

STATE OF ILLINOIS
EDUCATIONAL LABOR RELATIONS BOARD

ANNUAL REPORT

FISCAL YEAR 2013

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February 25, 2014

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 2013.

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 2013 was a busy year for the Illinois Educational Labor Relations Board. The Board engaged in rule-making, ruled on injunctive relief requests, conducted elections, held mediations, conducted hearings, issued written decisions and opinions, and made continued progress in meeting its goals under the African American Employment Plan, the Hispanic Employment Plan, the Asian American Employment Plan, and the Bilingual Employment Plan. Additionally, the agency has regularly assisted the Attorney General's office with its representation of the Board in court. Educational employers, employees, and labor organizations were cooperative and eager to work with the agency to peacefully resolve their educational employment disputes. The passage of the education reform law, P.A. 97-0008 effective on June 13, 2011 made significant changes to the Illinois Educational Labor Relations Act, which the Board continues to work diligently to implement in a smooth and efficient manner. The recent changes made to the Act by Senate Bill 1762, effective January 1, 2014, will be implemented in a similar manner.

We will continue to develop and use 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's had an appropriated budget of \$1,037,800 during Fiscal Year 2013. 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 2013 the Board was comprised of Chairman Lynne Sereed and Board Members Ronald Ettinger, Gilbert O'Brien, Michael Prueter and Michael Smith.

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

Gilbert F. O'Brien was appointed to the Illinois Educational Labor Relations Board in 2011 by Governor Pat Quinn. Mr. O'Brien comes to the Board with thirty years of experience in government and labor law. In 1991 he was appointed by Secretary of State George Ryan to serve on his transition team as labor policy liaison, thereafter he was hired as Chief Labor Liaison for the Office. Mr. O'Brien served in this capacity for eight years negotiating contracts and collective bargaining agreements with Union representatives working for the Illinois Secretary of State. Mr. O'Brien acted as a Governmental Affairs Consultant for the Teamsters Local 705, advising their Secretary-Treasurer on governmental operations that potentially affected their interest.

In January of 2000, Jesse White appointed Mr. O'Brien as Executive Labor Liaison to negotiate collective bargaining agreements and advise the Secretary on labor policy issues. He participated in labor negotiations between various unions and the State of Illinois. He is a resident of Glen Ellyn.

Michael Smith

Michael K. Smith was appointed to the Board by Governor Pat Quinn in June 2011. Prior to his appointment he served as a member of the Illinois House of Representatives for sixteen years. Before being elected to the legislature he was a Citizens Advocate in the Office of the Illinois Attorney General.

As a member of the Illinois General Assembly, Member Smith served his entire tenure on the Elementary & Secondary Education Committee

including four years as the chairman. He also served as a member of the Appropriations Committee for Elementary & Secondary Education including four years as chairman. His service also included as a member during various terms on the Higher Education Committee and the Personnel & Pensions Committee. He was appointed by the Speaker of the House to serve on the Pension Laws Commission.

Member Smith received his Bachelor of Arts degree from Bradley University. He is married and resides with his wife in Canton.

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.

AGENCY ACTIVITIES

The Agency processes three categories of cases: representation cases, unfair labor practice cases and mediation cases.

Representation Cases

The most common 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 more than 50 percent 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; 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 add or 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 2013

Representation Cases Filed in FY 2013

| | |
|---|-----------|
| Petition to Determine Representative (RC) | 15 |
| Petition to Decertify Representative (RD) | 3 |
| Petition to Determine Unit (RS) | 31 |
| Petition to Determine Unit/Employer Filed (RM) | 0 |
| Voluntary Recognition Petition (VR) | 1 |
| Unit Clarification Petition (UC) | 27 |
| Amendment to Certification Petition (AC) | 5 |
| MIP Cases (includes RC and RS figures above/not added to total) | 40 |
| Total | 82 |

Agency Activity on All Representation Cases for FY 2013

| | |
|---|-----------|
| Certification of Representation | 3 |
| Certification of Results | 0 |
| Certification of Voluntary Representation | 0 |
| MIP Order of Certification | 47 |
| Withdrawal | 12 |
| Executive Director's Recommended Decision & Order | 23 |
| ALJ's Recommended Decision & Order | 2 |
| Elections/polls | 8 |
| Cases mediated by Board Agents | 2 |
| Total | 97 |

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 meet 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 costly and adversarial process of litigation.

