

STATE OF ILLINOIS
EDUCATIONAL LABOR RELATIONS BOARD



ANNUAL REPORT

FISCAL YEAR 2017

One Natural Resources Way
Springfield, Illinois 62702
217/782-9068 (Phone)
217/782-9331 (Fax)

160 North LaSalle Street, Suite N-400
Chicago, Illinois 60601-3103
312/793-3170 (Phone)
312/793-3369 (Fax)

TTY: 1-800-526-0844 (Relay)
Internet Address: <http://www.illinois.gov/elrb>
Email: ELRB.Mail@illinois.gov



ILLINOIS EDUCATIONAL LABOR RELATIONS BOARD

October 12, 2017

Dear Governor Rauner:

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 (the Board) for Fiscal Year 2017. This report summarizes the work performed by the Board over the course of the Fiscal Year.

Fiscal Year 2017 was a productive year for the Illinois Educational Labor Relations Board. In addition to processing its normal caseload, the Board engaged in a substantial revision of its rules to make them simpler and clearer, to reduce regulatory burdens, and to make more use of current technology. These changes were developed in consultation with the Board's Advisory Committee, the Governor's Office, the Legislative Joint Committee on Administrative Rules (JCAR), and agency staff.

We expect to further enhance our online services throughout the upcoming years by upgrading our website to publish more Board Opinions and Orders, providing online fillable forms and delivering current information to the public through our website posting procedures. These objectives will be coordinated with the Illinois Department of Innovation and Technology (DoIT), the new technology agency under the Office of the Governor. Moreover, the Board intends to continue administering the Illinois Educational Labor Relations Act in a fair, prompt and efficient manner, as it explores new and creative ways to provide better future service to the public, while maintaining the high standards, quality of decisions and professional expertise that we have consistently provided to the public.

Thank you for your continued support and the opportunity to advance and improve labor relations within the public educational institutions of Illinois.

Sincerely yours,

Andrea R. Waintroob
Chairman

TABLE OF CONTENTS

Chairman’s Message

History and Funding Sources 1

Agency Mission and Structure 2

Board Members and Biographies 3

Agency Activities 8

 Representation Cases 9

 Unfair Labor Practice Cases 10

 Impasse Cases/Strike Activity 12

Major Board and Court Decisions 14

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 received an appropriated budget of \$1,571,200.00 during Fiscal Year 2017. The Illinois Educational Labor Relations Board receives its funding from the Personal Property Tax Replacement 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 must devote his entire time to the duties of the office and engage in no other work. During FY17, the Board was comprised of Chair Andrea Waitroob and Board Members Judy Biggert, Gilbert O'Brien, Lara Shayne and Lynne Sered.

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. The Board has the final appellate review 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 and Ethics 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; 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 a Recommended Decision 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:

Andrea Waitroob, Chair
Appointment 04/06/15

Judy Biggert
Appointed 04/06/15

Gilbert O'Brien
Appointed 08/01/16

Lara Shayne
Appointed 09/19/16

Lynne O. Sered
Appointed 04/13/15

Andrea R. Waitroob, Chair

Andrea R. Waitroob was appointed to serve as Chairman of the Illinois Educational Labor Relations Board by Governor Bruce Rauner in April, 2015.

Prior to her appointment, Chairman Waitroob represented Illinois public and private sector employers in all aspects of labor and employment law for over thirty-five years, including negotiating many collective bargaining agreements for educational employers in the State of Illinois. Additionally, she taught public sector labor relations, government regulation of the employment relationship and employment discrimination courses at the University of Chicago Booth School of Business and the University of Chicago Law School.

Ms. Waitroob began her legal career at Vedder, Price Kaufman and Kammholz in 1978, becoming a partner at that firm in 1984. In 1994, she was one of twelve founding partners of Franczek Radelet where she worked until her appointment to the Board.

Ms. Waitroob was a member of the Illinois Council of School Lawyers and served a term as Chair of the Council. She has been recognized as an Illinois Leading Lawyer, a Top Woman Lawyer and an Illinois Super Lawyer.

Ms. Waitroob received her BA, Magna Cum Laude from Brown University. She graduated with honors from the University of Chicago Law School where she was a member of the Law Review.

Ms. Waitroob is married and has two children. She resides in Deerfield.

