the dismissal of the Incumbent Union's charge that by locking out its representatives, the Respondent prevented the Incumbent from fulfilling its grievance functions. The Director found that the Incumbent failed to prove that any grievance discussion was compromised or that the Respondent had used the lockout to thwart the Incumbent in its work on grievances.

The following non-precedential decisions regarding Section 10(a)(4) refusal to bargain have issued this past year: North Shore Sanitary District, Case No. S-CA-03-229, 21 PERI __ (IL LRB SP ALJ 2005); State of Illinois, Department of Central Management Services (Department of Revenue), 21 PERI 45 (IL LRB SP 2005); City of Effingham, 21 PERI 11 (IL LRB SP ALJ 2005); Chicago Transit Authority, 21 PERI 95 (IL LRB LP ALJ 2005); County of Cook (Cook County Hospital), 21 PERI 50 (IL LRB LP ALJ 2005).

(2) Subjects of bargaining

In Board of Trustees of the University of Illinois v. Illinois Labor Relations Board, State Panel and the Illinois Fraternal Order of Police Labor Council, --- N.E.2d ----, 2005 WL 2436711, 21 PERI __ (2005), the Illinois Appellate Court for the Fourth District reversed the Board's determination that parking access and costs for University peace officers were

mandatory subjects of bargaining. Although the court agreed with the Board that the parking issue affected unit members' terms and conditions of employment, it accepted the Employer's argument that the issue was a matter of inherent managerial authority. The court found that the income stream from parking, the control of University land, equal treatment of all employees and staff, and the need to consider the impact of bargaining with 16 other bargaining units were central to the Employer's entrepreneurial control. Additionally, the court found that the parking budget and locations were intimately tied to the Employer's master plan for the University.

The court then considered, without remanding the matter to the Board to perform the Central City balancing analysis, whether the benefits of bargaining outweighed the burdens on the Employer, and concluded that the burdens greatly outweighed the benefits. The court stated that the existence, location and cost of parking were components of the Employer's daily business and overall educational mission. As such, the court ruled that if the Employer were required to bargain over the issue, it would adversely affect the Employer's master plan for the university.

Justice Myerscough dissented. She concluded that parking arrangements were not part of the University's essential operation and did not lie at the core of the University's entrepreneurial control. She also noted that negotiations over any subject matter with a bargaining unit impacts the equal treatment of employees and has an impact on negotiations with other units. Therefore, the fact that the University would be required to bargain parking arrangements with other units does not make the matter integral to the University's mission. She would have upheld the Board's decision. The Board and the Union have filed notices of intent to file petitions for leave to appeal in the Illinois Supreme Court.

In Village of Bridgeview, Case No. S-CA-04-249, 21 PERI ____, (IL LRB SP 2005), the Board reversed the dismissal of an unfair labor practice charge which alleged that the Employer violated the Act when, without bargaining with the representative of its full-time firefighters, it adopted an ordinance that authorized the appointment of part-time firefighters. The Board found that, on the face of the charge, significant questions were raised as to whether the Employer's decision would have a significant impact on the bargaining unit members' terms and conditions of employment because the part-time firefighters would most likely perform work claimable by the bargaining unit. Therefore, the Board remanded the case for issuance of a complaint for hearing.

In Village of Orland Park, 21 PERI 42 (IL LRB SP 2005), the Board upheld the Administrative Law Judge's ruling that the Employer violated the Act when it implemented a new system of project evaluations for its public works employees without bargaining with the Union. Contrary to the Administrative Law Judge, the Board relied upon Illinois appellate court precedent that distinguished between the procedural aspects of the project evaluation system and the substantive criteria used in those evaluations. The Board found that, pursuant to the Central City analysis, the former are mandatory subjects of bargaining while the latter are not.