Unfair Labor Practice Cases 2013

Unfair Labor Practice Cases Filed in FY 2013

| | |
|--|------------|
| Unfair Labor Practice Charge Against Employer (CA) | 120 |
| Unfair Labor Practice Charge Against Labor Organization or Agents (CB) | 26 |
| Unfair Labor Practice Charge Contesting Fair Share Fees (FS) | 67 |
| Total | 213 |

Agency Activity on All Unfair Labor Practice Cases for FY 2013

| | |
|---|------------|
| Withdrawn Pursuant to Settlement Agreement | 98 |
| Withdrawn | 41 |
| Executive Director's Recommended Decision & Order | 61 |
| ALJ's Recommended Decision & Order | 33 |
| Complaints Issued | 57 |
| Cases Mediated by Board Agents | 35 |
| Total | 325 |

Board Activity 2013

| | |
|------------------------|------------|
| Board Opinion & Orders | 22 |
| Final Orders | 78 |
| Total | 100 |

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 2013

(July 1, 2012 – June 30, 2013)

| School County | Union Unit /No. | Notice Filed Date Settled | Strike Date Strike Days |
|---|---|--------------------------------------|------------------------------------|
| Edwardsville CUSD #7 | IEA/certified personnel (511) | 8/03/12 8/21/12 | |
| Chicago Board of Ed | CTU/ teachers, assistants, etc. | 8/29/12 9/18.12 | 9/10/12 7 days |
| Lake Forest HS Dist.115 | IEA/ cert. teachers (165) (40% time or more) | 8/24/12 9/19/12 | 9/12/12 5 days |
| Argo CHS Dist. 217 | WSTU, #781, IFT (117) certified teachers | 9/7/12 9/21/12 (TA) | |
| Evergreen Park Elem School Dist. 124 | Southwest Sub. Teachers, #943, IFT/(204) teachers, social workers, nurses, sec., aids, clerks, speech pathologists | 9/11/12 10/12/12 | 10/02/12 7 days |
| Prairie Grove CSD 46 | IEA/(165) cert. teachers, psychologists, social workers | 8/27/12 10/12/12 TA | 10/12/12 1 day |
| North Shore SD 112 | North Shore IEA/NEA Certified employees (440) | 09/28/12 10/17/12 | 10/16/12 1 day |

| School County | Union Unit /No. | Notice Filed Date Settled | Strike Date Strike Days |
|--|---|--------------------------------------|------------------------------------|
| Hiawatha CUSD 426 | IEA/teachers(42) Amended notice filed | 09/18/12 10/09/12 10/11/12 | |
| Geneva CUSD 304 | IEA/certificated personnel (422) | 10/26/12 11/12/12 TA | |
| CUSD 300 | IEA/ (1256) certified 27 Non-cert) | 11/20/12 12/4/12 | 12/4/12 1 day |
| Catlin CUSD 5 | Catlin Faculty Org., IEA/ Certified Personnel (44) | 11/1/12 12/07/12 | |
| Community Unit Dist. 201 (Westmont) | IEA/ (118 certificated) | 11/14/12 11/20/12 | |
| U of I – Urbana | IFT /teaching, grad assistants | 10/26/12 12/4/12 | |
| Crab Orchard CUSD #3 | IEA /(26) Full and ½ time certificated | 12/18/12 01/11/13 | |
| Litchfield CUSD #12 | IEA/(85) certified, FT | 12/12/12 01/07/13 | |
| CCSD#46 (Grayslake) | IFT/ | 1/16/13 01/21/13 | 01/16/13 3 days |
| Spoon River College | IEA/ (33) faculty | 1/11/13 1/23/13 | |
| W.Chicago Elem SD 33 | IEA/ (280) certified | 12/26/12 02/07/13 | 2/4/13 3 days |
| Ewing Northern CCDist 115 | IFT /(15) certified | 12/04/12 TA 1/12/13 | |
| Dixon Public School Dist.#170 | IEA/ (167) certified teachers | 1/18/13 3/13/13 | 2/28/13 8 days |
| ECHO | IEA/(245) Professional | 2/13/13 2/22/13 TA | |

| School County | Union Unit /No. | Notice Filed Date Settled | Strike Date Strike Days |
|--------------------------|--|--------------------------------------|------------------------------------|
| U of I – Chicago | GEO, IFT/AFT, #6297 teaching and grad. assistants (1481) | 4/05/13 4/24/13 | |
| U of I/U-C | SEIU/ food service, housing and bldg service employees, etc. | *not filed 4/5/13 | 3/11/13-3/13 3 days |