Judy Biggert, Member

Judy Biggert was appointed to the Illinois Educational Labor Relations Board in 2015 by Governor Bruce Rauner. She brings to the Board decades of experience as an elected representative, community leader and attorney.

Prior to her appointment to the Board, she served Illinois for fourteen years as a member of the U.S. House of Representatives and for six years as a member of the Illinois House of Representatives.

In Congress, she served on the House Education and Workforce Committee, overseeing federal education programs and initiatives from preschool through higher education. During her tenure, the Committee produced major reforms of the Elementary and Secondary Education Act (ESEA), the Higher Education Act, Early Childhood Education including Head Start, the Individuals with Disabilities Education Act (IDEA), and many others.

Mrs. Biggert was appointed Vice Chairman of the Committee's Subcommittee on Workforce Protections, and helped to oversee its work on the Fair Labor Standards Act (FLSA), the Workforce Investment Act (WIA), workers compensation, retirement security, and all matters related to employee-employer relationships.

She also served as a senior member of the Financial Services Committee, House Committee on Science and Technology, and Standards of Official Conduct "Ethics" Committee. She was voted by her colleagues as one of the "Top Ten Most Bipartisan" members of Congress.

In the Illinois House of Representatives, Mrs. Biggert served as the Minority Spokesman on the Judiciary – Civil Committee, and as a member of the Financial Institutions, Insurance, and Labor and Commerce Committees. She was appointed to House leadership at the start of her second term.

As a member of the Hinsdale Township High School District 86 Board of Education, Mrs. Biggert chaired the committee that negotiated contracts with the District's teachers. After serving five years as a member, she was elected and served one term as President of the Board.

Her work on behalf of the Chicago area community has included service as President or Chairman of: the Junior League of Chicago, Visiting Nurse Association, Hinsdale Assembly of the Hinsdale Hospital, Village of Hinsdale Plan Commission, Junior Board of Travelers Aid Society, Hinsdale Antique Show, and the Oak School PTA.

Mrs. Biggert served as law clerk to the Hon. Luther M. Swygert, U.S. Court of Appeals for the Seventh Circuit. Prior to her election to public office, she practiced law, specializing in real estate, estate planning and probate.

She received her BA from Stanford University and JD from the Northwestern University School of Law, where she was a member of the Law Review. She and her husband Rody are the parents of four children and the grandparents of nine. They reside in Hinsdale.

Gilbert O'Brien, Member

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.

Lynne O. Sered, Member

Lynne O. Sered was re-appointed to serve as a Board Member in April 2015. She previously served as Board Chairman of the Illinois Educational Labor Relations Board from June 2004 until stepping down immediately prior to her most recent re-appointment by Governor Bruce Rauner. Prior to assuming the Board Chair's responsibilities in 2004, she served as a Board Member since her initial appointment to the Board in October 2000.

Ms. 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.

Ms. Sered lives with her husband Jeff Schoenberg and their two children in Evanston, Illinois.

Lara Shayne, Board, Member

Lara Shayne was appointed to the Illinois Educational Labor Relations Board by Governor Bruce Rauner in September 2016.

Ms. Shayne has been a labor and employment attorney since 1996, and has worked in all labor and employment practice areas, including negotiating and implementing collective bargaining agreements with numerous public employee unions, and handling grievance arbitrations and IELRB litigation. She began her legal career as an Assistant Corporation Counsel for the Labor/Employment Division of the City of Chicago Department of Law. In 2002, she left the City to join the labor practice group of the Board of Education of the City of Chicago's Law Department. In 2012, Ms. Shayne was selected to help run the Board of Education's Labor Relations unit, where she remained until her appointment to the IELRB.

Ms. Shayne received her BA from the University of Michigan and her J.D. from Chicago-Kent College of Law, where she was a member of Moot Court.

Ms. Shayne is married with two children. She resides in Chicago.

Victor E. Blackwell, Executive Director

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.

Susan Willenborg, General Counsel

Susan J. Willenborg is General Counsel at the Illinois Educational Labor Relations Board. She has been working at the IELRB since 1984, performing a wide variety of duties. Prior to working at the IELRB, she worked at the law firm of Jacobs, Burns, Sugarman & Orlove. She received her B.A. at Carleton College and her J.D. at the University of Chicago Law School.