The Board determined that the Employer's decision to implement project evaluations clearly affected the employees' terms and conditions of employment in that the project evaluations contained different criteria than were included on the annual evaluations, were completed by crew leaders as opposed to foremen, occurred more frequently throughout the work year, and served as the basis for annual evaluations, which in turn controlled employee wage increases. Moreover, the Board found that although the procedural aspects of the evaluations did not involve matters of inherent managerial authority, the substantive aspects of

the evaluations did, despite the Administrative Law Judge's contrary conclusion. The Board found that the substantive evaluation criteria were crucial to the Employer's ability to direct its workforce such that bargaining over those criteria would severely impede that ability.

In City of Chicago (Department of Police), 21 PERI 83 (IL LRB LP 2005), the Board upheld the Administrative Law Judge's determination that the Employer violated the Act when it failed to bargain with the representative of its police officers over its decision to grant traffic control assignments for certain Soldier Field events to the Chicago Park District and the Metropolitan Pier and Exposition Authority. The Board determined that the Employer's decision to assign traffic control assignments to non-City employees satisfied the first prong of the Central City analysis. It found that the decision was a departure from previously established operating practices, effected a change in the unit members' conditions of employment and resulted in a significant impairment of their anticipated work opportunities. The Board concluded that, prior to the Employer's decision, the traffic control duties had always been staffed by City police officers, and that the new situation, therefore, represented a change from established practice. The Board also found that, in assigning the work to non-City employees, the Employer had diminished the potential work available to unit members, and that unit members lost approximately 400 work assignments, thereby suffering an impairment of reasonably anticipated work opportunities. As the Employer did not maintain that the decision involved a matter of inherent managerial authority, and did not file exceptions to the Administrative Law Judge's findings that, under the third step of the Central City test, the decision was amenable to bargaining, the Board concluded that the decision was mandatorily negotiable.

Member Sadlowski dissented, stating that there was a difference between the Employer's decision to assign work to employees of fellow governmental agencies and a public employer which subcontracted work to a separate, private company. He also noted that the contract gave the Employer the right to assign work to non-unit employees. On June 1, 2005, the Employer filed a petition for review in the Illinois Appellate Court for the First District, Docket No. 1-05-1713.

In Forest Preserve District of Cook County, 21 PERI 43 (IL LRB LP 2005), the Board upheld the Administrative Law Judge's finding that the Employer's decision to lay off bargaining unit members was a mandatory subject of bargaining. The Employer contended that the layoffs were necessitated by financial concerns, but the Board noted well established case law that economically motivated layoffs are amenable to resolution through the collective bargaining process and that the Employer had not demonstrated a sudden or immediate situation which would obviate the need to bargain. On March 30, 2005, the Employer filed a petition for review in the Illinois Appellate Court for the First District, Docket No. 1-05-0813.

(3) Waiver of the right to bargain

In Village of Orland Park, 20 PERI 42 (IL LRB SP 2004), the Board upheld the Administrative Law Judge's determination that the Union did not waive its right to bargain over the implementation of a new system of project evaluations when it agreed to a management rights clause which provided that the Employer had the sole right to supervise and direct its employees, including the right to adopt policies, rules, regulations and practices in furtherance of those rights. The Board agreed with the Administrative Law Judge that it was well established that the language of a waiver must be clear and unmistakable, as waiver is never presumed. The Board found that the contractual management rights clause did not speak to the Employer's right

to adopt employee evaluation systems in any respect, and that the right to supervise and direct employees did not include the right to unilaterally implement the new system.

In City of Chicago (Department of Police), 21 PERI 83 (IL LRB SP 2005), the Board upheld the Administrative Law Judge's determination that the Union did not waive its right to bargain over the Employer's decision to subcontract certain traffic control assignments at Soldier Field events. The Employer contended that contractual language stating that nothing prohibited the Employer from hiring or assigning non-bargaining unit personnel to perform unit duties, together with the contractual management rights clause, demonstrated that the Union waived its right to bargain over any decision to subcontract such assignments.

