

STATE OF ILLINOIS  
EDUCATIONAL LABOR RELATIONS BOARD

ANNUAL REPORT

FISCAL YEAR 2011

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February 17, 2012

Governor Pat Quinn  
Office of the Governor  
207 State Capitol  
Springfield, Illinois 62706

Dear Governor Quinn:

Pursuant to Section 5(i) of the Illinois Educational Labor Relations Act, we are pleased to present to you, the General Assembly, and the citizens of Illinois, a statement of the operations of the Illinois Educational Labor Relations Board for Fiscal Year 2011.

This report contains a description of the activities and accomplishments of the Board as well as summaries of major cases decided by the Board and the Illinois courts. We believe that this report reflects the Agency's growth, success, and commitment to the effective implementation of the Act.

Fiscal Year 2011 was a busy year for the Illinois Educational Labor Relations Board. The Illinois Educational Labor Relations Board engaged in rule-making, ruled on injunctive relief requests, conducted elections, mediations, and hearings. Educational employers, employees, and labor organizations were cooperative and eager to work peacefully with the agency to resolve their educational employment disputes. Moreover, the passage of the education reform law, P.A. 97-0008 (Senate Bill 7) which became effective on June 13, 2011 made significant changes to the Illinois Educational Labor Relations Act. No doubt the effects of this law will bring changes to education for years to come.

We shall endeavor to continue to develop the necessary elements of fairness and cooperation in educational labor relations in Illinois.

Thank you for your support and for the opportunity to review our accomplishments with you.

Sincerely yours,

Lynne O. Sered  
Chairman

## **HISTORY AND FUNDING SOURCES**

The 83rd Illinois General Assembly created the Illinois Educational Labor Relations Board on January 1, 1984 by enactment of House Bill 1530, the Illinois Educational Labor Relations Act, in order to secure orderly and constructive relationships between all educational employees and their employers. The Board is the sole administrative body to resolve collective bargaining disputes, representation questions and allegations of unfair labor practices.

The Illinois Educational Labor Relations Board had an appropriated budget of \$1,051,800 during Fiscal Year 2011. The Illinois Educational Labor Relations Board receives its funding from the General Revenue Fund.

The IELRB is comprised of five members who are appointed by the Governor and confirmed by the Illinois Senate. By statute, Board members must be residents of Illinois and have a minimum of five years of direct experience in labor and employment relations. Each Board Member shall devote his entire time to the duties of the office and engage in no other work. During Fiscal Year 2011 the Board was comprised of Chairman Lynne Sered and Board Members Ronald Ettinger, Bridget Lamont, Michael Prueter and Jimmie Robinson. In June of 2011 Governor Quinn nominated Gilbert O'Brien and Michael Smith, to serve as Board Members and reappointed Michael Prueter.

## AGENCY MISSION AND STRUCTURE

The Board's primary mission is to maintain, develop and foster stable and harmonious employment relations between public educational employees and their employers. To accomplish this mission, the Board investigates all charges and petitions filed by either a representative union, an individual or by a school district. Besides an extensive review and hearing process, the Board also offers mediation and arbitration services to interested parties as an informal forum to resolve their labor disputes. The adjudication process is three fold. The Executive Director, the agency's Administrative Law Judges and the Board issue decisions on all cases that come before the agency. Although the Board is the final appellate reviewer of agency decisions, its final rulings set forth the legal standards for the interpretation of the Illinois Educational Labor Relations Act and Rules and establishes legal precedent through its decisions. Agency Attorneys and Investigators manage the case decisions under the direction of the General Counsel and Executive Director, the support staff process files and the paperwork associated with the claims and the Board oversees all operations and policy, including the budget.

The Executive Director investigates all unfair labor practice charges, conducts all necessary investigations of voluntary recognition and representation petitions including Majority Interest Petitions, advises the Board on legal issues, trains arbitrators and mediators, implements the Board's Labor Mediation Roster, administers the Board's public information officer program and serves as the Board's Freedom of Information Officer. The Executive Director is responsible for administering all financial transactions, preparing the agency's proposed budget and testifying before the Illinois Legislature as a proponent of the proposed budget. The Executive Director also assigns all clerical and administrative staff within the offices of the IELRB.

The General Counsel serves as the Chief Legal Officer of the Agency and chief legal advisor to the Board. The General Counsel supervises the Board's Administrative Law Judges and Board Attorneys; reviews all recommended decisions of its hearing officers and Executive Director; drafts and issues all unfair labor practice and representation decisions of the Board; advises the Board on legal issues arising in the course of the Board's official duties; serves as the Board's Ethic's Officer; assists the Office of the Attorney General in representing the Board in all legal matters pending in the courts; represent the Board in legal proceedings before other agencies and courts; conducts representation and unfair labor practice hearings; and reviews and revises the Board's Rules and Regulations.

After all unfair labor practice charges are fully investigated and reviewed by the Executive Director, the charge is either dismissed in the form of an Executive Director's Recommended Decision and Order, or sent to Complaint to be heard by an Administrative Law Judge (ALJ). The ALJ will conduct a full evidentiary hearing on the Complaint and at the conclusion of the hearing, issue an Opinion and Order. All formal decisions issued by the Executive Director and an Administrative Law Judge are subject to review by the Board pursuant to a party filing exceptions or by the Board upon its own motion. The Board will review and discuss cases on its docket in open session. Thereafter, the Board will vote on the disposition of each case in open session. A Board decision may be appealed to the Illinois Appellate Court.

The current Board Members are:

Lynne O. Sered, Chairman  
Appointed 06/01/10 – 06/01/16

Ronald F. Ettinger  
Appointed 06/02/08 – 06/01/14

Gilbert O'Brien  
Appointed 06/20/11 – 06/01/16

Michael H. Prueter  
Appointed 10/28/11 – 06/01/14

Michael Smith  
Appointed 06/20/11 – 06/01/14

**Lynne O. Sered**

Lynne O. Sered was appointed to serve as Chairman of the Illinois Educational Labor Relations Board in June 2010 by Governor Pat Quinn. Prior to assuming the board chair's responsibilities, she served as a board member since her initial appointment to the Board in October 2000.

Chairman Sered's legal background includes serving as Counsel to the Honorable Wilford W. Johansen, Member of the National Labor Relations ("NLRB") in Washington, D.C. In that capacity, she prepared analyses for and made recommendations to Board Member Johansen and drafted decisions and orders for publication in the areas of collective bargaining, discriminatory hiring and termination practices, union organizing activities and elections, and other unfair labor practice and representation issues under the National Labor Relations Act. During her tenure at the NLRB, Ms. Sered also represented the NLRB in cases before the Second and Sixth Circuit Courts of Appeals.

As an attorney in private practice with the law firm of Scariano, Kula, Elch & Himes, Chtd., Chicago and Chicago Heights, Illinois, she counseled school districts, private employers and labor clients regarding litigation, legal strategies and policy issues pertaining to labor law and collective bargaining issues.

Ms. Sered also practiced with the law firm of Katz and Buhai in South Barrington, Illinois, where she represented clients in labor and employment discrimination matters in state and federal courts and administrative agencies. She also served as staff counsel for the Attorney Registration and Disciplinary Commission, where her duties included the review, analysis and investigation of professional misconduct within the legal profession in Illinois.

