IPLRA DEVELOPMENTS

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ILLINOIS PUBLIC LABOR RELATIONS ACT
RECENT DEVELOPMENTS

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IPLRA UPDATES
Board and Court Decisions
October 2017 – September 2018

I. Representation Issues

10/17/17
ILRB SP
Unit Clarification/Managerial Exclusion
In *State of Illinois, Department of Central Management Services (Department of Children and Family Services, Department of Employment Security) and American Federation of State, County and Municipal Employees, Council 31,* 34 PERI ¶ 79 (IL LRB-SP 2017) (Case Nos. S-UC-16-032, 033, 034), the Employer filed three unit clarification petitions each seeking to exclude a vacant Public Service Administrator ("PSA") position from AFSCME represented bargaining units. The Board accepted the ALJ's findings and conclusions that the petitions were appropriately filed and that the Board's Decision and Order issued on September 2, 2016 ("September Order"), remanding this case for a hearing on the vacant positions at issue, made a substantial change in the Board's caselaw affecting the bargaining rights of employees who will hold the at-issue positions in the future. A majority of the Board, however, disagreed with the ALJ that *Dep't of Cent. Mgmt. Servs. v. Ill. Labor Relations Bd.*, 364 Ill. App. 3d 1028 (2006) (AFSCME Drug Screeners) and *Niles Twp. High Sch. Dist. 219, Cook Cty. v. Ill. Educ. Labor Relations Bd.*, 369 Ill. App. 3d 128 (1st Dist. 2006), are limited to confidential employees and found that those cases can be interpreted to extend to other statutorily excluded employees. The majority found that extending the reasoning of those cases in this manner is consistent with additional appellate court and Board caselaw and that, as with employees who are confidential under the Act, a unit clarification petition seeking to remove other statutorily excluded employees can be brought at any time. Finally, the Board adopted the ALJ's findings and conclusions that the positions of Supervisory Regional Counsel and Manager for the Migrant and Seasonal Farmworker Program for IDES are managerial positions under Section 3(j) of the Act and granted the unit clarification petitions. Dissenting in part, Chairman Harnett and Member Nelson disagreed with the majority's extension of the court's holdings but concurred with the remainder of the majority's decision.

11/15/17
ILRB SP
Majority Interest/Managerial Exclusion
In *American Federation of State, County and Municipal Employees, Council 31 and County of Will,* 34 PERI ¶ 91, (IL LRB-SP 2017) (Case No. S-RC-15-076), the Union sought to represent three Program Manager positions within the Employer's Land Use Department Community Development Division. The Employer opposed the petition, asserting all three employees were managerial under the Act. The ALJ, however, found the Program Managers were not managerial employees, concluding there was insufficient evidence that the Program Managers were predominantly engaged in executive and management functions. The ALJ found the record indicated they lacked the requisite

authority and discretion to establish program goals, the means for achieving those goals on a broad scale, or the specific methods or means in administering their respective programs. The ALJ also found there was insufficient evidence that the Program Managers exercised discretion in executing their duties sufficient to confer managerial status, noting the existence of predetermined requirements and procedures, government regulations, and a collaborative decision-making process and other levels of review. The Board adopted the ALJ's findings and recommendations but clarified his findings regarding the lack of discretion to clarify that the mere existence of government regulations does not require a finding that an employee lacks managerial discretion. The Board also modified the ALJ's findings and conclusions that the County failed to provide specific examples, noting that the cases cited by the ALJ do not require specific examples to be provided and that the quality of evidence is determinative.

11/15/17
ILRB LP
Majority Interest/Managerial Exclusion
In *American Federation of State, County and Municipal Employees, Council 31 and City of Chicago,* 34 PERI ¶ 90 (IL LRB-LP 2017) (Case No. L-UC-16-009), the Board adopted the ALJ's recommendation to certify the American Federation of State, County and Municipal Employees, Council 31, as the exclusive representative of all positions in the Principal Programmer Analyst (PPA) and Financial Planning Analyst (FPA) classifications employed by the City of Chicago (City) except for several specific positions she determined to be managerial or confidential under the Act. The Board adopted the ALJ's findings and conclusions that (1) the October 2001 Agreement did not preclude AFSCME from seeking to include the PPAs; (2) the PPA in the OIG is a confidential employee; (3) the six FPAs in the Family Act Financing Division are managerial; and (4) the FPAs in the Housing Preservation Division and TIF Designation and Amendments Section are not managerial. The Board declined to review the ALJ's recommendations that the PPA in the Fire Department is not a supervisory employee and that the five FPAs are not managerial because neither party filed exceptions as to these positions. The Board, however, rejected the ALJs findings and conclusions as to the three FPAs in TIF Underwriting, one FPA in LIRI, and one FPA who split his time between two divisions, and found these employees are excluded from collective bargaining as managerial employees pursuant to Section 3(j) of the Act. In an unpublished decision, 2018 IL App (1st) 173061-U, the Illinois Appellate Court, First District, affirmed the Board's decision as to all the positions at issue except for the one FPA position working in two divisions. The court found that for that FPA position, the Board's findings were based on erroneous factual findings and remanded to the Board for further proceedings on the issue of managerial status.

12/13/17
ILRB SP
Unit Clarification/Confidential Exclusion
In *American Federation of State, County and Municipal Employees, Council 31 and City of Rolling Meadows,* 34 PERI ¶ 116 (IL LRB-SP 2017) (Case No. S-UC-16-029) AFSCME filed a unit clarification petition seeking to include twelve positions in the

bargaining unit certified in Case No. L-RC-16-030. The Employer objected to the petition but before hearing, the parties agreed to include and exclude several of the positions sought and litigate the remaining three positions: Logistics Coordinator, Secretary to the Chief of Police; and Executive Secretary/Administrative Support Coordinator in the Public Works Department. The ALJ determined all three positions were confidential under Section 3(c) of the Act. The ALJ found the Logistics Coordinator and the Secretary to the Chief of Police satisfied the labor nexus test because in the regular course of their duties, they assisted individuals who formulate, determine, and effectuate labor relations policies, in a confidential capacity. The ALJ also found they satisfied the authorized access test because the employees were authorized to access labor relations information in the regular course of their duties. The ALJ then found the Executive Support Coordinator in the Public Works Department satisfied the reasonable expectation test and thus concluded that the position was also confidential. The Board agreed and adopted the ALJ's findings and conclusion as stated in the RDO, noting the exceptions failed to identify any error in the ALJ's findings of fact, analysis, or conclusions. The First District affirmed the Board's decision by Rule 23 Order, 2018 IL App (1st) 180096-U, issued on September 28, 2018.

01/22/18
1st District Opinion
Majority Interest/Managerial Exclusion
In *AFSCME Council 31 v. Ill. Labor Relations Bd., State Panel and State of Illinois, Central Mgmt. Servs.*, 2018 IL App (1st) 140656 (ILRB Case No. S-RC-11-078, 30 PERI ¶ 206, the court affirmed the Board's decision finding that directors at the Illinois Commerce Commission were managerial employees within the meaning of Section 3(j) of the Act and dismissing the majority interest petition filed by AFSCME. The court rejected the Union's argument that the Board erred in construing the word predominately" in section 3(j) of the Act to mean either superiority in numbers or importance. Although, the court agreed with AFSCME that it would have been incorrect for the Board to conclude that being a gatekeeper alone was enough to confer managerial status on an employee, the court ruled that in this case, the employees' statutorily defined duties, combined with other record evidence, supported the Board's determination as to each of them.

03/06/18
ILRB LP
Majority Interest/Supervisory Exclusion
In *International Brotherhood of Teamsters, Local 700 and County of Cook and Sheriff of Cook County,* 34 PERI ¶ 144 (IL LRB-LP 2018) (Case No. L-RC-14-004), Local 700 sought to represent employees of the County of Cook and Cook County Sheriff in the rank of commander at the Cook County Department of Corrections (DOC) and to include them in a new bargaining unit. Applying the four-part supervisory test, the ALJ found that the commanders were not supervisors within the meaning of Section 3(r) and concluded they were public employees. Addressing the supervisory test, the ALJ found that the commanders satisfied the principal work requirement; disciplined their subordinates with independent judgment by effectively recommending the initiation of

discipline to the Employee Discipline office; and adjusted grievances with independent judgment because they consistently conducted their own investigation into each grievance and had discretion to reverse any discipline issued. The ALJ rejected, however, the Sheriff's claim that the commanders also possessed the authority to direct, hire, and reward, or to make effective recommendations on such matters. The ALJ found the commanders authority to assign work, fill vacancies, approve overtime and time off was clerical/ministerial work, governed by rules, policies, and the collective bargaining agreement applicable to their subordinates. The ALJ found that the commanders' authority to serve on a hiring panel failed to demonstrate that the commanders exercised independent judgment or that their recommendations on the panel were effective. The ALJ then determined the commanders did not spend a preponderance of their work time, either quantitatively or qualitatively, exercising supervisory authority. The ALJ also determined the commanders were not managerial employees under Section 3(j) of the Act.