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 used 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 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 2017

Representation Cases Filed in FY 2017:

Petition to Determine Representative (RC)	14
Petition to Decertify Representative (RD)	7
Petition to Determine Unit (RS)	23
Petition to Determine Unit/Employer Filed (RM)	0
Voluntary Recognition Petition (VR)	1
Unit Clarification Petition (UC)	23
Amendment to Certification Petition (AC)	7
MIP Cases (includes RC and RS figures above/not added to total)	(35)
Total	75

Agency Activity on Representation Cases for FY 2017:

Certification of Representation	1
Certification of Results	3
Certification of Voluntary Representation	0
MIP Order of Certification	40
Withdrawal	11
Executive Director's Recommended Decision & Order	22
ALJ's Recommended Decision & Order	2
Elections/polls	8
Cases mediated by Board Agents	5
Total	92

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 to support their position. At the conclusion of the investigation, the Executive Director will 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.

Mediation Cases

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 any time during the unfair labor practice charge process. During mediation, both the charging party and respondent 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 has successfully used mediation to resolve disputes in an amicable manner often avoiding the more costly and adversarial process of litigation.

Unfair Labor Practice Cases 2017

Unfair Labor Practice Cases Filed in FY 2017:

Unfair Labor Practice Charge Against Employer (CA)	94
Unfair Labor Practice Charge Against Labor Organization or Agents (CB)	34
Unfair Labor Practice Charge Contesting Fair Share Fees (FS)	64
Total	192

Agency Activity on All Unfair Labor Practice Cases for FY 2017:

Withdrawn (including w/d by settlement)	102
Executive Director's Recommended Decision and Order	57
ALJ's Recommended Decision and Order	13
Complaints issued	35
Cases mediated by Board Agents	5
Total	212

Board Activity 2017:

Board Opinion & Orders	21
Final Orders	47
Total	68

Impasse Cases

The Board also processes impasse cases, where the parties engaged in collective bargaining, notified the Board of the status of their negotiations and at some point engaged in the process of mediation, fact-finding and/or interest arbitration. The parties must report on

the status of negotiations to the Board at 90, and 45 days prior to the beginning of the school year. Forty-five days prior to the beginning of school year, the Board will invoke mediation absent agreement of the parties to defer mediation.

Strike Activity FY 2017
(July 1, 2016 – June 30, 2017)

School County	Union Unit /No.	Notice Filed Date Settled	Strike Date Strike Days
Rockford SD 205	AFSCME 31, Local 3210 Nutritional services (178)	03/02/17	03/15 - 03/17 3 days (suspended)
Rockford SD 205	AFSCME 31, Local 692 Paraprofessionals (532)	03/02/17	03/15 – 03/17 3 days (suspended)
Byron CUSD #226	IEA (135) Certified instructional	03/02/17	
Minooka CCSD 201	IBT, Local 179 FT&PT drivers, sub drivers Aides & sub aides	08/03/16	08/18/16 (suspended 08/24/16)
Minooka HSD 111	IBT, Local 179 FT&PT bus drivers & subs Bus aides & subs	08/03/16	08/18/16 (suspended 08/24/16)
DeKalb CUSD 428	DeKalb Classroom Teachers IFT/AFT (438)	08/15/16 08/15/16 TA	
Westmont CUSD 200	Ed Support Personnel IEA/NEA (69)	08/03/16 09/16/16	
Chicago Board of Ed	Chicago Teachers Union IFT	09/29/16 10/10/16 TA	

School County	Union Unit /No.	Notice Fil Date Settled	Strike Date Strike Days
Red Hills CUSD 10	IEA (78) Teachers, custodians, cooks	12/27/16 01/14/17 TA	
Quincy SD 809	IFT (870) wall-to-wall unit	01/11/17 01/19/17	
East Moline	IEA(263) Teachers, paraprofessionals, secretaries, nurses	01/27/17 02/15/17 TA 02/16/17 ratified	
Pickneyville Elem. SD 50	IEA (30) Certified FT teachers	02/21/17 S/A	
U of I – Springfield	UPI, #4100, IFT-AFT F-T (.51 or more) tenured or tenure track faculty & dept. chairs	04/14/17 05/07/17	05/02/17 4 days
Rockford SD 205	AFSCME 31, Local 1275 Bus Drivers (235)	03/02/17 05/25/17 TA 05/26/17 ratified	03/15 – 03/17 3 days (suspended)