The Board agreed with the Administrative Law Judge that the Union had not waived its right to bargain because a long history of arbitration awards interpreting the article in question did not find a specific waiver. The Board noted that arbitrators had interpreted the contract to allow the Employer to assign the traffic control assignments to other City employees, but subcontracting to entities outside the City had not been contemplated. Additionally, the Board disagreed with the Employer that existing case law supported its waiver contentions, as the Board previously had found waiver based not on broadly worded clauses similar to the one in the instant case, but only where there was also specific contractual language that created a clear and unmistakable waiver of the right. On June 1, 2005, the Employer filed a petition for review in the Illinois Appellate Court for the First District, Docket No. 1-05-1713.

In Forest Preserve District of Cook County, 21 PERI 42 (IL LRB LP 2005), the Board upheld the Administrative Law Judge's finding that the Union did not waive bargaining over layoffs of bargaining unit members. The Employer contended that a management rights clause constituted such a waiver, but the Board upheld the Administrative Law Judge's conclusion that

the contract clause did not mention layoffs, or the right to relieve employees due to lack of work, and therefore was not a clear and unmistakable waiver. On March 30, 2005, the Employer filed a petition for review in the Illinois Appellate Court for the First District, Case No. 1-05-0432.

(5) Declaratory rulings

In Village of Elk Grove Village, 21 PERI 87 (IL LRB SP GC 2005), the General Counsel issued a declaratory ruling concerning whether the Union's proposal regarding provisions of the Illinois Fire Department Promotion Act was a mandatory subject of bargaining. The General Counsel found that the proposal to incorporate the FDPA into the contract was a mandatory subject of bargaining because the FDPA dealt with firefighter promotions, a subject that had long been held to be mandatorily negotiable. The General Counsel stated that the negotiation of a proposal to incorporate statutory mandates does not interfere with management rights because it only deals with an obligation that has already been statutorily created.

The General Counsel also found that the proposals regarding seniority and eligibility requirements were mandatory subjects of bargaining. The General Counsel found that Section 40(a) of the FDPA provided that the weight of seniority points and the computation thereof could be determined through collective bargaining. The General Counsel found that this provision clearly showed that the FDPA specifically allowed for bargaining over that topic and ruled that it was a mandatory subject of bargaining. The General Counsel also found that the proposal that employees submit a letter of intent and a resume was a mandatory subject of bargaining because the FDPA stated that requirements may include minimum standards as to length of employment, education, training and certification in firefighting-related subjects and skills. Therefore, the General Counsel held that the proposal was mandatorily negotiable. The General Counsel found, however, that the proposal relating to eligibility requirements did not address the FDPA

requirement that the eligibility requirements be posted for one year prior to the date of the beginning of the promotional process and that the silence could be construed as a waiver. Therefore, the General Counsel held that to the extent the eligibility requirements proposal was silent on the FDPA, it was a permissive subject of bargaining.

Lastly, the General Counsel held that to extent the Union's proposals on exam scoring, minimum passing score and vacancy fillings dealt with topics long held to be mandatorily negotiable, they were mandatory subject of bargaining. She further found that the Union had not sought a waiver on any of the topics covered by the proposals and that the proposals did not deal with the Employer's rights pursuant to the Illinois Municipal Code. Therefore, the Union's proposals on exam scoring, minimum passing score and vacancy fillings were mandatory subjects of bargaining.

In Village of Elk Grove Village, 21 PERI 14 (IL LRB SP GC 2005), the General Counsel issued a declaratory ruling concerning whether an Employer proposal that would require a waiver of certain provisions of the Illinois Fire Department Protection Act was a mandatory subject of bargaining. The Union was the exclusive representative for a unit composed of Respondent's fire department employees.

The General Counsel found that the Employer's proposal, to the extent that it concerned topics long held to be mandatorily negotiable such as promotional criteria, minimum eligibility requirements, order of promotion from a final eligibility list and posting of exam scores, was mandatorily negotiable because the language of the FDPA established a minimum set of guidelines for promotions and was meant to authorize negotiations between employers and exclusive bargaining representatives. However, the General Counsel ruled that, to the extent the Employer's proposal contained language providing for less than the minimums specified in the

FDPA, it was permissive. Finally, the General Counsel found that the last provision in the Employer's proposal, which provided that the contract would take precedence over the FDPA, could be construed as a waiver of the FDPA provisions for those provisions not referenced in the contract. Therefore, it was a permissive subject of bargaining.

