ILLINOIS PUBLIC LABOR RELATIONS ACT: RECENT DEVELOPMENTS

Board and Court Decisions
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CASE SUMMARIES

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I. Jurisdiction

Final/Appealable Order, Interest Arbitration

In a non-precedential decision in Cnty. of McHenry v. Ill. Labor Relations Bd and City of Marengo v. Ill. Labor Relations Bd, 2012 IL App (2d) 110438-U, 28 PERI ¶90, the 2d District Appellate Court consolidated employer appeals from two Board decisions involving an amendment to the Act that went into effect January 1, 2010, providing an interest arbitration option for units of fewer than 35 employees bargaining a first CBA. In both cases before the court, the employer refused to proceed to interest arbitration, arguing that the amendment did not apply because the subject negotiation began prior to the January 1, 2010 effective date of the new law. The Board dismissed the union's charge in each case, finding that there was no violation of the Act because the employer had a good faith basis for its refusal to arbitrate. However, the Board also ruled in both cases that the new law was intended to apply to negotiations in progress as of January 1, 2010, and therefore directed the issuance of interest arbitrator panels to the parties. In an unpublished order, the Appellate Court ruled that the Board's orders were not appealable "final orders of the Board" under Section 11(e) of the Act, because the orders did not "terminate the [interest arbitration] proceedings before the Board." The court based this ruling on its determination that the Board "is intimately involved in that arbitration process, as it is responsible for establishing the arbitration panel, assigning some of the arbitrators, and overseeing the arbitration process." The Appellate Court therefore dismissed the employers' appeals for lack of jurisdiction. The Board's decisions are reported at 27 PERI ¶34 (IL LRB-SP 2011) (Case No. S-CA-11-017) and 27 PERI ¶36 (IL LRB-SP 2011) (Case No. S-CA-11-045).

Jurisdiction, Confidential, Managerial, Right to Hearing

By means of a non-precedential order issued in Dep't of Cent. Mgmt. Servs. v. Ill. Labor Relations Bd., 2012 IL App (4th) 100729-U, 28 PERI ¶91, the court affirmed the Board's determination that CMS had failed to raise an issue for hearing regarding the confidential or managerial status of four CMS attorneys. The court also determined that it did not have subject matter jurisdiction over CMS' appeal of the Board's remand for a hearing on the confidential status of a fifth attorney, since the Board's administrative procedures had not been exhausted during the pendency of the remand hearing process. 26 PERI ¶83 (IL LRB-SP 2010) (Case No. S-RC-10-052)

Jurisdiction

In Bd. of Educ. of Peoria Sch. Dist. 150 v. Peoria Fed'n. of Support Staff, Sec./Policemen's Benevolent & Protective Ass'n. Unit 114,, 2012 IL App (4th) 110875, 29 PERI ¶19, the Peoria School District filed a complaint challenging the constitutionality of Public Act 96-1257, which went into effect in 2010 and amended the Illinois Public Labor Relations Act by adding peace officers employed directly by school districts to the definition of "public employee," thereby transferring jurisdiction over such employees from the Illinois Educational Labor Relations Board to the Illinois Labor Relations Board. The practical effect of this change was to subject these school district peace officers to the same prohibition on strikes, and the same right to interest arbitration, as other peace officers covered under the IPLRA. The Peoria School District's complaint was filed shortly after the Union filed a petition with the ILRB to be certified as the representative of the District's security and police officers, the same unit it had represented for years under a certification issued by the Educational Labor Relations Act. The basis for the Peoria School District's challenge was its claim that Public Act 96-1257 was special legislation intended to apply only to the school district in Peoria. The circuit court dismissed the complaint, and the Peoria School District appealed. The Fourth District reversed and remanded for further consideration, finding that the complaint stated a claim sufficient to survive the motion to dismiss, and rejecting the argument raised by the ILRB and IELRB that the School District failed to exhaust its administrative remedies when it filed its complaint before the ILRB had made a final determination as to whether the Union should be certified as the representative of the District's security and police employees. On this point, the appellate court concluded that "the questions of whether the unit's members are public employees and their employer a public employer are jurisdictional prerequisites apart from the merits of the case. These are questions

appropriately addressed by a trial court prior to a plaintiff's submission to an administrative agency's unauthorized exercise of its jurisdiction."

Jurisdiction, Joint Employer
In Countiss Perkins and Chief Judge of the Cir. Ct. of Cook Cnty. (Cook Cnty. Juvenile Temp. Det. Ctr.), 29 PERI ¶34 (IL LRB-SP 2012) (Case No. S-CA-09-225), the ALJ dismissed the charge after finding that, based on federal district court orders entered granting a court-appointed Transitional Administrator extensive powers to run the Juvenile Temporary Detention Center, including authority to determine the terms of employment of JTDC employees, the Board had no jurisdiction over the charge because the TA is not a "public employer" under the Act. The Board reversed the ALJ's ruling and remanded the matter for hearing on the question of whether the Chief Judge remained at least a joint employer of the Charging Party, such that Charging Party is still a "public employee" under the Act, and the Board would have jurisdiction over her charge. The Board also directed that the hearing be held in abeyance pending resolution by the federal Court of Appeals of questions raised in the district court with respect to the scope and extent of the TA's authority. In a partial dissent, Member Brennwald wrote that, while he fully agreed with the decision to remand the matter for hearing, he saw no reason to direct that the hearing be held in abeyance if the Charging Party preferred to proceed.

II. Representation Issues

A. Unit determination/appropriateness

Severance, Appropriate Unit
In Ill. Council of Police and City of Chicago, Serv. Emps. Int'l. Union, Local No. 73 & Int'l. Bhd. Elec. Workers, Local 21, 28 PERI ¶80 (IL LRB-LP 2011) (Case No. L-RC-07-017), the Board affirmed the ALJ's dismissal of ICOP's petition to sever a group of Aviation Security Officers ("ASOs") from the City of Chicago's "Unit II" bargaining unit, jointly represented by IBEW Local 21 and SEIU Local 73. The ASOs had been the subject of a previous severance petition, which the Board dismissed in 2001 for lack of any showing that the petition met the Board's standards for severance from an existing unit, specifically, that (1) the employees to be severed share a significant and distinct community of interest; and (2) there is a demonstrated conflict with other segments of the existing unit, or their interests have been ineffectively represented by an unresponsive bargaining agent. ICOP's petition for severance in this case was initially dismissed by the Board's Executive Director, based on the 2001 Board decision. Following ICOP's appeal of the dismissal, the Board remanded the case for hearing, on its determination that changes in airline travel and airport security since 2001 warranted reexamination of the appropriateness of severance. In its decision, the Board agreed with the ALJ's recommended decision following hearing that the changes in ASOs' duties were not sufficient to merit a conclusion that ICOP had met the Board's severance standards. In its decision, the Board noted that ICOP's appeal was misguided in its focus on the question of whether the ASOs qualify as "peace officers" under the Act, because the ASOs were already part of a "mixed" unit that included non-peace officers, and the determination of whether they qualified as "peace officers" was irrelevant to the severance issue.

Appropriate Unit
In Am. Fed'n. of State, Cnty. & Mun. Emps., Council 31 and City of Naperville, 28 PERI ¶98 (IL LRB-SP 2011) (Case No. S-RC-11-035), the Board upheld the ALJ's recommended decision dismissing the Union's petition to represent a bargaining unit of employees in 19 different titles in two different City departments. In dismissing the petition, the ALJ cited the Board's long-standing preference for broad-based bargaining units, and found that the petitioned-for unit inappropriately excluded unrepresented employees in other City departments who share identical job titles, similar duties, and other similar terms and conditions of employment with the petitioned-for employees. Specifically, the ALJ determined that both the petitioned-for employees and the excluded employees in other departments were all recruited,

promoted and transferred by the City's human resources department, were all subject to six months probation, subject to the same discipline, paid according to a centralized cross-departmental salary range, and participated in the same benefits and leave plans. The ALJ also found that the petitioned-for employees did not constitute a sufficiently distinct and identifiable group so as to warrant separate representation, noting that the two departments encompassed by the petition had separate budgets, the employees in each department had different duties, and the two departments generally had no greater functional integration with each other than they had with other City departments. In a dissent, Chairman Zimmerman stated that she would find the petitioned-for unit appropriate, based on what she saw as the City's demonstrated pattern of bargaining with single-department units, the fact that the two departments encompassed by the petition had been a single department until shortly before the filing of the petition, and the fact that only three employees excluded by the petition occupied the same job title as petitioned-for employees.

Supervisor, Managerial, Exclusion as a Matter of Law, Unit Appropriateness

In Am. Fed'n. of State, Cnty. & Mun. Emps., Council 31 and State of Ill., Dep't. of Cent. Mgmt. Servs. (Dep't. of Revenue), __ PERI ¶__ (IL LRB-SP 2012) (Case No. S-RC-10-222), the Board affirmed the ALJ's determination that four Deputy General Counsels in the State's Department of Revenue are supervisors under Section 3(r) of the Act, based on their duties and responsibilities as heads of separate divisions within the Department's Legal Services Bureau. In affirming the ALJ's ruling, the Board rejected, among other arguments, the Union's contention that the positions at issue did not satisfy the "preponderance" requirement, finding that the ALJ's analysis on this point was consistent with the Fourth District Appellate Court's holding in Dep't of Cent. Mgmt. Serv. v. Ill. State Labor Rel. Bd., 278 Ill. App. 3d 79, 83-86 (4th Dist. 1996), that "[w]hether a person is a 'supervisor' should be defined by the significance of what that person does for the employer, regardless of the time spent on particular types of functions." Id., 278 Ill. App. 3d at 86. The Board also upheld the ALJ's ruling that a fifth attorney, a Senior Counsel who reported to one of the Deputy General Counsels, should not be excluded as a matter of law solely because his position is a "term appointment" under the State Personnel Code, as well as the ALJ's finding that it would not be inappropriate to add the Senior Counsel position to the parties' existing RC-10 bargaining unit solely because of his term appointment status. In so ruling, the Board rejected the Employer's argument that, because expired term appointments cannot be granted the "just cause" protections afforded to other employees in RC-10 under the collective bargaining agreement, the Senior Counsel position must be excluded from collective bargaining altogether, or, in the alternative, the position may not appropriately be included in the existing RC-10 unit with employees covered under the collective bargaining agreement's "just cause" provision. The Board noted that, contrary to the apparent presumption underlying the Employer's arguments, there is nothing in any Board certification order which mandates coverage for employees under a "just cause" provision, or under any other particular term of a collective bargaining agreement, and that a certification only triggers the duty to bargain as spelled out in the Act. Therefore, whether any position is given "just cause" protection is a matter left entirely to the parties, and any concerns over potential "just cause" coverage for any position by virtue of Board certification provides no basis for excluding a position as a matter of law.

Exclusion as a Matter of Law, Unit Appropriateness

In Am. Fed'n. of State, Cnty. & Mun. Emps., Council 31 and State of Ill., Dep't of Cent. Mgmt. Servs. (Dep't. of Agric., et.al.), __ PERI ¶__ (IL LRB-SP 2012) (Case No. S-RC-11-004), the Board affirmed the ALJ's ruling, following a June 10, 2011 remand order from the Board, that it would not be inappropriate to certify the Union as the representative of the State's Private Secretary Is as part of the parties' existing RC-62 bargaining unit. The Board rejected the Employer's argument that, because the Private Secretaries are "at will" employees under the State Personnel Code, they could not be appropriately included in a bargaining unit with employees who have "just cause" protection under the terms of the parties' collective bargaining agreement. In reaching this conclusion, the Board noted that the RC-62 bargaining unit already includes positions designated as "at will" under the Personnel Code, and that the coverage of any of these positions under the "just cause" provision of the collective

bargaining agreement would have come about only as a result of the specific agreement of the Employer and the Union. Referencing its decision in Am. Fed'n of State, Cnty. & Mun. Emps., Council 31 and State of Ill., Dep't. of Cent. Mgmt. Servs. (Dep't. of Revenue), __ PERI ¶__ (IL LRB-SP 2012) (Case No. S-RC-10-222), issued the same day, the Board also noted that there is nothing in any Board certification order which mandates coverage for employees under a "just cause" provision, or under any other particular term of a collective bargaining agreement, and that a certification only triggers the duty to bargain as spelled out in the Act. Therefore, any concerns of the Employer with respect to maintaining "at will" status for represented employees are concerns that it can address in negotiations.