In addition, Ms. Sered served as Legal Director of the American Jewish Congress, Midwest Region, in Chicago, where she managed the organization's not-for-profit legal program, focusing on civil liberties and civil rights and

oversaw its pro bono clinic providing legal services to the indigent. Her professional experience is also highlighted by her roles as a domestic policy specialist with the Jewish Community Relations Council and as Midwest regional director of the Jewish Labor Committee.

Ms. Sered received her law degree from DePaul University College of Law and her Bachelor of Arts degree from Indiana University. She is admitted to practice law in Illinois and the District of Columbia and is a member of the Illinois State Bar Association, the Chicago Bar Association and the Women's Bar Association. She has served on the Board of Chicago Volunteer Legal Services and the Government Affairs Committee of the Jewish Federation of Metropolitan Chicago.

Chairman Sered lives with her husband and their two children in Evanston, Illinois.

#### **Michael H. Prueter**

Michael H. Prueter was appointed to the Illinois Educational Labor Relations Board in October 2000. Mr. Prueter served as Government Liaison for a number of corporations and trade associations where he negotiated labor contracts with local and national food service vendors. He has received numerous local, state and national awards for his work in youth and family services, humanitarianism, and in legislation. He also received the Illinois General Assembly Award of Recognition for his work. He also served on a national legislative policy board in Washington, D.C. for several years.

Mr. Prueter has served for many years as pro bono Director of Government Affairs for the Illinois State Crime Commission and as a mentor and tutor in

an alternative education program through the Regional Office of Education in DuPage County.

As a mortgage banker, Mr. Prueter has several years of business experience in the banking and financial services industry. Mr. Prueter has previously worked as a staff member in the Illinois House and Illinois Senate. He was elected in his township as Township trustee and served the public in this capacity for 10 years. Mr. Prueter received his Masters in Business Administration from Columbia State University.

#### **Ronald F. Ettinger**

Ronald F. Ettinger was appointed to the Illinois Educational Labor Relations Board in 2004 and reappointed in 2008. Prior to his appointment he had retired from the University of Illinois at Springfield (UIS) as Emeritus Professor. During his 30 years of service at UIS (formerly Sangamon State University), Professor Ettinger served as Chair of the Faculty Senate and President of the Faculty Union. He also served as Executive Vice-President of the University Professionals of Illinois (Local 4100, IFT/AFT AFL-CIO) where his primary duties involved lobbying on behalf of public university faculty in Illinois. He was elected Vice-President of the Illinois Federation of Teachers and Delegate to the Illinois AFL-CIO.

Member Ettinger received a Ph.D. in clinical psychology from Purdue University and has taught at Purdue, York University (Toronto), Albion College and UIS. In addition to teaching and publishing articles related to education and labor relations, he has served as a member of the board of the Montessori Children's House in Springfield and has lobbied on behalf of public school teachers as a government

affairs specialist with the Illinois Federation of Teachers.

Member Ettinger is married to Bonnie J. Ettinger and they have two daughters.

**Gilbert O'Brien**

Mr. O'Brien was appointed by Governor Quinn on June 20, 2011 and is awaiting confirmation by the Senate.

**Michael Smith**

Mr. Smith was appointed by Governor Quinn on June 20, 2011 and is awaiting confirmation by the Senate.

**Victor E. Blackwell**

Victor E. Blackwell was appointed Executive Director of the Illinois Educational Labor Relations Board in February, 1996. Prior to his appointment, Mr. Blackwell served as Chief of Prosecutions at the Illinois Department of Professional Regulations for five years. He was also Chicago Personnel Manager for the Illinois Secretary of State from 1987 to 1991. He was Personnel Analyst for the Illinois Secretary of State, an Adjudicator for the Illinois Department of Rehabilitation Services, and a Securities Legal Intern and Reference Library Intern for the Illinois Secretary of State. Mr. Blackwell received his Juris Doctorate degree from Loyola University's School of Law where he graduated with honors, and his Bachelor of Arts degree from the University of Illinois in Political Science with triple minors in Economics, Sociology and Spanish.

**Helen Higgins**

In May 1984, Helen Higgins was hired as the first career staff attorney of the newly-created Illinois Educational Labor Relations Board (IELRB). In 1987, she joined the Chicago Law Office of the United States Postal Service, litigating labor and employment cases. In November 2002, she returned to the IELRB as General Counsel.

She attended the University of Illinois in Champaign-Urbana for undergraduate and graduate school. She has a master's degree from the Institute of Labor and Industrial Relations; her major was in collective bargaining. She graduated with high honors from IIT Chicago-Kent College of Law in 1984.

**Susan J. Willenborg**

Susan J. Willenborg was appointed Associate General Counsel of the Illinois Educational Labor Relations Board in November 2005. She joined the Board as a staff attorney and Hearing Officer in December 1984, and became a Board Attorney in October 1987. She served as Acting General Counsel from August 1995 to March 1996. From August 1983 to December 1984, she was employed by Jacobs, Burns, Sugarman & Orlove. She received her Juris Doctorate in 1983 from the University of Chicago, and graduated magna cum laude in Religion from Carleton College in 1980.

**Ellen Strizak**

Ellen Maureen Strizak returned to the IELRB in 2010 to serve as Associate General Counsel. Ms. Strizak began working for the IELRB as a Board Writer in 2002. From 2006 until 2010, Ms. Strizak was staff counsel for the Illinois Labor Relations Board. Ms. Strizak received her B.A. in Psychology from the University of Iowa and her J.D. from the John Marshall Law School. Prior to law school, Ms. Strizak was an AmeriCorps VISTA volunteer in Austin, Texas.



## **AGENCY ACTIVITIES**

The types of cases processed by the Agency fall essentially into three categories: representation cases, unfair labor practice cases and mediation cases.

### **Representation Cases**

The most frequent types of representation cases are petitions for representation and petitions for unit clarification. Petitions for representation are generally filed by a labor organization seeking to be certified as the exclusive bargaining representative of a unit of educational employees or seeking to add employees to a unit which is already represented. The Act provides for a majority interest procedure to expedite certification if the petition is supported by at least 50 percent plus one of the proposed bargaining unit and there are no objections or other issues which could affect majority status. The Act also provides for representation elections to be conducted if the unit sought will contain professional and nonprofessional employees or the unit is an historical one; if the petition seeks to decertify an exclusive representative or if the petition is supported by at least 30 percent of the proposed bargaining unit.

The second major category of representation cases are petitions for unit clarification. The unit clarification process is appropriately used primarily to remove statutorily excluded employees from a bargaining unit; to resolve ambiguities concerning the unit placement of individuals who come within a newly-established classification or who fall within an existing job

classification that has undergone recent, substantial changes; and/or to resolve unit ambiguities resulting from changes in statutory or case law.

The Board also processes several other types of representation petitions, including petitions for voluntary recognition by an employer of an exclusive bargaining representative; petitions to amend certification due to a minor change in the name or organization of the exclusive bargaining representative; and petitions filed by an employer to determine whether a labor organization or exclusive representative represents a majority of the bargaining unit.

All representation petitions are investigated by the Board's agents. If a question concerning representation is raised during the course of the investigation, the case is scheduled for hearing and assigned to an Administrative Law Judge for resolution.

If an election is to be held, the Board Agent works with the parties to reach agreement on the date, time, place and other details of the election. Elections are conducted by secret ballot at a time and place when the majority of employees in the bargaining unit are working. Parties may file objections to the election within five days after the election. Objections are investigated, and if the objections are found to have affected the outcome of the election, a new election will be held. When the election procedures have concluded, a certification is issued by the Board.

