

STATE OF ILLINOIS  
EDUCATIONAL LABOR RELATIONS BOARD

ANNUAL REPORT

FISCAL YEAR 2022

July 1, 2021 – June 30, 2022

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# ILLINOIS EDUCATIONAL LABOR RELATIONS BOARD

December 23, 2022

Dear Governor Pritzker:

We appreciate the opportunity to present the Board's annual report to you, the General Assembly and the citizens of Illinois for calendar year 2022. The attached report summarizes the work performed by the Board during this period.

This year, the Board met and accomplished its statutory goals. It managed the challenges posed by COVID-19 restrictions that required flexibility in targeted areas of operation. The Board continued to provide the high caliber of legal services to the public that they have come to expect.

Telework and remote hybrid work schedules were refined and set to adequately accommodate the varied needs of our constituents. We continued to conduct evidentiary hearings remotely via WebEx, timely processed representation petitions and processed multiple investigations of unfair labor practices charges. In fact, our overall case production significantly increased during this year, as the public schools gradually reopened for in-person learning. Major labor unions, our state universities and school districts resumed negotiations for successive collective bargaining agreements and filed a bevy of unit representation petitions to organize collective bargaining units.

In spite of the many new challenges which confronted the Board this year, it maintained its core services to the public and met the primary responsibilities of certifying newly established collective bargaining units and resolving unfair labor practice charges in Illinois public schools. Agency attorneys and staff effectively transitioned to remote work scenarios and telework standards.

As we enter calendar year 2023, the Board intends to continue to provide the Unions and School Districts with an effective forum to resolve their labor disputes in a timely and professional manner. Our clear mission is to promote labor and management harmony by resolving disputes as this sustains the continuity of public education in our schools which directly benefits Illinois students and their families.

Finally, the Governor's newly appointed Board Members have come with a wealth of experience and knowledge of public sector labor relations making the transition into their new roles virtually seamless. Our Board Members have quickly learned the basic operations of the Board, timely processed all Board appellate cases and efficiently managed agency operations throughout the year. We greatly appreciate the leadership and assistance from the Governor's Office which provided us with essential operational resources and clear guidance throughout the year.

Sincerely,

Lara Shayne

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## **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 \$2,045,800 during Fiscal Year 2022. The Illinois Educational Labor Relations Board receives its funding from the Personal Property Tax Relief 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 FY22, the Board was comprised of Chair Lara Shayne and Board Members Steven Grossman, Chad Hays, Michelle Ishmael and Gilbert O'Brien.

## 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 threefold. 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; represents 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 Board Members during FY22:**

Lara Shayne, Chair  
Appointment 02/26/21 – 06/01/26 Chair  
Appointment 09/19/16 – 02/25/21 Member

Steven Grossman, Member  
Appointment 03/01/21 – 06/01/26

Chad Hays, Member  
Appointment 01/04/21 – 06/01/26

Michelle Ishmael, Member  
Appointment 03/01/21 – 06/01/22

Gilbert O'Brien, Member  
Appointment 08/01/16 to 06/01/22

**Lara Shayne, Chair**

Lara Shayne was first appointed to the Illinois Educational Labor Relations Board by Governor Bruce Rauner in September 2016. In February 2021, Governor JB Pritzker appointed Ms. Shayne to be Chairman of the Illinois Educational Labor Relations Board.

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's Law Department to join the labor practice group of the Board of Education of the City of Chicago. 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 and resides in Chicago.

**Steven Grossman, Member**

Steve Grossman was appointed to the Illinois Educational Labor Relations Board on March 1, 2021 by Governor JB Pritzker.

Prior to his appointment, Mr. Grossman spent 27 years as a high school teacher of social studies, serving for much of that time in union leadership. He taught in the Chicago Public Schools from 1991 through 1995 – three years at Whitney M. Young Magnet High School, and one year at Mather High School – before moving on to Niles West High School for the next 23 years. It was at District 219 where Mr. Grossman became actively involved with his union, joining the executive board of the Niles Township Federation of Teachers in 1997 and serving at all levels of leadership, including a four-year stint as president, until his retirement from teaching in 2018. During that time, Mr. Grossman also joined the executive board of the North Suburban Teachers Union, IFT-AFT Local 1274, and served as its president from 2010 until his appointment to the IELRB. And since 2010, he has served on the Executive Board of the Illinois Federation of Teachers as one of 40 elected Vice Presidents.

In 2017 Mr. Grossman joined the faculty DePaul University's Labor Education Center where he served on a part-time basis as Assistant Director (2017-19), instructor, and advisory committee member (2017-2021). At the LEC, Mr. Grossman taught courses in Arbitration, Collective Bargaining, and Introduction to Union Leadership. He also led its high school summer school program and brought its collective bargaining role play to dozens of area high schools.