The Board adopted the ALJ's findings and conclusions regarding principal work and the commanders' authority to discipline and adjust grievances as stated in the RDO but rejected the ALJ's recommendations regarding the authority to direct and the preponderance of time. In finding that the commanders did not possess the requisite independent judgment in performing their oversight and review functions, the ALJ found that the commanders were restricted by the myriad rules and regulations and collective bargaining agreements the commanders were obligated to follow in the performance of their duties. The Board found the ALJ erred in this analysis, finding that the record indicated that those rules and regulations provided opportunities for discretion. The Board also found significant the ALJ's findings that the commanders possessed supervisory authority to discipline and adjust grievances, thereby possessing the discretionary authority to affect the terms and conditions of their subordinates' employment yet failed to take this into account in his analysis of the authority to direct. Finally, the Board determined the commanders also satisfy the preponderance of time element when considering the amount of time they spend exercising the supervisory authority to direct.

03/06/18
ILRB SP
Unit Clarification; Managerial Exclusion

In *State of Illinois, Department of Central Management Services and American Federation of State, County and Municipal Employees, Council 31,* 34 PERI ¶ 146 (IL LRB-SP 2018) (Case No. S-UC-17-036), the State filed a unit clarification petition seeking to exclude as managerial two vacant Public Service Administrator (PSA) positions from a unit represented by AFSCME. The ALJ found the petition to be procedurally appropriate under the rationales set forth in *State of Ill., Dep't of Cent. Mgmt. Servs. (Dep't of Children & Family Servs., Dep't of Emp. Sec.), (SOI/CMS I)*, 33 PERI ¶ 55 (ILRB-SP 2016) and in *State of Ill., Dep't of Cent. Mgmt. Servs. (Dep't of Children & Family Servs., Dep't of Emp. Sec.), (SOI/CMS II)*, 34 PERI ¶ 79 (ILRB-SP 2017). The ALJ then determined the positions to be managerial within the meaning of section 3(j) of the Act and therefore excluded from collective bargaining, finding the positions at issue undistinguishable from the Supervisory Regional Counsel positions

excluded in as managerial in *SOI/CMS II*. Because she found the positions at issue had the same classification, title, and job description and reported to the same rank as those excluded in *SOI/CMS II,* the ALJ concluded that the testimony provided in *SOI/CMS II* concerning the duties and authority of the positions at issue in that case, as well as the rationale for excluding those positions from the unit reasonably applied to the positions at issue here. She noted that in its response to the rule to show cause, the Union affirmatively adopted the evidence and its arguments presented in *SOI/CMS II* to support its contention that the positions at issue in this case are not managerial, suggesting no material difference between the positions. The ALJ rejected the Union's assertion that the rule to show cause shifted the burden of proof to the Union, explaining that the rule to show cause merely emphasized that the Employer already satisfied its burden based on the evidence and arguments presented in *SOI/CMS II*. She noted that in *SOI/CMS II*, the Board explained that the duties of "similar but distinct job positions" constitute relevant evidence of the vacant positions job duties, and that was precisely the evidence relied on in this case where the earlier record was incorporated into the record. The Board agreed and adopted the ALJ's findings and conclusions for the reasons given in the RDO.

07/10/18
ILRB LP
Majority Interest/Managerial Exclusion

In *American Federation of State, County and Municipal Employees, Council 31 and City of Chicago*, 35 PERI ¶ 12 (IL LRB-LP 2018) (Case No. L-RC-16-031), AFSCME petitioned to represent sixteen Senior Procurement Specialist positions in the Department of Procurement Services at the City of Chicago and to include them in AFSCME's existing historical bargaining Unit #1. Applying the traditional managerial test to the SPS positions, the ALJ found that there was sufficient evidence establishing that the SPSs are predominantly engaged in executive and management functions and effectuate the Department's policies and procedures through their recommendations regarding the award of procurement contracts and thus concluded the SPSs fell within the managerial employee exclusion pursuant to Section 3(j) of the Act. The ALJ found the SPSs are responsible for the procurement process from start to finish and as such, are responsible for managing the competitive bidding process by which most of the City's contracts are awarded. The ALJ also determined the SPSs possessed sufficient authority and discretion in managing the City's procurement process to confer managerial status, noting the SPSs must consider as many as 30 factors in making responsible bidder determinations. Relying on *Dep't of Cent. Mgmt. Serv./Ill. Commerce Comm'n (ICC) v. Ill. Labor Rel. Bd.,* 406 Ill. App. 3d 766, 780 (4th Dist. 2010), the ALJ found it unnecessary for the SPSs to formulate policy so long as they help run the Department. Because she found the Department accomplishes its mission through the SPS's administration of the procurement process, the ALJ concluded the SPSs engaged in executive and management functions. The ALJ also determined that because most of the contracts awarded go through the competitive bid process, SPSs both quantitatively and qualitatively predominantly engage in executive and management functions. The ALJ also found the SPSs effectuate the Department's policies through their recommendations in the award of contracts, which the uncontroverted evidence demonstrated, were almost

always accepted by the Chief Procurement Officer. The Board agreed and accepted the ALJ's findings and conclusions for the reasons given in the RDO.

09/12/18
ILRB SP
Unit Clarification/Confidential Exclusion

In *State of Illinois, Department of Central Management Services and American Federation of State, County and Municipal Employees, Council 31,* 35 PERI ¶ 51 (IL LRB-SP 2018) (Case No. S-UC-17-083), the ALJ found the unit clarification petition filed by the State seeking to exclude in part one Administrative Assistant I (AAI) position at the Illinois Liquor Control Commission (LCC) and one Administrative Assitant II position at the Department of Financial and Professional Regulation (DFPR) as confidential employees to be appropriately filed, but found the two positions duties did not confer confidential status under the relevant tests. The ALJ applied the two tests derived from the statutory definition of confidential employees—the authorized access test and the labor nexus test. The ALJ found the AAI and AAII positions did not satisfy either test and concluded those positions did not fall within the confidential employee exclusion, noting that an expansion of the reasonable expectation test was not available the ALJ level. Relying on *American Federation of State, County and Municipal Employees, Council 31 v. Illinois Labor Relations Board*, 2014 IL App (1st) 13455 ¶ 44, the ALJ found neither position satisfied the authorized access test because the incumbents had held their respective positions for more than ten years without actual access to confidential collective bargaining related material, rejecting the State's contentions that it "walled off" access to the employees because of their inclusion in the bargaining unit. She further found the Employer's focus on the positions' job descriptions unavailing because the job descriptions made no specific reference to labor relations or collective bargaining material and the Employer's interpretations of the job descriptions were insufficient to confer confidential employee status. The ALJ also determined that both positions failed to satisfy the labor nexus test because neither incumbent assisted her respective supervisor in a confidential capacity.

The Board disagreed and rejected the ALJ's findings and conclusions regarding the positions' confidential status and found both positions at issue confidential under Section 3(c) of the Act. The Board rejected the ALJ's analysis and her characterization of "walling off" of access as a removal of or change in the duties and functions of the AAI and AAII positions. The Board found the duties and functions of the positions had not fundamentally changed because the Employer "walled" off access when the positions were included in the bargaining unit because accessing information cannot be fairly characterized as a "duty" under these circumstances. The Board observed that under these circumstances, access to information was a tool the incumbents would use in performing their duties, noting there was no evidence the incumbents did not perform, or were not responsible for, the duties and functions listed in the position descriptions, which describe the AAI and AAII positions in general as assisting "in the planning, development and implementation of [LCC] policies and procedures" and "in the review and development of [DFPR] policies and procedures," respectively. The Board further noted that both positions serve as assistants to heads of their respective workplaces who

are undisputedly involved in the formulation, determination and effectuation of collective bargaining policies and found merit to the State's contention that it should not be required to give access to labor relations or collective bargaining related material before seeking to remove the positions.