In City of Chicago, 20 PERI ¶ 183 (IL LRB LP GC 2004), the General Counsel issued a declaratory ruling that Union proposals that the Employer award employee health care coverage contracts to the lowest bidder, pursuant to a competitive bid process, and that the factors used to select the health care administrator be developed by a joint labor-management committee were mandatory subjects of bargaining.

The General Counsel found that the identity of the health care provider would have a substantial impact on the level of benefits for employees and therefore was mandatorily negotiable. She found that employees were required to pay a percentage, as a copay, of the negotiated fee and that the amount of money each employee would be required to pay was therefore dependent upon the amounts an individual health care administrator determined would be covered. Therefore, the General Counsel found that the identity of a health care administrator could cause changes in employee benefit levels and, as such, affected employees' wages.

The General Counsel also found that the establishment of a joint labor-management committee affected wages, hours and terms and conditions of employment because the discussion of factors to select a new health care administrator would relate to the level of benefits each carrier would agree to provide. The General Counsel also found that the Employer never asserted that the proposal concerned any inherent managerial rights. Lastly, the General Counsel found that, had the Employer argued that the proposal concerned inherent managerial rights, the benefits of bargaining over the proposal outweighed the burdens bargaining would impose on the

Employer. The General Counsel found that benefit levels are among the most important benefits employees enjoy and, because the employees' concerns about these benefits outweighed the administrative concerns of the Employer, the proposal was a mandatory subject of bargaining.

D. Remedies

(1) Cost of living increases

In Pleasantview Fire Protection District, 21 PERI 19 (IL LRB SP 2005), the Board affirmed the Administrative Law Judge's finding that the Board's compliance officer erred in including a cost of living adjustment in a make whole remedy awarding backpay. The underlying violation was that the Respondent unlawfully threatened to, and then did, eliminate its fire captain rank. The Board found that nothing in the initial complaint dealt with a failure to pay cost of living increases, nor had the original decision addressed whether that failure was an unfair labor practice. The Board further found that the Respondent had frozen the increases two years before it eliminated the captain rank. On February 2, 2005, the Charging Party filed a petition for review in the Illinois Appellate Court for the First District, Docket No. 1-05-0432.

V. Union unfair labor practices

A. Section 10(b)(1) duty of fair representation

In American Federation of State, County and Municipal Employees, Council 31 (Bigley), Case No. L-CA-03-045, 21 PERI __ (IL LRB LP 2005), the Board affirmed the Administrative Law Judge's dismissal of an unfair labor practice charge. The Charging Parties occupied non-unit positions that had been abolished by their Employer, the State of Illinois, Department of Corrections. The Employer sought to allow the non-unit employees to bump into positions in two Union-represented bargaining units. The Union opposed that action and also contended that the Charging Parties should not receive seniority credit for any time previously spent in those

units. After their entry into the bargaining units, the Charging Parties filed grievances seeking their accrued seniority, and the Union declined to process the grievances.

The Board affirmed the Administrative Law Judge's conclusion that the Union had not committed intentional misconduct. There was no evidence to support the Charging Parties' allegation that the Union had failed to process the grievances in retaliation for the Charging Parties' earlier inquiry into representation by another labor organization. In addition, the Board found at the time of the events in question, the Respondent did not owe the Charging Parties a duty of fair representation, because they did not represent them. The Board found that the Union's actions were intended to safeguard the rights of their unit members.