## Representation Cases 2011

### Representation Cases Filed in FY 2011

Petition to Determine Representative (RC)	29
Petition to Decertify Representative (RD)	2
Petition to Determine Unit (RS)	32
Petition to Determine Representative-Employer Filed (RM)	0
Voluntary Recognition Petition (VR)	0
Unit Clarification Petition (UC)	20
Amendment to Certification Petition (AC)	1
MIP Cases (included in RC, and RS figures above)	42
<b>Total</b>	<b>84</b>

### Agency Activity on All Representation Cases for FY 2011

Certification of Representative	7
Certification of Voluntary Recognition	2
Certification of Results	0
MIP Order of Certification	48
Withdrawal	4
Executive Director's Recommended Decision & Order	19
ALJ's Recommended Decision & Order	1
Elections	15
Cases Mediated by Board Agents	3

### **Unfair Labor Practice Cases**

Unfair labor cases are charges alleging that the conduct of an employer or a union, or both, constitute conduct prohibited by the Act. Unfair labor practice charges can be filed by educational employers, unions, or employees. After a charge is filed, it is assigned to a Board agent who conducts an investigation by contacting both the charging party and the charged party to obtain statements and documents from each party to support their position. At the conclusion of the investigation, the Executive Director may either dismiss the charge or issue a complaint. A charging party whose charge has been dismissed by the Executive Director may appeal that decision to the Board. When the Executive Director issues a complaint, the matter is set for hearing before an Administrative Law Judge. During the hearing, the parties have the opportunity to present witnesses to testify and present documentary evidence. After the hearing, the Administrative Law Judge issues a Recommended Decision and Order in

which the Administrative Law Judge either finds that an unfair labor practice charge has been committed and orders an appropriate remedy or dismisses the charge. The Administrative Law Judge's Recommended Decisions and Orders are appealable to the Board.

The Board offers mediation in all unfair labor practice cases. Mediations most frequently occur after the Executive Director issues a complaint, but before the date of the scheduled hearing. However, Board agents can conduct mediations with the parties at all times during the unfair labor practice charge process. During mediation, both the charged party and the charging party sit down together with a Board agent to attempt to resolve the dispute and withdraw the unfair labor practice charge. Mediation is an important case processing tool. The Illinois Educational Labor Relations Board is successfully using mediation to resolve disputes in an amicable manner often avoiding the more adversarial process of litigation.

## Unfair Labor Practice Cases 2011

### **Unfair Labor Practice Cases Filed in FY 2011**

Unfair Labor Practice Charge Against Employer (CA)	150
Unfair Labor Practice Charge Against Union (CB)	31
Unfair Labor Practice Charge Contesting Fair Share Fees (FS)	82
Total	263

### **Agency Activity on All Unfair Labor Practice Cases for FY 2011**

Withdrawn Pursuant to Settlement Agreement	83
Withdrawn	69
Executive Director's Recommended Decision & Order	60
ALJ's Recommended Decision & Order (including Fair Share)	35
Complaints Issued	106
Cases Mediated by Board Agents	38

### **Board Activity 2011**

Board Opinion & Orders, Final Orders	88
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### **Impasse Cases**

The Board also processes impasse cases, where the parties engaged in collective bargaining, notify the Board of the status of their negotiations and at some point engage in the process of mediation, fact-finding and/or interest arbitration. In bargaining units consisting of professional/instructional personnel, the parties must report on the status of negotiations to the

Board at 90, 45 and 15 days prior to the beginning of the school year. In bargaining units consisting of non-professional/non-instructional personnel, the parties must report to the Board at 45 and 15 days prior to the expiration of the collective bargaining agreement. Fifteen days prior to the beginning of school or fifteen days before the expiration of the collective bargaining agreement, the Board will invoke mediation absent agreement of the parties to defer mediation.

### **Strike Activity FY 2011** (July 1, 2010 – June 30, 2011)

<b>School County</b>	<b>Union Unit Description/No.</b>	<b>Notice Filed Date Settled</b>	<b>Strike Date Strike Days</b>
SIU-Carbondale* Jackson	IEA/NEA Tenure Faculty (681)	05/03/11 11/09/11	11/3/2011*
SIU-Carbondale Jackson	IEA/NEA Civil Service (425)	05/03/11 11/03/11	
SIU-Carbondale Jackson	IEA/NEA Non-Tenure Faculty (650)	05/03/11 11/03/11	
SIU-Carbondale Jackson	IEA/NEA Grad. Assistants (1700)	05/03/11 11/03/11	
U of I – Urbana Champaign	SEIU Food Service Workers (200)	04/01/11 04/16/11	
U of I – Urbana Champaign	SEIU Bld. Service Workers (558)	04/01/11 04/16/11	
Elgin C. College Kane	IFT/AFT FT and Adj. Faculty (490)	04/07/11 04/15/11	
Com. Cons. SD 204 Perry	IEA/NEA Cert. and Non-Cert. (21)	12/01/10 03/02/11	

<b>School County</b>	<b>Union Unit Description/No.</b>	<b>Notice Filed Date Settled</b>	<b>Strike Date Strike Days</b>
U of I – Chicago Cook	IFT/AFT Security Guards (26)	08/11/10 03/01/11	
U of I – Chicago Cook	SEIU Clerical Unit (1500)	08/06/10 03/01/11	
U of I – Chicago Cook	SEIU Med. Technical (400)	08/06/10 03/01/11	
U OF I – Chicago Cook	SEIU Service/Maintenance (900)	08/06/10 03/01/11	
Granite City CUD 9 Madison	IFT/AFT Non-Cert. Secretarial (33)	10/22/10 01/01/11	
Brussels CUSD 42 Calhoun	IEA/NEA Certified and Nurse (15)	12/01/10 12/13/10	
Tri City CUSD 1 Sangamon	IEA/NEA Certified (40)	11/05/10 11/22/10	
Whiteside SD 115 St. Clair	IFT/AFT Cert. Teachers (93)	08/10/10 11/17/10	
North Mac SD 34 Macoupin	IEA/NEA Cert. & Non-Cert. (169)	09/22/10 10/03/10	
Cahokia SD 187 St. Clair	IFT/AFT Teachers,Service wkrs (600)	08/06/10 10/01/10	
Evergreen Park Elem. Cook	IFT/AFT Teachers,Social worker (205)	09/17/10 08/02/10	
IL Bluffs SD 327 Peoria	IFT/AFT Full & Pt Time Faculty (65)	08/02/10 08/02/10	
Danville SD 118 Vermillion	IEA/NEA Certified,TAs,Sec,Lrc (628)	08/27/10 09/15/10	09/13/10

<b>School County</b>	<b>Union Unit Description/No.</b>	<b>Notice Filed Date Settled</b>	<b>Strike Date Strike Days</b>
Harmony Emge 175 Hancock	IFT/AFT Cert. teachers (54)	08/20/10 09/01/10	
Mahomet-Seymour School Dist. 3 Champaign	IEA/NEA Cert.& Non-Cert. (269)	08/03/10 08/20/10	08/19/10

**Total Notices Filed for FY2011:** 23  
**Total Strikes for FY 2011:\*** 02  
 Danville CC School Dist. 118  
 Mahomet-Seymour CU School Dist. 3