09/12/18
ILRB SP
Majority Interest/Employee Objections
In *American Federation of State, County and Municipal Employees, Council 31 and Kendall County Circuit Clerk*, 35 PERI ¶ 50 (IL LRB-SP 2018) (Case No. S-RC-18-041), AFSCME filed a majority interest petition seeking to represent certain employees of the Kendall County Circuit Clerk (Employer). The Employer objected to the petition contending certain employees should be excluded based on the Act's supervisory employee exclusion. In addition, several employees at issue in the petition submitted letters complaining of their co-worker's conduct in seeking AFSCME's representation of the bargaining unit. Relying on *Nilsson v. NBD Bank of Ill.,* 313 Ill.App.3d 751, 762 (1st Dist. 1999) and *Bd. of Trustees of the Univ. of Ill.,* 29 PERI ¶ 67 (IELRB 2012), the Executive Director dismissed the objections on grounds the employees failed to provide "clear and convincing evidence" that the showing of interest was obtained by fraud or coercion. She found the language of the authorization cards clearly stated that the individual signing the cards agreed to choose AFSCME as his/her exclusive representative and understood that "when a majority of [his/her] co-workers join in signing the card, this card can be used to obtain certification of AFSCME Council 31 as our exclusive bargaining representative without an election." She also found that none of the employees who submitted objections alleged that he/she was prevented from reading that language which appeared directly above the signature line on the authorization card and determined that any employee who signed the authorization card had the opportunity to read it as well. A majority of the Board affirmed the dismissal for the reasons given by the Executive Director and denied the Employer's motion to cite to additional authority in support of its appeal. Member Snyder, dissenting in part and concurring in part, stated that although he concurred with the majority in denying the motion to cite additional authority, he would have reversed the dismissal of objections and ordered a hearing, noting that a pattern of conduct by AFSCME was emerging and that he disagreed with the application of the holding in *Nilsson*, which involved experienced business people, to the judicial employees in this case who lacked labor relations experience.

II. Employer Unfair Labor Practices

10/17/17
ILRB LP
Executive Director Dismissal – Repudiation; Information Requests; Unilateral Change; Violation of Arbitration Awards; Retaliation
In *International Brotherhood of Teamsters, Local 700 and County of Cook and Sheriff of Cook County*, 34 PERI ¶ 72 (IL LRB-LP 2017) (Case No. L-CA-15-042), the Union alleged that the Employers violated the Act by repudiating the parties' collective bargaining agreement, refusing to provide the Union with requested, relevant and

necessary information, making numerous unilateral changes to employees' terms and conditions of employment, violating certain grievance arbitration awards and letters of agreement, and retaliating against an Assistant Chief Union Steward for engaging in protected activity. The Executive Director issued a complaint on portions of the charge but dismissed the portions related to the Employers' decision to impose new criteria for the transfer of Correctional Officers to vacant Deputy Sheriff positions, reasoning that the Union did not raise issues of fact or law for hearing on this alleged violation because the allegation simply described a contract dispute or, alternatively, a dispute concerning the enforcement of an arbitration award, over which the Board has no jurisdiction. The Union timely appealed a portion of the dismissal related to the Employers' inclusion of a Physical Agility Test (PAT) as part of the disputed transfer criteria. The Local Panel allowed the dismissal to stand as to the issues not appealed by the Union. The Local Panel reversed the dismissal as to the allegation appealed by the Union, finding that it raised issues of fact and law for hearing and directed the Executive Director to issue a complaint on that allegation.

10/17/17
ILRB LP
Executive Director Dismissal –Retaliation
In *Michael J. Conroy and City of Chicago (Fire Department)*, 34 PERI ¶ 73 (IL LRB-LP 2017) (Case No. L-CA-17-001), Conroy alleged that the Employer retaliated against him for filing OSHA complaints with the Illinois Department of Labor by taking four separate actions against him. The Executive Director dismissed the charge, finding that Conroy failed to demonstrate that the Employer retaliated against Conroy in the manner he alleged. Conroy timely appealed the dismissal as to one of the alleged actions by the Employer, and the Employer responded. The Local Panel allowed the dismissal to stand as to the issues not appealed by Conroy, but remanded the allegation that Conroy appealed for further investigation. Specifically, Conroy alleged that the Employer required him to attend a particular training in retaliation for making OSHA complaints, and the Local Panel held that dismissal of this allegation was premature where the Employer had not provided evidence to support its denial that it had treated Conroy disparately.

11/6/17
Fifth District Opinion
Unilateral Change
In *American Federation of State, County and Municipal Employees, Council 31 and State of Ill., Dep't of Cent. Mgmt, Servs.*, 2017 IL App (5th) 160229 (IL LRB-SP 2016, Case No. S-CA-16-006, 33 PERI ¶ 3), the court reversed the Board's decision and remanded for further proceedings. The court held that the State's failure to pay step increases to AFSCME represented bargaining unit members during negotiations for a successor agreement was an unfair labor practice in violation of the Act, as those payments constituted the *status quo.* The court also found the Board erred in finding that the parties' 2012-2015 CBA violated the clear and plain language of Section 21.5(b) of the Act, rendering the agreement null and void under Section 21.5(c) of the Act. Finally, the court remanded to the Board to determine the remedy.

11/06/17
Fifth District Opinion
Unilateral change/Coercion
In *American Federation of State, County and Municipal Employees, Council 31 and State of Illinois, Department of Central Management Services*, 2017 IL App (5th) 160046 (IL LRB-SP 2016, Case No. S-CA-16-007, 32 PERI ¶ 128), the court reversed and remanded the Board's dismissal of a charge filed by AFSCME alleging one of several FAQs posted to the State's website in June 2015, which indicated that striking employees would be responsible for the full cost of their health insurance, was coercive and constituted a unilateral change in bargaining unit members' terms and conditions of employment. The Board and the Executive Director found that a 10(a)(2) claim was not ripe, and that the FAQ, while it could serve as a disincentive to strike, was not coercive and was not a unilateral change, as the State merely publicized an existing policy. The court reversed, finding the Board abused its discretion in failing to find there were questions of fact and/or law regarding the existence of the policy before the posting, and the coercive nature of the policy, and remanded to the Board for further proceedings. The court also found that if AFSMCE ultimately prevails on its claim that the policy itself constituted a threat, the State's policy announcement would not be protected as free speech under Section 10(c) of the Act.

12/13/17
ILRB LP
Unfair Labor Practice - Employer's Knowledge of protected concerted activity
In *Teamsters Local 700 and County of Cook and Sheriff of Cook County,* 34 PERI ¶ 10 (IL LRB-LP 2017) (Case No. L-CA-15-047), the Board adopted the ALJ's recommendations and found that the Sheriff of Cook County did not violate Sections 10(a)(2) and 10(a)(3) of the Act when he placed one of his deputies on unpaid leave and then terminated his employment. The Board agreed with the ALJ's conclusion that the Union failed to establish a *prima facie* case for either a Section 10(a)(2) or 10(a)(3) violation in that the evidence failed to establish that any of the individuals involved in deciding on the adverse actions were aware of the deputy's protected activities. The Board, however, modified the ALJ's analysis to address the first, third, and fourth elements of the *prima facie* case regarding the deputy's termination. The Board also adopted the ALJ's findings and conclusion that the Sheriff did not violate Section 10(a)(1) either independently or derivatively, finding the Union waived its exceptions to the ALJ's findings.

1/17/18
ILRB SP
Executive Director Dismissal – Retaliation; Service Rules on Appeal; Variance
In *Margo E. Porche and Illinois State Toll Highway Authority*, 34 PERI ¶ 123 (IL LRB-SP 2018) (Case No. S-CA-17-008), Porche alleged that the Employer harassed and retaliated against her for filing an EEOC claim. The Executive Director dismissed the charge, finding that Porche had not alleged that she engaged in activity protected by the Act. Porche timely filed an appeal of the dismissal. Porche did not include a certificate of service with her appeal showing that she served it upon the Union, and the Union did

not respond. The State Panel noted that a variance from the Board's service rule was warranted and accepted the appeal. Upon review, the State Panel affirmed the dismissal.