Mr. Grossman lives in Chicago with his wife, Food Stylist Mary Valentin, and nearby his two adult children.

#### **Chad Hays, Member**

Chad Hays served for 4 terms in the Illinois House of Representatives and was Assistant Minority Leader from 2013-2018. He was the Minority Spokesperson for the Higher Education Committee, Executive Committee and Community College Access Committee and on the Legislative Ethics Commission, among a myriad of leadership responsibilities.

Chad Hays served as the Chief Executive Officer of Crosspoint Human Services in Danville, IL from 2018-2021. Crosspoint works with the Developmentally Disabled and individuals diagnosed with Mental Illness. Crosspoint also operates the Domestic Violence and Transitional Housing Shelters and Early Childhood programs in Vermilion County.

Prior to serving in the IL General Assembly Chad was Vice President and Executive Director of Development and Mission Services at Provena United Samaritans Medical Center in Danville.

His healthcare administration background also includes being the Clinic Manager at the Family Medical Center/Paris Community Hospital as well as Director of Development at the Danville Polyclinic.

A Vermilion County native, Chad served as Mayor of his hometown of Catlin for 8 years where he balanced 8 consecutive budgets. He was named Catlin's Citizen of the Year in 2005.

Chad is a graduate of Danville Area Community College, where he was named the Distinguished Alumni in 2014, and Southern Illinois University.

Chad and his wife Ruth reside in Danville, Illinois. They have three grown sons and four grandchildren.

### **Michelle Ishmael, Member**

Michelle Ishmael was appointed to the Illinois Educational Labor Relations Board by Governor JB Pritzker in March 2021.

For the past 30 years, Ms. Ishmael has combined her skills and knowledge of the legislative and political process with her passion for public education to improve the lives of educators and students. She has worked as a lobbyist for the Illinois Education Association (IEA), in various roles in Illinois State government, and for an education non-profit.

While with the IEA, Ms. Ishmael was the lead lobbyist for the Senate Education and Labor Committees. She analyzed and drafted legislation, provided testimony in committees, and developed position papers resulting in the advancement of many major public education policies. She successfully collaborated with local unions, school districts, policy makers, and coalitions to improve and protect employee rights and benefits, increase school funding and address education reform issues.

Ms. Ishmael created a nationally recognized grassroots organizing program that trained educators to be effectively engaged in policy advocacy and political action. Her work as a champion of education was recognized by being elected to serve multiple terms as the Vice-President and Secretary of the National Association of Legislative and Political Specialists in Education (NALPSE).

Ms. Ishmael resides in Springfield.

### **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.

**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.

**Ellen Strizak, General Counsel**

Ellen Maureen Strizak is the General Counsel of the Illinois Educational Labor Relations Board. She began working for the Illinois Educational Labor Relations as a Board Writer in 2002. Ms. Strizak was Staff Counsel for the Illinois Labor Relations Board from 2006 until 2010. She returned to the Illinois Educational Labor Relations Board in 2010 as Associate General Counsel and became General Counsel in 2019. Ms. Strizak received her B.A. in Psychology from the University of Iowa and her J.D. from the John Marshall Law School. Prior to law school, Ms. Strizak organized tenants as an AmeriCorps VISTA volunteer in Austin, Texas.

## **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 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 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 FY 2022

#### **Representation Cases Filed in FY 2022:**

Petition to Determine Representative (RC)	19
Petition to Decertify Representative (RD)	1
Petition to Determine Unit (RS)	20
Petition to Determine Unit/Employer Filed (RM)	0
Voluntary Recognition Petition (VR)	0
Unit Clarification Petition (UC)	40
Amendment to Certification Petition (AC)	3
MIP Cases (includes RC and RS figures above/not added to total)	37
<b>Total</b>	<b>83</b>

#### **Agency Activity on Representation Cases for FY 2022:**

Certification of Representation	4
Certification of Results	0
Certification of Voluntary Representation	0
MIP Order of Certification	35
Withdrawal	5
Executive Director's Recommended Decision & Order	25
ALJ's Recommended Decision & Order	4
Elections/Polls	5
Cases mediated by Board Agents	0
<b>Total</b>	<b>78</b>

### **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 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.

### **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 all times during the unfair labor practice charge process. During mediation, both the charging party and the 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 FY 2022**

**Unfair Labor Practice Charges Filed in FY 2022:**

Charge Against Employer (CA)	81
Charge Against Labor Organization or Agents (CB)	12
<b>Total</b>	<b>93</b>

**Agency Activity on Unfair Labor Practice Cases for FY 2022:**

Withdrawn (including w/d by settlement)	28
Executive Director's Recommended Decision and Order	16
ALJ's Recommended Decision and Order	3
Complaints issued	26
Cases mediated by Board Agents	0
<b>Total</b>	<b>73</b>

**Board Activity FY 2022**

Board Opinion and Orders	14
Board Final Orders	48
<b>Total</b>	<b>66</b>

**IM Cases**

In IM cases, parties engaged in collective bargaining may initiate the public posting process. The parties then submit their most recent offers to the Board and the Board subsequently posts the offers on its website pursuant to Section 12(a-5) of the Act.