Total Notices Filed for FY2013: 22*
Total Strikes for FY 2013: 10

*U of I/U-C not included

MAJOR BOARD AND COURT CASES

July 1, 2012 through June 30, 2013

Jurisdiction/Constitutionality

***Board of Education of Peoria School District No. 150 v. Peoria Federation of Support Staff*, ___ Ill.App.3d ___, 362 Ill.Dec. 221, 972 N.E.2d 1254 (4th Dist. 2012).**

Public Act 96-1257 reclassified as public employees certain peace officers directly employed by school districts who were previously considered to be educational employees. The Appellate Court explained that the relevant effect of Public Act 96-1257 on labor relations concerned the fact that public employees employed as peace officers do not have the right to strike and instead have the right to interest arbitration. The Appellate Court reasoned that any peace officers directly employed by school districts other than the plaintiff in the future would be covered by the Illinois Educational Labor Relations Act, rather than the Illinois Public Labor Relations Act, and would have the right to strike while being precluded from pursuing interest arbitration. The Appellate Court concluded that the plaintiff had adequately alleged that the distinctions drawn by the legislature were arbitrary and violated the prohibition against special legislation in the Illinois constitution. The Appellate Court reversed the trial court's grant of the labor boards' motion to dismiss and remanded the case to the circuit court. (On October 18, 2013, the Illinois Supreme Court affirmed the Appellate Court's decision, except that the Supreme Court entered a declaratory judgment that Public Act 96-1257 was unconstitutional as special legislation instead of remanding the case to the circuit court.)

Unfair Labor Practices

Employer Unfair Labor Practices

Duty to Bargain in Good Faith

***Western Illinois University/International Union of Operating Engineers, Local 399*, ___ PERI ___, Case No. 2011-CA-0106-C (IELRB Opinion and Order, July 20, 2012).**

The Union alleged that the University had violated Section 14(a)(5) of the Act by failing to apply the terms of the existing collective bargaining agreement to six employees accreted to the existing bargaining unit. The Union's sole bargaining demand was to apply the terms of the existing agreement to the accreted employees. The University refused to do so, but was willing to negotiate over the accreted employees' terms and conditions of employment. The IELRB found that the University had not violated Section 14(a)(5) of the Act. The IELRB determined that the Union's and the University's obligation was to bargain over appropriate contractual terms for the newly added employees, and that the University did not violate Section 14(a)(5) of

the Act by failing to simply apply the existing collective bargaining agreement to the newly added job title. Board Member Prueter dissented in part. Member Prueter concurred with the Board's broader holding, that when there is an existing collective bargaining agreement between the parties, employers and unions should be required to bargain regarding the terms of employment of the newly-accreted employees. However, Member Prueter dissented from the majority's disposition of the case in that he would have found that the Employer had violated its duty to bargain by not responding to the Union's demands that the Employer apply the terms of the existing collective bargaining agreement. Member Prueter reasoned that the Union's demands amounted to a bargaining proposal, and that the Employer violated its duty to bargain in good faith when it failed to respond to the Union's demands. (The Appellate Court affirmed the IELRB's decision in an unpublished order on October 30, 2013.)

Chicago Board of Education/SEIU, Local 73, __ PERI __, Case No. 2011-CA-0088-C (IELRB Opinion and Order, July 23, 2012) (appeal pending).

The Union requested the disciplinary files of two students on the basis that they were relevant to the arbitration of the termination of an employee. The Union stated that it was willing to accept redacted disciplinary files without the last names of the students and that it would respect the Employer's claim that the files were confidential and would take reasonable steps to ensure that the files were not used for any purpose other than the confidential arbitration hearing. The IELRB found that the Employer had a legitimate interest in keeping student records confidential, but noted that the Union was willing to accept redacted student records. The IELRB concluded that the Employer violated Sections 14(a)(5) and (1) of the Act by refusing to provide information that was necessary and relevant to the Union's role as bargaining agent. The IELRB also found that the issue was not moot even though the underlying grievance had already proceeded to arbitration without the requested information and led to a finding in favor of the Union. The IELRB ordered that the Employer provide the information to the Union with the students' last names redacted.