Total Notices Filed for FY 2017: 14
Total Pending for FY 2017: 5
Total Settled for FY 2017: 9

MAJOR BOARD AND COURT CASES

July 1, 2016 through June 30, 2017

Representation Cases

Exclusions from the Definition of Educational Employee

Board of Trustees of University of Illinois/University Professionals of Illinois, Local 4100, IFT-AFT, AFL-CIO, 33 PERI 73, Case No. 2016-RS-0006-S (IELRB Opinion and Order, December 15, 2016) (appeal pending)

The IELRB determined that department chairs were not confidential employees because assuming that it was reasonable to expect that they would become the first step in the grievances procedure, they would not have access to the type of information required under the second part of the test for confidential status. The IELRB also determined that the department chairs were not supervisory employees. The IELRB found that the department chairs had the authority to perform some of the functions of a supervisor with respect to adjunct faculty and that they used independent judgment in performing those functions. However, the IELRB also found that the department chairs did not spend a preponderance of their time supervising adjunct faculty. The IELRB also found that the department chairs did not exercise independent judgment in scheduling classes. The IELRB further determined that the department chairs were not managerial employees. The IELRB found that the department chairs did not have the authority and discretion necessary to establish managerial status, but rather shared authority with the faculty. The IELRB also found that the chairs' role was to represent the departments to higher levels of administration rather than the reverse. The IELRB found that the department chairs' role in the college cabinets was to act as liaisons between the deans and the department faculty rather than to exercise the type of independent authority to determine the means by which the Employer's goals would be achieved which was necessary for managerial status. The IELRB found that the department chairs' predominant role was working with the faculty in operating the departments rather than participating in the college cabinets.

Unit Clarification

Elgin Community College/Support Staff of Elgin Community College, IEA-NEA, 33 PERI 122, Case No. 2016-UC-0007-C (IELRB Opinion and Order, May 18, 2017)

The IELRB determined that a unit clarification petition seeking to add an employee to an existing bargaining unit was untimely where it was filed 20 to 21 months after the Employer last changed the employee's job classification, and 16 to 17 months after the Employer last changed her duties. The IELRB stated that it is the date that a position's duties and/or classification are actually changed, rather than the date the change is formalized, that is determinative.

Unfair Labor Practices

Employer Unfair Labor Practices

Violation of Employee Rights

Robert Green v. IELRB, 33 PERI 49, 2016 WL 4258330 (Ill. App. 1st Dist., July 15, 2016) (unpublished Rule 23 order)

The court affirmed the IELRB's decision concluding that the Employer did not violate the Act by terminating an employee's employment.

Moraine Valley Community College v. IELRB, 33 PERI 102, 2017 WL 127770 (Ill. App. 1st Dist., March 10, 2017 (unpublished Rule 23 order)

The court affirmed the IELRB's decision concluding that the Employer violated Sections 14(a)(3) and (1) of the Act by terminating union president's employment.

Chicago Board of Education/Chicago Teachers Union, 33 PERI 38, Case No. 2014-CA-0079-C (IELRB Opinion and Order, August 18, 2016)

The IELRB concluded that the Union had not shown that the Employer took its adverse actions against an employee because of her protected concerted or union activity. The IELRB determined that the timing of a letter from the Employer was not evidence of improper motivation, and that the Union had not shown that the employee was treated differently from other similarly situated teachers. The IELRB declined to draw an adverse inference from the Employer's failure to preserve the lesson plans and grade book entries submitted by other teachers.

Bremen Community High School District 228/Bremen Educational Support Team, IEA-NEA, 33 PERI 42, Case No. 2015-CA-0089-C (IELRB Opinion and Order, September 15, 2016) (appeal pending)

The IELRB concluded that the Union had not established a prima facie case that the District violated Sections 14(a)(3) and (1) of the Act by discharging an employee. The IELRB found that the Union had not presented evidence that the employee was discharged because of her union activity. The IELRB stated that harassment of another employee and dishonesty were not protected activities. The IELRB also concluded that the District did not violate Sections 14(a)(5) and (1) of the Act by its delay in providing information to the Union. The IELRB noted that the District promptly replied to the Union's initial request and explained that due to the volume of material requested, it would take more time to produce it. The IELRB also found that in light of the dates for which the arbitration was scheduled and to which it was later postponed, at the Union's request, the District's conduct was not so unreasonable as to constitute a violation under the circumstances. The IELRB also determined that the unfair labor practice charge was not untimely and that doctrine of collateral estoppel did not apply. The IELRB found that the relevant date for determining the timeliness of the charge was that date the board of

education took action to discharge the employee rather than the date the employee learned that the superintendent had recommended that she be discharged.