Parties engaged in collective bargaining shall notify the Board concerning the status of negotiations if they have not reached an agreement by 90 days before the school year starts and again if they have not reached agreement by 45 days before the school year starts. Upon request of a party, the Board will invoke mediation if mediation has not already been initiated.

**Strike Activity FY 2022**  
(July 1, 2021 – June 30, 2022)

<b><u>School County</u></b>	<b><u>Union Unit /No.</u></b>	<b><u>Notice Filed Date Settled</u></b>	<b><u>Strike Date Strike Days</u></b>
University of IL (Springfield)	UPI 4100 IFT (tenure/tenure track faculty)	4/21/22 (filed)	
Champaign Unit 4 SD	Champaign Fed of Teachers IFT (teachers/aides app. 900)	3/28/22 (filed)	
Illinois State University	AFSCME (culinary, main. grounds, etc. app. 333)	4/07/22 (filed)	
University of IL (Chicago)	UIC Graduate Employees (teaching, grad. asst. app 1550)	4/07/22 (filed)	
Geo. S. Patton 157	SW Teachers, #943, IFT (teachers – 19)	2/02/22 (filed) 3/08/22 (commenced) 3/13/22 (ended)	
Proviso TSHD 209	WSTU, #571, IFT (teachers/counselors/ librarians, social workers – 276)	2/01/22 (filed) 3/04/22 (commenced)	
Sycamore CUSD #427	Sycamore Ed Assn. IEA (teachers – 284)	2/07/22 (filed) 2/15/22 (settled)	

<b>School County</b>	<b>Union Unit /No.</b>	<b>Notice Filed Date Settled</b>	<b>Strike Date Strike Days</b>
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Naperville CUSD #203	Naperville EA IEA (teachers/cert. nurses; app. 1700 employees)	8/09/22, 8/23/22	
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**Total Notices Filed for FY2022: 8**  
**Total Strikes for FY2022: 3**

**MAJOR BOARD AND COURT CASES FY JULY, 2021 – JUNE, 2022**

**REPRESENTATION CASES**

**Exclusions from Status as Educational Employee**

**Managerial Employee**

**Confidential Employee**

**Supervisory Employee**

**Unit Appropriateness**

**GEO Local 6297, IFT-AFT, AFL-CIO/University of Illinois, Chicago, 38 PERI 31, Case No. 2021-RS-0015-C (IELRB Opinion and Order, August 19, 2021)**

The Union filed a petition to represent a group of unrepresented employees, together with its existing unit of University employees. The Board rejected the University's argument that the heightened standard in its University of Illinois Rules for determining unit appropriateness applied, as the petition did not seek to establish a new unit. Applying the standard for unit appropriateness in Section 7 of the Act, the Board found the petitioned-for unit appropriate.

**Homewood-Flossmoor CHSD 233/ Homewood-Flossmoor Classified Staff Org., IEA-NEA, 2021 IL ERB LEXIS 77, Case No. 2020-RC-0005-C (IELRB Opinion and Order, October 21, 2021)**

The Union filed a petition seeking to represent a unit of the District's employees in various support staff titles. The District objected, asserting that its own proposed unit of all support staff titles rendered the petitioned-for unit inappropriate. Noting that neither the District's proposed unit nor the petitioned-for unit was inappropriate, the Board indicated that just because a possible unit configuration is appropriate does not render other possible unit configurations inappropriate. More than one appropriate unit may cover the same employees. The Board emphasized that the Act does not require that a bargaining unit be the most appropriate unit, but rather an appropriate unit. The Board found that the petitioned-for unit was appropriate under Section 7 of the Act.



**Rockford Public School Dist. #205/Rockford Association of Educational Personnel, IEA-NEA, Case No. 2022-RS-0001-C (IELRB Opinion and Order, July 20, 2022)**

The Union filed a majority interest petition seeking to add two titles to an existing bargaining unit. The Employer opposed the petition, asserting that that petitioned-for positions did not share a community of interest with the existing unit. The ALJ found the petitioned-for unit appropriate. The ALJRDO mistakenly stated the deadline for filing exceptions was fourteen, rather than seven, days after the parties received the ALJRDO. The Employer's exceptions to the ALJRDO were filed fourteen days after receipt of the ALJRDO. The Board recognized that ordinarily it would strike the exceptions as untimely filed, but because the ALJRDO stated the deadline for filing exceptions was fourteen days it would consider the exceptions timely under these very limited circumstances. The Board found no merit to the Employer's exception that the ALJ incorrectly placed the burden of proof as to unit appropriateness. In representation cases, the party asserting a position is excluded from a bargaining unit, the Employer in this case, has the burden of proof. The Board rejected the Employer's argument that the ALJ erred when he relied on a few similarities between the petitioned-for employees and those in the existing unit in finding a community of interest and ignored evidence of differences between the employees. More than one appropriate bargaining unit may cover the same employees. It is whether the petitioned-for unit is an appropriate unit, not the most appropriate unit. The Board found the petitioned-for unit was appropriate under Section 7 of the Act and affirmed the ALJRDO.