2/6/18
ILRB SP
Executive Director Dismissal – Retaliation
In *Lloyd Miller and Village of Mount Prospect (Fire Department)*, 34 PERI ¶ 138 (IL LRB-SP 2018) (Case No. S-CA-18-002), Miller alleged that the Employer discharged him in retaliation for disagreeing with the Employer's changes to the lieutenants' promotional examination, agreed to by the union, and for running for a position on the Union's Executive Board The Executive Director dismissed the charge on the grounds that Miller did not present evidence of a causal connection between his protected activity and the Employer's decision to discharge him; rather, the Employer discharged Miller pursuant to an investigation into his alleged misconduct. Miller timely appealed. In his appeal, Miller asked the Board to withhold judgment on the dismissal so that he may retain an attorney, challenge the Respondent's denial of his FOIA request for documents allegedly relevant to this unfair labor practice charge, and present the documents to the Board as evidence. On the merits, Miller appealed the Executive Director's finding that he failed to present evidence of a causal connection between his protected activity and the Respondent's decision to discharge him. Upon review, the State Panel declined to hold the case in abeyance. The State Panel upheld the dismissal with modification, disagreeing with the Executive Director that there was a probability that the Employer did not know of Miller's protected activity when it discharged him but finding that this knowledge alone did not raise an issue for hearing.

3/6/18
ILRB SP
Executive Director Deferral – *Dubo* Deferral; Unilateral Change; Jurisdiction
In *Teamsters Local 700 and Village of Midlothian Police Department*, 34 PERI ¶ 145 (IL LRB-SP 2018) (Case No. S-CA-16-118), the Executive Director deferred the Union's charge to the parties' agreed-upon grievance resolution process. In the charge, the Union alleged that the Employer made a unilateral change to terms and conditions of employment, a mandatory subject of bargaining, without giving the Union the opportunity to bargain. Upon review, the State Panel found that the case was properly deferred to arbitration. The State Panel upheld the dismissal with modification, noting that the Board retains jurisdiction to determine whether any outstanding issues remain for resolution by the Board after the grievance resolution process concludes.

01/17/18
ILRB SP
Default Judgment; Misnomer
In *International Union of Operating Engineers, Local 150 and Algonquin Township Highway Department,* 34 PERI ¶ 124 (IL LRB-SP 2018) (Case No. S-CA-17-137), Local 150 filed an unfair labor practice charge against the Respondent Algonquin Township Highway Department alleging that Respondent repudiated the parties' collective bargaining agreement when it refused to arbitrate several discharge grievances. When

Respondent failed to answer the complaint within the required time period, the ALJ recommended a default judgment finding Respondent committed an unfair labor practice in violation of Sections 10(a)(4) and (1) of the Act. Respondent filed exceptions contending the ALJ's findings and conclusions should be rejected for lack of service on the proper entity. Respondent claimed the Algonquin Highway Department it is not the same entity as the Algonquin Township Road District (Road District), which it contended is the proper party to the proceedings and the collective bargaining agreement at issue, pointing to the Board's Certification in Case No. S-RC-17-051 in support its assertions. The Board rejected the ALJ's recommendations and remanded the matter for further proceedings. The Board found that although the exceptions were not persuasive on the issue of whether the Highway Department and the Road District are separate and distinct entities, the exceptions along with the certification raised questions as to proper respondent in this case and thus Respondent was not properly served with the complaint for hearing. The Board also noted that because Local 150 filed an identical charge in Case No. S-CA-18-067 listing the employer as the "Algonquin Township Road District, a/k/a Algonquin Township Highway Department," a remand would provide a hearing on the proper respondent for this case and efficiently address the later identical charge.

02/06/18
ILRB LP
Abeyance/Deferral

In *Amalgamated Transit Union, Local 308 and Chicago Transit Authority,* 34 PERI ¶ 134 (IL LRB-LP 2018) (Case No. L-CA-14-066), Local 308 filed a charge alleging that the Chicago Transit Authority committed unfair labor practices in violation of Sections 10(a)(4) and (1) of the Act, when it announced six changes affecting the way work hours were determined for rail operators in the wake of a highly publicized train derailment at the CTA's Blue Line O'Hare terminal in March of 2014. Before filing the charge, the Union filed several grievances over the changes, alleging that those changes constituted breaches of the parties' collective bargaining agreement. After a hearing before the ALJ, the parties arbitrated, using transcripts from the hearing, grievances involving four of the six changes before an arbitration panel chaired by Arbitrator Daniel Nielsen and the remaining two changes before a panel chaired by Arbitrator Steven Bierig. Both panels issued awards upholding in total, the grievances as to four of the six changes. The CTA petitioned the court to vacate both awards and then later appealed the courts' orders denying the petitions. In the interim, the ALJ issued an RDO finding the CTA violated Sections 10(a)(4) and (1) as to all six changes. The Board, however, found deferral to the award under the *Spielberg* doctrine would be appropriate, but because both arbitration awards were under review in the Appellate Court, the criterion requiring adherence to the arbitration award for a *Spielberg* type deferral could not be satisfied at this juncture, and held the case in abeyance pending the outcome of the appellate review of the arbitration awards. After the parties advised the Board that the Appellate Court affirmed the arbitration awards and that they would not pursue further appeals, on September 11, 2018, the Board issued its deferral of the matter to the arbitration awards in *Amalgamated Transit Union, Local 308 and Chicago Transit Authority,* 35 PERI ¶ 44 (IL LRB-LP 2018) (Case No. L-CA-14-066).

02/06/18
ILRB SP
Repudiation/Refusal to Process Grievances/Control
In *International Brotherhood of Teamsters, Local 700 and Chief Judge of the Circuit Court of Cook County,* 34 PERI ¶ 136 (IL LRB-SP 2018) (Case Nos. S-CA-10-213; S-CA-12-137), the Teamsters filed an unfair labor practice charges against the Office of the Chief Judge (Respondent) involving Respondent's conduct following the appointment of a Transitional Administrator (TA) by the U.S. District Court. The court appointed the TA to oversee compliance with directives in connection with a lawsuit related to the administration of the Cook County Juvenile Temporary Detention Center (JTDC). The Teamsters alleged the Respondent repudiated the parties' collective bargaining agreement by refusing to arbitrate disciplinary and discharge grievances. The Board, noting the unique circumstances presented by the charges, adopted the ALJ's recommendations finding the Respondent did not violate Sections 10(a)(4) and (1) of the Act when it refused to arbitrate grievances while the TA controlled the JTDC. Moreover, the Board noted that neither party filed exceptions to the ALJ's determinations regarding Respondent's conduct after the TA's removal and therefore, declined to review those portions of the RDO, allowing the RDO to stand as a non-precedential disposition of those issues.

04/17/18
ILRB LP
Threats/Protected Activity/Use of Office Space
In *Erik Slater and Chicago Transit Authority,* 34 PERI ¶ 160 (IL LRB-LP) (Case No. L-CA-16-017), the Board accepted in part, the ALJ's recommendations that the Chicago Transit Authority engaged in unfair labor practices within the meaning of Sections 10(a)(1) and 10(a)(2) of the Act. The Board adopted the ALJ's findings and conclusions that the CTA violated Section 10(a)(1) when it (i) barred the Union from posting on areas of the garage designated for personal or commercial use; (ii) threatened Slater with discipline if he continued to speak at a March 7, 2015 rap session; (iii) and when it instructed Slater not to discuss the Chicago Teachers Union strike on CTA property. The Board also adopted the ALJ's recommendations that there were no violations of the Act when the CTA (i) postponed all grievances and hearings involving Slater and hearings where Slater was to be the Union representative for unit members and (ii) threatened Slater with discipline for making photocopies for the Union on CTA copy machines. The Board, however, rejected the ALJ's findings and conclusions that the CTA violated Sections 10(a)(1) and 10(a)(2) when it denied Local 241, and consequently Slater, use of office space, finding that such denial was not an adverse action because neither Local 241 nor Slater had a proprietary interest in the office space.

06/05/18
ILRB LP
Unilateral Change/Mandatory Subjects/Abeyance
In *Fraternal Order of Police, Lodge #7 and City of Chicago (Department of Police),* 34 PERI ¶ 178 (IL LRB-LP 2018) (Case No. L-CA-17-034), FOP filed an unfair labor practice charge against the City of Chicago alleging the City unilaterally implemented its

CR Matrix and CR Guidelines in violation of Sections 10(a)(4) and 10(a)(1) of the Act. The ALJ found the City violated Sections 10(a)(4) and 10(a)(1) of the Act when it implemented the CR Matrix and Guidelines without first bargaining such with the Union. The ALJ determined the CR Matrix was a mandatory subject of bargaining, finding that changes to the disciplinary consequences to employees for violating City rules were mandatory subjects of bargaining, as were changes to the procedures for selecting disciplinary penalties and the designation of new penalty ranges for each category of rule violation. The ALJ also determined the Union did not waive its right to bargain the CR Matrix and Guidelines, either by contract or past practice and that the City did not bargain with the Union over the CR Matrix and Guidelines by simply expressing a willingness to discuss a subject that must be bargained. At the May 8, 2018 oral argument, the parties advised the Board that they were scheduled to begin negotiations for a successor agreement on May 26, 2018 and that City rescinded discipline imposed under the CR Matrix. The Board in consideration of this information determined that the "spirit and purposes" of the Act were best served by holding the case in abeyance so that the parties could explore avenues for agreement to resolve this case and it directed the parties to report on the status of their negotiations.