McLean County Unit District 5/ a/k/a Board of Education of McLean County Unit District 5/AFSCME, Council 31, 29 PERI 174, Case No. 2012-CA-0043-S (IELRB Opinion and Order, April 18, 2013) (appeal pending).

The IELRB held that the Employer violated Sections 14(a)(3) and (5) of the Act when it subcontracted its transportation services to a private sector company without bargaining to impasse beforehand with AFSCME, Council 31, the educational employees' recently elected exclusive representative. The Board found that the subcontracting out was motivated by the employees' selection of AFSCME, a strong union, which replaced the independent, unaffiliated prior certified representative. The IELRB reasoned that a complainant may meet its burden of showing unlawful motive without evidence of specific intent where an employer has engaged in conduct that predictably undermines employees' statutory rights. The IELRB found that the Employer's conduct was inherently destructive of employee rights. The IELRB found that the parties had not bargained in good faith prior to contracting out the transportation services because the legal standard of notice and a meaningful

opportunity to bargain or bargaining to impasse prior to implementation had not been met. The Board ordered a “make whole” remedy including rescission of the Employer’s contract with a private sector transportation company and of the Employer’s decision to discharge bargaining unit employees, and an extension of the certification bar.

Violation of Employee Rights

See McLean County Unit School District 5 a/k/a Board of Education of McLean County Unit District 5 /AFSCME, Council 31, 29 PERI 174, Case No. 2012-CA-0043-S (IELRB Opinion and Order, April 18, 2013) (appeal pending), above.

Board of Trustees of Illinois Eastern Community Colleges, District No. 529/Illinois Eastern Community Colleges Association, IEA-NEA and Daniel Tahtinen, 29 PERI 136, Case No. 2011-CA-0008-S (IELRB Opinion and Order, January 24, 2013).

The IELRB affirmed the Administrative Law Judge’s Recommended Decision and Order dismissing the complaint alleging that the Employer had violated Section 14(a)(3) and derivatively violated Section 14(a)(1) of the Act when it laid off employees in a reduction in force, including the former Association President. Although it was undisputed that the five (5) employees who were the subjects of the unfair labor practice hearing had high-profile union activity, the Complainants had failed to prove that their union activity motivated the Employer’s layoff decisions.

Maine Township High School District 207/Jannon Kirley, 29 PERI 147, Case No. 2012-CA-0055-C (IELRB Opinion and Order, February 21, 2013).

The IELRB affirmed the Executive Director’s dismissal of the charges alleging the Employer violated unspecified subsections of Section 14(a) concerning events that led to a ten (10) day suspension and dismissal from employment in 2011. The IELRB found that the employee presented no evidence of a causal connection between her union or protected concerted activity and the employer’s adverse actions. It also found that an independent allegation of a violation of Section 14(a)(1) for an employer directive not to discuss her discipline with co-workers was untimely as it was outside the six (6) month time period to file a timely charge.

Northeastern Illinois University/John Boyle, __ PERI __, Case No. 2012 CA 0043-C (IELRB Opinion and Order, May 16, 2013).

The IELRB affirmed the Executive Director’s dismissal of the unfair labor practice charge because the employee failed to present the requisite evidence of a causal connection between his protected concerted activity and his failure to be awarded tenure.

Refusal to Arbitrate

Chicago Board of Education/Chicago Teachers Union, 29 PERI 112, Case No. 2011-CA-0091-C (IELRB Opinion and Order, December 20, 2012) (appeal pending).

The IELRB found that the Employer violated Section 14(a)(1) of the Act when it refused to arbitrate three (3) grievances filed by the Union over whether Employer's policy of placing a do not hire ("DNH") designation on non-renewed employees' personnel files was in violation of the parties' collective bargaining agreement. The IELRB determined that grievances were not contractually excluded from arbitration. The Board noted that the grievance clause was broad, and that there was no language in the collective bargaining agreement excluding the matter from arbitration. The Board also determined that the grievances were not excluded from arbitration by Section 10(b) of the Act on the basis of a conflict with Section 4 of the Act.