B. Unit clarification

Unit Clarification
In Serv. Emps. Int'l. Union, Local 73 and Ill. Sec'y. of State, 29 PERI ¶28 (IL LRB-SP 2012) (Case No. S-UC-12-034), the Union petitioned to clarify an existing bargaining unit by adding Executive I and Executive II positions in the Employer's Drivers' Services Department that had been inadvertently excluded from a recent Board order certifying the Union as the representative of the two titles. Neither party brought this inadvertent exclusion to the Board's attention until the time the subject UC petition was filed. In its decision, the Board affirmed the ALJ's ruling that the UC petition was appropriate, given that Section 1210.170(a)(2) specifically provides for the use of unit clarification petitions to accrete inadvertently excluded titles, and also given the fact that it was undisputed that the Drivers' Services Department positions were inadvertently excluded by the Board's order certifying the Union as the representative of the titles, as all positions in those titles – included the ones in the Drivers' Services Department – were the subject of the hearing on the original petition. The Board rejected the Employer's argument that no UC petition is appropriate in any case unless all three grounds for a UC petition set forth in 1210.170(a) are satisfied, concluding that such an interpretation would make little sense. The Board also rejected the Employer's argument that a hearing was required because the UC petition failed to establish majority support among the petitioned-for employees, noting that a showing of majority support is not required in UC cases, and that, in any event, the Union did demonstrate majority support with respect to all of the positions in the subject titles – including those in the Drivers' Services Department – at the time the original petition to represent those titles was filed.

C. Section 3(c) confidential employees

Jurisdiction, Confidential, Managerial, Right to Hearing
By means of a non-precedential order issued in Dep't of Cent. Mgmt. Servs. v. Ill. Labor Relations Bd., 2012 IL App (4th) 100729-U, 28 PERI ¶91, the court affirmed the Board's determination that CMS had failed to raise an issue for hearing regarding the confidential or managerial status of four CMS attorneys. The court also determined that it did not have subject matter jurisdiction over CMS' appeal of the Board's remand for a hearing on the confidential status of a fifth attorney, since the Board's administrative procedures had not been exhausted during the pendency of the remand hearing process. 26 PERI ¶83 (IL LRB-SP 2010) (Case No. S-RC-10-052)

Supervisor, Confidential
By means of a non-precedential order issued in Ill. Fraternal Order of Police, Labor Council v. Ill. Labor Relations Bd., 2012 IL App (1st) 111691-U, 28 PERI ¶162 (27 PERI ¶69) (Case No. S-RC-09-184), the First District affirmed the Board's order dismissing the Union's petition to represent the City of Springfield's police lieutenants, and the Board's determination that the employees are supervisors under the Act. The court rejected the Union's argument that the employees do not exercise the requisite independent judgment, concluding that they could, without substantial oversight, determine whether to administer lesser forms of discipline, such as oral counseling and verbal and written reprimands, or no discipline at all. The court also found that the lieutenants exercise independent judgment in effectively recommending more serious forms of discipline. The court rejected the Board's ruling that the employees

are also confidential, finding that, although two of the lieutenants had participated in contract negotiations for the City, they did not engage in this function in the regular course of their duties, because one lieutenant's participation was by his own request, and the other participated only as a short-term substitute.

Confidential

In Am. Fed'n. of State, Cnty. & Mun. Emps., Council 31 and State of Ill., Dep't. of Cent. Mgmt. Servs., 29 PERI ¶12 (IL LRB-SP 2012) (Case No. S-RC-10-052), the Board adopted the ALJ's recommended order finding Erin Davis, an employment law attorney for CMS, to be confidential within the meaning of the Act, and therefore excluded from representation. The ALJ based her ruling on her finding that Davis' collaboration with CMS' labor relations unit with respect two matters: Human Rights Commission charges related to grievances, and a case before the Civil Service Commission that impacted work performed by represented employees, qualified her position as confidential under both the "labor nexus" and "authorized access" tests. In adopting this ruling, the Board noted that the amount of time the employee spent collaborating with labor relations was irrelevant, and that the critical fact was that the collaboration occurred in the regular course of her duties, and not on an ad hoc basis. The Board expressly declined to address the Employer's cross-exceptions, in which the Employer argued that the ALJ erred in finding that certain other functions performed by Davis were not indicative of confidential status, reasoning that a determination as to whether those other functions are also confidential in nature was unnecessary to the Board's resolution of the case. The petition in this case, which also sought to represent four other CMS attorneys, was the subject of the Fourth District's January 20, 2012, order in Ill. Dep't of Cent. Mgmt. Serv. v. Ill. Labor Relations Bd., 2012 IL App (4th) 100729-U, 28 PERI ¶91, denying the union's appeal on the ground that the Board's administrative procedures had not yet been exhausted with respect to Davis, and affirming the Board's ruling that the other four attorneys are neither confidential nor managerial under the Act.

D. Section 3(j) managerial employees

Jurisdiction, Confidential, Managerial, Right to Hearing

By means of a non-precedential order issued in Dep't of Cent. Mgmt. Servs. v. Ill. Labor Relations Bd., 2012 IL App (4th) 100729-U, 28 PERI ¶91, the court affirmed the Board's determination that CMS had failed to raise an issue for hearing regarding the confidential or managerial status of four CMS attorneys. The court also determined that it did not have subject matter jurisdiction over CMS' appeal of the Board's remand for a hearing on the confidential status of a fifth attorney, since the Board's administrative procedures had not been exhausted during the pendency of the remand hearing process. 26 PERI ¶83 (IL LRB-SP 2010) (Case No. S-RC-10-052)

Managerial

In Am. Fed'n. of State, Cnty. & Mun. Emps., Council 31 and State of Ill., Dep't of Cent. Mgmt. Servs. (Dep't. of Human Servs.), 28 PERI ¶126 (IL LRB-SP 2012) (Case No. S-RC-08-154), the Board upheld the ALJ's recommended order rejecting the Employer's argument that an administrative law judge for the State's Department of Human Services should be excluded from representation as a managerial employee. The Board agreed with the ALJ's ruling that the position failed to meet either of the two criteria that must be satisfied under the statutory definition, in that the employee at issue was neither predominantly engaged in executive and management functions, nor charged with the responsibility of directing the effectuation of management policies and procedures. The Board held that, regardless of how often the employee's recommended decisions were adopted by her several layers of supervisors and, ultimately, by the Secretary of Human Services, the employee did not meet the statutory criteria because her recommended decisions are not generally available to the public, are never cited as binding precedent, and merely apply "specific facts presented to her to legal standards developed by others for the various programs administered by DHS," rather than setting or even impacting those standards. The Board also agreed with the ALJ that the position is not managerial as a matter of law, under the "alternative test,"

because the employee does not have authority to issue decisions "without review by layers of superiors and she never functions as a surrogate for the Secretary issuing a decision in her place." Finally, the Board also rejected the Employer's more generalized argument that allowing the administrative law judge to be represented would result in "divided loyalties" when she is called upon to rule on cases that might affect other bargaining unit employees. The Board noted that all represented employees owe a duty of loyalty to their employer, and are therefore to some extent faced with the potential for divided loyalties, and that this generalized concern alone was therefore insufficient to warrant exclusion, absent evidence that the position met the criteria for one or more of the specific exclusions delineated in the Act by the General Assembly.

Supervisor, Managerial

In Am. Fed'n. of State, Cnty. & Mun. Emps,, Council 31 and State of Ill., Dep't. of Cent. Mgmt. Servs., 28 PERI ¶160 (IL LRB-SP 2012) (Case No. S-RC-08-130), the Board upheld the ALJ's ruling certifying AFSCME as the representative of three administrative law judge positions in the State's Department of Healthcare and Family Services, and rejecting the employer's argument that all three positions should be excluded as managerial, and that one should be excluded as supervisory.

Managerial

In Am. Fed'n. of State, Cnty. & Mun. Emps., Council 31 and State of Ill., Dep't. of Cent. Mgmt. Servs. (Pollution Control Bd.), 29 PERI ¶13 (IL LRB-SP 2012) (Case No. S-RC-11-062), the Union filed a petition to represent two Environmental Scientists, and the Employer argued that they should be excluded as managerial. Based on the parties' written submissions in response to a rule to show cause, the ALJ rejected the Employer's argument, and found that there existed no issue of fact or law sufficient to warrant a hearing. On review, the Board remanded the matter for hearing, citing an ambiguity evident from comparing the job descriptions and an affidavit submitted by the employees' supervisor, regarding the extent to which the employees at issue might make effective recommendations regarding environmental policy. The Board pointed out that, because it is the Employer's burden to prove the elements of a claimed exclusion from representation, and the affidavit suggesting the employees have no role in formulating agency policy would normally prevail over the more general job descriptions suggesting they do, the ambiguity created by these two documents would normally be resolved against the Employer, and the employees would be added to the bargaining unit without hearing. However, because the Employer's arguments in this case were premised on the Fourth District's holding in Dep't. of Cent. Mgmt. Servs./Ill. Commerce Comm'n. v. Ill. Labor Relations Bd., 406 Ill. App. 3d 766 (2010), issued at the same time that the Employer provided to the Board its written submission in this case, the Board determined that it would prefer to address the legal issue raised by the Employer on the basis of a more fully developed evidentiary record.

Supervisor, Managerial, Exclusion as a Matter of Law, Unit Appropriateness

In Am. Fed'n. of State, Cnty. & Mun. Emps., Council 31 and State of Ill., Dep't. of Cent. Mgmt. Servs. (Dep't. of Revenue), __ PERI ¶__ (IL LRB-SP 2012) (Case No. S-RC-10-222), the Board affirmed the ALJ's determination that four Deputy General Counsels in the State's Department of Revenue are supervisors under Section 3(r) of the Act, based on their duties and responsibilities as heads of separate divisions within the Department's Legal Services Bureau. In affirming the ALJ's ruling, the Board rejected, among other arguments, the Union's contention that the positions at issue did not satisfy the "preponderance" requirement, finding that the ALJ's analysis on this point was consistent with the Fourth District Appellate Court's holding in Dep't of Cent. Mgmt. Serv. v. Ill. State Labor Rel. Bd., 278 Ill. App. 3d 79, 83-86 (4th Dist. 1996) that "[w]hether a person is a 'supervisor' should be defined by the significance of what that person does for the employer, regardless of the time spent on particular types of functions." Id., 278 Ill. App. 3d at 86. The Board also upheld the ALJ's ruling that a fifth attorney, a Senior Counsel who reported to one of the Deputy General Counsels, should not be excluded as a matter of law solely because his position is a "term appointment" under the State Personnel Code, as well as the ALJ's finding that it would not be inappropriate to add the Senior Counsel position to the parties' existing

RC-10 bargaining unit solely because of his term appointment status. In so ruling, the Board rejected the Employer's argument that, because expired term appointments cannot be granted the "just cause" protections afforded to other employees in RC-10 under the collective bargaining agreement, the Senior Counsel position must be excluded from collective bargaining altogether, or, in the alternative, the position may not appropriately be included in the existing RC-10 unit with employees covered under the collective bargaining agreement's "just cause" provision. The Board noted that, contrary to the apparent presumption underlying the Employer's arguments, there is nothing in any Board certification order which mandates coverage for employees under a "just cause" provision, or under any other particular term of a collective bargaining agreement, and that a certification only triggers the duty to bargain as spelled out in the Act. Therefore, whether any position is given "just cause" protection is a matter left entirely to the parties, and any concerns over potential "just cause" coverage for any position by virtue of Board certification provides no basis for excluding a position as a matter of law.

Managerial

In Am. Fed'n. of State, Cnty. & Mun. Emps., Council 31 and State of Ill., Dept. of Cent. Mgmt. Servs. (Ill. Commerce Comm'n), __ PERI ¶__ (IL LRB-SP 2012) (Case Nos. S-RC-10-034 and S-RC-10-036), the Board affirmed the ALJ's ruling that Administrative Law Judge IIIs and IVs in the Illinois Commerce Commission are managerial employees and therefore excluded from coverage under the Act. The matter came to a Board ALJ for hearing only after a remand order from the Fourth District Appellate Court in Dep't of Cent. Mgmt. Servs./Ill. Commerce Comm'n v. Ill. Labor Relations Bd., 406 Ill. App. 3d 766 (4th Dist. 2010), in which the court found that the Board had improperly certified the Union as the representative of the ALJ IIIs and IVs without conducting a hearing on the Employer's claim that the petitioned-for employees are managerial under Section 3(j) of the Act. (The court rejected the Employer's argument that the employees are "managerial as a matter of law.") In affirming the ALJ's ruling, the Board found that the ALJ properly applied the analysis laid out by the Fourth District, and correctly concluded that the employees met the definition of a managerial employee under Section 3(j), based on the fact that they spend 90% of their time issuing recommended decisions in contested cases that they hear, and that, through their recommended decisions, they are "the whole game" when it comes to utility regulation, and thereby help run the agency with respect to its primary mission. In a footnote, the Board rejected the Employer's one-sentence "incorporation by reference" of its post-hearing brief as its response to the Union's exceptions, and declined to consider the post-hearing brief. In doing so, the Board concluded that responses to exceptions must focus on the analysis in the ALJ's decision, and be responsive to the specific points raised by the excepting party – requirements that obviously cannot be met by merely referencing a brief filed prior to issuance of the ALJ's decision and the filing of exceptions.