5/8/18
ILRB SP
Executive Director Dismissal – Failure to Respond to Board Request for Information

In *International Brotherhood of Electrical Workers, Local 193 and City of Springfield*, 34 PERI ¶ 169 (IL LRB-SP 2018) (Case No. S-CA-17-037), the Union alleged that the Employer violated the Act by unilaterally imposing a drug testing policy. The Executive Director dismissed the charge on the grounds that the Union failed to respond to the Board investigator's requests for information about the charge, and the available information did not raise an issue for hearing. The Union timely appealed the dismissal. Upon review, the State Panel considered evidence presented by the Union that it attempted to respond to the Board investigator's requests but that, through no fault of the Union, the Board investigator never received the response. Based on that information, the State Panel reversed the dismissal and remanded for further investigation.

5/8/18
ILRB SP
Executive Director Dismissal – Failure to Respond to Board Request for Information

In *Policemen's Benevolent Labor Committee and Village of Glen Carbon (Police Department)*, 34 PERI ¶ 170 (IL LRB-SP 2018) (Case No. S-CA-18-073), the Union alleged that the Employer violated the Act by failing to abide by the terms of two grievance settlement agreements. The Executive Director dismissed the charge on the grounds that the Union failed to respond to the Board investigator's requests for information about the charge, and the available information did not raise an issue for hearing. The Union timely appealed the dismissal, contending that its failure to respond was excusable neglect and that dismissal was too harsh a penalty. Upon review, the State Panel rejected the contention of excusable neglect and noted that the Union had already

filed an identical charge, presumably in response to the dismissal. Therefore, the State Panel affirmed the dismissal.

07/10/18
ILRB SP
Unilateral Change/Notice and Opportunity to Bargain/Withdrawal
In *International Brotherhood of Electrical Workers, Local 193; American Federation of State, County and Municipal Employees, Council 31; International Union of Painters and Allied Trades, District Council 58, Local 90; District 9, International Association of Machinists and Aerospace Workers; Plumbers and Steamfitters Local 137; Carpenters, Local 270 and City of Springfield*, 35 PERI ¶ 15 (IL LRB-SP 2018) (S-CA-16-028, 029, 030, 031, 032, & 044, consolidated cases), six labor organizations filed separate unfair labor practices against the City of Springfield alleging the City's 2015 ordinance no longer allowing unit members to take vacation payouts four to twelve months in advance of their written notice of an irrevocable intent to retire, constituted an unlawful change to a mandatory subject of bargaining. The ALJ found unfair labor practices in Case Nos. S-CA-16-029 and S-CA-16-030, involving AFSCME and Painters, respectively, but recommended dismissal of the complaints for hearing in the remaining cases.

The Board adopted the ALJ's recommendations dismissing Case Nos. S-CA-16-028, 031, and 044 in their entirety, and his recommendations dismissing the allegations involving AFSMCE Local 3417 and Local 3738 in Case No. S-CA-16-029 for the reasons stated in the RDO, but rejected his recommendations finding unfair labor practices in the cases involving AFSCME Local 337 and the Painters. The Board rejected the ALJ's recommendations and dismissed the complaints for hearing, finding both AFSCME Local 337 and the Painters had notice and an opportunity to bargain the timing of vacation payouts as both entered into negotiations for a successor collective bargaining agreement after the 2015 Ordinance was introduced and ratified the agreement before the June 1, 2016 effective date of the ordinance. The Board also modified the ALJ's recommendation regarding Case No. S-CA-16-032 (Plumbers), to reflect withdrawal of the charge in that case as requested by the charging party instead of a dismissal.

7/10/18
ILRB LP
Executive Director Dismissal – Retaliation; Jurisdiction
In *April D. Glenn and Chicago Transit Authority*, 35 PERI ¶ 11 (IL LRB-LP 2018) (Case No. L-CA-18-039), Glenn alleged that the Employer retaliated against her for a grievance that her Union filed on her behalf contesting discipline she received for two incidents of missed work shifts. The Executive Director dismissed the charge on grounds that the charge failed to raise an issue of law or fact for hearing because Glenn did not provide evidence of a nexus between the Employer's alleged conduct and Glenn's protected activity. Moreover, the Executive Director found that the charge raised an issue that is covered by the applicable CBA and that was the subject of the grievance filed on Glenn's behalf; the Executive Director further noted that Board does not police collective bargaining agreements or remedy alleged contractual breaches through the Board's

processes. Glenn timely appealed. The Local Panel affirmed the Executive Director's dismissal.

8/7/18
ILRB LP
Executive Director Dismissal – Retaliation; *Weingarten* Rights
In *Annie Burton and Chicago Transit Authority*, 35 PERI ¶ 30 (IL LRB-LP 2018) (Case No. L-CA-16-056), Burton alleged that the Employer violated her *Weingarten* rights by suspending her without the presence of a union representative at a meeting with her supervisor. Burton later amended the charge to allege that the Employer suspended her for three days and placed her on a six-month probation in retaliation for filing her original charge in this case. The Executive Director dismissed the charge based on evidence provided by Burton and the Employer, finding that Burton did not have a right to union representation because the meeting in question was not investigatory in nature and was held to impose predetermined discipline. The Executive Director also dismissed the portion of the charge alleging retaliation because Burton did not provide evidence of a link between filing the charge before the Board and the Employer issuing her a three-day suspension. Burton timely appealed the portion of the dismissal concerning the Weingarten issue but did not appeal the dismissal of the retaliation claim. The Local Panel allowed the Executive Director's dismissal to stand as to the issue of retaliation. On the Weingarten issue that Burton appealed, the Local Panel remanded the issue for further investigation regarding whether the meeting in question was investigatory in nature.

8/7/18
ILRB LP
Executive Director Dismissal – Retaliation; Timeliness
In *John Kugler and Chicago Park District*, 35 PERI ¶ 31 (IL LRB-LP 2018) (Case No. L-CA-18-042), Kugler alleged that the Employer violated his rights under the Act by retaliating against him for protected activity; failing to give proper notice of termination; denying him a disciplinary hearing, union representation, and an opportunity to appeal discipline; and failing to respond to several grievances that Kugler filed. The Executive Director dismissed the charge, finding that portions of the charge were untimely and that Kugler had not provided evidence that supported his claims such that it would raise an issue for hearing. Kugler timely appealed. The Local Panel affirmed the dismissal.

08/15/18
ILRB SP
Mandatory Subjects/Unilateral Change/Waiver/Information Requests
In *Service Employees International Union Healthcare Illinois and Indiana and State of Illinois, Department of Central Management Services (DHS)* 35 PERI ¶ 35 (IL LRB-SP) (S-CA-16-132), SEIU filed an unfair labor practice charge alleging the State of Illinois, Department of Central Management Services violated Sections 10(b)(4) and (1) of the Act when the State unilaterally implemented an overtime policy with respect to Personal Assistants in the Home Services Program (HSP) administered by the Department of Human Services, later rescinded it, and then submitted the policy to its rulemaking

process. SEIU also alleged the State violated the Act when it unilaterally implemented a background check policy and failed to respond to several information requests submitted by SEIU. The Board rejected the ALJ determinations that State violated the Act with respect to the implementation of the overtime and background check policies but accepted the ALJ's findings that the State violated the Act when it failed to respond to Charging Party's information requests in violation of Section 10(a)(4) of the Act. The Board, recognizing the unique relationship existing between the State, the Personal Assistants and the HSP participants, found that the State was not obligated to bargain over the overtime and background check policies.