**University of Illinois, Chicago/UIC United Faculty, Local 6456, IFT-AFT, AFL-CIO, Case No. 2022-RS-0013-C (IELRB Opinion and Order, July 20, 2022)**

The Union filed a majority interest petition seeking to add Bridge to Faculty Program Scholars to existing unit of full-time non-tenure track faculty members. The University objected to the petition, arguing the petitioned-for unit was inappropriate under both the presumptively appropriate bargaining unit rules applicable only the University of Illinois bargaining units (U of I Rules) and under the traditional community of interest factors in Section 7(a) of the Act. Because the petition did not seek to establish a new unit, the Board found that the U of I Rules did not apply and instead the petitioned-for unit only needed to be appropriate

under Section 7 of the Act. Recognizing that more than one appropriate bargaining unit may cover the same employees and rejecting any requirement of maximum coherence or selection of a most appropriate unit if more than one potential configuration would be appropriate, the Board determined there was a community of interest between the petitioned-for employees and those in the existing unit. The Board found the petitioned-for unit appropriate under Section 7 of the Act.

### **Unit Clarification**

**GEO Local 6297, IFT-AFT, AFL-CIO/University of Illinois, Chicago, 38 PERI 28, Case No. 2020-UC-0015-C (IELRB Opinion and Order, August 19, 2021)**

The Union filed a petition seeking to clarify an existing unit of certain GA and TA titles to include certain RA titles. After the original petition to represent the unit was filed, but before the Board certified the unit, Section 2(b) of the Act was amended in 2004 to define RAs as students, excluding them from the definition of educational employee. Despite that, the University recognized certain RA titles as part of the unit for fourteen years following the certification. The Union filed this UC petition in November 2019, shortly after learning that the University no longer considered RA titles part of the unit. The Act confers the right on employees to choose whether they wish to be represented, yet the UC process allows employees to be added to or removed from a bargaining unit without an MIP or an election. For that reason, the UC process is appropriate in only the following limited circumstances: (1) newly created job classification that entails job functions that are similar to those in the existing unit; (2) existing job classification's functions have been substantially altered since certification, creating genuine doubt as to whether the classification should continue to remain in, or be excluded from, the unit; or (3) there has been a change in statutory or case law that affects the bargaining rights of employees. Although Section 2(b) of the Act was amended again in January 2020 to provide that the term student does not include RAs, rendering them no longer excluded from the definition of educational employee, the Union did not amend the UC petition to include RAs due to the change in statutory law. Nor did it raise the issue before the ALJ. Accordingly, the Board found that none of the limited circumstances where the UC process is appropriate applied and dismissed the petition.

**Maine Township High School District 207 v. Maine Teachers' Ass'n,**  
**2021 IL App (1st) 200910-U**

The Board found that the Employer engaged in bad faith bargaining in violation of Section 14(a)(5) when it created a new non-bargaining unit position and assigned it bargaining unit work, and granted the Union's unit clarification petition to include the new position in the existing unit. The Employer appealed, but the petition for review was limited to the UC and did not seek to overturn the Board's ULP finding. The Court affirmed the Board's decision and rejected the Employer's assertion that the Board was required to explain how each factor in Section 7(a) of the IELRA affected its decision. The Court found the Board's decision, adopting the ALJ's findings of fact, sufficiently permitted intelligent review of the decision, and the Board used the correct standard.

**UNFAIR LABOR PRACTICES**  
**Employer Unfair Labor Practices**  
**Violations of Employee Rights**

**Barnett/Chicago Board of Education, 38 PERI 13, Case No. 2021-CA-0002-C (IELRB Opinion and Order, July 15, 2021)**

The Board determined that a Charging Party's belief that the Employer's adverse actions were in retaliation for her protected activity was not a sufficient showing of the causation element to warrant a hearing. As a result, the Board affirmed the Executive Director's Recommended Decision and Order dismissing the charge.