E. Section 3(r) supervisors

Supervisor

In Am. Fed'n. of State, Cnty. & Mun. Emps., Council 31, AFL-CIO and Cnty. of Cook, 28 PERI ¶85 (IL LRB-LP 2011) (Case No. L-RC-11-009), the Board affirmed the ALJ's ruling that the four Building Custodian Is at issue are not supervisors within the meaning of the Act, based on the finding that the County failed to show that any supervisory functions performed by the employees were more significant than their non-supervisory functions. In its decision, the Board modified the ALJ's ruling only to the extent that the ALJ had found that the authority to issue written reprimands is not supervisory. Instead, the Board found that issuing written reprimands, which may impact future levels of discipline, can constitute the exercise of supervisory authority to discipline, but that, in this case, the employees do not exercise the requisite independent judgment in issuing written warnings.

Supervisor

In Serv. Emps. Int'l. Union, Local, Local 73, CLC-CTW and City of Chi., 28 PERI ¶86 (IL LRB-LP 2011) (Case No. L-RC-11-006), the Board reversed the ALJ's ruling that eleven Supervising Investigators

employed by the City of Chicago's Independent Police Review Authority are public employees under the Act. While the Board agreed with the ALJ's conclusion that the employees are not managerial, the Board held that, contrary to the ALJ's determination, the employees are "supervisors" under the Act. The ALJ's ruling that the Supervising Investigators are not supervisors was premised on his finding that, although their principal work is substantially different from that of their subordinates, and they consistently exercise independent judgment in issuing discipline, resolving grievances and rewarding subordinates, they do not meet the preponderance requirement because they spend most of their time instructing their subordinates and reviewing their reports and investigative cases, and that these functions did not constitute supervisory "direction" within the meaning of the Act. In reviewing the record, the Board concluded that, contrary to the ALJ's finding, the Supervising Investigators' review and instruction of their subordinates is supervisory direction, and not merely the giving of suggestions or advice, because 95% of the investigations they supervise are either closed without any input from the Supervisors' superiors, or are submitted to their superiors with full agreement between the Supervisors and their subordinates that the underlying disciplinary allegations have merit. The Board also found that, in the vast majority of cases, the subordinates do not challenge the Supervisors' instructions or opinions. Therefore, the Board ruled, because the Supervising Investigators spend the preponderance of their time engaged in supervisory direction, they meet all four elements of the supervisory test, and the Union's petition to represent them was dismissed. In a dissent, Member Sadlowski stated that he would have affirmed the ALJ's recommended decision in its entirety, including the ALJ's rejection of the City's arguments that the Supervising Investigators should be excluded as managerial employees, and that a stand-alone unit of Supervising Investigators would not be an appropriate unit under the Act.

Supervisor
In Am. Fed'n. of State, Cnty. & Mun. Emps., Local 31, AFL-CIO and Cnty. of Cook, 28 PERI ¶109 (IL LRB-LP 2012) (Case No. L-RC-11-014), the Board upheld the ALJ's ruling rejecting the Employer's contention that respiratory therapy supervisors are supervisors within the meaning of the Act. Specifically, the ALJ rejected the Employer's argument that the employees are supervisors under the Act because they direct and/or discipline subordinates with the consistent exercise of independent judgment. The ALJ concluded that, because the employees do not exercise any supervisory authority within the meaning of the Act, they are not statutory supervisors.

Supervisor
By way of a non-precedential order issued in Ill. Fraternal Order of Police, Labor Council v. Ill. Labor Relations Bd., 2012 IL App (1st) 111692-U, 28 PERI ¶134, the court affirmed the Board's determination (27 PERI ¶68) (Case No. S-RC-11-034) that police sergeants for the City of Carbondale are supervisors. The court based its decision on the sergeants' authority to discipline subordinates, and therefore did not need to address IFOP's arguments that the Board had erred in finding that the sergeants also have the supervisory authority to direct.

Supervisor
With a non-precedential order in Vill. of Richton Park v. Ill. Labor Relations Bd., 2012 IL App (1st) 110289-U, 28 PERI ¶143, the First District reversed the Board's determination (26 PERI ¶151) (Case No. S-RC-10-055) that police sergeants employed by the Village of Richton Park are not supervisors under the Act. The court ruled that evidence of the existence of authority to effectively recommend varying levels of discipline was sufficient to find that the sergeants are supervisors, despite the absence of any evidence that such authority had ever in fact been exercised.

Supervisor, Managerial
In Am. Fed'n. of State, Cnty. & Mun. Emps,, Council 31 and State of Ill., Dep't. of Cent. Mgmt. Servs., 28 PERI ¶160 (IL LRB-SP 2012) (Case No. S-RC-08-130), the Board upheld the ALJ's ruling certifying AFSCME as the representative of three administrative law judge positions in the State's Department of

Healthcare and Family Services, and rejecting the employer's argument that all three positions should be excluded as managerial, and that one should be excluded as supervisory.

Supervisor, Confidential

By means of a non-precedential order issued in Ill. Fraternal Order of Police, Labor Council v. Ill. Labor Relations Bd., 2012 IL App (1st) 111691-U, 28 PERI ¶162 (27 PERI ¶69) (Case No. S-RC-09-184), the First District affirmed the Board's order dismissing the Union's petition to represent the City of Springfield's police lieutenants, and the Board's determination that the employees are supervisors under the Act. The court rejected the Union's argument that the employees do not exercise the requisite independent judgment, concluding that they could, without substantial oversight, determine whether to administer lesser forms of discipline, such as oral counseling and verbal and written reprimands, or no discipline at all. The court also found that the lieutenants exercise independent judgment in effectively recommending more serious forms of discipline. The court rejected the Board's ruling that the employees are also confidential, finding that, although two of the lieutenants had participated in contract negotiations for the City, they did not engage in this function in the regular course of their duties, because one lieutenant's participation was by his own request, and the other participated only as a short-term substitute.

Supervisor, Managerial, Exclusion as a Matter of Law, Unit Appropriateness

In Am. Fed'n. of State, Cnty. & Mun. Emps., Council 31 and State of Ill., Dep't. of Cent. Mgmt. Servs. (Dep't. of Revenue), __ PERI ¶__ (IL LRB-SP 2012) (Case No. S-RC-10-222), the Board affirmed the ALJ's determination that four Deputy General Counsels in the State's Department of Revenue are supervisors under Section 3(r) of the Act, based on their duties and responsibilities as heads of separate divisions within the Department's Legal Services Bureau. In affirming the ALJ's ruling, the Board rejected, among other arguments, the Union's contention that the positions at issue did not satisfy the "preponderance" requirement, finding that the ALJ's analysis on this point was consistent with the Fourth District Appellate Court's holding in Dep't of Cent. Mgmt. Serv. v. Ill. State Labor Rel. Bd., 278 Ill. App. 3d 79, 83-86 (4th Dist. 1996) that "[w]hether a person is a 'supervisor' should be defined by the significance of what that person does for the employer, regardless of the time spent on particular types of functions." Id., 278 Ill. App. 3d at 86. The Board also upheld the ALJ's ruling that a fifth attorney, a Senior Counsel who reported to one of the Deputy General Counsels, should not be excluded as a matter of law solely because his position is a "term appointment" under the State Personnel Code, as well as the ALJ's finding that it would not be inappropriate to add the Senior Counsel position to the parties' existing RC-10 bargaining unit solely because of his term appointment status. In so ruling, the Board rejected the Employer's argument that, because expired term appointments cannot be granted the "just cause" protections afforded to other employees in RC-10 under the collective bargaining agreement, the Senior Counsel position must be excluded from collective bargaining altogether, or, in the alternative, the position may not appropriately be included in the existing RC-10 unit with employees covered under the collective bargaining agreement's "just cause" provision. The Board noted that, contrary to the apparent presumption underlying the Employer's arguments, there is nothing in any Board certification order which mandates coverage for employees under a "just cause" provision, or under any other particular term of a collective bargaining agreement, and that a certification only triggers the duty to bargain as spelled out in the Act. Therefore, whether any position is given "just cause" protection is a matter left entirely to the parties, and any concerns over potential "just cause" coverage for any position by virtue of Board certification provides no basis for excluding a position as a matter of law.

F. Professional employees

Professional Employees

In City of E. Moline and Am. Fed'n. of State, Cnty. & Mun. Emps., Council 31, 28 PERI ¶89 (IL LRB-SP 2011) (Case No. S-UC-08-398), the City filed a unit clarification petition to exclude from the existing historical unit employees in three newly-created positions - Assistant Director of Engineering, Senior

Engineer and GIS/CADD (Global Information Systems/Computer Aided Drafting and Design) Coordinator – as "professional" employees within the meaning of Section 3(m) of the Act. The Board agreed with the ALJ's ruling that the employees are professional employees within the meaning of the Act. Specifically, the Board found that that their output or results could not be standardized in relation to a given period of time, and that all three positions require advanced knowledge customarily acquired through a prolonged course of specialized training. The Board emphasized that the nature of the work, rather than the distinct qualifications of the employee, determined their professional status. As such, the Assistant Director of Engineering qualified as a professional employee even though he did not actually possess a license, because "experience may be sufficient to render an engineer a professional despite lack of an engineering license." The Board rejected the union's claim that the new positions are not professional because they merely perform work previously performed within the bargaining unit, finding that the new positions included much work that was previously contracted out, and which was more sophisticated than the work performed by existing unit employees. In accordance with Section 9(b) of the Act, the Board directed the taking of a poll of the three professional employees to determine whether they want to be represented in the existing unit of non-professional employees, as well as a poll of the employees in the existing unit, to determine whether they want to be represented in a mixed unit with professional employees.

G. Other exclusions

Supervisor, Managerial, Exclusion as a Matter of Law, Unit Appropriateness

In Am. Fed'n. of State, Cnty. & Mun. Emps., Council 31 and State of Ill., Dep't. of Cent. Mgmt. Servs. (Dep't. of Revenue), __ PERI ¶__ (IL LRB-SP 2012) (Case No. S-RC-10-222), the Board affirmed the ALJ's determination that four Deputy General Counsels in the State's Department of Revenue are supervisors under Section 3(r) of the Act, based on their duties and responsibilities as heads of separate divisions within the Department's Legal Services Bureau. In affirming the ALJ's ruling, the Board rejected, among other arguments, the Union's contention that the positions at issue did not satisfy the "preponderance" requirement, finding that the ALJ's analysis on this point was consistent with the Fourth District Appellate Court's holding in Dep't of Cent. Mgmt. Serv. v. Ill. State Labor Rel. Bd., 278 Ill. App. 3d 79, 83-86 (4th Dist. 1996) that "[w]hether a person is a 'supervisor' should be defined by the significance of what that person does for the employer, regardless of the time spent on particular types of functions." Id., 278 Ill. App. 3d at 86. The Board also upheld the ALJ's ruling that a fifth attorney, a Senior Counsel who reported to one of the Deputy General Counsels, should not be excluded as a matter of law solely because his position is a "term appointment" under the State Personnel Code, as well as the ALJ's finding that it would not be inappropriate to add the Senior Counsel position to the parties' existing RC-10 bargaining unit solely because of his term appointment status. In so ruling, the Board rejected the Employer's argument that, because expired term appointments cannot be granted the "just cause" protections afforded to other employees in RC-10 under the collective bargaining agreement, the Senior Counsel position must be excluded from collective bargaining altogether, or, in the alternative, the position may not appropriately be included in the existing RC-10 unit with employees covered under the collective bargaining agreement's "just cause" provision. The Board noted that, contrary to the apparent presumption underlying the Employer's arguments, there is nothing in any Board certification order which mandates coverage for employees under a "just cause" provision, or under any other particular term of a collective bargaining agreement, and that a certification only triggers the duty to bargain as spelled out in the Act. Therefore, whether any position is given "just cause" protection is a matter left entirely to the parties, and any concerns over potential "just cause" coverage for any position by virtue of Board certification provides no basis for excluding a position as a matter of law.