\*SIU-Carbondale: Notice filed in FY 2011, Strike occurred in FY2012

## **Board and Court Cases**

**JULY 1, 2010 THROUGH OCTOBER 31, 2011**

### **I. Jurisdiction/Constitutionality**

### **II. Unfair Labor Practices**

#### **A. Employer Unfair Labor Practices**

##### **1. Duty to Bargain in Good Faith**

- (a) *Triopia CUSD No. 27*, \_\_ PERI \_\_, Case No. 2009-CA-0012-S. (IELRB Opinion and Order, August 19, 2010)

The Union filed a charge alleging the Employer violated Section 14(a)(5) and (1) of the Act by unilaterally changing wages, hours, and working conditions of employment of teacher and terminating teacher's employment. The Executive Director referred the matter to arbitration. The Executive Director dismissed the charge after the arbitration award issued. The Union filed exceptions. The IELRB found that the award did not adequately establish when the Union became aware, or should have become aware, that the District converted the pre-kindergarten teacher position to 100% of the negotiated salary level and non-renewed the employment of the teacher. The IELRB remanded the matter to the Executive Director to issue a complaint and notice of hearing as to whether the Employer violated Section 14(a)(5) and (1) when it unilaterally changed the wages, hours and working conditions of the pre-kindergarten teacher position and non-renewed the employment of the teacher.

Board Member Lamont dissented, stating that she agreed with the Executive Director's conclusion that the arbitrator's factual findings were significant enough to resolve the statutory issues before the IELRB and that she would have affirmed the Executive Director's decision to dismiss the charge.

- (b) See VI.A., *Morton Township High School District 201*, \_\_ PERI \_\_, Case No. 2010-CA-0145-C (IELRB Opinion and Order, August 19, 2010)
- (c) *City Colleges of Chicago*, \_\_ PERI \_\_, Case Nos. 2010-CA-0078-C & 2010-CA-0079-C (IELRB Opinion and Order, August 19, 2010)

The IELRB affirmed the Executive Director's dismissal of two unfair labor practice charges filed by an individual charging party. The first charge alleged that the Employer violated Section 14(a)(2) of the Act by paying money to the officers of the Union and by assisting its officers in targeting certain Union members, including the Charging Party, for "extra-collective bargaining agreement discipline." The second charge alleged that the Employer violated Section 14(a)(5) of the Act by failing to follow the discipline procedures contained in the collective bargaining agreement between the Employer and the Union, failing to bargain with the Union about the subject, and by refusing to respond to grievances filed by the Charging Party about the same subject. The Charging Party also contended that the Employer terminated his employment without following the discipline process set forth in the collective bargaining agreement. The IELRB determined that the Executive Director properly evaluated all of the Charging Party's claims in both cases, as they related to the rights guaranteed under the Act, and determined that the Charging Party failed to state a *prima facie* case of a violation of the Act. The IELRB stated that the Charging Party did not raise any error of fact or law in his exceptions which warranted reversal of the dismissal. The IELRB indicated that the Charging Party did not raise, nor did the record reveal, any abuse of discretion by the Executive Director and that to the contrary, the Executive Director's decision was consistent with the Act, the Rules and relevant case law.



- (d) See IIC1(a), *Quincy School District 172*, \_\_\_\_ PERI \_\_\_\_, Case No. 2010-CA-0007-S (IELRB Opinion and Order, September 16, 2010)
- (e) *University of Illinois at Springfield*, 27 PERI 1, Case No. 2009-CA-0002-S (IELRB Opinion and Order, October 21, 2010)

On a stipulated record that was removed by the ALJ to the IELRB, the IELRB dismissed a Complaint alleging that the Employer violated Section 14(a)(5) and (1) of the Act when it unilaterally increased housing rates for bargaining unit members. The IELRB found that under the circumstances presented in the case, housing rates for bargaining unit members did not impact wages, hours and terms and conditions of employment where bargaining unit members paid the same housing rates as all other students living in on-campus housing and thus were not receiving any cost benefit by virtue of their employment. Accordingly, with this finding, the IELRB concluded the inquiry under the *Central City* test at the first step, determined that housing rates were not a mandatory subject of bargaining in the matter, and that the Employer had no duty to bargain over housing rates.

- (f) *Cairo Unit School District No. 1*, \_\_ PERI \_\_, Case Nos. 2006-CA-0016-S, 2006-CA-0045-S, 2007-CA-0023-S, 2008-CA-0013-S (IELRB Opinion and Order, January 20, 2011)

The Employer filed exceptions to an ALJ's Recommended Decision and Order finding that the Employer violated Section 14(a)(5) and (1) by unilaterally changing a mandatory subject of bargaining without first bargaining in good faith to impasse or agreement after the Union requested bargaining and by failing to provide information to the Union that was relevant and necessary for the performance of its duties as the exclusive representative of a bargaining unit of the District's employees; that the Employer committed an independent violation of Section 14(a)(1) by refusing to honor Employee's dues deduction authorization and by refusing Employee's request that he be permitted union representation during investigatory meetings where he reasonably feared he would be disciplined; and that the Employer violated Sections 14(a)(1), (3) and (4) by refusing to reemploy Employee for the 2006-2007 and 2007-2008 school years for positions that he was qualified solely because he engaged in protected activity. The IELRB affirmed the ALJ's Recommended Decision and Order.

- (g) See IIC4(b), *Eastern Illinois University*, 27 PERI 17, Case No. 2010-CA-0017-S (IELRB Opinion and Order, February 15, 2011)
- (h) See IIC4(c), *Chicago Board of Education*, \_\_ PERI \_\_, Case No. 2011-CA-0033-C (IELRB Opinion and Order, February 15, 2011)
- (i) See IIIA1, *McLean County District 5*, \_\_PERI \_\_, Case Nos. 2011-CA-0011-S, 2011-CA-0018-S, 2011-RC-0004-S (IELRB Opinion and Order, March 17, 2011)
- (j) See IIC4(d), *University of Illinois at Springfield*, \_\_ PERI \_\_, Case No. 2010-CA-0033-S (IELRB Opinion and Order, May 19, 2011)
- (k) See IIC4(e), *Rockford Public School District 205*, \_\_ PERI \_\_, Case Nos. 2011-CA-0026-C, 2011-CA-0027-C, 2011-CA-0028-C, 2011-CA-0029-C, 2011-CA-0030-C (IELRB Opinion and Order, July 21, 2011)
- (l) See VIB, *Chicago Board of Education*, \_\_ PERI \_\_, Case No. 2012-CA-0000-C (IELRB Opinion and Order, October 20, 2011)

## 2. Violation of Employee Rights

- (a) See IIA1c, *City Colleges of Chicago*, \_\_\_ PERI \_\_\_, Case Nos. 2010-CA-0078-C & 2010-CA-0079-C (IELRB Opinion and Order, August 19, 2010)
- (b) *Chicago Board of Education*, \_\_\_ PERI \_\_\_, Case No. 2010-CA-0091-C (IELRB Opinion and Order, November 18, 2009)

The IELRB affirmed an Executive Director's Recommended Decision and Order dismissing charge that the Employer violated Sections 14(a)(1) and 14(a)(3) by allegedly participating in ongoing retaliation against the Charging Party for filing grievances and for her participation in the Local School Council. After reviewing the record, the IELRB found that the Charging Party's exceptions did not establish a basis to disturb the underlying Executive Director's disposition of the matter.