Chicago Board of Education/Chicago Teachers Union, 30 PERI 20, Case No. 2013-CA-0014-C (IELRB Opinion and Order, June 20, 2013).

The IELRB found that the Employer violated Section 14(a)(1) of the Act when it refused to arbitrate a grievance that arguably involved a work dispute under the collective bargaining agreement. Section 10(b) did not prohibit the arbitration of the grievance because the IELRB found no conflict with statutory language. In fact, the IELRB reasoned that arbitration of the grievance would promote labor stability. The IELRB further reasoned that any change in the scope of the bargaining unit as a result of the arbitration award subsequently could be processed through the IELRA's certification procedures.

Failure to Comply with a Binding Arbitration Award

Griggsville-Perry Community Unit School District No. 4 v. IELRB, ___ Ill.2d ___, 368 Ill.Dec. 494, 984 N.E.2d 440 (2013).

The arbitrator issued an award requiring the Employer to reinstate an employee. The IELRB remanded the matter to the arbitrator to address the Appellate Court's decision in *Board of Education of Harrisburg Community Unit School District No. 3 v. IELRB*, 227 Ill.App.3d 208, 169 Ill.Dec. 205, 591 N.E.2d 85 (1997). The arbitrator did so, and issued an amended award that again required the employee's reinstatement. The arbitrator found that the Employer had violated the provision of the collective bargaining agreement requiring the Employer to give employees "reasonable prior notice" of the reasons they were being to appear before the board of education concerning disciplinary matters. The arbitrator concluded, based on the bargaining history and the language of the collective bargaining agreement, that the Employer could not be held to a standard of just cause for dismissal, but that the employee was not an at-will employee. The arbitrator concluded that, under the collective bargaining agreement, dismissals were governed by a standard of arbitrariness. The arbitrator determined that, in this case, the employee's dismissal was procedurally and substantively arbitrary. The Supreme Court determined that the arbitrator's decision

was based on the language of the contract and the parties' bargaining history. The Court concluded that the arbitrator's decision drew its essence from the collective bargaining agreement, and that the IELRB did not err in ordering the Employer to comply with the arbitrator's award.

University of Illinois at Urbana/Graduate Employees Organization, Local 6300, IFT-AFT, __ PERI __, Case Nos. 2011-CA-0015-S, 2012-CA-0019-S (IELRB Opinion and Order, November 15, 2012).

The arbitrator determined that the Employer had violated the collective bargaining agreement by reducing tuition waivers for certain employees. The Employer argued that the arbitrator had exceeded his authority by ignoring certain language in a side letter. The IELRB found that the arbitrator did not ignore that provision because he specifically quoted it in his decision, even though he did not explicitly spell out elsewhere in his decision the role that this provision played in his determination of the result. The IELRB stated that the arbitrator's decision was based on his analysis of the language of the collective bargaining agreement. The IELRB determined that the arbitrator's decision was a bona fide interpretation of the collective bargaining agreement, and he did not "materially disregard" the agreement. Therefore, the Board determined that the arbitrator's decision was within his authority, and that the arbitrator's award was binding. The Board concluded that the Employer violated Section 14(a)(8) and, derivatively, Section 14(a)(1) of the Act by refusing to comply with the award. In addition, the IELRB deferred to the arbitrator's award with respect to the Union's 14(a)(5) charge and found that the Employer violated Section 14(a)(5) and 14(a)(1) of the Act by unilaterally changing tuition waivers.

Niles Township High School District No. 219/ Niles Township Support Staff, Local 1274, IFT-AFT, 29 PERI 159, Case No. 2013-CA-0001-C (IELRB Opinion and Order, March 21, 2013) (appeal pending).