A-C Central Community Unit School District 262/A-C Central Education Association, IEA-NEA, 33 PERI 89, Case No. 2013-CA-0007-S (IELRB Opinion and Order, October 20, 2016) (appeal pending)

The IELRB determined that the District violated Sections 14(a)(3) and (1) of the Act when it lowered an employee's rating and changed her job assignment. The IELRB determined that the Union had established a prima facie case of a violation and that the District did not actually rely on any legitimate business reasons for the adverse actions. The IELRB rejected the District's argument that the issue of whether it violated the Act by lowering the employee's evaluation was moot because she was subsequently rated as "proficient" and that, therefore, the evaluation at issue did not affect how likely she was to be laid off. The IELRB also rejected the District's argument that the lowering of the employee's evaluation and the change in her job assignment were not adverse actions because she was ultimately not laid off and because the change in her job assignment was never implemented.

Chicago Board of Education/Denise Long, 33 PERI 62, Case No. 2015-CA-0085-C (IELRB Opinion and Order, November 18, 2016)

The IELRB determined that the Employer did not violate Section 14(a)(1) of the Act by the actions it took against the Charging Party because she did not demonstrate that it took those actions because of her protected activity. The IELRB also dismissed the Charging Party's Section 14(a)(2) allegation because there was not evidence that the Employer controlled the Union's attorney or controlled the Union with respect to its representation of the Charging Party. The IELRB also dismissed a large portion of the unfair labor practice charge as untimely filed.

Chicago Board of Education/Denise Butler, 33 PERI 83, Case No. 2016-CA-0065-C (IELRB Opinion and Order, January 23, 2017)

The IELRB dismissed the unfair labor practice charge where the Charging Party alleged only that the Employer did not follow the procedures in the collective bargaining agreement when it laid her off.

Cairo School District #1/James Gibson, 33 PERI 123, Case No. 2017-CA-0005-S (IELRB Opinion and Order, May 18, 2017)

The IELRB determined that, with respect to the Charging Party's timely claims, the District's actions did not violate Section 14(a)(1), 14(a)(3) or 14(a)(4) of the Act. The IELRB found that the District's actions did not significantly alter the Charging Party's terms and conditions of employment, and thus, did not constitute adverse actions. The IELRB determined that a large part of the Charging Party's charge was untimely.

Chicago Board of Education/Jacqueline Perry, 34 PERI 8, Case No. 2016-CA-0088-C (IELRB Opinion and Order, June 26, 2017)

The IELRB determined that the Employer did not violate the Act by retaliating against an employee. The IELRB upheld the Executive Director's conclusion that the employee's claims were of a personal nature, and thus not protected by the Act. The IELRB stated that even if it could consider the documents the employee submitted for the first time with her exceptions, the employee did not show that her protected activity caused the adverse actions.

Duty to Bargain

Board of Trustees of Community College District #508, d/b/a City Colleges of Chicago v. IELRB, 33 PERI 20, 2016 WL 4258331 (Ill. App. 1st Dist., July 20, 2016) (unpublished Rule 23 order)

The court affirmed the IELRB's conclusions that the Employer violated Sections 14(a)(5) and (1) by refusing to implement a grievance settlement and failing to engage in impact bargaining over the implementation of a new time reporting system.