- (c) See IID4(a), *Quincy Public School District 172*, \_\_ PERI \_\_\_, Case No. 2010-CA-0001-S (IELRB Opinion and Order, January 20, 2011)
- (d) See IIA1(f), *Cairo Unit School District No. 1*, \_\_ PERI \_\_\_, Case Nos. 2006-CA-0016-S, 2006-CA-0045-S, 2007-CA-0023-S, 2008-CA-0013-S (IELRB Opinion and Order, January 20, 2011)
- (e) See IIC4(c), *Chicago Board of Education*, \_\_ PERI \_\_\_, Case No. 2011-CA-0033-C (IELRB Opinion and Order, February 15, 2011)
- (f) *SPEED District 802 v. Warning*, 242 Ill.2d 92, 950 N.E.2d 1069 (2011)

A teacher in her final probationary year was accompanied by her union representative to remediation meetings. The teacher's contract was subsequently not renewed. The IELRB determined that the employer had violated Section 14(a)(3) of the Act. The IELRB also ordered that the employee be reinstated, with the consequence that she would receive tenure. The Supreme Court determined that the employer had not committed an unfair labor practice when it failed to renew the teacher's contract. The Court determined that the teacher had presented no evidence that she was entitled, by law or contract, to union representation at remediation meetings. The Court concluded that, because the teacher was not entitled to union representation, she was not engaged in union activity when she insisted on having union representation at her evaluation conference and remediation meetings and when she chose to follow her union representative's lead in taking an assertive and confrontational stance with regard to her evaluation and the administration's attempts to provide corrective instruction. The Court stated that, in light of its conclusion that the employer had not committed an unfair labor practice, it need not consider whether reinstating the teacher to a tenured position was an appropriate remedy.

Justices Freeman and Theis dissented. They would have decided that the employer committed an unfair labor practice when it dismissed the teacher. However, they disagreed with the IELRB that tenure was the proper remedy. Rather, they would have restored the teacher to a final probationary year. Chief Justice Kilbride also dissented. Chief Justice Kilbride would have decided that the employer committed an unfair labor practice when it dismissed the teacher, and that the IELRB did not abuse its discretion when it ordered that the teacher be reinstated, with the consequence that she would receive tenure.

- (g) *North Chicago Community Unit School District 187*, 27 PERI 46, Case No. 2011-CA-0004-C (IELRB Opinion and Order, April 14, 2011)

The IELRB affirmed an Executive Director's Recommended Decision and Order dismissing a charge that the Employer violated an unspecified subsection of 14(a). The Charging Party alleged that the Employer violated the Act because she was given excessive work and not equally paid. The IELRB stated that to be cognizable under the Act, there must be a causal connection between the adverse working conditions and the educational employee's union or protected concerted activity. Here, there was no

evidence presented during the investigation of union or protected concerted activity by the Charging Party, said the IELRB. Therefore, the IELRB determined that the Charging Party never stated a cognizable claim under the Act.

- (h) See IIC4(d), *University of Illinois at Springfield*, \_\_ PERI \_\_, Case No. 2010-CA-0033-S (IELRB Opinion and Order, May 19, 2011)
- (i) See IIC4(e), *Rockford Public School District 205*, \_\_ PERI \_\_, Case Nos. 2011-CA-0026-C, 2011-CA-0027-C, 2011-CA-0028-C, 2011-CA-0029-C, 2011-CA-0030-C (IELRB Opinion and Order, July 21, 2011)
- (j) *Chicago Board of Education*, \_\_ PERI \_\_, Case No. 2011-CA-0007-C (IELRB Opinion and Order, August 4, 2011) (appeal pending)

The IELRB affirmed an ALJ's Recommended Decision and Order finding that that the District did not violate Sections 14(a)(1) and (3) of the Act and dismissing the charge in its entirety. The IELRB found no merit in the Complainant's objections to several of the ALJ's findings of fact and assertions that the ALJ ignored certain testimony and documentary evidence. The IELRB stated that its policy not to reject an ALJ's credibility findings unless the clear preponderance of all relevant evidence demonstrates that the findings are incorrect. That was not the case in this matter, noted the IELRB. As the trier of fact, the ALJ listened and observed each witness during the hearing. The ALJ witnessed the demeanor and credibility of the witnesses and based her credibility determinations on those observations. Accordingly, the IELRB found that the ALJ's credibility determinations must stand.

- (k) See VIB, *Chicago Board of Education*, \_\_ PERI \_\_, Case No. 2012-CA-0000-C (IELRB Opinion and Order, October 20, 2011)

### **3. Employer Domination of Labor Organizations**

- (a) See IIIA1, *McLean County District 5*, \_\_PERI\_\_, Case Nos. 2011-CA-0011-S, 2011-CA-0018-S, 2011-RC-0004-S (IELRB Opinion and Order, March 17, 2011)

### **4. Failure to Comply with an Arbitration Award**

- (a) *Griggsville-Perry Community Unit School District 4*, 27 PERI 16, Case No. 2009-CA-0027-S (IELRB Opinion and Order, February 16, 2011) (appeal pending)

The IELRB found that the Employer violated Section 14(a)(8) and (1) by refusing to comply with the provisions of a binding arbitration award. It rejected the Employer's contention that the arbitrator impermissibly interpreted the collective bargaining agreement when issuing an amended arbitration award and directing the Grievant's reinstatement with back pay and benefits. The IELRB found that the original arbitration award and the amended award drew their essence from the collective bargaining agreement. The IELRB determined that the arbitrator properly analyzed the agreement and the parties' bargaining history before reaching the conclusion that under the agreement's terms, the Employer's decision to terminate the Grievant was procedurally and substantively arbitrary. It concluded that, in accordance with Illinois case law, the amended award determined a remedy that was not formulated upon an assumption that the Grievant could be terminated without just cause.

- (b) *Matteson School District No. 162*, 27 PERI 45, Case No. 2010-CA-0098-C (IELRB Opinion and Order, April 14, 2011) (appeal pending)

The IELRB affirmed an ALJ's Recommended Decision and Order finding that the Employer violated Section 14(a)(8) and (1) when it refused to comply with a binding arbitration award ordering Grievant be reinstated following her termination for making a statement to co-workers during an argument that occurred away from the work-site, without students present, during non-work hours. The IELRB

rejected the Employer's argument that the award was not binding because violated public policy. The IELRB reasoned that Grievant's reinstatement did not contravene the public policy dictating that public schools must be a safe haven for students, employees and visitors. Additionally, the IELRB determined that Grievant's reinstatement also comported with the public policy requiring employers to take reasonable action to protect employees' safety and requiring educational employers to refrain from interfering with a union's administration or existence.

- (c) *University of Illinois at Chicago*, \_\_ PERI \_\_, Case No. 2010-CA-0074-C (IELRB Opinion and Order, June 17, 2011) (appeal pending)

The Union filed exceptions to an ALJ's Recommended Decision and Order finding that an arbitration award was not binding because it violated public policy and remanding the matter back to the arbitrator. The IELRB reversed the ALJ, and determined that the arbitration award was binding and that by refusing to comply with the award, the Employer violated Section 14(a)(8) and (1). While not disputing the existence of the public policies relied upon by the ALJ and the Employer, the IELRB focused upon the question of whether the arbitrator's award of reinstatement violated those public policies. The IELRB determined that there was nothing in the record to lead them to the conclusion that the Grievant's reinstatement violated public policy.