**Jaffary/College of DuPage, 2021 IL ERB LEXIS 53, Case No. 2021-CA-0015-C (IELRB Opinion and Order, September 27, 2021)**

A Charging Party's exceptions to the Executive Director's Recommended Decision and Order did not object to the dismissal of his charge, but to errors and omissions the Charging Party deemed crucial and relevant, and requested the EDRDO be revised. The Board determined corrective action was not necessary because the requested corrections, even if true, concerned matters not relevant to the charge and would not affect the outcome of the case before the IELRB. The Board affirmed the EDRDO.

**Bean/State Universities Civil Service System, 39 PERI 10, Case No. 2021-CA-0061-C (IELRB Opinion and Order, July 20, 2022)** (appeal pending)

Board dismissed unfair labor practice, affirming EDRDO finding that Respondent was not an educational employer within the meaning of the Act. The Board noted that it would not consider Charging Party's claims that Respondent violated the Civil Service Act and portions of the Illinois Administrative Code concerning Respondent because it was not authorized to enforce such rights.

**DeBerry v. Illinois Educ. Labor Rels. Board, 2021 IL App (1st) 201127-U**

In an unpublished order, the Court affirmed the Board's dismissal of the unfair labor practice charge where there was no evidence that Charging Party was disciplined for engaging in protected activity or treated differently than similarly situated employees.

**Ramos/City Colleges of Chicago, District 508, 39 PERI 45, Case No. 2021-CA-0084-C (IELRB Opinion and Order, September 21, 2022) & 39 PERI 46, Case No. 2022-CA-0037-C (IELRB Opinion and Order, September 21, 2022)**

The Board affirmed EDRDOs dismissing 14(a)(1) charges. The Board refused Charging Party's request in her exceptions to EDRDO to defer her charge to arbitration. The Board nixed Charging Party's argument that the EDRDO should be reversed because it did not recite all the details contained in documents she submitted during the investigation. The Executive Director properly distilled what was relevant from those documents and dismissed the charge because there was no evidence that the Union violated the Act. The Board agent's failure to ask Charging Party for additional information or clarification on unclear issues did not warrant overturning the charge. Section 1120.30(b)(1) of the Board's Rules provides that a charging party shall submit all evidence relevant to or in support of their charge.

## **Retaliation**

**Cook County School District 130 v. Illinois Educational Labor Rels. Board & SEIU, Local 73, 2021 IL App (1st) 200909**

The Board affirmed an ALJRDO finding that the District violated Sections 14(a)(1) and 14(a)(3) of the Act in connection with its discharge of Employee and refusal to arbitrate a grievance challenging her discharge. On appeal, the Court held: (1) Employee's actions, appropriation of two Ziploc bags from Teacher's cabinet, were taken out of concern for a hygienic student environment and involved spending her own money in

furtherance of the purpose, and the facts strongly supported the Board's conclusion that the District had no bona fide basis to terminate Employee; (2) Supervisor's statement was admissible under Ill. R. Evid. 801(d)(2)(D) as an admission against the District as a statement by an employee made during his employment relationship with the District and made within scope of his employment; (3) Teacher's testimony supported Employee's argument that her conduct caused no harm to the District and did not warrant termination; and (4) The Board did not err in finding that the District committed an unfair labor practice under Section 14(a)(1) of the Act by refusing to arbitrate the grievance.

**North Shore Education Association, IEA-NEA/North Shore School District 112, 2022 IL ERB LEXIS 50, Case No. 2022-CA-0003-C (IELRB Opinion and Order, October 20, 2022)**

Teacher Ms. K used her personal Apple ID to log in to her District iPad. Prior to beginning a leave of absence, Ms. K returned her District iPad to Respondent District so that her substitute, Ms. N, could use it. According to the Charging Party Union, Ms. K was assured that her personal information and passwords would be deleted. Yet Ms. K's personal login remained active on the District iPad after she returned it and it was transferred to Ms. N. As a result, Ms. N discovered two text message threads between Ms. K and other District teachers on the District iPad with commentary about Ms. N and her teaching abilities. In a text thread between Ms. K and several other teachers, one of Ms. K's coworkers recalled her previous experience with Ms. N and described Ms. N in unfavorable terms. The other thread is between Ms. K and District teacher Ms. A. It contained a multitude of negative comments from both women about Ms. N's teaching ability and referenced Ms. K's potential discipline over a parent complaint. Ms. K participated in the text threads at issue from her personal cell phone while she was on leave from District employment. According to the Union, none of the conversation participants were aware the messages were being mirrored to the District iPad while it was in Ms. N's possession. Ms. N filed a formal internal complaint with the District over the texts on the District iPad. The District investigated whether the texts in question were in violation of any of its policies. As a result, Ms. K was issued a written warning for violating the District's Access to Electronic Networks policy stemming from her use of a District device for personal purposes. According to the District, when Ms. K was in possession of the District iPad, she logged in