In International Brotherhood of Teamsters, Local 347, Case No. S-CB-05-020, 21 PERI __ (IL LRB SP 2005), the Board affirmed the Executive Director's dismissal of an unfair labor practice charge. The Union prevailed in a representation election after the incumbent Johnson County State's Attorney was defeated for re-election, and entered into a collective bargaining with the outgoing State's Attorney the day before the Board issued its certification of the unit, one week before the defeated State's Attorney left office. The new State's Attorney contended that the contract was invalid, and that a new duty to bargain arose with certification and with the new State's Attorney's assumption of office. The State's Attorney asserted that the Union violated the Act when it refused to bargain a new agreement. The Board found, however, that the Charging Party had not argued that the previous incumbent lacked the authority to negotiate with the Union and that, through continued assent to the contract, the incumbent ratified his previous agreement. The Board further stated that the Charging Party's contention that the swearing in of new officeholders invalidates existing contracts was ridiculous, as it would throw government into chaos.

In National Nurses Organizing Committee-California Nurses Association, 21 PERI 52 (IL LRB LP 2005), the Board upheld the dismissal of a Section 10(b)(1) charge because the majority of the complained-of conduct was not directed at public employees.

The Board dismissed the following cases because the charging parties had failed to present evidence of union intentional misconduct sufficient to warrant a hearing: American Federation of State, County and Municipal Employees, Council 31 (Duncan), Case No. S-CB-05-035, 21 PERI __ (IL LRB SP ALJ 2005); Illinois Nurses Association (Wilkerson), Case No. S-CB-04-024, 21 PERI ____ (IL LRB SP 2005); International Brotherhood of Teamsters Local 325 (Rivera), 21 PERI 37 (IL LRB SP ALJ 2005), where, on March 10, 2005, the Charging Party filed a petition for review in the Illinois Appellate Court for the Second District, Docket No. 2-05-0242; International Brotherhood of Teamsters, Local 714 (Solava), 20 PERI 166 (IL LRB SP ALJ 2004); Amalgamated Transit Union, Local 308 (Dujmovic), Case No. L-CB-05-014, 21 PERI __ (IL LRB LP ALJ 2005); Amalgamated Transit Union (Chatman), 21 PERI 96 (IL LRB LP 2005); Amalgamated Transit Union, Local 241 (Ento), 21 PERI 69 (IL LRB LP 2005); Amalgamated Transit Authority (Merriweather), 21 PERI 54 (IL LRB LP 2005); International Association of Machinists (Shamely), 20 PERI 142 (IL LRB LP 2004), where, on November 10, 2004, the Charging Party filed a petition for review in the Illinois Appellate Court for the First District, Docket No. 1-04-3328; American Federation of State, County and Municipal Employees, Council 31 (Cooper), 20 PERI 137 (IL LRB LP 2004).

The following non-precedential decisions regarding Section 10(b)(1) duty of fair representation have issued this past year: American Federation of State, County and Municipal Employees, Council 31 (Bryant), 21 PERI 97 (IL LRB SP ALJ 2005); Palos Heights Professional Firefighters, IAFF, Local 4254, 21 PERI 85 (IL LRB SP ALJ 2005); American

Federation of State, County and Municipal Employees (Edwards), 21 PERI __ (IL LRB LP ALJ 2005).

B. Section 10(b)(5) conduct of representation elections

In City of Greenville, 21 PERI 109 (IL LRB SP 2005), the Board upheld the Executive Director's decision to direct an election on a certain date. The incumbent union contended that the Director should have set the election for a different, mutually convenient date. The Board, however, found that the incumbent had initially agreed to the date selected by the Director, a date reached after several others had been rejected. The Board stated that the Director had adequately considered the needs of all the parties and that the primary concern was to ensure that the employees were able to expeditiously resolve the question of representation.

In National Nurses Organizing Committee-California Nurses Association, 21 PERI 52 (IL LRB LP 2005), the Board upheld the Acting Executive Director's dismissal of a Section 10(b)(1) and (5) charge, finding that the Charging Party had failed to submit sufficient evidence to support its claim that the Respondent violated any provision of Section 1210 of the Board's Rules and Regulations.