Bremen Community High School District 228/Bremen Educational Support Team, IEA-NEA, 33 PERI 42, Case No. 2015-CA-0089-C (IELRB Opinion and Order, September 15, 2016) (see above)

Violation of Weingarten Rights

Chicago Board of Education/Chicago Teachers Union, Local 1, IFT-AFT, AFL-CIO, 33 PERI 104, Case No. 2015-CA-0081-C (IELRB Opinion and Order, March 16, 2017)

The IELRB determined that the Employer did not violate the Act by dismissing an employee who refused to submit to a drug and alcohol test. The IELRB determined that, assuming that a Weingarten right attaches to drug and alcohol testing, the Employer did not violate the employee's right to union representation. The IELRB found that the employee said that he needed to call the Union, rather than that he needed to have a Union representative physically present. The IELRB found that the principal offered the employee the use of a telephone to call the Union, and also offered to ensure that his conversation with the Union would be private.

Harlem Consolidated School District No. 122/Harlem Federation of Teachers, Local No. 540, IFT-AFT, AFL-CIO, 33 PERI 105, Case No. 2016-CA-0015-C (IELRB Opinion and Order, March 16, 2017)

The IELRB determined that an employee did not have a right by law to Union representation at a meeting to discuss her "needs improvement" evaluation, and that there was no evidence presented during the investigation that the Union had collectively

bargained for such a right. The IELRB noted that the Union could not present to the Board alleged facts which contradicted what it stated during the investigation.

Union Unfair Labor Practices

Duty of Fair Representation

Brian J. McKenna v. IELRB, 33 PERI 94, 2017 WL 10891111 (Ill. App. 1st Dist., March 2, 2017) (unpublished Rule 23 order)

The court affirmed the IELRB's decisions concluding that the Union did not violate its duty of fair representation and that the Union did not violate the IELRB's rules concerning representation elections.

Chicago Teachers Union, Local No. 1, IFT-AFT, AFL-CIO/Denise Long, 33 PERI 63, Case No. 2016-CB-0025-C (IELRB Opinion and Order, November 18, 2016)

The IELRB decided that the Union did not violate its duty of fair representation. The IELRB found that there was no evidence that the Union was aware of the Employer's alleged conduct, and that there was no evidence that the Union's representation of the Charging Party was improperly motivated. The IELRB dismissed a large portion of the unfair labor practice charge as untimely filed.

Service Employees International Union, Local 73/Leroy Hughes, 33 PERI 77, Case No. 2016-CB-0011-C (IELRB Opinion and Order, December 15, 2016)

The IELRB decided that the Union did not violate its duty of fair representation. The IELRB determined that the Union's failure to pursue the Charging Party's grievance did not rise to the level of intentional misconduct. The IELRB determined that even assuming that the Charging Party's version of the facts was correct as to whether the Union responded to him and explained to him that he did not have a valid grievance, it would not rise to the level of intentional misconduct. The IELRB also declined to strike the Charging Party's exceptions on the basis that he did not include a certificate of service where the Union responded to the Charging Party's exceptions and admitted in its response that the Charging Party mailed his exceptions to the Union. The IELRB concluded that the Union was not prejudiced by the Charging Party's failure to include a certificate of service and that there was not evidence that the Charging Party deliberately disregarded the IELRB's processes.

Other Union Unfair Labor Practices

Brian J. McKenna v. IELRB, 33 PERI 94, 2017 WL 10891111 (Ill. App. 1st Dist., March 2, 2017) (unpublished Rule 23 order) (see above)

Chicago Teachers Union, Local No. 1, AFT, AFL-CIO/Chicago Board of Education, 33 PERI 124, Case No. 2017-CB-0027-C (IELRB Opinion and Order, May 18, 2017) (see below)

Unfair Labor Practice Procedure and Related Issues

Claims Beyond Scope of Act

Proviso Township High School District 209/Leroy Hughes, 33 PERI 76, Case No. 2016-CA-0055-C (IELRB Opinion and Order, December 15, 2016)

The IELRB determined that the Charging Party's claim that the District retaliated against him for filing a workers' compensation claim was not within its jurisdiction. The IELRB also determined that the Charging Party's claim that the District violated the collective bargaining agreement because the Grievance Committee established by the agreement never met to discuss his grievance did not concern an alleged violation of the Act. The IELRB also declined to strike the Charging Party's exceptions on the basis that he did not include a certificate of service where the District responded to the Charging Party's exceptions and previously filed a motion for an extension of time to respond to the Charging Party's exceptions based on the content of the exceptions. The IELRB concluded that the District was not prejudiced by the Charging Party's failure to include a certificate of service and that there was not evidence that the Charging Party deliberately disregarded the IELRB's processes.