Regarding the overtime policy, the Board disagreed with the ALJ's determinations regarding the first and third parts of the *Central City* test. The Board noted the overtime policy at issue involved the availability of overtime and that Section 7 of the Act provides that "Collective bargaining for home care and home health workers who function as personal assistants . . . shall be limited to the terms and conditions of employment under the State's control." The Board reasoned that because the HSP participants controlled the Personal Assistants' schedule and work hours, the first part of the test was not satisfied. Moreover, even if the Board were to accept the ALJ's findings on the first part and second part of the test, the Board found that the burdens imposed on the State's inherent managerial authority to administer the HSP program outweighed the benefits of bargaining. The Board, however, only rejected the ALJ's findings on the third part of the *Central City* test regarding the background check policies, finding again that the burdens imposed on the State's inherent managerial authority to administer the program outweighed the benefits of bargaining the decision to implement background checks. The Board further found there was no obligation to bargain the decision to implement the overtime policy and background checks under the parties' collective bargaining agreement. The Board did observe that for the background checks, the State agreed to bargain over the effects of its decision to conduct background checks pursuant to a side letter incorporated into the parties' collective bargaining agreement. Because the Board found the overtime policy was not a mandatory subject of bargaining, it also found the State did not unlawfully submit its overtime policy to rulemaking.

A majority of the Board, however, found the State engaged in unfair labor practices by failing to respond to several information requests submitted by SEIU. But because the Board did not find the State was obligated to bargain over the overtime and background check policies, it limited the remedy. Member Snyder dissented to the majority's findings that the State's failure to respond to SEIU's information requests but concurred with rest of the decision.

09/11/18
ILRB SP
Retaliation/Improper Motive
In *James Young and Village of University Park (Police Department),* 35 PERI ¶ 52 (IL LRB-SP 2018) (Case Nos. S-CA-15-095 and S-CA-15-111), Charging Party filed an unfair labor practice charge alleging the Employer engaged in unfair labor practices within the meaning of Sections 10(a) of the Act. The ALJ determined that Respondent

violated Section 10(a)(1) and Sections 10(a)(2) and, derivatively, 10(a)(1), of the Act by ordering Charging Party to surrender his department identification and badge and discharging him in retaliation for engaging in protected activity. The ALJ, however, dismissed the remaining allegations in the complaint for hearing. The Board rejected the ALJ's findings and conclusions that the Employer violated the Act, finding that the circumstantial evidence failed to show that the Employer acted with the requisite improper motives against Charging Party because of his protected activity. The Board found that the pattern of conduct and inconsistencies in the reasons for the Employer's actions did not demonstrate improper motive as there was no evidence of shifting explanations, suspicious timing or expressed hostility.

9/11/18
ILRB LP
Executive Director Dismissal – Retaliation
In *Brian C. Johnson and Chicago Transit Authority*, 35 PERI ¶ 45 (IL LRB-LP 2018) (Case No. L-CA-18-006), Johnson alleged that the Employer discharged him from his employment in retaliation for engaging in protected activity. The Executive Director dismissed the charge on grounds that the charge failed to raise an issue of fact or law for hearing where the available evidence failed to indicate a causal connection between Johnson's protected activity and his discharge. Johnson timely appealed and provided additional documentation with his appeal. The Local Panel considered the appeal and found that it lacked merit and that the additional materials did not indicate that Johnson was discharged because he engaged in protected activity. Therefore, the Local Panel affirmed the dismissal.

9/11/18
ILRB LP
Executive Director Dismissal – Retaliation
In *National Nurses Organizing Committee and County of Cook, Health and Hospital System*, 35 PERI ¶ 46 (IL LRB-LP 2018) (Case No. L-CA-18-018), the Union alleged, in relevant part, that the Employer retaliated against a unit member by calling the police to escort her off the premises of Stroger Hospital in response to her threat to file a grievance. The Executive Director issued a complaint on other allegations in the charge but dismissed this portion of the charge on grounds that the available evidence failed to indicate a nexus between the unit member's protected activity and the Employer's actions. The Union timely appealed and provided additional documentation with the appeal that it had not previously provided to the Board investigator. The Local Panel considered the appeal and found that it lacked merit. Moreover, the Local Panel declined to consider the additional materials because they could have been presented during the investigation but were not. Therefore, the Local Panel affirmed the dismissal.

9/12/18
ILRB SP
Executive Director Dismissal – Failure to Respond to Board Request for Information
In *International Brotherhood of Teamsters, Local 371 and City of Colona*, 35 PERI ¶ 47 (IL LRB-SP 2018) (Case No. S-CA-17-091), the Union alleged that the Employer violated the Act when it retaliated against a unit member after the Employer received notice that the Board had certified the Union as the exclusive representative of the unit. The Executive Director dismissed the charge on the grounds that the Union failed to respond to the Board investigator's requests for information about the charge, and the available information did not raise an issue for hearing. The Union timely appealed the dismissal and contended that its failure to respond constituted excusable neglect. Upon review, the State Panel disagreed with the contention of the Union and affirmed the dismissal.

9/12/18
ILRB SP
Executive Director Dismissal – Unilateral Change; Spielberg Dismissal
In *Mattoon Fire Fighters Association, Local 691 and City of Mattoon (Fire Department)*, 35 PERI ¶ 48 (IL LRB-SP 2018) (Case No. S-CA-18-084), the Union alleged that the Employer violated the Act when it adopted a resolution to eliminate City-operated paramedic services. The Executive Director dismissed the charge on the grounds that the Spielberg criteria were satisfied and that the Board should defer to a previous arbitration award resolving this issue between these parties. Moreover, the Executive Director noted that the Employer did offer to engage in impact bargaining with the Union on this issue. The Union timely appealed. Upon review, the State Panel affirmed the dismissal.

III. Union Unfair Labor Practices

10/17/17
ILRB LP
Executive Director Dismissal – Service Rules on Appeal; Variance; Timeliness
In *Dudlita Prewitt and American Federation of State, County and Municipal Employees, Council 31*, 34 PERI ¶ 74 (IL LRB-LP 2017) (Case No. L-CB-17-028), the Executive Director dismissed the charge, finding that the charge was untimely filed more than six months after the alleged unlawful activity. Prewitt appealed the dismissal but failed to provide proof of service on the Union. The Local Panel granted a variance of the Board's service rules, allowing the appeal despite the procedural deficiency. However, the Local Panel found that the charge was untimely filed and affirmed the dismissal.

10/17/17
ILRB SP
Executive Director Dismissal – Duty of Fair Representation; Jurisdiction
In *Michael Dill and East St. Louis Firefighters, IAFF Local 23*, 34 PERI ¶ 76 (IL LRB-SP 2017) (Case No. S-CB-17-020), the Executive Director dismissed the charge on grounds that the Board lacks jurisdiction over internal union policies and practices and

that the Union had no duty to represent Dill during the relevant time period. Moreover, the Executive Director found that there was no evidence indicating that the Union engaged in a discriminatory action against Dill. The State Panel upheld the dismissal but narrowed its holding only to find that the Board lacks jurisdiction over internal union policies and practices and declined to reach the other issues raised by the Executive Director.

12/13/17
ILRB SP
Executive Director Dismissal – Duty of Fair Representation
In *Elizabeth Cintron and American Federation of State, County and Municipal Employees, Council 31*, 34 PERI ¶ 105 (IL LRB-SP 2017) (Case No. S-CB-16-032), the Executive Director dismissed the charge on grounds that the available evidence failed to demonstrate that the Union failed to properly represent Cintron in her disciplinary matters with the Employer. Moreover, the Executive Director found that there was no evidence of intentional misconduct on the part of the Union. Cintron timely appealed. The State Panel found that the appeal lacked merit and upheld the dismissal by the Executive Director.

12/13/17
ILRB LP
Executive Director Dismissal – Duty of Fair Representation; Service Rules on Appeal
In *Paul T. Foertsch and Chicago Fire Fighters Union, IAFF Local 2*, 34 PERI ¶ 102 (IL LRB-LP 2017) (Case No. L-CB-18-001), the Executive Director dismissed the charge, which alleged that the Union engaged in unfair labor practices when it refused to represent Foertsch on the grounds that he was not a member of the Union. Foertsch timely appealed the dismissal but did not include a certificate of service, and there was no indication that the Union received a copy of Foertsch's appeal. The Union filed no response. The Local Panel struck the appeal because it did not conform to the Board's rules. The Local Panel noted that, even if it were to accept the appeal as properly served on the Union, it would find that Foertsch's arguments on appeal would not justify disturbing the dismissal. Accordingly, the Local Panel affirmed the dismissal.