The Employer filed a motion to dismiss the grievance with the arbitrator. The arbitrator determined that the grievance was substantively inarbitrable and granted the Employer's motion. The arbitrator relied on the language of the collective bargaining agreement stating that, if an employee filed a lawsuit and/or charge with a federal or state agency alleging that he or she had been discriminated against in violation of the provision of the agreement prohibiting discrimination on the basis of race, creed, color, sex, national origin, religion, age or handicap unrelated to ability to perform the particular work involved, the employee would waive his or her right to use the agreement's grievance procedure. The IELRB determined that an employer's action to prevent a grievance from being arbitrated on the merits may violate Section 14(a)(1) of the Act. The IELRB stated that, insofar as it concerns the interpretation of the collective bargaining agreement, substantive arbitrability is a matter for the arbitrator to decide. The IELRB stated that, on the other hand, insofar as the issue of whether a grievance is substantively arbitrable concerns the interpretation of the Act, this is an issue for the IELRB to decide. The IELRB determined that the contractual provision at issue was permissible under the Act, noting the prior decisions in *Chicago Board of Education*, 6 PERI 1048, Case No. 88-CA-0056-C (IELRB Opinion and Order, March

12, 1990) and *Alton Community Unit School District No. 11 v. IELRB*, 209 Ill.App.3d 16, 153 Ill.Dec. 713, 567 N.E.2d 671 (4th Dist. 1991) determining that the parties may validly agree to exclude specified matters from the grievance and arbitration procedure. The IELRB determined that the arbitrator's award drew its essence from the collective bargaining agreement and was not contrary to the Act. The IELRB concluded that the award was binding, and that the Employer did not violate Section 14(a)(1) of the Act.

International Brotherhood of Teamsters, Local 726 v. University of Illinois-Chicago, No. 4-11-0639 (Ill. App. 4th Dist. Aug. 24, 2012).

In an unpublished decision, the Appellate Court affirmed the IELRB's decision finding that the employee's reinstatement pursuant to an arbitration award did not violate public policy and that the Employer violated Sections 14(a)(8) and (1) of the Act by refusing to comply with the award.

Union Unfair Labor Practices

Orland Park School District No. 135/Southwest Suburban Federation of Teachers, Local 943, IFT/AFT, AFL-CIO, 29 PERI 96, Case No. 2012-CB-0015-C (IELRB Opinion and Order, November 15, 2012).

The IELRB found that the union did not violate Section 14(b)(3) of the Act by demanding to arbitrate an inarbitrable grievance. The IELRB rejected the Employer's argument that it should abandon its long-standing precedent that the exclusive representative does not violate the Act by insisting upon taking a grievance to arbitration that the Employer contends is inarbitrable. *Alton Community School District No. 11*, 7 PERI 1013, Case No. 1989-CB-0007-S (IELRB Opinion and Order, December 18, 1990). The Illinois Appellate Court affirmed the Board's policy in a case three (3) years later in *Community College District No. 502 v. IELRB*, 241 Ill.App.3d 914, 181 Ill.Dec. 699, 608 N.E. 2d 950 (4th App. Dist. 1993). The IELRB's reasoning favors the arbitrator addressing the question of whether the grievance is arbitrable under the collective bargaining agreement, and this may resolve the underlying dispute without further litigation. *Alton*, 7 PERI 1013.

Unfair Labor Practice Procedure and Related Issues

Timely Filed

Chicago Board of Education/Stinson, 29 PERI 66, Case No. 2012-CA-0047-C (IELRB Opinion and Order, September 24, 2012).

The IELRB affirmed an Execution Director's Recommended Decision and Order dismissing an unfair labor practice charge because the Charging Party failed to file the charge within six months after she became aware, or reasonably should have become aware, of the conduct that allegedly constituted the unfair labor practice. The Board reiterated that the six month period is jurisdictional and cannot be tolled.

***Chicago Board of Education/Angela Cunliffe*, 29 PERI 176, Case No. 2012- CA-0085-C (IELRB Opinion and Order, April 18, 2013).**

The IELRB affirmed the Executive Director's dismissal of a teacher's unfair labor practice charge as untimely under six (6) month statute of limitations from when she knew, or should have known, of the basis for filing the charge. It was undisputed that the teacher was terminated on August 31, 2010. Her grievance was denied on December 22, 2010. Despite this knowledge, the unfair labor practice charge was not filed until May 17, 2012, almost one (1) year and a half later.

***See Maine Township High School District 207/Joanne Kirley*, 29 PERI 147, Case No. 2012-CA-0055-C (IELRB Opinion and Order, February 21, 2013), above.**

Reconsideration

***Chicago Board of Education/Chicago Teachers Union*, 29 PERI 171, Case No. 2011-CA-0033-C (IELRB Opinion and Order, April 18, 2013).**

The IELRB declined to rescind a prior final order pursuant to the Union's motion to vacate. Although Employer did not oppose the motion, the IELRB followed its long standing precedent articulated by the court in *Board of Education of Mundelein Elementary School District No. 75 v. IELRB*, 179 Ill.App.3d 696, 534 N.E.2d 1022 (4th Dist. 1989). The Act does not expressly grant the Board the authority to reconsider its orders.