**5. Employer Free Speech**

**B. Union Unfair Labor Practices**

**1. Duty of Fair Representation**

- (a) See IIC2(a), *City Colleges of Chicago*, \_\_ PERI \_\_, Case No. 2009-CB-0009-C (IELRB Opinion and Order, November 18, 2010)
- (b) *Southwest Suburban Federation of Teachers, Local 943, IFT*, \_\_ PERI \_\_, Case No. 2010-CB-0025-C (IELRB Opinion and Order, August 4, 2011)

*The IELRB affirmed an Executive Director's Recommended Decision and Order dismissing unfair labor practice charge because the Charging Party failed to establish a prima facie case that the Union breached its duty of fair representation in violation of Section 14(b)(1) of the Act by its refusal to arbitrate her grievance.*

**2. Unlawful Restraint and Coercion**

**3. Duty to Bargain in Good Faith**

**C. Unfair Labor Practice Procedure and Related Issues**

**1. Timely Filed**

- (a) *Quincy School District 172*, \_\_ PERI \_\_, Case No. 2010-CA-0007-S (IELRB Opinion and Order, September 16, 2010)

The IELRB affirmed an Executive Director's Recommended Decision and Order dismissing charge alleging that the Employer violated Section 14(a)(5) when it unilaterally eliminated the use of compensatory time by the District's custodians as untimely filed. The IELRB rejected the Union's argument that the charge was timely because until an arbitration award issued in the Employer's favor within six months from the date it filed the charge, it did not know, or should not have known whether the Employer's stated intention to eliminate comp time would be a violation of the Act. The IELRB noted that the Union's position was contrary to years of Board precedent, which clearly established that the Union's charge was untimely.

- (b) *Chicago Board of Education*, \_\_ PERI \_\_, Case No. 2010-CA-0108-C (IELRB Opinion and Order, November 18, 2010)

The IELRB affirmed an Executive Director's Recommended Decision and Order dismissing charge that the Employer violated an unspecified section of Section 14(a) of the Act because it was untimely filed. The IELRB did not consider the alleged new facts and evidence the Charging Party submitted with her exceptions for the reason that they were not presented to the Executive Director during investigation.

- (c) *Chicago Board of Education/Chicago Teachers Union*, \_\_ PERI \_\_, Case Nos. 2009-CA-0058-C & 2009-CB-0018-C (IELRB Opinion and Order, July 15, 2010), *aff'd*, No. 1-10-2346 (Ill. App. Ct., 1<sup>st</sup> Dist. 2011) (unpublished order)

The IELRB struck the Charging Party's exceptions as untimely filed and affirmed the Executive Director's Recommended Decision and Order dismissing charges against the Employer and the Union. The Charging Party's exceptions were filed more than 14 days after his attorney received the EDRDO. The Charging Party argued that his exceptions were timely because the time period for filing his exceptions began to run on the day he personally received the EDRDO. The IELRB found no merit in the Charging Party's argument, noting that service on a party through service on that party's attorney of record is accepted practice in administrative and judicial proceedings. The IELRB determined that the Charging Party's exceptions were filed more than 14 days after his attorney received the EDRDO and were therefore untimely. In an unpublished order, the Court affirmed the IELRB's Opinion and Order.

## **2. Failure to Serve Exceptions**

- (a) *City Colleges of Chicago*, \_\_ PERI \_\_, Case No. 2009-CB-0009-C (IELRB Opinion and Order, November 18, 2010)

The IELRB struck the Charging Party's Exceptions and affirmed the Executive Director's Recommended Decision and Order dismissing unfair labor practice charge. The Charging Party did not attach a certificate of service to his exceptions or otherwise demonstrate that he served his exceptions upon the Union. The Union did not file a response to the Charging Party's exceptions. The Union was prejudiced by the Charging Party's failure to serve because he denied them an adequate opportunity to respond to his exceptions.

- (b) *McLean County Unit District No. 5*, 27 PERI 27, Case No. 2011-CA-0007-S (IELRB Opinion and Order, March 17, 2011)

The IELRB struck the Charging Party's exceptions and affirmed the Executive Director's Recommended Decision and Order dismissing the unfair labor practice charge. The Charging Party did not provide a certificate of service or otherwise demonstrate that he served his exceptions upon the Employer. The Employer was prejudiced because it was denied an opportunity to respond to the Charging Party's exceptions.

## **3. Consideration of New Evidence, Arguments**

- (a) See IID1(b), *Chicago Board of Education*, \_\_ PERI \_\_, Case No. 2010-CA-0108-C (IELRB Opinion and Order, November 18, 2010)

## **4. Standard for Issuance of Complaint**

- (a) *Quincy Public School District 172*, \_\_ PERI \_\_, Case No. 2010-CA-0001-S (IELRB Opinion and Order, January 20, 2011)

The Executive Director issued a Recommended Decision and Order dismissing the Union's charge alleging that the Employer violated Sections 14(a)(1) and 14(a)(5) when it did not renew a teacher's employment in retaliation for the teacher and the Union successfully contesting certain items from being included in her remediation plan and final evaluation. The Union filed exceptions to the dismissal of the 14(a)(1) allegation. The IELRB determined that the investigation disclosed issues of fact or law as to whether the Employer took adverse action against the teacher for engaging in protected concerted activity. For that reason, the IELRB reversed the EDRDO in part and remand the matter to the Executive Director for issuance of Complaint and Notice of Hearing on the portion of the charge alleging a violation of Section 14(a)(1).

Board Member Lamont dissented, stating that she did not find that the investigation disclosed issues of fact or law as to whether the Employer took adverse action against the teacher for engaging in protected concerted activity and that she would have affirmed the Executive Director's decision to dismiss the charge in its entirety.

(b) *Eastern Illinois University, 27 PERI 17, Case No. 2010-CA-0017-S (IELRB Opinion and Order, February 15, 2011)*

The Union filed exceptions to an Executive Director's Recommended Decision and Order dismissing charge alleging that the Employer violated Section 14(a)(5) and (1) by unilaterally establishing a new policy regarding cell phone use in the classroom. The IELRB determined that the investigation disclosed issues of fact or law as to whether Employer's new policy regarding cell phone use in the classroom is a mandatory subject of bargaining and remanded the matter to the Executive Director for issuance of a Complaint and Notice of Hearing.

Board Member Lamont dissented, stating that the Employer's new policy regarding cell phone use in the classroom was not a term or condition of employment because it did not affect the employees' welfare or intimately and directly affect their work. Dissenting Member Lamont continued that even if the Employer's new policy was a mandatory subject of bargaining, the Executive Director correctly dismissed the unfair labor practice charge because the impact of the new policy was *de minimis* and thus did not warrant issuance of a complaint.

(c) *Chicago Board of Education, \_\_ PERI \_\_, Case No. 2011-CA-0033-C (IELRB Opinion and Order, February 15, 2011)*

The Union filed exceptions to an Executive Director's Recommended Decision and Order dismissing a portion of its unfair labor practice charge. The IELRB determined that the investigation disclosed issues of fact or law as to whether the Employer refused to bargain in good faith over its decision to lay off teachers, engaged in overall bad faith bargaining, and retaliated against the Union. The IELRB remanded the matter to the Executive Director for issuance of a Complaint and Notice of Hearing.

Board Member Prueter dissented, stating that the evidence presented during the investigation did not establish a *prima facie* issue of law or fact sufficient to warrant a hearing, and thus, the charge was properly dismissed.