1/17/18
ILRB LP
Executive Director Dismissal – Service Rules on Appeal; Variance; Timeliness; Failure to Respond to Requests for Information
In *Halas Wilbourn and Amalgamated Transit Union, Local 308*, 34 PERI ¶ 122 (IL LRB-LP 2018) (Case No. L-CB-18-003), the Local Panel affirmed the Executive Director's dismissal of the charge on grounds that the Charging Party failed to respond to the investigator's request for additional information in support of the charge and that the available evidence did not raise an issue of fact or law for hearing. Wilbourn appealed but failed to provide proof of service upon the Union of his appeal, and the Union also alleged that the appeal was untimely. The Local Panel found that the appeal was timely and allowed a variance from the Board's service rules because the appeal was not

accompanied by a proper certificate of service. However, the Local Panel found that the appeal lacked merit and affirmed the dismissal.

12/13/17
ILRB SP
Failure to Ratify TA/Advance Notice of Support
S-CB-16-029; 34 PERI ¶ 104 –In *State of Illinois, Department of Central Management Services and Illinois Nurses Association*, 34 PERI ¶ 104 (IL LRB-SP 2017) (Case No. S-CB-16-029), the State and INA signed a tentative agreement (TA) for a successor collective bargaining agreement. The TA was submitted to INA members for ratification, but the membership voted to reject the TA. The State then filed an unfair labor practice charge alleging INA engaged in unfair labor practices by either failing to support ratification of the TA or advising the State in advance that INA would not advocate in favor of ratification. A majority of the Board adopted the ALJ's findings and conclusions that INA's conduct did not constitute an unfair labor practice but modified her conclusions of law to find that "once parties reach a tentative agreement (TA), *negotiators that participated in the negotiation process* are bound to support the agreed upon TA or advise the opposing party in advance that they will not support the agreement." *See Harvey Park District and American Federation of Professionals*, 23 PERI ¶ 132 (IL LRB-SP 2007), *aff'd* 386 Ill. App. 3d 773 (4th Dist. 2008); *American Federation of State, County and Municipal Employees, Council 31 and County of Fulton and Fulton County Sheriff*, 7 PERI ¶ 2020 (IL SLRB 1991). A majority of the Board found INA presented uncontradicted, unrebutted evidence that its lead negotiator gave the notice to one of the State's negotiators prior to signing a TA between the parties that the Union would take a neutral stance on the TA with its membership. The majority rejected the ALJ's conclusions of law that the Union did affirmatively support the TA and that the missing witness rule should be applied to the lack of testimony by the State's negotiator. Member Snyder, dissenting in part, disagreed with the majority's finding that INA provided advance notice, noting that INA gave varying explanations of the notice given to the State, but agreed that requiring implementation of the TA would not be appropriate given the facts of the case.

3/6/18
ILRB LP
Executive Director Dismissal – Duty of Fair Representation
In *Edward Donaldson and Amalgamated Transit Union, Local 241*, 34 PERI ¶ 143 (IL LRB-LP 2018) (Case No. L-CB-18-002), Donaldson alleged that the Union violated the Act when it failed to provide him with a share of the backpay awarded by an arbitrator on a grievance between the Employer and the Union. The Executive Director dismissed the charge, reasoning that Donaldson failed to identify an unlawful motive for the Union's actions and that the Union produced evidence that disproved Donaldson's claim of disparate treatment. Donaldson timely appealed. Upon review, the Local Panel affirmed the dismissal, finding that Donaldson did not demonstrate that the Union treated him differently than other similarly situated employees and that Donaldson did not present evidence establishing that the Union took action against him for an unlawful reason.

4/11/18
ILRB SP
Executive Director Dismissal – Retaliation; Jurisdiction
In *Raviel Winters and State of Illinois, Department of Central Management Services (Corrections – Stateville Correctional Center)*, 35 PERI ¶ 34 (IL LRB-SP 2018) (Case No. S-CA-17-042), Winters alleged that the Employer failed to select him for an interview for a posted position in retaliation for his protected activity. The Executive Director dismissed the charge on the grounds that the available evidence did not demonstrate that Winters was not promoted or selected for an interview because of his participation in protected activity and that the Board lacked jurisdiction over issues of veteran's preference and claims of racial discrimination and harassment by the Employer as raised by Winters. Upon review, the State Panel affirmed the dismissal and corrected the case caption to reflect the correct department of the Employer that employed Winters.

4/17/18
ILRB LP
Executive Director Order – Appointment of Counsel
In *Theopolis Hoffman and Service Employees Int'l Union, Local 73*, 34 PERI ¶ 161 (IL LRB-LP 2018) (Case No. L-CB-16-038), Hoffman asked the Executive Director to appoint counsel so that he could have legal representation in a hearing on his complaint in Case No. L-CB-16-038. The Executive Director applied the Board's rules on appointment of counsel and found that, pursuant to those rules, Hoffman did not qualify for appointment of counsel due to income requirements, and the Executive Director had no discretion to grant a request for appointment of counsel when it did not comply with the Board's rules. Upon review, the Local Panel reversed the denial of Hoffman's request and granted a variance from the Board's rules on appointment of counsel, finding that it would be unreasonable to deny Hoffman's request for appointment of counsel under the circumstances.

6/5/18
ILRB LP
Executive Director Dismissal – Duty of Fair Representation
In *Reginald J. Dean and American Federation of State, County and Municipal Employees, Council 31*, 34 PERI ¶ 179 (IL LRB-LP 2018) (Case No. L-CB-16-051), Dean alleged that the Union improperly failed to represent him concerning the Employer's layoffs and staff transitions related to his position. The Executive Director dismissed the charge on grounds that the charge failed to raise an issue of law or fact for hearing because there was no evidence indicating that the Union's actions constituted intentional misconduct. Dean timely appealed. The Local Panel affirmed the Executive Director's dismissal.

8/15/18
ILRB SP
Executive Director Dismissal – Timeliness; Failure to Respond to Board Request for Information
In *Roger McComb and American Federation of State, County and Municipal Employees, Council 31*, 35 PERI ¶ 36 (IL LRB-SP 2018) (Case No. S-CB-17-030), the Executive Director dismissed the charge on grounds that McComb failed to respond to the investigator's request for additional information in support of the charge and that the charge was untimely filed. McComb timely appealed. The State Panel found that the appeal lacked merit and upheld the dismissal by the Executive Director.

8/15/18
ILRB SP
Executive Director Dismissal – Duty of Fair Representation; Timeliness
In *Ramtin Sabet and Fraternal Order of Police Labor Council*, 35 PERI ¶ 37 (IL LRB-SP 2018) (Case No. S-CB-18-017), Sabet alleged that the Union, through its attorneys and other representatives, discriminated against him on the basis of his religion and national origin and engaged in intentional misconduct when it failed to adequately represent him during an investigation by the Employer into his alleged misconduct. The Executive Director dismissed the charge, concluding that Sabet failed to raise issues of fact for hearing on the claim that the FOP's agents discriminated against him on the basis of his religion or national origin. Sabet timely appealed. The State Panel found that, in addition, to the rationale provided by the Executive Director, portions of the charge were untimely filed and should be dismissed on that basis. Ultimately, the State Panel found that the appeal lacked merit and upheld the dismissal by the Executive Director.

8/15/18
ILRB SP
Executive Director Dismissal – Duty of Fair Representation
In *Carlo J. Carlotta and Illinois Council of Police*, 35 PERI ¶ 38 (IL LRB-SP 2018) (Case No. S-CB-18-021), Carlotta alleged that the Union engaged in intentional misconduct by refusing to arbitrate a grievance over his termination from employment. The Executive Director dismissed the charge, noting that, according to Board precedent, a union is afforded substantial discretion in deciding to pursue grievances, and finding that Carlotta failed to identify any Union bias or motive against Carlotta when it decided against pursuing his discharge grievance. Carlotta timely appealed. The State Panel found that the appeal lacked merit and upheld the dismissal by the Executive Director.

IV. Procedural Issues

07/10/18
ILRB SP
Compliance/Make Whole Remedies
In *American Federation of State, County and Municipal Employees, Council 31 and State of Illinois, Department of Central Management Services,* 35 PERI ¶ 14 (IL LRB-SP 2018) (Case No. S-CA-16-006), the Board affirmed the ALJ's dismissal of an unfair

labor practice complaint involving the State's failure to pay bargaining unit members certain increases, including step increases, during negotiations for a successor collective bargaining agreement. The Charging Party, AFSCME, subsequently appealed the matter to the Appellate Court of Illinois, Fifth District. On November 6, 2017, the court reversed the Board's decision finding the State engaged in an unfair labor practice when it altered the *status quo ante* by withholding step increases. The court also remanded the matter to the Board for further proceedings consistent with the court's Opinion. On May 1, 2018, the court issued its mandate to the Board. The State filed a Motion to Set a Hearing to Determine the Specific Remedy and Whether There Are Sufficient Appropriations to Fund that Remedy, to which AFSCME filed a response. The State then filed a Motion to Strike Portions of AFSCME's Response or in the Alternative File a Reply in Support of Its Motion to Set a Hearing and an accompanying memorandum of law. The Board, in accordance with the court's mandate, denied the State's motions, vacated its decision dismissing the complaint, and found that the State of Illinois engaged in an unfair labor practice when it failed and refused to bargain in good faith with the Union, in violation of Section 10(a)(4) and (1) of the Act. The Board referred the matter to its compliance process as set forth in 80 Ill. Admin. Code § 1220.80.