Failure to Serve Exceptions

***Northeastern Illinois University/Judith Kaplan – Weinger, et al.*, 30 PERI 4, Case No. 2012-CA-0042-C (IELRB Opinion and Order, May 20, 2013).**

The IELRB struck the exceptions filed by the Charging Parties to the Executive Director's dismissal of the unfair labor practice charges. In this case, the Charging Parties did not attach a certificate of service to the exceptions. There was no evidence that the Employer had notice of the exceptions as it filed no response. Therefore, the Employer had been prejudiced as there was no notice to allow it an adequate opportunity to respond to the exceptions.

Representation Cases

Majority Interest Petitions

***Board of Trustees of the University of Illinois at Urbana-Champaign/AFSCME Local 698*, 29 PERI 67, Case No. 2012-RS-0009-S (IELRB Opinion and Order, September 25, 2012).**

The Union filed a majority interest petition seeking to add veterinary technician employees at the Urbana-Champaign campus of the University of Illinois to an existing unit at that campus. The Board concluded that there was not clear and convincing evidence that employees were fraudulently induced to sign authorization cards. The

Board determined that the language of the cards was clear, and that the employees were not denied the opportunity to read the cards.

The Board also concluded that the proposed bargaining unit was not inappropriate because it excluded animal imaging and veterinary diagnostic pathology employees. The Board noted that there was an historical pattern of the Union adding groups of employees to the existing unit, and that the existing unit contained a wide variety of titles. The Board also noted that the desires of the employees favored the proposed unit, because the employees were presumably aware of the group of employees that the Union represented. However, the Board decided that the proposed bargaining unit inappropriately excluded veterinary technician employees at the University's Chicago campus. The Board noted that the veterinary technician employees at the University's Chicago campus were the same as the veterinary technician employees at the University's Urbana-Champaign campus except for the physical location where they worked and their lower-level supervision. The Board determined that the veterinary technician employees in Chicago and the veterinary technician employees in Urbana-Champaign shared a community of interest and were governed by a centralized system. The Board also determined that there was an historical pattern of recognition in that the existing unit included employees at physical locations other than Urbana-Champaign, including locations not specifically listed in the description of the unit. The Board also decided that the IELRB's Rules on appropriate bargaining units at the University of Illinois did not prevent the certification of the bargaining unit that it found to be appropriate.

Merger of Bargaining Units

Danville Community Consolidated School District 118/Danville Education Association, IEA-NEA, 29 PERI 149, Case No. 2013-RS-0002-S (IELRB Opinion and Order, February 21, 2013).

On August 1, 2012, the Union filed a petition seeking to merge two bargaining units that it represented: one consisting of teachers and teacher aides, and one consisting of secretarial and clerical employees. The Union had filed a representation petition in 1987 seeking to add teacher aides and secretarial employees to its existing bargaining unit of certificated teachers. On April 12, 1989, the IELRB issued an Opinion and Order finding that the petitioned-for bargaining unit would be inappropriate. The IELRB found that any of the following bargaining units would be appropriate: 1) teacher aides and secretarial and clerical employees; 2) teachers and teacher aides; and 3) secretarial and clerical employees. The Board found that the secretarial and clerical employees shared a sufficient community of interest with teacher aides to be included in the same bargaining unit. The Board also found that the community of interest that the Employer's teachers shared with the Employer's secretarial and clerical employees was too attenuated to justify including them in the same bargaining unit. Following that decision, the IELRB certified the Union as the exclusive bargaining representative of two bargaining units: one consisting of the Employer's teachers and teacher aides, and one consisting of the Employer's secretarial and clerical employees. The Employer's food service employees are now represented

by another union, so that there are now no employees of the Employer who are not represented by a union, except for those who are covered by statutory exclusions. The IELRB determined that the bargaining unit that the Union currently proposed was appropriate. The IELRB explained that the fact that the IELRB had found to be key to its decision in 1989 that the proposed bargaining unit was not appropriate—that is, that the proposed bargaining unit contained some, but not all, of the Employer’s remaining unrepresented employees—no longer existed. The IELRB stated that the proposed unit was similar to a residual unit in terms of efficiency in bargaining. The IELRB also found that there was a pattern of coordinated bargaining between the two units.