Exclusion as a Matter of Law, Unit Appropriateness

In Am. Fed'n. of State, Cnty. & Mun. Emps., Council 31 and State of Ill., Dep't of Cent. Mgmt. Servs. (Dep't. of Agric., et.al.), __ PERI ¶__ (IL LRB-SP 2012) (Case No. S-RC-11-004), the Board affirmed the ALJ's ruling, following a June 10, 2011 remand order from the Board, that it would not be

inappropriate to certify the Union as the representative of the State's Private Secretary Is as part of the parties' existing RC-62 bargaining unit. The Board rejected the Employer's argument that, because the Private Secretaries are "at will" employees under the State Personnel Code, they could not be appropriately included in a bargaining unit with employees who have "just cause" protection under the terms of the parties' collective bargaining agreement. In reaching this conclusion, the Board noted that the RC-62 bargaining unit already includes positions designated as "at will" under the Personnel Code, and that the coverage of any of these positions under the "just cause" provision of the collective bargaining agreement would have come about only as a result of the specific agreement of the Employer and the Union. Referencing its decision in Am. Fed'n of State, Cnty. & Mun. Emps., Council 31 and State of Ill., Dep't. of Cent. Mgmt. Servs. (Dep't. of Revenue), __ PERI ¶__ (IL LRB-SP 2012) (Case No. S-RC-10-222), issued the same day, the Board also noted that there is nothing in any Board certification order which mandates coverage for employees under a "just cause" provision, or under any other particular term of a collective bargaining agreement, and that a certification only triggers the duty to bargain as spelled out in the Act. Therefore, any concerns of the Employer with respect to maintaining "at will" status for represented employees are concerns that it can address in negotiations.

III. Employer Unfair Labor Practices

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

ED Dismissal – Employer Interference
In Matthew George and Cnty. of Cook (Health & Hosp. Sys.), 28 PERI ¶135 (IL LRB-LP 2012) (Case No. L-CA-12-016), the Board affirmed the Executive Director's dismissal of a charge alleging that the Employer improperly denied the employee a scheduled wage increase, agreeing with the Executive Director's ruling that an alleged breach of a collective bargaining agreement is, in itself, insufficient to demonstrate a violation of the Act.

ED Dismissal – Employer Interference, Stipulated Unit Exclusion
In Margaret J. Lowder and State of Ill., Dep't. of Cent. Mgmt. Servs., 28 PERI ¶138 (IL LRB-SP 2012) (Case No. S-CA-11-152), the Charging Party claimed the Employer violated the Act by stipulating with the Union that her position be excluded from the bargaining unit as managerial. The Board upheld the Executive Director's dismissal of the charge because, by virtue of the stipulation, Charging Party is not a public employee under the Act, and because, in any event, there was no showing that the Employer entered into the stipulation because of Charging Party's exercise of rights protected under the Act, or for any reason other than a good faith assessment of the duties of the position.

Weingarten
In Am. Fed'n. of State, Cnty. & Mun. Emps. and Cnty. of Cook & Sheriff of Cook Cnty., 28 PERI ¶155 (IL LRB-LP 2012) (Case No. L-CA-10-032), the Board adopted the ALJ's determination that the Respondent violated the Weingarten rights of an employee represented by Charging Party, in violation of Section 10(a)(1) of the Act, when it denied her request for union representation during an investigatory interview. However, the Board rejected the ALJ's conclusion that the three-day suspension that followed the interview was "predominantly dependent" upon information obtained during the interview, and therefore rejected the ALJ's recommendation of a make-whole remedy with respect to the suspension. In reaching this conclusion, the Board determined that, based on the record, it could not fairly be said that the suspension was the product of the interview, and found that the suspension was instead based on information already available to the Employer prior to the interview.

ED Dismissal Reversed - Weingarten
In Int'l. Bhd. of Teamsters, Local 700 and State of Ill., Dep't. of Cent. Mgmt. Servs., 28 PERI ¶157 (IL LRB-SP 2012) (Case No. S-CA-12-076), Charging Party alleged that, by denying a bargaining unit

employee's request for representation during an investigatory interview, the Employer violated the employee's Weingarten rights under Section 10(a)(1) of the Act. The Executive Director dismissed the charge on his finding that the employee lacked a reasonable expectation that discipline could result from the interview, since the employee was merely a witness, and not a focus of the investigation, and because the Employer's investigator had assured the employee that he would not be disciplined as a result of the interview. The Board reversed the dismissal and directed the issuance of a complaint for hearing, finding that there existed an issue of fact as to the exact nature of the assurances given by the Employer's investigator, and an issue of law as to whether any such assurances were sufficient to dispel any reasonable belief by the employee that the interview could result in discipline.

ED Dismissal Reversed – Employer Interference
In Barbara Martenson and Cnty. of Boone & Boone Cnty. Sheriff, 28 PERI ¶161 (IL LRB-SP 2012) (Case No. S-CA-11-255), the Executive Director dismissed the portion of Charging Party's charge alleging that the Employer had violated Section 10(a)(1) when it issued a directive that she and her co-workers refrain from discussing a pending disciplinary investigation of Charging Party that eventually led to her discharge. The Board reversed the Executive Director's partial dismissal and ordered the issuance of a complaint for hearing, finding the existence of issues of law and fact as to whether the Employer's order was overly broad, and lacked sufficient business justification, so as to constitute improper interference with the employees' right to engage in protected concerted activity.

ED Dismissal - Timeliness
In Tri-State Prof'l. Firefighters Union, Local 3165, IAFF and Tri-State Fire Prot. Dist., 29 PERI ¶33 (IL LRB-SP 2012) (Case No. S-CA-12-027), the Board affirmed the Executive Director's dismissal of the Union's charge because it was filed more than six months after the Union had knowledge of the events giving rise to the charge.

ED Dismissal – Improper Representation
In William Foster & Laura Foster and Chi. Transit Auth., 29 PERI ¶32 (IL LRB-LP 2012) (Case No. L-CA-11-006), Charging Parties alleged that the Employer violated the Act by entering into a collective bargaining agreement with a coalition of trades unions representing the Employer's employees, including the Charging Parties. The Executive Director initially dismissed the charge on timeliness grounds, which dismissal was upheld by the Board following Charging Parties' appeal. While the Board's decision was pending administrative review in the Appellate Court, the Board determined that the charge had in fact been filed in a timely fashion, and, upon the Board's own motion, the Appellate Court remanded the charge to the Board for consideration on the merits. The Board then upheld the Executive Director's dismissal of the charge on the ground that the essence of the Charging Parties' claim is that they were not properly represented in negotiations by the trades coalition, and that the charge therefore did not state a claim against the Employer, against whom the charge was filed.

ED Dismissal Reversed - Retaliation
In Susan Gruberman and St. Clair Twp., 29 PERI ¶37 (IL LRB-SP 2012) (Case No. S-CA-12-088), the Charging Party alleged that the Employer violated Section 10(a)(1) when her supervisor accused her of insubordination in connection with her comments at a public meeting of the Township's board of trustees. The Board reversed the Executive Director's dismissal of the charge, finding a question of fact and law sufficient to warrant hearing with respect to whether her supervisor's statements coerced, restrained or interfered with activity protected under the Act.

B. Section 10(a)(2) discrimination

Retaliation, Decision by ALJ Who Did Not Conduct Hearing
In James Pino and Vill. of Oak Park, 28 PERI ¶111 (IL LRB-SP 2012) (Case No. S-CA-08-131), the Board upheld the ALJ's dismissal of Charging Party's charge alleging that he was terminated in

retaliation for his union activity, and the ALJ's ruling that there was insufficient evidence that Charging Party's termination was motivated by anti-union animus, or that the Employer made improper coercive threats during collective bargaining negotiations. In its decision, the Board also rejected Charging Party's argument that the ALJ, who was not the same ALJ who presided over the hearing, improperly made credibility determinations in his recommended ruling. In addressing this issue, the Board found that the ALJ did not in fact make any explicit credibility determinations. More significantly, the Board ruled that, under the Act, it is the Board – and not the ALJ – that is ultimately responsible for findings of fact by the agency, and the Board accordingly owes no deference to an ALJ's factual determinations. The Board also noted that it had reviewed a file memorandum authored by the hearing ALJ which summarized witnesses' testimony. The Board therefore ruled that there was no need to conduct a new hearing.

ED Dismissal – Retaliation, Deferral to Arbitration Award

In Ann Moehring and Chief Judge of the 16th Jud. Cir., 29 PERI ¶50 (IL LRB-SP 2012) (Case No. S-CA-10-241), the Board upheld the ALJ's order dismissing the Charging Party's retaliatory termination charge, and deferring to an arbitration award in which the arbitrator ruled that the Employer had just cause to terminate Charging Party's employment. Because the arbitration award expressly addressed the question of whether the discharge was improperly motivated by Charging Party's union activity, the Board found deferral and dismissal appropriate under the Spielberg Mfg. Co. post-arbitration deferral standards. The Board rejected Charging Party's argument that deferral was not appropriate because the Union, and not Charging Party, was the named party to the arbitration. In this regard, the Board noted that her union pursued the arbitration case solely on Charging Party's behalf, her interests and the Union's were identical, and she was undoubtedly aware that she would be bound by the award.

Retaliation, Discrimination

In Oak Lawn Prof'l. Firefighters Ass'n., Local 3405, IAFF and Vill. of Oak Lawn, 28 PERI ¶127 (IL LRB-SP 2012) (Case No. S-CA-08-271), the Board upheld the ALJ's ruling that the Employer violated Section 10(a)(2) when, during the course of protracted negotiations for a successor collective bargaining agreement with the Union, the Employer decided to reduce bargaining unit staffing by six, including the layoff of three incumbent employees. The Board agreed with the ALJ's finding that the reduction in force was in retaliation for the union's bargaining and grievance filing activities, and that the Employer's proffered reasons for the reduction – a budget shortfall and overstaffing in the fire department – were pretextual. Key to this ruling were statements made by the Village Manager complaining about the costs of negotiations and referencing layoffs as a form of punishment, and also a statement by the Employer's fire chief that the budget deficit was merely an excuse for the reduction in force. The Board's decision also pointed to the "obvious" flaws in the analyses relied on by the Employer to justify the layoff – flaws which, the Board noted, would not alone be sufficient basis for finding a violation of the Act, since employers have the right to make honest mistakes, but which, in this case, given the lack of clarity in the record regarding the timing, originator and purpose of the analyses, seemed more post-decision justification for the layoff than a bona fide originating basis for the decision. The Board also rejected the Employer's argument that there was no violation of the Act because there was no evidence that any of the laid off employees engaged in union activity. Relying on the plain language of the Act, as well as analogous NLRB cases, the Board held that there is nothing in the Act that limits remedies for unfair labor practices to only those who are proven to have engaged in protected activity.

ED Dismissal - Retaliation

In Pamela Mercer and Cnty. of Cook/Sheriff of Cook Cnty., 28 PERI ¶165 (IL LRB-SP 2012) (Case No. L-CA-12-010), the Board upheld the Executive Director's dismissal of the charge, finding that Charging Party's allegations concerning her attempts to enforce institutional procedures against her subordinates did not involve activity protected under the Act, and noting the lack of evidence that any similarly situated employee was treated more favorably than Charging Party.

ED Dismissal Reversed - Retaliation
In Patrick C. Nickerson and Vill. of Univ. Park, 28 PERI ¶167 (IL LRB-SP 2012) (Case No. S-CA-12-011), Charging Party alleged that his 2011 discharge was in retaliation for his complaints about loss of sick and vacation time in 2009, and for assisting a co-worker with charges filed by the co-worker with the Board, the EEOC, and the IDHR. In response to the Employer's claim that he was discharged because he lacked a valid driver's license, and was therefore incapable of performing the duties of his position, Charging Party claimed that other employees lacked driver's licenses and were not discharged. The Executive Director dismissed the charge, concluding that the lapse in time between his alleged protected activity in 2009 and his discharge in 2011 foreclosed any argument that the discharge was retaliatory. The Executive Director also noted that there was no evidence that Charging Party was treated any differently from other similarly situated employees. The Board found that, in his appeal, Charging Party was able to document that his assistance to a co-worker may have occurred much closer in time to his discharge than revealed during the initial investigation. The Board therefore reversed the Executive Director's dismissal and remanded the charge for further investigation.