(d) *University of Illinois at Springfield, \_\_ PERI \_\_, Case No. 2010-CA-0033-S (IELRB Opinion and Order, May 19, 2011)*

The Union filed exceptions to an Executive Director's Recommended Decision and Order dismissing charge alleging that the Employer violated Sections 14(a)(1), (3) and (5) by negotiating in bad faith with the Union regarding the proposed implementation of a furlough program and subsequent layoff of bargaining unit employees. The IELRB determined that the investigation disclosed issues of fact or law as to whether the Employer took adverse action against bargaining unit members for engaging in union activity, reversed the EDRDO in part, and remand the matter to the Executive Director for issuance of a Complaint and Notice of Hearing on the portion of the charge alleging a violation of Sections 14(a)(1) and (3) of the Act. The IELRB affirmed the dismissal of the 14(a)(5) portion of the charge, where the allegations were

based only upon the Union's unsupported assertion that the Employer engaged in surface bargaining, rather than evidence that the Employer engaged in surface bargaining.

- (e) *Rockford Public School District 205*, \_\_ PERI \_\_, Case Nos. 2011-CA-0026-C, 2011-CA-0027-C, 2011-CA-0028-C, 2011-CA-0029-C, 2011-CA-0030-C (IELRB Opinion and Order, July 21, 2011)

The Union filed exceptions to the Executive Director's Recommended Decision and Order dismissing its charges against the District. The IELRB determined that the Union had established issues of law and fact warranting a hearing as to whether the District violated Sections 14(a)(1), (3) and (5) of the Act. The IELRB remanded the matter to the Executive Director for issuance of a Complaint and Notice of Hearing.

- 5. **Settlement Agreement**
- 6. **Bias**
- 7. **Agency**
- 8. **Interference with a Witness**
- 9. **Investigation Procedures**
- 10. **Failure to File Timely Answer**

- (a) *Chicago Board of Education*, \_\_ PERI \_\_, Case No. 2011-CA-0020-C (IELRB Opinion and Order, October 20, 2011)

The IELRB reversed an ALJ's Recommended Decision and Order denying the Employer's Motion to Vacate Default and for Leave to File Answer Instantly and remanded the matter for a hearing on the merits.

- 11. **Interlocutory Appeals**
- 12. **Reconsideration**

- (a) *Triopia CUSD No. 27*, \_\_ PERI \_\_, Case No. 2009-CA-0012-S. (IELRB Opinion and Order, September 16, 2010)

The IELRB denied the Employer's motion to reconsider its recently issued Opinion and Order. In denying the Employer's motion, the IELRB stated that it did not have the authority to reconsider its decisions.

- 13. **Failure to Prosecute**
- 14. **Motions**
- 15. **Summary Judgment**
- 16. **Hearing Procedures**
- 17. **Other**

- (a) See IIA2(i), *Chicago Board of Education*, \_\_ PERI \_\_, Case No. 2011-CA-0007-C (IELRB Opinion and Order, August 4, 2011) (appeal pending)

### **III. Representation Cases**

#### **A. Contract Bar**

1. *McLean County District 5, \_\_PERI\_\_, Case Nos. 2011-CA-0011-S, 2011-CA-0018-S, 2011-RC-0004-S (IELRB Opinion and Order, March 17, 2011)*

The Charging Party filed exceptions to an Executive Director's Recommended Decision and Order dismissing its unfair labor practice charges and its majority interest petition seeking to represent a bargaining unit of employees currently represented by the Incumbent Union. The IELRB affirmed the dismissal of the petition and the charges. The IELRB determined that the charge alleging the Employer violated Section 14(a)(2) was untimely filed and even if proven, would not establish a *prima facie* issue of law or fact sufficient to warrant a hearing. The IELRB dismissed the representation petition because it was not filed during the window period prior to the expiration of the existing collective bargaining agreement between the Employer and the Incumbent. The IELRB found no merit in the Charging Party's allegation that the Employer unilaterally changed the terms and conditions of employment while its representation petition was pending because when the Employer made changes to salary and the guaranteed hours policy, there was no valid pending representation petition and because as the exclusive bargaining representative, the Incumbent was the only entity that could bring a claim for failure to bargain.

#### **B. Blocking Charge Rule**

#### **C. Appropriate Unit**

1. *Board of Trustees of the University of Illinois, \_\_ PERI \_\_, Case No. 2011-RC-0011-C (IELRB Opinion and Order, September 15, 2011) (appeal pending)*

The Employer filed exceptions to an ALJ's Recommended Decision and Order finding petitioned-for unit that included tenured and tenure-track faculty and non-tenure track faculty was appropriate and recommending the Union be certified as the exclusive representative of the unit as petitioned-for. The IELRB affirmed the ALJ's Recommended Decision and Order.

The IELRB first addressed the Employer's assertion that the portion of Section 7(a) of the Act providing that "The sole appropriate bargaining unit for tenured and tenure-track academic faculty at each campus of the University of Illinois shall be a unit that is comprised of non-supervisory academic faculty employed more than half-time and that includes all tenured and tenure-track faculty of that University campus" does not permit a bargaining unit combining tenure system and non-tenure track faculty. The IELRB noted that the legislature used the word "include", rather than an alternative term such as "consist of". The plain, ordinary and popularly understood meaning of "include" is to state that the items listed are part of a series, rather than that the series is limited to those items, the IELRB continued. Where the language of a statute is clear and unambiguous, the plain and ordinary meaning of the language must be applied without resorting to other tools for interpreting statutes. The IELRB found that there was no ambiguity about what "includes" meant. Therefore, the IELRB determined that Section 7(a) must be interpreted at it is written, and not as prohibiting non-tenure track faculty from being including in bargaining units that also includes tenure system faculty.

Next, the IELRB addressed the Employer's argument that it would not be appropriate to include tenure system and non-tenure track faculty in the same bargaining unit under a traditional Section 7(a) analysis because there is a significant conflict of interest between tenure system and non-tenure track faculty. The IELRB's rules regarding presumptively appropriate bargaining units for employees of the University of Illinois provide that "presumptively appropriate means that a bargaining unit has been found to have the requisite community of interest under Section 7(a) of the...Act...unless the appropriateness is rebutted by contrary evidence." The IELRB's rules regarding presumptively appropriate bargaining units for employees of the University of Illinois also describe the unit as petitioned-for in this matter as a



presumptively appropriate unit for collective bargaining. The IELRB found that the presumption that the proposed bargaining unit was appropriate had not been rebutted. In the alternative, the IELRB concluded that the proposed unit would be appropriate even if the IELRB's rules governing appropriate bargaining units were not considered.

Chairman Sered dissented, stating that Section 7(a) of the Act is clear on its face that "the *sole* appropriate bargaining unit for tenured and tenure-track academic faculty at each campus of the University of Illinois *shall* be a unit...that includes all tenured and tenure-track faculty of that University campus....Any decision, rule, or regulation promulgated by the Board to the contrary shall be null and void." Accordingly, Chairman Sered continued, the IELRB's current Rule promulgated prior to the enactment of the January 1, 2004 amendment of Section 7(a) is null and void to the extent that it is inconsistent with the statutory language. However, Chairman Sered indicated that two separate bargaining units would be appropriate and that she would remand to the Executive Director to certify a unit of "tenured and tenure-track" faculty" and another comprised of non-tenure track faculty. Chairman Sered noted that even if the language of the statute were ambiguous, the legislative history of the statute indicates a bargaining unit combining tenure system and non-tenure track faculty at the University of Illinois-Chicago campus is still prohibited by Section 7(a).