Statutory Exclusions

Supervisor

Illinois State University/AFSCME Council 31, __ PERI ____, Case No. 2012-RS-0004-S (IELRB Opinion and Order, July 23, 2012), aff’d, Nos. 1-12-0487, 1-12-2272 (Ill. App. 1st Dist. Mar. 21, 2013) (unpublished order) (consolidated with appeal from IELRB’s decision in *Board of Trustees of the University of Illinois/AFSCME Council 31, __ PERI ____, Case No. 2011-RS-0006-S (IELRB Opinion and Order, January 19, 2012).*

The Union filed a majority interest representation petition seeking to add employees classified as Building Service Foremen to an existing bargaining unit. The IELRB affirmed the Administrative Law Judge’s Recommended Decision and Order dismissing the petition. The IELRB found that the Building Service Foremen spent a preponderance of their time directing and assigning work, and were, therefore, supervisors under the Act.

Unit Clarification Petitions

University of Illinois-Chicago/SEIU, Local 73, __ PERI ____, Case No. 2012-UC-0005-C (IELRB Opinion and Order, October 18, 2012).

The IELRB affirmed the Executive Director’s Recommended Decision and Order denying the unit clarification petition because it did not meet the established criteria for granting a unit clarification petition. The Board found that there was no evidence that the positions were newly created or had undergone recent substantial change. The Board refused to consider documents that the Union submitted with its exceptions on the basis that they were not presented to the Executive Director during the investigation.

Motion to Stay

Chicago Board of Education/SEIU, Local 73, __ PERI __, Case No. 2011-CA-0088-C (IELRB Order, August 17, 2012).

The Employer sought a stay of the IELRB's order requiring that it provide certain information to the Union. The Board determined that an immediate stay was not necessary to preserve the status quo without endangering the public, that granting a stay would be contrary to the public policy that favors "requiring educational employers to negotiate and bargain with employee organizations representing educational employees," and that there was not a reasonable likelihood that the Employer would succeed on the merits. The IELRB also determined that the prohibitions in the statutes cited by the Employer did not apply to this case. Accordingly, the IELRB denied the Employer's motion for a stay of the IELRB's order.

AFSCME Council 31/McLean County Unit District 5, a/k/a Board of Education of McLean County Unit District 5, 30 PERI 3, Case No. 2012-CA-0043-C (IELRB Order, May 16, 2013).

The Employer filed a motion to stay the IELRB's order that the Employer rescind the contract it entered into when it subcontracted transportation services. The Board determined that an immediate stay was not required in order to preserve the status quo without endangering the public; that granting a stay would be contrary to the public policies that favor "granting educational employees the right to organize and choose freely their representatives" and "requiring educational employers to negotiate and bargain with employee organizations representing their employees"; and that there was not a reasonable likelihood that the Employer would succeed on the merits. The Board also found that denying the motion to stay would not impermissibly deny the rights of the company with which the Employer had entered into the contract. Accordingly, the IELRB denied the Employer's motion for a stay of the IELRB's order.

Preliminary Injunctive Relief – Section 16(d) of the Act

IELRB v. Board of Education of Community Unit School District No. 5, No. 4-12-0690 (4th Dist. Nov. 26, 2012) (unpublished order).

The IELRB filed a petition for a temporary restraining order and a preliminary injunction to prohibit the Employer from effectuating an agreement to subcontract the District's student transportation services. The Employer filed a motion for a temporary or preliminary order of prohibition seeking to prohibit the IELRB from taking any action on any administrative complaint or charges arising out of the Employer's decision to subcontract those services. The circuit court granted the preliminary injunction and enjoined the Employer from releasing, terminating, discharging, or otherwise altering the terms and conditions of employment of the employees as a result of the Employer's decision to subcontract the work until the IELRB issues its decision in the case. In an unpublished decision, the Appellate Court affirmed the circuit court's

decision granting the IELRB's petition for a preliminary injunction and denying the Employer's motion for a temporary or preliminary order of prohibition.

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