ED Dismissal - Retaliation
In Dottie Atterberry and State of Ill., Dep't. of Cent. Mgmt. Servs., 28 PERI ¶168 (IL LRB-SP 2012) (Case No. S-CA-12-022), the Board upheld the Executive Director's dismissal of the charge, which alleged that the Employer violated the Act by failing to give Charging Party a salary step increase in accordance with two prior grievance settlements.

Retaliation
In Stephanie Birkner & Douglas Birkner and Vill. of New Athens, 29 PERI ¶27 (IL LRB-SP 2012) (Case Nos. S-CA-11-120 and -122), the Board upheld the ALJ's ruling that the Employer violated Section 10(a)(1) by discharging both Charging Parties in retaliation for their signing a petition to remove a Village trustee from office. The Board noted that Charging Parties' signing of the petition involved protected activity because the petition expressly addressed concerns related to hiring, firing and promotion of Village employees. It was undisputed that the trustee was angry with both Charging Parties for having signed the petition, and the Board agreed with the ALJ's finding that the Employer's inconsistent and inadequate attempts to explain the discharge of the Charging Parties warranted an inference of unlawful animus.

ED Dismissal - Retaliation
In Samuel Ware and City of Chi., 29 PERI ¶26 (IL LRB-LP 2012) (Case No. L-CA-10-058), the Board affirmed the Executive Director's dismissal of Charging Party's charge alleging that the Employer improperly took several adverse actions against him, agreeing with the Executive Director's conclusion that Charging Party was treated no differently from other employees in his department. The Board also found irrelevant the fact that Charging Party was a union steward at the time of the alleged adverse actions, because such status alone is insufficient to confer any greater protections under the Act, and Charging Party provided no evidence to suggest that his actions as a union steward were a basis for any retaliation by the Employer.

ED Dismissal - Retaliation
In Peter J. Wagner and State of Ill., Dep't. of Cent. Mgmt. Servs., 29 PERI ¶36 (IL LRB-SP 2012) (Case No. S-CA-12-072), the Board upheld the Executive Director's dismissal of the charge, which alleged that the Employer violated the Act by terminating his probationary employment after he had engaged in union organizing activities. In upholding the dismissal of the charge, the Board found no evidence that the Employer was aware of any union activity by Charging Party prior to the time it initiated the termination of his employment.

Retaliation

By way of a published opinion in Cnty. of Cook v. Ill. Labor Relations Bd., State Panel, Beverly Joseph & Leslie Mitchner, 2012 IL App (1st) 111514, 29 PERI ¶44, the 1st District Appellate Court reversed the Local Panel's decision finding that an employer committed an unfair labor practice by refusing to reinstate a nurse because she had filed too many grievances. The nurse (and a fellow nurse involved in the case) worked for Cermak Health Services and was assigned to the Cook County Juvenile Temporary Detention Center (rather than at the jail). When the Transitional Administrator for the JTDC was appointed by the federal district court, he ordered that all who worked at the JTDC submit to background checks. These two nurses refused to do so, ostensibly for the purpose of protecting the rights of all bargaining unit members not to be subjected to unilateral changes in working conditions. During discussions attempting to settle related arbitration proceedings, a representative of the Employer purportedly stated that the Employer would consider reemploying one of the nurses but not the other, because of all the grievances she had filed. An arbitrator eventually ruled that both employees were terminated for just cause. The ALJ found violations both in the termination and in the refusal to reinstate. The Board reversed the ALJ's finding that the terminations violated the Act, but a majority found a violation in the refusal to reinstate. Dissenting member Anderson found the evidence upon which the second finding was based insufficient to support finding a violation. In reversing the Board, the court agreed with the dissenting member that the evidence was insufficient to justify finding a violation with respect to the failure to reinstate. The court also overruled the majority's finding that the evidence concerning what was said by the Employer's representative during settlement discussions was admissible. The court distinguished NLRB precedent which considered some statements made in settlement discussions, and, relying on Board rule 1200.120 (which had not been cited by any parties), held that it did not matter that the settlement discussions were outside the context of the unfair labor practice proceeding.

ED Dismissal - Retaliation

In Gerard H. Henderson and Cnty. of Cook, 29 PERI ¶46 (IL LRB-LP 2012) (Case No. L-CA-12-040), the Board upheld the Acting Executive Director's dismissal on the ground that Charging Party failed to show that his layoff was because of, or in retaliation for, his exercise of any rights protected under the Act.

ED Dismissal – Retaliation

In William Sewell and Cnty. of Cook, 29 PERI ¶58 (IL LRB-LP 2012) (Case No. L-CA-12-039), Charging Party alleged that his layoff by the Employer violated Section 10(a)(1). Because Charging Party did not allege that his layoff was in retaliation for his exercise of any rights protected under the Act, and the facts did not otherwise suggest any such improper motive on the part of the Employer, the Board affirmed the Executive Director's dismissal of the charge.

ED Dismissal – Retaliation, Refusal to Bargain

In Metro. Alliance of Police, Schaumburg Command Chapter 219 and Vill. of Schaumburg, __ PERI ¶__ (IL LRB-SP 2012) (Case No. S-CA-12-127), the Board upheld the Executive Director's dismissal of the Union's allegations that the Employer violated Sections 10(a)(2) and 10(a)(4) with respect to its implementation of a reorganization plan under which bargaining unit Lieutenant positions would be phased out by attrition. The Union alleged that the reorganization was implemented in retaliation for the Union's prevailing in an interest arbitration award issued approximately four and one-half months prior to the announcement of the reorganization plan, and therefore violated Section 10(a)(2). The Union also alleged that the Employer violated Section 10(a)(4) by refusing to bargain over the effects of the reorganization. The Executive Director found no issue of law or fact sufficient to warrant hearing on the 10(a)(2) charge based on the absence of any adverse impact of the reorganization on current unit employees, and the Employer's demonstration of a legitimate, non-retaliatory motive for the reorganization. The Executive Director dismissed the 10(a)(4) charge based on the four-month delay between the Union's receipt of written notice of the reorganization plan and its demand to bargain over

the effects of the reorganization, finding that the reorganization was already "well under way" by the time the Union demanded bargaining, and that, by waiting too long, the Union had waived its right to bargain over either the decision or the effects.

C. Section 10(a)(3) retaliation for filing petition

Refusal to Bargain, Retaliation, Discrimination
In Metro. Alliance of Police, Barrington Hills, Chapter #576 and Vill. of Barrington Hills, 29 PERI ¶15 (IL LRB-SP 2012) (Case No. S-CA-10-189), the Board adopted the ALJ's ruling that the Employer violated Sections 10(a)(3) and (1) of the Act when it withheld a previously announced wage increase for employees who were the subject of a pending representation petition, and also when it withheld a previously approved tuition reimbursement benefit from Charging Party's chapter president. The ALJ found that, although the Employer had no duty to bargain with the Charging Party, because no certification had yet been issued, the denial of the previously announced benefits was inherently coercive, in that it conveyed to employees the message that the Employer controls the purse strings. Critical to the ALJ's ruling was her finding that all other non-represented employees received the announced increase; the decision to withhold the announced increase only for employees that were the subject of the petition was not made until after the petition was filed; and, in each of the past four years, increases had been implemented for the employees following the announcement of the increases. Under these circumstances, the ALJ did not credit the Employer's contention that it withheld the announced increases and the tuition reimbursement solely for economic reasons.

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

Refusal to Bargain
In Fraternal Order of Police, Chi. Lodge No. 7 v. Ill. Labor Relations Bd. & City of Chi., 2011 ILApp (1st) 103215, 961 N.E.2d 855, 28 PERI ¶72, the court affirmed the Board's decision in 26 PERI ¶115 (IL LRB-LP 2010) (Case No. L-CA-09-009), reversing the ALJ's recommended order, and concluding that the City of Chicago did not have an obligation to bargain with the Union over its decision to consolidate field training districts in the Department of Police. The Board reasoned that, although the reduction in field training districts did affect the terms and conditions of employment of Field Training Officers represented by the Union, the City's means of improving the quality of training for probationary officers is also a matter of inherent managerial authority. Applying the Central City balancing test, the Board concluded that the burden on the City's inherent managerial authority of bargaining over how best to train its new hires outweighed whatever benefits such bargaining might provide. The court also affirmed the Board's determination that the Union had waived any allegation that the City violated the Act by refusing to bargain over the effects of the decision to consolidate the training districts.

ED Dismissal - Refusal to Bargain
In Serv. Emps. Int'l. Union, Local, Local 73 and City of Hickory Hills, 28 PERI ¶87 (IL LRB-SP 2011) (Case No. S-CA-11-205), the Board upheld the Executive Director's dismissal of the Union's charge alleging that the City of Hickory Hills violated Section 10(a)(4) by unilaterally implementing a "light duty" policy that was contrary to language contained in the parties' collective bargaining agreement. In affirming the dismissal, the Board noted that the charge, in essence, alleged a violation of the CBA, which would not in itself be a violation of the Act.

Security Employees
In Metro. Alliance of Police, Chapter #228 and Chief Judge of the 12th Jud. Cir. (River Valley Juvenile Det. Ctr.), 28 PERI ¶137 (IL LRB-SP 2012) (Case No. S-CA-11-055), the Union filed a charge alleging that the Employer violated Section 10(a)(4) by refusing to cooperate in the selection of an interest arbitrator pursuant to Section 14 of the Act. The Board affirmed the ALJ's dismissal of the charge on the ground that the subject bargaining unit employees, all of whom work at the River Valley Juvenile

Detention Center, are not "security employees" within the meaning of Section 3(p) of the Act, because the RVJDC is not a "correctional facility" within the meaning of that same section.

ED Dismissal Reversed – Refusal to Execute Agreement

In Int'l. Union of Operating Eng'rs., Local 150 and Vill. of Frankfort, 28 PERI ¶144 (IL LRB-SP 2012) (Case No. S-CA-11-227), the Executive Director dismissed the Union's charge alleging that the employer violated the Act by refusing to execute a side letter to which the parties had agreed, finding that there had been no meeting of the minds on the terms of the side letter, and that the Employer therefore did not violate Section 10(a)(7) of the Act when it refused to sign. The Board reversed the Executive Director's dismissal, ruling that the Executive Director should also have analyzed the charge as a potential 10(a)(4) violation, and finding that there existed an issue of fact or law sufficient to warrant hearing on the question of whether the parties had reached a meeting of the minds on the terms to be included in the side letter.

Duty to Provide Information

In Ill. Fraternal Order of Police, Labor Council and Ill. Sec'y. of State, 28 PERI ¶145 (IL LRB-SP 2012) (Case No. S-CA-11-016), the Union's charge alleged that the Employer violated Section 10(a)(4) by failing to provide, during the course of collective bargaining negotiations, a requested copy of an efficiency audit report prepared by the Secretary of State's Inspector General, which report was based in part on interviews of bargaining unit employees. In its decision, the Board agreed with the ALJ's ruling that the refusal to provide the Union a copy of the report did not violate the Employer's general duty to provide information under the Act, because the Employer's interest in maintaining the confidentiality of a purely internal assessment of its operations outweighed the Union's interest in obtaining a copy. However, the Board reversed the second part of the ALJ's ruling, in which the ALJ found that the refusal to produce the report contravened one of the parties' written ground rules for negotiations, which expressed the parties' mutual agreement to comply with "reasonable requests for information," and that this breach of the ground rule worked a violation of Section 10(a)(4). In reversing this aspect of the ALJ's decision, the Board noted that whether the Employer had violated the ground rule was a matter of interpretation which was not for the Board to resolve, and that, in any event, a one-time breach of a negotiation ground rule would not rise to the level of an unfair labor practice.

Refusal to Bargain

In Vill. of Ford Heights v. Ill. Labor Relations Bd., 2012 IL App (1st) 110284-U, 28 PERI ¶147 , the First District issued a non-precedential order affirming the Board's determination in Case No. S-CA-09-055 (26 PERI ¶145) that the Village of Ford Heights had a duty to bargain before entering into an intergovernmental agreement with the Cook County Sheriff's Department for the provision of police services, which agreement ultimately led to the dissolution of the Village's police department, and the termination of four bargaining unit employees.