**D. Statutory Exclusions**

**1. Supervisor**

- (a) *University of Illinois at Urbana-Champaign*, \_\_ PERI \_\_, Case No. 2011-RS-0006-S (IELRB Opinion and Order, June 17, 2011)

The Employer objected to majority interest petition based on the contention that the petitioned-for employees were supervisory within the meaning of Section 2(g) of the Act, and thus excluded from coverage under the Act. The Employer further argued that the Union failed to establish substantially changed circumstances since the IELRB's prior determination that petitioned-for employees were supervisory under the Act and thus collateral estoppel barred the Union from re-litigating the issue. The ALJ removed the case to the IELRB. The IELRB determined that the investigation disclosed issues of fact as to whether the petitioned-for employees were supervisory employees within the meaning of the Act. Therefore, the IELRB found that a question concerning representation existed and remanded the matter for a hearing.

- (b) *Prairie State College*, \_\_ PERI \_\_, Case No. 2011-RC-0008-C (IELRB Opinion and Order, October 20, 2011)

The IELRB affirmed an ALJ's Recommended Decision and Order determining that the petitioned-for employees in the position of sergeant in the Employer's Campus and Public Safety Department were supervisors within the meaning of Section 2(g) of the Act and thus excluded from bargaining under Section 2(b) of the Act.

**2. Confidential**

**3. Managerial**

**4. Short-term**

**5. Part-Time Academic Employees of Community Colleges**

**E. Unit Clarification/Self-Determination Petitions**

**F. Elections Objections**

1. *McLean County Unit District No. 5*, \_\_ PERI \_\_, Case No. 2011-RC-0010-S (IELRB Opinion and Order, October 20, 2011)

Incumbent Union filed the following objections to a representation election, which were reiterated in its exceptions to the IELRB: the petition was untimely filed, the petition was incorrectly termed by Petitioner Union as a decertification petition at the time it was filed and administratively reclassified as a certification of representation, the Petitioner may not have satisfied the requisite showing of interest because the authorization cards that the Petitioner filed as a showing of interest in support of the petition did not meet the time limits set forth in Section 1110.140 of the IELRB Rules and Regulations, and the Incumbent's observer was unable to examine the ballot box prior to the opening of the polls because the ballot box was sealed prior to the Incumbent's observer's arrival at the polling place. The IELRB found no merit to any of the Incumbent's exceptions and affirmed the Executive Director's Recommended Decision and Order dismissing the Incumbent's objections to the election.

**G. Employer-Filed Petitions**

**IV. The IELRB and Arbitration**

**A. Failure to Arbitrate/Arbitrability**

**B. Enforcement of Awards**

1. See IIA4(a), *Griggsville-Perry Community Unit School District 4*, 27 PERI 16, Case No. 2009-CA-0027-S (IELRB Opinion and Order, February 16, 2011) (appeal pending)
2. See IIA4(b), *Matteson School District No. 162*, 27 PERI 45, Case No. 2010-CA-0098-C (IELRB Opinion and Order, April 14, 2011) (appeal pending)
3. See IIA4(c), *University of Illinois at Chicago*, \_\_ PERI \_\_, Case No. 2010-CA-0074-C (IELRB Opinion and Order, June 17, 2011) (appeal pending)

**C. Referral to Arbitration/Deferral to Awards**

1. See IIA1(a), *Triopia CUSD No. 27*, \_\_ PERI \_\_, Case No. 2009-CA-0012-S. (IELRB Opinion and Order, August 19, 2010)

**V. Compliance/Remedies/Sanctions**

**VI. Preliminary Injunctive Relief—Section 16(d) of the Act**

- A. *Morton Township High School District 201*, \_\_ PERI \_\_, Case No. 2010-CA-0145-C (IELRB Opinion and Order, August 19, 2010)

The IELRB denied the Union's request for preliminary injunctive relief under Section 16(d) of the Act. The IELRB indicated that although the Executive Director had issued a Complaint and Notice of Hearing, alleging that the Employer violated Sections 14(a)(5) and 14(a)(1) of the Act by failing to bargain in good faith about changing the work day schedule for the 2010-2011 school year, they could not conclude at the time that there was a significant likelihood that the Union would prevail on the merits, and therefore, that reasonable cause to believe that the Act may have been violated existed. The reason for this, said the IELRB, was due to the nature of the alleged violation, which required an extremely fact-specific inquiry. The IELRB continued that since they had determined that the first necessary element of a successful request for injunctive relief had not been met, they need not determine whether preliminary injunctive relief is just and proper. The IELRB noted that assuming *arguendo*, the Union had established a likelihood of prevailing on the merits, it did not appear that an extraordinary remedy was warranted because should the Union prevail before the Administrative Law Judge, it appeared that the ordinary IELRB remedies would suffice.

- B. *Chicago Board of Education, \_\_ PERI \_\_, Case No. 2012-CA-0009-C (IELRB Opinion and Order, October 20, 2011)*

The IELRB granted the Union's request that it seek preliminary injunctive relief pursuant to Section 16(d) of the Act.

The IELRB determined that there was a significant likelihood that the Union would prevail on the merits of its claim that the Employer violated Section 14(a)(1) by offering benefits to employees if they voted in favor of a longer school day where it was undisputed that the Employer determined that, if the employees voted in favor of the waiver sought by the Employer, they would receive a lump sum payment, which was an offer of a benefit which would reasonably have the tendency to interfere with the employees' exercise of their collectively bargained right to vote on whether to waive the provisions of the collective bargaining agreement with respect to the length of the school day. The IELRB also determined that there was a significant likelihood that the Union would prevail on the merits of its claim that the Employer violated Section 14(a)(5) by unilaterally modifying the collective bargaining agreement and by dealing directly with the Employer's employees where it was undisputed that the Employer dealt directly with the employees and that the subject matters of the direct dealing were the length of the school day, terms of the collective bargaining agreement which may well be of such importance to the agreement that their unilateral modification would negate the very statutory duty to bargain collectively and it was clear that Employer has been attempting to unilaterally modify the language in the collective bargaining agreement concerning the length of the school day at all of its elementary schools without obtaining the agreement of the Union.

The IELRB next found that there would be irreparable harm if preliminary injunctive relief was not ordered because the injury was of a continuing nature in that the Respondent admitted that it was engaged in an ongoing effort to secure a longer school day at every elementary school; that the Respondent's unlawful conduct also deprived employees of time which could not be returned to them later, which they could otherwise have used for other purposes; and that Respondent's alleged unilateral modification of the collective bargaining agreement and direct dealing were undermining the parties' bargaining relationship in a manner that could not be undone later. The IELRB stated that because of this irreparable harm, it was necessary to immediately restore the status quo ante. The IELRB added that the hearing and appeal process in this case could well last beyond the expiration date of the current collective bargaining agreement. And thus, the remedies that the IELRB could award would come too late to effectively remedy the Respondent's alleged misconduct and ordinary IELRB remedies would be inadequate, and preliminary injunctive relief is necessary to avoid frustration of the basic remedial purposes of the Act. The IELRB also noted that the public interest would be adversely affected by allowing the Respondent to continue to engage in its allegedly unlawful conduct.

The IELRB authorized its General Counsel to seek the following injunctive relief: to prevent the Employer from dealing directly with employees about the length of the school day or compensation for working a longer school day; to cease and desist from offering inducements to employees to vote in favor of lengthening the school day; and to cease and desist from unilaterally modifying the terms of the collective bargaining agreement.

VII. Fair Share

VIII. Other

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