using her personal Apple ID instead of her District ID. The District deduced this because Ms. K's personal email address was set as the login default on the District iPad. Because Ms. K linked her personal account to her District iPad, the contents of her personal communications were available to anyone with access to her District iPad, Ms. N in this case. None of the other teachers who participated in the text threads at issue were disciplined or found to have violated the District's policies. The Union then filed an unfair labor practice charge alleging the District violated Section 14(a)(1) of the Act under the Neponset standard requiring proof of unlawful motivation. The Executive Director dismissed the charge because the Union failed to make the requisite showing of protected activity and the Board affirmed the dismissal. Nothing in the text threads was concerted protected activity on Ms. K's part. Ms. K's references in the texts to her own potential discipline were gripes and concerns of a personal nature and not concerted activity that contemplated group action. The communications, although they were between a group of bargaining unit members, did not contemplate group action, but instead were a mutual venting or a group concern about Ms. N and not activity protected by the Act. The Board rejected the theory advanced by the Union in its exceptions that the District engaged in covert surveillance in violation of 14(a)(1) under the objective test. It was Ms. N, not the District, who initiated the view into Ms. K's texts and filed a complaint with the District and Ms. N saw the texts because Ms. K signed into the District iPad with her personal information.

### **Domination or Interference with a Labor Organization**

#### **Refusal to Bargain in Good Faith**

**Federation of College Clerical and Technical Personnel, Local 1708, IFT-AFT, AFL-CIO/City Colleges of Chicago, District 508, 2021 IL ERB LEXIS 45, Case No. 2020-CA-0038-C (IELRB Opinion and Order, August 19, 2021) (see below in Refusal to Reduce CBA to Writing)**

**Forest Park Teachers' Ass'n, IEA-NEA/Forest Park School Dist. 91, 38 PERI \_\_, Case Nos. 2019-CA-0065-C & 2020-CA-0055-C (IELRB Opinion and Order, October 21, 2021) (see below in Untimely Charge)**

**Board of Educ. of Deerfield Public Schools District No. 109 v. Deerfield Educ. Ass'n, 2022 IL App (4th) 210359, appeal denied, 2022 Ill. LEXIS 678 (Sep. 28, 2022)**

The Court affirmed the Board's finding that the Employer was required to disclose notes from outside counsel, who investigated complaints against a teacher, to the Union because the notes were relevant to the Union's function as exclusive bargaining representative and were reasonably necessary for the performance of that function; the Employer did not meet its burden of demonstrating that the interview notes were made in preparation for trial or that the notes contained outside counsel's mental impressions or thoughts.

**Refusal to Arbitrate**

**Cook County School District 130 v. Illinois Educational Labor Rels. Board & SEIU, Local 73, 2021 IL App (1st) 200909** (see above in Retaliation)

**Ball-Chatham Community Unit School District No. 5 v. State Educational Labor Rels. Board, 2022 IL App (4th) 210428-U**

In a Rule 23 (unpublished) order, the Court affirmed the Board's decision that the Union's grievance was arbitrable and by refusing to arbitrate, the Employer violated the Act.

**Refusal to Reduce CBA to Writing and Sign**

**Federation of College Clerical and Technical Personnel, Local 1708, IFT-AFT, AFL-CIO/City Colleges of Chicago, District 508, 2021 IL ERB LEXIS 45, Case No. 2020-CA-0038-C (IELRB Opinion and Order, August 19, 2021)**

The Board affirmed an ALJRDO finding that the Employer violated Section 14(a)(5) of the Act by failing to provide information the Union requested about a reduction in force and Section 14(a)(6) by refusing to update Appendix D of the proposed final contract to reflect the term of the successor agreement or accurate employer contribution percentages.

**Violating the Rules Regarding the Conduct of a Representation Election**

**Refusal to Comply with Arbitration Award**

**Western Illinois University v. IELRB, 2021 IL 126082**

In a grievance challenging the layoff of professors, an arbitrator found that the University violated the CBA. The Union subsequently asserted the University failed to comply with the award and requested the arbitrator exercise remedy jurisdiction. The University, claiming compliance with the award, maintained