Refusal to Bargain

In Ill. Fraternal Order of Police, Labor Council and Vill. of Summit, 28 PERI ¶154 (IL LRB-SP 2012) (Case No. S-CA-11-167), the ALJ ruled that the Employer violated Section 10(a)(4) by refusing to bargain with the Union prior to issuing discipline to bargaining unit police officers based on police station video surveillance camera footage. The video footage showed the officers lounging at the station when they were supposed to be on patrol on the night of a shooting. Critical to the ALJ's decision was the fact that the Employer had never before used footage from the station's video cameras as a basis for discipline. The ALJ also noted that the case presented a question of first impression for the Board. The Board reversed the ALJ's conclusion of law, holding that the Employer did not have a duty to bargain prior to disciplining the employees, because the use of the video camera footage as evidence did not constitute a material change in the employees' terms and conditions of employment. The Board based this conclusion on the following factors, all of which distinguished this case from the NLRB, ILRB and IELRB cases cited by the ALJ in her decision: the presence of the video cameras was already well known

to the employees and the union; the union had never objected to the presence of the cameras; and, unlike the implementation of drug testing or polygraph testing policies, the use of video footage evidence as a basis for discipline in this case did not involve the introduction of any new disciplinary rules or procedures impacting employees. The Board also noted that there was no evidence that the employer had ever affirmatively represented to the union that footage from the station security cameras would not be used as evidence to support employee discipline.

Interest Arbitration, Refusal to Bargain

By means of a non-precedential order issued in Cnty. of St. Clair & Sheriff of St. Clair Cnty. v. Ill. Labor Relations Bd., State Panel & Ill. Fraternal Order of Police Labor Council, 2012 IL App (5th) 110317-U, 29 PERI ¶20, the 5th District Appellate Court affirmed the Board's decision finding that the St. Clair County Sheriff violated Section 14(l), and therefore Section 10(a)(4), when it unilaterally changed the status quo during the course of interest arbitration proceedings by creating a new transit unit and transferring bargaining unit work to non-bargaining unit employees.

ED Dismissal – Failure to Provide Information, Repudiation

In Theodis Ivy and City of Chi., 29 PERI ¶30 (IL LRB-LP 2012) (Case No. L-CA-12-050), the Board affirmed the Executive Director's dismissal for the Charging Party's failure to respond to the Board agent's request for further information that might indicate that the Employer's alleged actions could have constituted anything more than a single instance of a breach of its collective bargaining agreement with Charging Party's Union.

ED Dismissal Reversed – Duty to Bargain, Refusal to Reduce Agreement to Writing

In Int'l. Union of Operating Eng'rs., Local 150 and Vill. of Oak Lawn, 29 PERI ¶35 (IL LRB-SP 2012) (Case No. S-CA-10-221), the Union and the Employer entered into a memorandum of understanding outlining the parameters of a second, more detailed agreement to be drafted and executed by the parties, but were unable to reach agreement as to the terms of the second document. The Board reversed the Executive Director's dismissal of the Union's charge alleging a violation of Section 10(a)(4), finding that there was a question of law and fact sufficient to warrant hearing as to whether the parties had reached a meeting of the minds with respect to the terms to be included in the second agreement.

Refusal to Bargain

In Lake Forest Prof'l. Firefighters Union, IAFF, Local 1898 and City of Lake Forest, 29 PERI ¶52 (IL LRB-SP 2012) (Case No. S-CA-10-115), the Union filed a charge alleging that, following certification of the Union as representative of a unit of firefighters and paramedics, the Employer violated Section 10(a)(4) by unilaterally withholding pay increases and by assigning overtime work to non-unit chiefs. The Board affirmed the ALJ's ruling that there was no violation of the Act with respect to the assignment of overtime, because such assignments were consistent with the status quo as it pertained as of the date of certification. The Board also agreed with the ALJ's conclusion that the Employer did violate the Act with respect to the denial of the pay increases, because, as of the date of certification, the unit employees had a reasonable expectation of receiving their annual May 1 across-the-board and step increases, as they had every prior year for at least the previous twelve years.

ED Dismissal – Retaliation, Refusal to Bargain

In Metro. Alliance of Police, Schaumburg Command Chapter 219 and Vill. of Schaumburg, __ PERI ¶__ (IL LRB-SP 2012) (Case No. S-CA-12-127), the Board upheld the Executive Director's dismissal of the Union's allegations that the Employer violated Sections 10(a)(2) and 10(a)(4) with respect to its implementation of a reorganization plan under which bargaining unit Lieutenant positions would be phased out by attrition. The Union alleged that the reorganization was implemented in retaliation for the Union's prevailing in an interest arbitration award issued approximately four and one-half months prior to the announcement of the reorganization plan, and therefore violated Section 10(a)(2). The Union also alleged that the Employer violated Section 10(a)(4) by refusing to bargain over the effects of the

reorganization. The Executive Director found no issue of law or fact sufficient to warrant hearing on the 10(a)(2) charge based on the absence of any adverse impact of the reorganization on current unit employees, and the Employer's demonstration of a legitimate, non-retaliatory motive for the reorganization. The Executive Director dismissed the 10(a)(4) charge based on the four-month delay between the Union's receipt of written notice of the reorganization plan and its demand to bargain over the effects of the reorganization, finding that the reorganization was already "well under way" by the time the Union demanded bargaining, and that, by waiting too long, the Union had waived its right to bargain over either the decision or the effects.

E. Section 10(a)(7) refusal to execute

ED Dismissal Reversed – Refusal to Execute Agreement
In Int'l. Union of Operating Eng'rs., Local 150 and Vill. of Frankfort, 28 PERI ¶144 (IL LRB-SP 2012) (Case No. S-CA-11-227), the Executive Director dismissed the Union's charge alleging that the employer violated the Act by refusing to execute a side letter to which the parties had agreed, finding that there had been no meeting of the minds on the terms of the side letter, and that the Employer therefore did not violate Section 10(a)(7) of the Act when it refused to sign. The Board reversed the Executive Director's dismissal, ruling that the Executive Director should also have analyzed the charge as a potential 10(a)(4) violation, and finding that there existed an issue of fact or law sufficient to warrant hearing on the question of whether the parties had reached a meeting of the minds on the terms to be included in the side letter.

ED Dismissal Reversed – Duty to Bargain, Refusal to Reduce Agreement to Writing
In Int'l. Union of Operating Eng'rs., Local 150 and Vill. of Oak Lawn, 29 PERI ¶35 (IL LRB-SP 2012) (Case No. S-CA-10-221), the Union and the Employer entered into a memorandum of understanding outlining the parameters of a second, more detailed agreement to be drafted and executed by the parties, but were unable to reach agreement as to the terms of the second document. The Board reversed the Executive Director's dismissal of the Union's charge alleging a violation of Section 10(a)(4), finding that there was a question of law and fact sufficient to warrant hearing as to whether the parties had reached a meeting of the minds with respect to the terms to be included in the second agreement.

F. Joint employer

Jurisdiction, Joint Employer
In Countiss Perkins and Chief Judge of the Cir. Ct. of Cook Cnty. (Cook Cnty. Juvenile Temp. Det. Ctr.), 29 PERI ¶34 (IL LRB-SP 2012) (Case No. S-CA-09-225), the ALJ dismissed the charge after finding that, based on federal district court orders entered granting a court-appointed Transitional Administrator extensive powers to run the Juvenile Temporary Detention Center, including authority to determine the terms of employment of JTDC employees, the Board had no jurisdiction over the charge because the TA is not a "public employer" under the Act. The Board reversed the ALJ's ruling and remanded the matter for hearing on the question of whether the Chief Judge remained at least a joint employer of the Charging Party, such that Charging Party is still a "public employee" under the Act, and the Board would have jurisdiction over her charge. The Board also directed that the hearing be held in abeyance pending resolution by the federal Court of Appeals of questions raised in the district court with respect to the scope and extent of the TA's authority. In a partial dissent, Member Brennwald wrote that, while he fully agreed with the decision to remand the matter for hearing, he saw no reason to direct that the hearing be held in abeyance if the Charging Party preferred to proceed.

G. Remedies

Compliance, Remedies
In Local 8A-28A Metal Polishers, Sign & Display, Novelty Workers, Auto. Equip. Painters and Chi. Transit Authority, __ PERI ¶__ (IL LRB-LP 2012) (Case No. L-CA-01-017-C), the Board adopted the ALJ's decision and order upholding a Board compliance officer's compliance order finding that an employee unlawfully transferred to a different, more distant work facility was not entitled to compensation for his additional travel time.

IV. Union Unfair Labor Practices

A. Charge by Employer

ED Dismissal Reversed - Union Unfair Labor Practices
In PACE S. Div. and Amalgamated Transit Union, Local 1028, 28 PERI ¶88 (IL LRB-SP 2011) (Case No. S-CB-09-009), the Board reversed the Executive Director's dismissal, and found sufficient issues of fact and law to warrant issuance of a complaint on the Employer's charge that the Union had violated Section 10(b)(4) of the Act when, only six days after the Union's bargaining unit had rejected a tentative agreement reached with the Employer on a successor collective bargaining agreement, 60 of 132 unit employees were absent from work, and, three weeks later, union officials allegedly asked employees to refuse and cancel overtime assignments.

ED Dismissal – Employer Charge Against Union
In Vill. of Barrington Hills and Metro. Alliance of Police, Chapter 576, 29 PERI ¶51 (IL LRB-SP 2012) (Case No. S-CB-12-015), the Employer filed a charge alleging that the Union breached its duty of fair representation, and also failed to bargain in good faith, when it proposed during CBA negotiations that the Union president be reimbursed for educational expense reimbursement he was denied, without proposing a similar reimbursement for other unit employees. The Board upheld the Executive Director's dismissal of the charge, agreeing with the Executive Director that the Employer did not have standing to allege a violation by the Union of its duty of fair representation, and that there was no basis for alleging a violation of the Union's duty to bargain in good faith. On the latter point, the Board noted that the denial of tuition reimbursement for the Union president was the subject of a separate unfair labor practice charge, and also cited the wide latitude unions have in determining which proposals best serve the interests of the unit as a whole.

B. Charge by Employee

ED Dismissal For Failure to Provide Information
In Grover Stephens and Cnty. of Cook, 28 PERI ¶79 (IL LRB-LP 2011) (Case No. L-CA-12-004), the Board upheld the Executive Director's dismissal of the charge based on Section 1220.40(a)(1) of the Board's rules and regulations, and Charging Party's failure to provide information requested by the Board agent investigating the charge.

ED Dismissal - Union Unfair Labor Practices
In Barbara Brown-Frazier and Nat'l. Nurses Org. Comm., 28 PERI ¶115 (IL LRB-LP 2012) (Case No. L-CB-11-024), the Board upheld the Executive Director's dismissal of Charging Party's charge alleging that the Union had violated its duty of fair representation by the manner in which it settled a class action grievance involving layoffs, and the Executive Director's determination that there was no evidence that the Union intentionally treated Charging Party differently than other similarly situated employees, or that its actions were based on anything other than a good faith assessment of the merits of the claim.

ED Dismissal - Union Unfair Labor Practices
In Janette Watkins and Amalgamated Transit Union, Local 241, 28 PERI ¶114 (IL LRB-LP 2012) (Case No. L-CB-11-018), the Board upheld the Executive Director's dismissal of Charging Party's duty of fair representation charge, and his finding that there was no evidence that the Union intentionally took any action designed to retaliate against Charging Party, or to treat her differently than other similarly situated employees.

ED Dismissal – Retaliation, Union Unfair Labor Practices
In Georgia M. Foster and Clerk of the Cir. Ct. of Cook Cnty. and Georgia M. Foster and Int'l. Bhd. of Teamsters, Local 714, 28 PERI ¶125 (IL LRB-SP 2012) (Case Nos. S-CA-10-143 and S-CB-10-033), the Board upheld the Executive Director's dismissals of separate charges filed by Charging Party against her employer and against her union, arising out of her alleged forcible removal from her place of employment, and the Union's alleged failure to take appropriate action to obtain a remedy for the action. In affirming the dismissal of both charges, The Board agreed with the Executive Director that Charging Party failed to show that the complained of action by the Employer was in retaliation for her exercise of any right protected by the Act, or that the Union treated Charging Party differently than other similarly situated employees, or that its actions were based on anything other than a good faith assessment of the merits of her claim against the Employer. In the latter regard, the Board noted that Charging Party's failure to demonstrate any merit to her charge against the Employer tended to confirm that the Union's actions were based on legitimate, non-retaliatory considerations.

ED Dismissal - Union Unfair Labor Practices
In Deborah Ann Threlkeld and Am. Fed'n. of State, Cnty. & Mun. Emps., Council 31, 28 PERI ¶136 (IL LRB-LP 2012) (Case No. L-CB-12-010), the Board upheld the Executive Director's dismissal of a charge alleging that the Union violated its duty of fair representation to Charging Party by improperly processing her grievance after she filed a discrimination charge against the Union. The Board agreed with the Executive Director that there was insufficient evidence of intentional misconduct, because the Union had filed grievances on Charging Party's behalf, met with the Employer and argued on her behalf, and advocated advancing the grievance to the next step.