Community Unit School District 300/Donald Robinson, 33 PERI 113, Case No. 2017-CA-0020-C (IELRB Opinion and Order, April 20, 2017)

The IELRB affirmed the Executive Director's conclusion that the employee's claims were not within the IELRB's jurisdiction. The Charging Party claimed that the District violated his civil rights, forged portions of his employment record, failed to respond to his Freedom of Information Act requests, and forced his resignation after it set him up. The IELRB also affirmed the Executive Director's conclusion that the Act was inapplicable to the Charging Party's employment with the District because his employment with the District ended well before the Act became effective, and because the Charging Party's claims would likely be untimely.

Timely Filed

Bremen Community High School District 228/Bremen Educational Support Team, IEA-NEA, 33 PERI 42, Case No. 2015-CA-0089-C (IELRB Opinion and Order, September 15, 2016) (see above)

Southwestern Illinois College Adjunct Faculty Union, Local 6270, IFT-AFT, AFL-CIO/Joanna Schantz, 33 PERI 43, Case No. 2016-CB-0002-S (IELRB Opinion and Order, September 16, 2016)

The IELRB found that the Charging Party knew or had reason to know that the Union accused her of engaging in unfavorable behavior more than six months before she filed her unfair labor practice charge. The IELRB concluded that the charge was untimely.

Chicago Board of Education/Denise Long, 33 PERI 62, Case No. 2015-CA-0085-C (IELRB Opinion and Order, November 18, 2016) (see above)

Chicago Teachers Union, Local No. 1, IFT-AFT, AFL-CIO/Denise Long, 33 PERI 63, Case No. 2016-CB-0025-C (IELRB Opinion and Order, November 18, 2016) (see above)

Board of Trustees of University of Illinois/American Federation of State, County and Municipal Employees, Council 31, 33 PERI 93, Case No. 2015-CA-0015-S (IELRB Opinion and Order, February 16, 2017)

A majority of the IELRB dismissed a complaint alleging that the Employer violated Sections 14(a)(5) and (1) of the Act by unilaterally transferring work from bargaining unit employees to non-bargaining unit employees. The majority found that the unfair labor practice charge was untimely where it should have been clear to a Union representative that the Employer was employing non-bargaining unit employees to perform the same type of work as bargaining unit employees at least over two years before the Union filed the charge. The IELRB found that the Union representative held a position in the Union leadership such that her knowledge could be imputed to the Union, where she served as a Union steward and a member of the bargaining team, and was one of the Union's representatives who signed the collective bargaining agreement. The IELRB also noted language in the collective bargaining agreement, which the Union signed more than two years before it filed the unfair labor practice charge, reflecting the Union's concern that the Employer was seeking to erode the bargaining unit by assigning bargaining unit work to non-bargaining unit personnel.

Board Member Sered dissented. She would have found that, at a time when the Union representative was a Union agent, she did not have unequivocal notice that the Employer intended to have the work that had been performed by bargaining unit employees solely performed by non-bargaining unit employees. She also would have found that the language of the collective bargaining agreement did not demonstrate that the Union had unequivocal notice of the transfer of bargaining unit work. She stated that, on the merits, she would have found that the Employer violated Sections 14(a)(5) and (1) of the Act.

Community Unit School District 300/Donald Robinson, 33 PERI 113, Case No. 2017-CA-0020-C (IELRB Opinion and Order, April 20, 2017) (see above)

Cairo School District #1/James Gibson, 33 PERI 123, Case No. 2017-CA-0005-S (IELRB Opinion and Order, May 18, 2017) (see above)

Failure to Serve Exceptions

Proviso Township High School District 209/Leroy Hughes, 33 PERI 76, Case No. 2016-CA-0055-C (IELRB Opinion and Order, December 15, 2016) (see above)

Service Employees International Union, Local 73/Leroy Hughes, 33 PERI 77, Case No. 2016-CB-0011-C (IELRB Opinion and Order, December 15, 2016) (see above)

Canton Education Association, IEA-NEA/Donald Bugos, 33 PERI 85, Case No. 2017-CB-0001-S (IELRB Opinion and Order, January 20, 2017)

The Board struck the Charging Party's exceptions because he did not provide a certificate of service or any other evidence that he served his exceptions on the Union.