In County of Cook and Sheriff of Cook County, 21 PERI 10 (IL LRB LP 2005), the Board upheld the decision by the Acting Executive Director to conduct a mail ballot election in a unit of approximately 2800 potential voters. The Director acknowledged that mail ballot elections have a generally lower turnout, but stated that although the Board could adequately deal with mail ballot issues, it was unable to adequately staff the multiple sites and long hours that would be required for an on-site election.

VI. Right to strike

In International Association of Machinists and Aerospace Workers, Local 822, Case No. S-SI-06-001, 21 PERI __ (IL LRB SP 2005), the Board found no clear and present danger to the health and safety of the public by a strike of circuit clerk employees in Adams County. The employees' tasks included filing of documents related to the work of the criminal courts, preparing orders of protection and processing arrest warrants. However, the Board found a clear and present danger would exist if the Employer did not have the services of the Chief Deputy Clerk, a bargaining unit member. The Board found no impediment to the remaining employees' right to strike.

VII. Procedural issues

A. Replacement of Administrative Law Judges

In State of Illinois, Department of Central Management Services and American Federation of State, County and Municipal Employees, 21 PERI 46 (IL LRB SP 2005), the Board rejected the Employer's argument that the Board was not authorized to assign an Administrative Law Judge who had not presided over the hearing on a case to draft a recommended decision and order. The Board found that the substitution of Administrative Law Judges is clearly contemplated by Board rules, especially given the non-adversarial nature of representation proceedings. The Board concluded that the Administrative Law Judge did not improperly assess credibility, but merely weighed testimony and the Employer's due process rights were not violated by the substitution.

B. Summary judgment motions

In State and Municipal Teamsters, Chauffeurs and Helpers, Local 726 and Forest Preserve District of Cook County *consolidated with* International Brotherhood of Teamsters,

Local 726 and Forest Preserve District of Cook County, 21 PERI 43 (IL LRB LP 2005), the Board rejected the Respondent's argument that the Administrative Law Judge incorrectly denied its motion for summary judgment. The Board ruled that the record plainly showed that there existed genuine issues of law or fact as to whether the Employer unilaterally laid off bargaining unit members and whether the Union had waived bargaining over that issue. The Board also rejected the Respondent's argument that the motion for summary judgment should have been granted because the Charging Party failed to file a response thereto. The Board stated that unfair labor practice proceedings before the Board are not governed by the Illinois Code of Civil Procedure, and that its Rules and Regulations do not provide that a failure to respond to a motion will result in a default ruling.

C. Default

The following non-precedential cases involving default judgment have issued in the past year: Village of Maywood, Case No. S-CA-04-225, 21 PERI __ (IL LRB SP ALJ 2005); County of Vermilion, 21 PERI 12 (IL LRB SP ALJ 2005).

D. Motion to re-open record

In State of Illinois Department of Central Management Services v. Illinois Labor Relations Board, State Panel, et.al, Case No. 4-04-1001, __ Ill. App. 3d __ (2005), the Illinois Appellate Court for the Fourth District, in an unpublished order, affirmed the Board's decision not to reopen the record to allow the Employer to introduce evidence that a planned consolidation of auditing functions had been completed. The court ruled that the record in the was full and complete at the time of the hearing, and that no witnesses were unavailable, no critical documents were found post-hearing and the Employer was not prevented from presenting its case. The court instead found that the duties of the petitioned-for employees developed post

hearing, and that the Employer should have instead filed a unit clarification petition to address the change in duties.

E. Filing period for exceptions to recommended orders

In Illinois Nurses Association, 21 PERI 41 (IL LRB SP 2005), the Board rejected the Employer's exceptions to the Administrative Law Judge's recommended order and decision because the exceptions were not timely filed. The Employer had filed a motion to extend the period to file, and the Board's General Counsel had granted the Employer's request for the extension, even though time for filing had already run. The Board overruled the General Counsel and dismissed the Employer's exceptions as untimely.