ED Dismissal - Union Unfair Labor Practices, Appointment of Counsel
In Carl Hamilton and Am. Fed'n. of State, Cnty. & Mun. Emps., Council 31, 28 PERI ¶139 (IL LRB-SP 2012) (Case No. S-CB-11-045), Charging Party alleged that the Union breached its duty of fair representation by withdrawing a grievance challenging discipline he had received. With his charge, Charging Party also submitted to the Board a request that the Board appoint an attorney to represent him. The Executive Director dismissed the charge, finding no evidence that the withdrawal of the grievance was unlawfully motivated, or based on anything other than a good faith assessment of the merits of the claim. In its decision, the Board agreed with the Executive Director's assessment that the evidence presented did not warrant issuance of a complaint, particularly in view of the fact that two of three grievances pursued by the Union had been resolved in Charging Party's favor, and he had failed to respond to a Board agent's request for further information. However, the Board noted that it was troubled by the fact that Charging Party's union steward is also his supervisor, and that his request for legal representation was never specifically addressed, reasoning that this may have played a role in Charging Party's failure to respond to the Board agent's request for information. To address these concerns, the Board in its decision expressly denied Charging Party's request for appointment of counsel, and remanded the matter for further investigation. In denying Charging Party's request for appointment of counsel, the Board noted that the investigative stage of charge processing does not involve any legal formalities, that Charging Party had demonstrated more than adequate ability to articulate his position, and that he failed to meet the financial standards for appointment of counsel set out in the Board's rules.

ED Dismissal - Union Unfair Labor Practices
In Virdia Spain and Am. Fed'n. of State, Cnty. & Mun. Emps., Council 31, 28 PERI ¶141 (IL LRB-SP 2012) (Case No. S-CB-11-059), the Charging Party alleged that the Union breached its duty of fair representation by failing to accompany her to a police interview regarding the death of a disabled person that had been in her care, and by failing to challenge a disciplinary suspension she received in connection with the death on the grounds that it was imposed by the employer in an untimely fashion. The Board upheld the Executive Director's dismissal of the charge on the grounds that the claim regarding the police interview was untimely, and that Charging Party failed to show that the Union treated Charging Party differently than other similarly situated employees, or that its refusal to further contest her discipline was based on anything other than a good faith assessment of the merits of her claim against the employer. The Board also noted in particular that the Illinois Supreme Court's decision in AFSCME v. Department of Central Management Services, 173 Ill. 2d 299 (1996), vacating on public policy grounds an arbitrator's reinstatement of a DCFS worker based on the State's untimely imposition of discipline, bolstered the conclusion that the Union's decision not to pursue a grievance with respect to Charging Party's discipline was based solely on a good faith assessment of the merits of the claim.

ED Dismissal - Union Unfair Labor Practices, Timeliness
In Edward White and Am. Fed'n. of State, Cnty. & Mun. Emps., Council 31, 28 PERI ¶142 (IL LRB-SP 2012) (Case No. S-CB-12-003), the Board upheld the Executive Director's dismissal of Charging Party's fair representation claim against the Union, agreeing that the charge was untimely with respect to his claims regarding the Union's failure to pursue a grievance over the denial of a promotion, and failure to contest the Employer's assessment of a fine, because those claims arose when Charging Party learned that the Union would not file a grievance, and not when Charging Party later came to understand the legal significance of the Union's decision. The Board also agreed with the Executive Director's finding that Charging Party failed to present any evidence of intentional misconduct by the Union with respect to its failure to assist him with the denial of his workers' compensation claim, and that this aspect of the charge therefore did not present an issue of law or fact sufficient to warrant hearing.

ED Dismissal Reversed - Union Unfair Labor Practices, Timeliness
In Britt J. Weatherford and Am. Fed'n. of State, Cnty. & Mun. Emps. Council, 31, 28 PERI ¶156 (IL LRB-SP 2012) (Case No. S-CB-11-002), the Board reversed the Executive Director's dismissal of Charging Party's fair representation charge on timeliness grounds, and remanded the charge for further investigation. In reversing the ALJ, the Board held that, under the Board's rules and regulations, Charging Party's charge should have been deemed to have been filed with the Board and served on the Union on the date it was mailed, and not on the date it was received. Based on this determination, the Board found that the charge was filed within the six-month limitations period provided in the Act.

ED Dismissal - Union Unfair Labor Practices
In Amanda Moren and Am. Fed'n. of State, Cnty. & Mun. Emps., Council 31, 28 PERI ¶159 (IL LRB-SP 2012) (Case No. S-CB-10-073), the Board upheld the Executive Director's decision to dismiss Charging Party's fair representation charge, noting that the Union had repeatedly filed and processed grievances on the Charging Party's behalf, and there was no evidence that the Union intentionally took any action against Charging Party due to her status.

ED Dismissal - Union Unfair Labor Practices
In Britt J. Weatherford and Am. Fed'n. of State, Cnty. & Mun. Emps., Council 31, 28 PERI ¶158 (IL LRB-SP 2012) (Case No. S-CB-10-004), the Board upheld the Executive Director's dismissal of Charging Party's fair representation charge, and the Executive Director's determination that there was no evidence that the Union intentionally took action to retaliate against the Charging Party due to his status.

Timeliness, Union Unfair Labor Practices
In John Michels v. Ill. Labor Relations Bd., 2012 IL App (4th) 110612-U, 28 PERI ¶163 , the Fourth District issued a non-precedential order affirming the Board's decisions in Case Nos. S-CA-09-250 and S-CB-09-038 (28 PERI ¶10 and 28 PERI ¶12), upholding the Executive Director's dismissal of Charging Party's charge against the State of Illinois/Central Management Services (Department of Corrections) on timeliness grounds, and also the Executive Director's dismissal of Charging Party's charge against AFSCME. The court agreed with the Board that the charge was untimely because it was filed more than a year after Charging Party was discharged, and that the date of his discharge, rather than the date AFSCME withdrew its grievance with respect to the discharge, was the point at which Charging Party had knowledge of the basis for his charge against the Employer, and therefore the point from which the Act's six-month limitations period began to run. The court also found no error in the Board's dismissal of Charging Party's charge against AFSCME because he failed to provide any evidence that AFSCME's withdrawal of his grievance was improperly motivated and based on intentional misconduct.

ED Dismissal – Union Unfair Labor Practices
In Pamela Mercer and Am. Fed'n. of State, Cnty. & Mun. Emps., Council 31, 28 PERI ¶166 (IL LRB-LP 2012) (Case No. L-CB-12-006), the Board upheld the Executive Director's dismissal of the Charging Party's fair representation charge, and his finding that there was no evidence that the Union had intentionally taken any action designed to retaliate against Charging Party or because of her status.

ED Dismissal – Union Unfair Labor Practices
In Dottie Atterberry and Am. Fed'n. of State, Cnty. & Mun. Emps., Council 31, 28 PERI ¶169 (IL LRB-SP 2012) (Case No. S-CB-12-002), the Board upheld the Executive Director's dismissal of the charge, in which Charging Party claimed that the Union violated the Act when it failed to pursue her grievance against the Employer claiming that she had been improperly denied a salary step increase.

ED Dismissal – Union Unfair Labor Practices
In Wayne Harej and Fraternal Order of Police, Lodge 7, 29 PERI ¶31 (IL LRB-LP 2012) (Case No. L-CB-12-033), Charging Party claimed that the Union improperly denied him the opportunity to attend a joint Union-Employer stress management class on the basis of Charging Party's status as a "fair share" dues-paying member of the bargaining unit who was therefore not a full dues-paying member of the Union. The Board upheld the Executive Director's dismissal, finding that the investigation revealed that Charging Party was never in fact prevented from attending the class, and that he instead failed to even apply or otherwise make any effort to attend the class.

ED Dismissal - Union Unfair Labor Practices
In Britt Weatherford and Am. Fed'n. of State, Cnty & Mun. Emps., Council 31, 29 PERI ¶38 (IL LRB-SP 2012) (Case No. S-CB-12-016), the Board upheld the Executive Director's dismissal of Charging Party's fair representation charge regarding the Union's handling of two grievances, and the Executive Director's determination that there was no evidence that the Union intentionally took action to retaliate against the Charging Party due to his status.

ED Dismissal – Union Unfair Labor Practices
In Gerard H. Henderson and Ill. Fraternal Order of Police, Labor Council, 29 PERI ¶47 (IL LRB-LP 2012) (Case No. L-CB-12-038), the Board affirmed the Acting Executive Director's dismissal of the charge on the ground that Charging Party failed to show that the Union intentionally took any action designed to retaliate against Charging Party due to his status, or because of personal animosity or dissident union activity, with his respect to his layoff by the Employer.

ED Dismissal – Failure to Provide Information, Union Unfair Labor Practices
In Darryl Carter and Am. Fed'n. of State, Cnty. & Mun. Emps., Council 31, 29 PERI ¶48 (IL LRB-LP 2012) (Case No. L-CB-12-041), the Board upheld the Executive Director's dismissal of the charge based

on Charging Party's failure to comply with the investigating Board agent's request for information demonstrating intentional conduct by the Union directed at Charging Party because of his past actions or status, or because of the Union's animosity toward Charging Party.

ED Dismissal – Union Unfair Labor Practices
In William Sewell and Ill. Fraternal Order of Police, Labor Council, 29 PERI ¶59 (IL LRB-LP 2012) (Case No. L-CB-12-037), the Board upheld the Executive Director's dismissal of Charging Party's duty of fair representation charge, for lack of any evidence that the Union engaged in any intentional conduct directed at Charging Party because of his past actions or status, or because of the Union's animosity toward Charging Party, with respect to its handling of Charging Party's layoff by the Employer. Instead, the investigation indicated that the Union filed a grievance challenging the layoff, and advanced the grievance in an effort to secure Charging Party's reinstatement.

ED Dismissal – Union Unfair Labor Practices
In Benny Eberhardt and Int'l. Bhd. of Teamsters, Local 700, __ PERI ¶__ (IL LRB-SP 2012) (Case No. S-CB-11-043), the Board affirmed the Executive Director's dismissal of Charging Party's claim that the Union violated the Act by failing to process to arbitration grievances filed on his behalf challenging disciplinary suspensions he had received prior to his discharge. In agreeing with the Executive Director's determination that there was no evidence of any unlawful motive on the Union's part, the Board noted that Charging Party's mere allegation that his grievances had merit was not a sufficient basis for issuing a complaint, and cited the substantial discretion afforded to unions under the Act in determining which grievances to pursue.

Union Unfair Labor Practices, Variance
In Darryl Spratt and Amalgamated Transit Union, Local 241, __ PERI ¶__ (IL LRB-LP 2012) (Case No. L-CB-09-066), the ALJ issued a recommended decision ordering that, because it did not file a timely answer to the complaint for hearing, the Union be deemed to have admitted the allegations in the complaint, and therefore found by default to have violated Section 10(b)(1) by failing to advance Charging Party's grievance in retaliation for Charging Party's support for a candidate opposed to the Union's president. The ALJ denied the Union's motion to file a late answer, as well as the Union's request for a variance from the timely filing requirement pursuant to Board Rule 1200.160. The ALJ denied the variance on her finding that the Union failed to demonstrate that application of the timely answer requirement would be "unreasonable or unnecessarily burdensome" within the meaning of 1200.160. The remedy ordered by the ALJ included a directive that the Union advance the Charging Party's grievance to arbitration in accordance with the terms of the collective bargaining agreement. The Board reversed the ALJ's denial of the variance, finding that requiring adherence to the timely answer requirement under the particular circumstances of this case would indeed be unnecessarily burdensome, given that just one day before the answer to the complaint was due, the Union had been placed in trusteeship and its officers replaced and if any demand to arbitrate the grievance at this point is untimely, it may be unfair to require, as an alternative remedy, that the Union pay damages for the termination, if it turns out that there was little likelihood of success on the merits of the grievance in the first place. The Board concluded that, under this "unusual set of circumstances," the best course would be to allow the Union to file a late answer, and to hold a hearing on the merits of the Charging Party's complaint.