03/01/17
1st District Order
Compliance

In *Chicago Joint Board, Local 200 v. Ill. Labor Relations Bd., et al.*, Appellate Court No. 1-14-0802, the Board, in 2010, found the Union was required to recalculate the disbursement of a $375,000 grievance award to include the previously excluded charging parties. After the Union's unsuccessful challenge of the Board's order before the Appellate Court, the employees sought enforcement of the Board's 2010 order. The compliance officer and ALJ both determined that to put the charging parties in the position they would have been in absent the Union's unlawful conduct, the Union was required to pay the charging parties a specific sum (appropriate proportion of the disbursement plus interest). The court rejected the Union's appeal and affirmed the Board's compliance order. Despite the court's order, the Union still had not paid the employees as ordered, claiming that it had insufficient funds to pay. Consequently, the Board requested the AG's Office to file with the Appellate Court a Rule to Show Cause against the Union which was granted by the Appellate Court. The court entered a rule and remanded to the Board for fact finding on the issue of the Union's ability to pay.

IPLRA UPDATES
General Counsel's Declaratory Rulings
October 2017 – September 2018

S-DR-18-002 *Village of Maywood and Illinois Council of Police*
10/16/2017; 34 PERI ¶ 77

The Employer filed a unilateral petition seeking a determination as to whether a "minimum manning" provision in the parties' expired contract concerns a mandatory or permissive subject of bargaining within the meaning of the Act, and if permissive, whether the subject can be excluded from interest arbitration. Relying on the holdings in *County of Cook v. Ill. Labor Rel. Bd., Local Panel*, 347 Ill. App. 3d 538, 545-46 (1st Dist. 2004) and *Vill. of Oak Lawn v. Ill. Labor Rel. Bd., State Panel*, 964 N.E.2d 1132, 1137 (1st Dist. 2011), the General Counsel found that the minimum manning provision concerned a permissive subject and that Section 14(i) excludes "minimum manning" for peace officers in interest arbitration decisions.

S-DR-18-001 *Streator Professional Firefighters, IAFF-AFFI, Local 56 and City of Streator*
1/30/2018; 34 PERI ¶ 133

The Employer unilaterally filed a petition seeking a determination as to whether certain of its proposals relating to shift manning involve a permissive or mandatory subject of bargaining within the meaning of Act. The Union contended the City's proposals, which sought to use non-bargaining unit employees in place of its bargaining unit members, fell within the parameters of the Substitutes Act, and thus, concerned a permissive subject of bargaining. The General Counsel agreed and found the Employer's proposals concerned a permissive subject of bargaining, rejecting the City's contention that the phrase "temporary or permanent substitute" is ambiguous and noting the plain language of the Substitutes Act clearly makes the temporary or permanent substitution of, in this case, bargaining-unit members who are full-time firefighters a permissive subject of bargaining. *See* 65 ILCS 5/10-1-14 (2016).

S-DR-18-003 *City of Decatur and Decatur Police Benevolent and Protective Association Labor Committee*
3/26/2018; 34 PERI ¶ 159

The Employer unilaterally filed a petition seeking a declaratory ruling as to whether its proposals regarding compensatory time and holiday pay offered mandatory, permissive, or prohibited subjects of bargaining within the meaning of the Act, and if determined to be permissive, whether the subjects can be excluded from interest arbitration. The Union objected on

procedural and substantive grounds. Regarding the procedural grounds, the Union contended the petition should have been filed on or before December 14, 2016, the first day of hearing before the interest arbitrator instead of on November 20, 2017, a continuation of the December 2016 hearing. The General Counsel, after bifurcating procedural and substantive issues, first determined the petition was timely filed under Section 1200.143(b) of the Board's rules, finding the first day of the interest arbitration hearing was November 20, 2017, because no hearing commenced on December 14, 2016—no opening statements were made by either party, no substantive issues were discussed on the record, and no testimony or other evidence was introduced. The General Counsel then found the proposals at issue to be mandatory subjects of bargaining. Regarding the Employer's proposal to change the cap on compensatory time accruals, the General Counsel found the proposal to concern a mandatory subject under *Central City,* rejecting the Union's contentions that the proposal would require a waiver of rights under the FLSA. The General Counsel also found that the Employer's proposal to cap the accrual of holiday time going forward, to be a mandatory subject of bargaining under *Central City,* rejecting the Union's claims that the holiday time proposal violated IRS regulations.

S-DR-18-004 *Village of Oak Lawn and Oak Lawn Professional Firefighters Association, Local 3405, IAFF*
7/23/2018; 35 PERI ¶ 29

The Employer's unilateral petition sought a determination on whether (1) the Union's *status quo* proposal to maintain language recognizing unit members as the sole providers of specified services and prohibiting the subcontracting of bargaining unit work; (2) the *status quo* proposal to retain a provision regarding minimum staffing; and (3) the Union's proposals to maintain the *status quo* with regard to retiree health insurance and other employee benefit plans concern non-mandatory subjects of bargaining. The Employer further sought additional determinations in the even any of the foregoing concerned permissive subjects: (1) whether such subjects can be excluded from interest arbitration; (2) whether provisions containing such subjects lapsed with the expiration of the parties' CBA; and (3) whether such provisions can continue to be included under Section 14(l) of the Act.

The General Counsel determined that the Union's proposal to maintain the *status quo* with respect to recognition and subcontracting concerned mandatory subjects of bargaining to the extent the proposal asserted the Union's statutory rights under the Substitutes Act. The General Counsel found that the proposal in seeking to prohibit subcontracting, sought to preserve the Union's rights under the Substitutes Act, rather than waive them and as such, the Union was entitled to insist to impasse, its *status*

quo proposal. Regarding the Union's proposal to maintain the *status quo* and retain Section 7.14 of the parties CBA addressing minimum manning, the General Counsel, followed the precedent set by the parties' prior litigation in *Vill. of Oak Lawn v. Ill. Labor Rel. Bd., State Panel*, 2011 IL App. (1st) 103417, in which the court affirmed the Board's decision holding that the very same provision at issue concerned mandatory subjects of bargaining, and determined the proposal at issue here to also be a mandatory subject of bargaining. With respect to the proposals to maintain the status quo on retired employee benefits, the General Counsel relying on the Illinois Supreme Court's decision in *Matthews v. Chicago Transit Authority*, 2016 IL 117638, found the Union's proposal to concern a mandatory subject of bargaining.

S-DR-19-001 *Village of Sauk Village and Illinois FOP Labor Council*
9/14/2018; 35 PERI ¶ 55

The Employer unilaterally filed a petition for declaratory ruling seeking a determination as to whether the Union's proposals addressing manpower, utilization, and erosion of the bargaining unit concern permissive or mandatory subjects of bargaining within the meaning of the Act. The Union contended the Employer's petition was not ripe with respect to the manpower and erosion of the bargaining unit proposals and the last sentence of its utilization proposal and sought a separate ruling on whether its utilization proposal minus the last sentence, would be a permissive or mandatory subject of bargaining. The General Counsel found that the petition was ripe as to all three proposals at issue, noting that there existed a good faith dispute over whether the Act requires bargaining. At briefing, the Union expressed its desire to join, in part, the Employer's petition.

As to the merits, the General Counsel found the manpower provision to be a permissive subject of bargaining for that provision unequivocally addresses minimum manning, and there is insufficient indication that the provision implicates safety issues of the type referenced in Section 14(i) of the Act. The General Counsel, however, found the utilization provision to be a mandatory subject of bargaining as it did not address a subject prohibited from inclusion in an arbitrator's award under Section 14(i) of the Act, noting the proposal preserved the Employer's discretion to increase or decrease the total number of employees in the Department. The General Counsel further found that the utilization proposal is a not mandatory subject under the *Central City* test. However, the General Counsel found there was insufficient background information provided concerning the erosion provision to permit a finding on it.