that only the Board had the authority to review compliance. The Union filed an unfair labor practice charge. Meanwhile, the arbitrator held a hearing on the compliance issue and issued a supplemental award favorable to the Union. The Union then amended the unfair labor practice charge to include the University's failure to comply with the supplemental award. During the unfair labor practice hearing, the Board's Administrative Law Judge allowed, over the Union's objection, testimony relating to the University's compliance with the original award. Finding no determinative issue of fact, the Administrative Law Judge removed the case to the Board for decision. The Board refused to consider the University's testimony about compliance because in reviewing an arbitration award, evidence that was not before the arbitrator may not be considered. The Board found that the University violated Section 14(a)(8) when it failed to comply with the arbitration award and supplemental arbitration award. The Fourth District Appellate Court vacated the Board's order and remanded the matter back to Board with instructions to consider any evidence relevant to University's compliance with the arbitration award and expressing no opinion on the issue of whether University engaged in unfair labor practices. In a 5-2 opinion written by Justice Garman, the Illinois Supreme Court affirmed the Appellate Court. The Court determined that the existence of 14(a)(8) deprived the arbitrator of remedy jurisdiction, so the parties would take the issue of compliance itself to the Board rather than the arbitrator. Recognizing that remedy jurisdiction is routine in labor relations law, other labor relations statutes do not have a refusal to comply with an arbitration award as an unfair labor practice, so remedy jurisdiction is necessary for parties outside of the Board's jurisdiction. The Court indicated that the Board is tasked with reviewing the compliance with the award through 14(a)(8), but not the substance of the award itself. The Court vacated the Board's opinion and remanded the matter back to the Board with directions to consider all evidence relevant to whether the University violated 14(a)(8) by refusing to comply with the original award.

**AFSCME, Council 31/City Colleges of Chicago, Dist. 508, 38 PERI 73, Case No. 2021-CA-0056-C (IELRB Opinion and Order, December 16, 2021)**

The Board found that the Colleges violated Section 14(a)(8) by refusing to comply with a binding arbitration award. Grievant came to be employed by the Colleges as an adult educator in 1995, two years after he resigned from his position as a priest. In 2004, the Archdiocese determined there was reasonable cause to believe Grievant engaged in acts of sexual misconduct with a minor while he was a priest. In 2014, aware of the Archdiocese's determination, the Colleges placed Grievant on paid administrative leave pending investigation to determine whether there was evidence he engaged in misconduct while employed by the Colleges. Finding none, the Colleges allowed Grievant to return to work. In 2019, the Archdiocese sent the Colleges a letter indicating it had received an anonymous call that Grievant was employed by the Colleges and stating



that his name was on its list of Clergy with a Substantiated Allegation of Sexual Abuse of a Minor. As a result, the Colleges terminated Grievant's employment. The Union filed a grievance challenging the termination. Grievant retired and became an annuitant in January 2020. For that reason, the grievance sought backpay from the time of his discharge until his retirement and did not seek reinstatement. The arbitrator found the Colleges violated the CBA by terminating Grievant without just cause after previously investigating the same allegation and clearing him to return to work. The arbitrator determined that Grievant was entitled to backpay for the period he was suspended without pay until he retired. The Colleges refused to comply with the award and the unfair labor practice charge followed. The Board rejected the Colleges' argument that the nondelegation doctrine gave it the exclusive power to terminate instructors and the arbitrator's review of that power conflicted with the Illinois Public Community College Act. The Board noted that before the IELRA went into effect, the nondelegation doctrine governed whether school boards were required to comply with CBAs and lead to courts routinely invalidating arbitration awards. But the conflict between collective bargaining and issues of delegability served as a catalyst for the IELRA. The nondelegation doctrine does not apply to cases arising under the IELRA because it was replaced by Section 10(b) of the IELRA in determining whether contractual provisions or arbitration awards are valid. The Board likewise rejected the Colleges' argument that the award was unenforceable because it was against public policy protecting children from sexual predators. Acknowledging the paramount importance and undisputed existence of this public policy, the Board found nothing in the record that the arbitrator's backpay award violated that public policy. The arbitrator recognized the legitimate public policy concern with returning Grievant to the workplace. This was a non-issue to the arbitrator and to the Board because Grievant retired.

### **Union Unfair Labor Practices**

#### **Bean/SEIU, Local 73, Case No. 2021-CB-0005-C (IELRB Opinion and Order, June 15, 2022)**

The Board dismissed charge against Union alleging it breached its duty of fair representation in violation of Section 14(b)(1) of the Act. The portion of the charge alleging the Union violated the Act by conduct that occurred more than six months before the charge was filed was dismissed as untimely. The remainder of the charge was dismissed because there was no evidence in the record that the Union engaged in intentional misconduct. The Union's decision not to pursue the Charging Party's grievance or represent him before the merit board were within the wide

range of discretion the Union has in determining how far to pursue members' claims.

**Ramos/City Colleges Contingent Labor Organizing Committee, IEA-NEA, 39 PERI 44, Case No. 2021-CB-0006-C (IELRB Opinion and Order, August 17, 2021)**

The Board affirmed an EDRDO dismissing charge against Union. In her exceptions to the EDRDO, Charging Party recognized that a portion of her charge was dismissed as untimely and asserted that the EDRDO should be corrected to contain no references to anything that occurred more than six months before her charge filing. The Board disagreed because the mention of those events was necessary for the Executive Director to properly explain his analysis that led to his conclusion that they were untimely. The Board nixed Charging Party's argument that the EDRDO should be reversed because it did not recite all the details contained in documents she submitted during the investigation. The Executive Director properly distilled what was relevant from those documents and dismissed the charge because there was no evidence that the Union violated the Act. The Board agent's failure to ask Charging Party for additional information or clarification on unclear issues did not warrant overturning the charge. Section 1120.30(b)(1) of the Board's Rules provides that a charging party shall submit all evidence relevant to or in support of their charge.