V. Procedural Issues

A. Timing when filing by mail

ED Dismissal Reversed - Union Unfair Labor Practices, Timeliness
In Britt J. Weatherford and Am. Fed'n. of State, Cnty. & Mun. Emps. Council, 31, 28 PERI ¶156 (IL LRB-SP 2012) (Case No. S-CB-11-002), the Board reversed the Executive Director's dismissal of

Charging Party's fair representation charge on timeliness grounds, and remanded the charge for further investigation. In reversing the ALJ, the Board held that, under the Board's rules and regulations, Charging Party's charge should have been deemed to have been filed with the Board and served on the Union on the date it was mailed, and not on the date it was received. Based on this determination, the Board found that the charge was filed within the six-month limitations period provided in the Act.

B. Default, variances, and waiver

Union Unfair Labor Practices, Variance

In Darryl Spratt and Amalgamated Transit Union, Local 241, __ PERI ¶__ (IL LRB-LP 2012) (Case No. L-CB-09-066), the ALJ issued a recommended decision ordering that, because it did not file a timely answer to the complaint for hearing, the Union be deemed to have admitted the allegations in the complaint, and therefore found by default to have violated Section 10(b)(1) by failing to advance Charging Party's grievance in retaliation for Charging Party's support for a candidate opposed to the Union's president. The ALJ denied the Union's motion to file a late answer, as well as the Union's request for a variance from the timely filing requirement pursuant to Board Rule 1200.160. The ALJ denied the variance on her finding that the Union failed to demonstrate that application of the timely answer requirement would be "unreasonable or unnecessarily burdensome" within the meaning of 1200.160. The remedy ordered by the ALJ included a directive that the Union advance the Charging Party's grievance to arbitration in accordance with the terms of the collective bargaining agreement. The Board reversed the ALJ's denial of the variance, finding that requiring adherence to the timely answer requirement under the particular circumstances of this case would indeed be unnecessarily burdensome, given that just one day before the answer to the complaint was due, the Union had been placed in trusteeship and its officers replaced and if any demand to arbitrate the grievance at this point is untimely, it may be unfair to require, as an alternative remedy, that the Union pay damages for the termination, if it turns out that there was little likelihood of success on the merits of the grievance in the first place. The Board concluded that, under this "unusual set of circumstances," the best course would be to allow the Union to file a late answer, and to hold a hearing on the merits of the Charging Party's complaint.

C. Specificity of Exceptions and Responses

Incorporation by reference

In Am. Fed'n. of State, Cnty. & Mun. Emps., Council 31 and State of Ill., Dept. of Cent. Mgmt. Servs. (Ill. Commerce Comm'n), __ PERI ¶__ (IL LRB-SP 2012) (Case Nos. S-RC-10-034 and S-RC-10-036), the Board rejected the Employer's one-sentence "incorporation by reference" of its post-hearing brief as its response to the Union's exceptions, and declined to consider the post-hearing brief. In doing so, the Board concluded that responses to exceptions must focus on the analysis in the ALJ's decision, and be responsive to the specific points raised by the excepting party – requirements that obviously cannot be met by merely referencing a brief filed prior to issuance of the ALJ's decision and the filing of exceptions.

D. Deferral

ED Deferral Order

In Licensed Practical Nurses Ass'n. of Ill. and Cnty. of Cook, 28 PERI ¶108 (IL LRB-LP 2012) (Case No. L-CA-11-060), the Board upheld the Executive Director's order deferring consideration of the charge until the parties have completed the grievance resolution process.

ED Dismissal Reversed – Failure to Respond, Deferral

In Amalgamated Transit Union, Local 241 and Chi. Transit Auth., 28 PERI ¶110 (IL LRB-LP 2012) (Case No. L-CA-10-066), the Executive Director issued a July 6, 2010 order deferring consideration of the charge pending potential resolution through arbitration. On August 9, 2011, the Executive Director

sent Charging Party's counsel a letter requesting an update as to the status of the arbitration, and stating that a failure to respond to the letter by September 6, 2011 would result in dismissal of the charge. Not having received any response to the letter, the Executive Director dismissed the charge on September 13, 2011. In its appeal, Charging Party asserted that the arbitration process was still pending, and admitted that failure to respond to the Executive Director's letter was merely an oversight. The Board chose to exercise its discretion and reverse the dismissal of the charge, on the potential that the matter may be resolved on its merits if necessary, but only after noting that the decision in this case should not serve as an indication that future failures to respond to Board inquiries in this or any other case will be met with similar leniency. The Board ordered that the Charging Party will have fifteen days from the termination of the arbitration process to request that the Board reopen proceedings on the charge, and that Charging Party's failure to do so within the specified time period would result in dismissal of the charge, either on motion of the Employer or on the Board's own motion.

ED Dismissal – Retaliation, Deferral to Arbitration Award

In Ann Moehring and Chief Judge of the 16th Jud. Cir., 29 PERI ¶50 (IL LRB-SP 2012) (Case No. S-CA-10-241), the Board upheld the ALJ's order dismissing the Charging Party's retaliatory termination charge, and deferring to an arbitration award in which the arbitrator ruled that the Employer had just cause to terminate Charging Party's employment. Because the arbitration award expressly addressed the question of whether the discharge was improperly motivated by Charging Party's union activity, the Board found deferral and dismissal appropriate under the Spielberg Mfg. Co. post-arbitration deferral standards. The Board rejected Charging Party's argument that deferral was not appropriate because the Union, and not Charging Party, was the named party to the arbitration. In this regard, the Board noted that her union pursued the arbitration case solely on Charging Party's behalf, her interests and the Union's were identical, and she was undoubtedly aware that she would be bound by the award.

ED Dismissal Reversed – Deferral

In Serv. Emps. Int'l. Union, Local 73 and Chi. Park Dist., __ PERI ¶__ (IL LRB-LP 2012) (Case No. L-CA-12-055), the Union filed a charge alleging that the Employer unilaterally reduced the hours of security guards in violation of the Act, and the Executive Director issued an order deferring the charge to arbitration. After determining that the same Employer had been found by the Board, on multiple previous occasions, to have violated the Act by unilaterally reducing employee hours, the Board reversed the Executive Director's deferral order and remanded the matter to the Executive Director for further investigation.

E. Right to a hearing

Jurisdiction, Confidential, Managerial, Right to Hearing

By means of a non-precedential order issued in Dep't of Cent. Mgmt. Servs. v. Ill. Labor Relations Bd., 2012 IL App (4th) 100729-U, 28 PERI ¶91, the court affirmed the Board's determination that CMS had failed to raise an issue for hearing regarding the confidential or managerial status of four CMS attorneys. The court also determined that it did not have subject matter jurisdiction over CMS' appeal of the Board's remand for a hearing on the confidential status of a fifth attorney, since the Board's administrative procedures had not been exhausted during the pendency of the remand hearing process. 26 PERI ¶83 (IL LRB-SP 2010) (Case No. S-RC-10-052)

F. Decision by ALJ who did not conduct the hearing

Retaliation, Decision by ALJ Who Did Not Conduct Hearing

In James Pino and Vill. of Oak Park, 28 PERI ¶111 (IL LRB-SP 2012) (Case No. S-CA-08-131), the Board upheld the ALJ's dismissal of Charging Party's charge alleging that he was terminated in retaliation for his union activity, and the ALJ's ruling that there was insufficient evidence that Charging Party's termination was motivated by anti-union animus, or that the Employer made improper coercive

threats during collective bargaining negotiations. In its decision, the Board also rejected Charging Party's argument that the ALJ, who was not the same ALJ that presided over the hearing, improperly made credibility determinations in his recommended ruling. In addressing this issue, the Board found that the ALJ did not in fact make any explicit credibility determinations. More significantly, the Board ruled that, under the Act, it is the Board – and not the ALJ – that is ultimately responsible for findings of fact by the agency, and the Board accordingly owes no deference to an ALJ's factual determinations. The Board also noted that it had reviewed a file memorandum from the hearing ALJ summarizing witnesses' testimony. The Board therefore ruled that there was no need to conduct a new hearing.

G. Appointment of Counsel

ED Dismissal - Union Unfair Labor Practices, Appointment of Counsel
In Carl Hamilton and Am. Fed'n. of State, Cnty. & Mun. Emps., Council 31, 28 PERI ¶139 (IL LRB-SP 2012) (Case No. S-CB-11-045), Charging Party alleged that the Union breached its duty of fair representation by withdrawing a grievance challenging discipline he had received. With his charge, Charging Party also submitted to the Board a request that the Board appoint an attorney to represent him. The Executive Director dismissed the charge, finding no evidence that the withdrawal of the grievance was unlawfully motivated, or based on anything other than a good faith assessment of the merits of the claim. In its decision, the Board agreed with the Executive Director's assessment that the evidence presented did not warrant issuance of a complaint, particularly in view of the fact that two of three grievances pursued by the Union had been resolved in Charging Party's favor, and he had failed to respond to a Board agent's request for further information. However, the Board noted that it was troubled by the fact that Charging Party's union steward is also his supervisor, and that his request for legal representation was never specifically addressed, reasoning that this may have played a role in Charging Party's failure to respond to the Board agent's request for information. To address these concerns, the Board in its decision expressly denied Charging Party's request for appointment of counsel, and remanded the matter for further investigation. In denying Charging Party's request for appointment of counsel, the Board noted that the investigative stage of charge processing does not involve any legal formalities, that Charging Party had demonstrated more than adequate ability to articulate his position, and that he failed to meet the financial standards for appointment of counsel set out in the Board's rules.

VI. Right to Interest Arbitration

Interest Arbitration
In Policemen's Benevolent Labor Comm. v. Cnty. of Kane, 2012 IL App (2d) 110993, 29 PERI ¶18, the 2d District Appellate Court reversed a ruling of the Kane County Circuit Court that the circuit court's security officers have a right to interest arbitration under Section 14 of the Act. The circuit court reasoned that, since Section 2 of the Act provides for interest arbitration for employees who are prohibited from striking, and since the Union was a party to a collective bargaining agreement – still in effect under the terms of a written extension agreement entered into between the Union and the Employer pending completion of negotiations for a new CBA – that prohibited any strikes during its term, the court employees covered under that CBA have a right to interest arbitration under the Act. The Second District reversed, rejecting the Union's contention that giving up the right to strike during the contract term (the quid pro quo for a negotiated grievance arbitration term mandated by Section 8 of the Act) meant the Union was entitled to interest arbitration. It found the circuit court misconstrued Section 2, noting that the employees regained the right to strike as soon as the contract ended, that there was nothing in the law that prohibited them from striking, and that the "no strike" pledge contained in the CBA, and continued in effect by the parties' extension agreement, was a term that the Union had agreed to freely and voluntarily. The Second District found that the court security officers did not fit any of the enumerated categories of employees given the right to interest arbitration under Section 14(a), and also found that they were not

"essential employees" entitled to interest arbitration pursuant to Section 18, because none of the procedures used to make this designation (after a Board strike investigation) had been undertaken.

Security Employees
In Metro. Alliance of Police, Chapter #228 and Chief Judge of the 12th Jud. Cir. (River Valley Juvenile Det. Ctr.), 28 PERI ¶137 (IL LRB-SP 2012) (Case No. S-CA-11-055), the Union filed a charge alleging that the Employer violated Section 10(a)(4) by refusing to cooperate in the selection of an interest arbitrator pursuant to Section 14 of the Act. The Board affirmed the ALJ's dismissal of the charge on the ground that the subject bargaining unit employees, all of whom work at the River Valley Juvenile Detention Center, are not "security employees" within the meaning of Section 3(p) of the Act, because the RVJDC is not a "correctional facility" within the meaning of that same section.

VII. Sanctions

Compliance, Sanctions
In Markham Prof'l. Firefighters Ass'n., IAFF, Local 3209 and City of Markham, 28 PERI ¶124 (IL LRB-SP 2012) (Case No. S-CA-09-001-C), the Board upheld the ALJ's recommended compliance decision and order, directing the Employer to take certain affirmative action in compliance with an earlier Board order in the underlying unfair labor practice proceeding, and also granting Charging Party's motion for sanctions, and accordingly directing the Employer to reimburse Charging Party for its costs and attorney's fees related to the compliance proceeding. The Board affirmed the ALJ's grant of sanctions based on arguments and assertions by counsel for the Employer during the compliance proceeding that misstated the issues, misstated the record with respect to his own prior assertions, and misstated the record testimony of the Employer's own key witness – all of which, the Board concluded, needlessly prolonged resolution of the matter. The Board modified the ALJ's recommended order only by adding a requirement that the Employer also reimburse Charging Party for its costs and reasonable attorney's fees in connection with responding to the Employer's exceptions to the ALJ's recommended order.