Exceptions to Issuance of a Complaint

Rock Valley College, 34 PERI 14, Case No. 2017-CA-0031-C (IELRB Opinion and Order, June 26, 2017)

The IELRB struck the Employer's exceptions to the issuance of a complaint. The IELRB noted that the Executive Director's issuance of a complaint is not a final order appealable to the Board.

Evidence Not Submitted During the Investigation

Harlem Consolidated School District No. 122/Harlem Federation of Teachers, Local No. 540, IFT-AFT, AFL-CIO, 33 PERI 105, Case No. 2016-CA-0015-C (IELRB Opinion and Order, March 16, 2017) (see above)

Chicago Board of Education/Jacqueline Perry, 34 PERI 8, Case No. 2016-CA-0088-C (IELRB Opinion and Order, June 26, 2017) (see above)

Hearing Process

Chicago Board of Education/Wanda Harris, 33 PERI 37, Case No. 2011-CA-0097-C (IELRB Opinion and Order, August 19, 2016)

The IELRB determined that the ALJ properly dismissed the complaint where the Complainant did not appear at the hearing, request that the hearing be continued, or notify the IELRB that she would not be present and provide the reason for her absence. The IELRB determined that the Complainant received proper notice of when the hearing would take place. The IELRB also determined that the Complainant was not denied due process when the hearing was delayed, when the previously assigned ALJ allowed the Union's attorney to withdraw from representing the Complainant or when the previously assigned ALJ allegedly said that she would rule against the Complainant if she filed a charge against the Union.

Preliminary Injunctive Relief

Chicago Teachers Union, Local No. 1, AFT, AFL-CIO/Chicago Board of Education, 33 PERI 124, Case No. 2017-CB-0027-C (IELRB Opinion and Order, May 18, 2017)

A majority of the IELRB decided to seek preliminary injunctive relief where the Union's website reflected that the Union was orchestrating a concerted failure by teachers to

report for work. The website encouraged teachers to fail to report for work by using personal or “0” days and to report to the Union that they were doing so. The website listed actions during the school day as actions in which individuals could participate and did not indicate that teachers should report for work instead of joining in those activities. The website encouraged Union delegates and other school leaders to organize Union members to participate in the activities and offered the Union’s assistance with those efforts. The website did not limit the activities with respect to which Union members were to be organized to activities outside of the school day. The majority determined that there was a significant likelihood that the Employer would be able to demonstrate that the Union’s contemplated actions were the equivalent of a strike, and that the Union violated Section 14(b)(3) by engaging in a strike without satisfying the prerequisites of Section 13(b) of the Act and by modifying a term of the collective bargaining agreement which was of such importance to the collective bargaining agreement that its modification would violate the statutory duty to bargain collectively.

The majority also determined that preliminary injunctive relief was just and proper. The IELRB noted the public policy against strikes where strikes are not permitted under the Act. The IELRB stated that the disruption of the educational process and the collective bargaining relationship caused by a strike is permissible only where it follows the statutory procedures. The IELRB also noted the burden on the students’ parents.

Board Member Lynne Sered dissented. She would have found that Section 13(b) of the Act does not prohibit engaging in the equivalent of a strike, and that the Union was not seeking a concerted refusal of employees to report for work. She also would have found that the majority had improperly deprived the Union’s membership the right to use earned benefit time, such as personal days, to engage in protected activity.

Motion to Stay

Harlem School District No. 122/Paula Hurley-Whiteaker, Case No. 2015-CA-0015-C (IELRB Order, August 18, 2016)

The IELRB denied the Employer’s motion to stay enforcement of its opinion and order pending appeal of the opinion and order. The IELRB found that the circumstances of the case did not rise to the level where an immediate stay was required to preserve the status quo without endangering the public. The IELRB stated that the Employer presented no evidence to support its claim that the Complainant did not have a valid teaching license. The IELRB found that granting a stay would be contrary to the public policy that favors protecting the rights of educational employees. The IELRB also found that there was not a reasonable likelihood that the Employer would succeed on the merits. In addition, the IELRB concluded that its order did not infringe on the Employer’s statutory authority to hire teachers.

Printed by Authority of the State of Illinois
Printed on Recycled Paper
Printed by the IELRB
100 – 10/2017