**Unfair Labor Practice Procedures  
Untimely Charge**

**Forest Park Teachers' Ass'n, IEA-NEA, et al./Forest Park School Dist. 91, 2021 IL ERB LEXIS 71, Case Nos. 2019-CA-0065-C & 2020-CA-0055-C (IELRB Opinion and Order, October 21, 2021)**

Charges alleging that the District violated Section 14(a)(5) of the Act were dismissed by the Board as untimely. The Complainants alleged that the District committed unfair labor practices when it implemented a contractual provision in violation of Section 10(b) of the Act by deducting excess contributions owed to Illinois Teachers Retirement System from a lump sum payment that it is contractually obligated to pay retirees in violation of the Illinois Pension Code. The Complainant Union knew of the District's conduct well before it applied to the individual Complainants, as evidenced by the grievance it filed more than a year before either charge was filed. Unlike the Complainant Union, the individual Complainants did

not have standing to allege a violation of Section 14(a)(5) because 14(a)(5) involves the rights of the exclusive representative under the Act. It was immaterial when the individual Complainants had notice of the alleged violation of the Act as it was applied to them individually. The relevant date is that which the Union, as a party to the collective bargaining process upon which the charge is grounded, learned of the misconduct.

**Bean/SEIU, Local 73, Case No. 2021-CB-0005-C (IELRB Opinion and Order, June 15, 2022)** (see above in Union Unfair Labor Practices)

**Bean/University of Illinois, Chicago, Case No. 2021-CA-0060-C (IELRB Opinion and Order, June 15, 2022)**

The Board dismissed Charging Party's charge against University as untimely where the alleged unlawful conduct occurred at least a year before the charge was filed.

- **Ramos/City Colleges Contingent Labor Organizing Committee, IEA-NEA, 39 PERI 44, Case No. 2021-CB-0006-C (IELRB Opinion and Order, August 17, 2021)** (see above in Union Unfair Labor Practices)

#### **Untimely Exceptions**

#### **Failure to Serve Exceptions**

### **INJUNCTIVE RELIEF**

**Highland Community College Faculty Senate, Local 1957, IFT-AFT, AFL-CIO/Highland Community College, Dist. 519, 38 PERI 101, Case No. 2022-CA-0033-C (IELRB Opinion and Order, February 16, 2022)**

The Union requested the Board seek injunctive relief under Section 16(d) of the Act in its unfair labor practice charge alleging that the College violated Section 14(a)(5) when it unilaterally changed working conditions and placed bargaining unit members in unsafe conditions by failing to notify them of students who were not in compliance with an Executive Order requiring higher education students who are not fully vaccinated against COVID-19 to test weekly and have negative test results. Preliminary injunctive relief is appropriate where there is reasonable cause to believe the Act may have been violated and where injunctive relief is just and proper. The Board denied the Union's request because there was not a significant likelihood the Union would prevail on the merits where critical facts were still in dispute that needed to be resolved by an ALJ. In particular, how the names of the students related to the Union's function as exclusive representative. Despite a specific invitation to do so, the Union did not file a brief to the Board on the injunctive relief issue. In addition to the factual dispute at issue, the Board noted that

whether the Union was not entitled to the student names under the Family Educational Rights and Privacy Act was an unresolved issue of law that demonstrated the Union had not established reasonable cause to believe there was a violation of the Act. Because there was not reasonable cause to believe the Act was violated, the Board did not address whether injunctive relief was just and proper.

**Chicago Teachers Union, Local No. 1, IFT-AFT, AFL-CIO/Chicago Board of Education, 39 PERI 11, Case No. 2022-CA-0053-C (IELRB Opinion and Order, April 22, 2022) (exceptions to ALJRDO on the merits currently pending with the Board)**

The majority of the Board denied the Union's request for injunctive relief regarding the Employer's unilateral rescission of its mask mandate for all persons entering its buildings. Preliminary injunctive relief is appropriate where there is reasonable cause to believe the Act may have been violated and where injunctive relief is just and proper. The majority of the Board could not conclude there was a significant likelihood of the Union prevailing on the merits when there were outstanding legal and factual issues in dispute that needed to be resolved in an evidentiary hearing before an ALJ. That is, what effect a vacated temporary restraining order in other litigation enjoining the Employer from requiring universal masking had on this case and the Union's amenability to come to the bargaining table. Because there was not reasonable cause to believe the Act was violated, the Board did not address whether injunctive relief was just and proper.

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