

STATE OF ILLINOIS
EDUCATIONAL LABOR RELATIONS BOARD

ANNUAL REPORT

FISCAL YEAR 2010

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>

TABLE OF CONTENTS

Chairman's Message

History and Funding Sources	1
Agency Mission and Structure	2
Board Members and Biographies	3
Agency Activities	6
Representation Cases	7
Mediation Cases/Strike Activity	9
Unfair Labor Practice Cases	10
Major Board and Court Decisions	12 - 17

January 25, 2011

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

Dear Governor Quinn:

Pursuant to Section 5(i) of the Illinois Educational Labor Relations Act, we are pleased to present to you, the General Assembly, and the citizens of Illinois, a statement of the operations of the Illinois Educational Labor Relations Board for Fiscal Year 2010.

This report contains a description of the activities and accomplishments of the Board as well as summaries of major cases decided by the Board and the Illinois courts. In addition, this year we include the FY10 strike activity report. We believe that this report reflects the Agency's growth, success, and commitment to effective implementation of the Act.

During the past fiscal year we were fortunate to find that for the most part, educational employers, educational employees, and labor organizations were cooperative and eager to work with the Agency to peacefully resolve their educational employment disputes. We shall endeavor to continue to develop the necessary elements of fairness and cooperation in educational labor relations in Illinois.

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

Sincerely yours,

Lynne O. Sered
Chairman

Michael H. Prueter
Board Member

Bridget L. Lamont
Board Member

Jimmie E. Robinson
Board Member

Ronald F. Ettinger
Board Member

HISTORY AND FUNDING SOURCES

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

The Illinois Educational Labor Relations Board had an appropriated budget of \$1,051,800 during Fiscal Year 2010.

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.

AGENCY MISSION AND STRUCTURE

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

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

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

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

The current Board Members are:

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

Michael H. Prueter
Appointed 06/01/04 – 06/01/07

Bridget L. Lamont
Appointed 06/01/04 – 06/01/10

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

Jimmie E. Robinson
Appointed 06/01/04 – 06/01/07

Lynne O. Sered

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

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

As an attorney in private practice with the law firm of Scariano, Kula, Ellch &

Himes, Chtd., Chicago and Chicago Heights, Illinois, she counseled school districts, private employers and labor clients regarding litigation, legal strategies and policy issues pertaining to labor law and collective bargaining issues.

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

In addition, Ms. Sered served as Legal Director of the American Jewish Congress, Midwest Region, in Chicago, where she managed the organization's not-for-profit legal program, focusing on civil liberties and civil rights and oversaw its pro bono clinic providing legal services to the indigent. Her professional experience is also

highlighted by her roles as a domestic policy specialist with the Jewish Community Relations Council and as Midwest regional director of the Jewish Labor Committee.

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

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

Michael H. Prueter

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

Mr. Prueter has served for many years as pro bono Director of Government Affairs for the Illinois State Crime Commission and as a mentor and tutor in an alternative education program through the Regional Office of Education in DuPage County.

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

Bridget L. Lamont

Bridget L. Lamont was appointed to the Illinois Educational Labor Relations Board in 2002 and reappointed in 2004 after legislation authorizing the restructuring of the Board. Prior to her appointment, Member Lamont served as Director of Policy Development in the Office of the Governor where she coordinated issues development and policy positions among agencies of state government with external constituencies. She administered a staff of policy specialists in areas ranging from economic development, education, health and human services, literacy and natural and cultural resources.

Member Lamont served as Director of the Illinois State Library for 16 years where she managed the nation's largest statewide library cooperative network; initiated state per capita grants for school library development; promoted community based literacy programs; and administered federal and state library grant programs. Under her leadership, numerous reading and author programs were established including Family Reading Night and the Illinois Author's Festival.

Member Lamont received her BA from Clarke College and an MS from the University of Illinois. She has an honorary doctorate in humane letters

from Dominican University. She has received numerous awards and honors from the American and Illinois Library Associations. She is the recipient of the Public Humanities Award from the Illinois Humanities Council; the Friend of Illinois Community College Libraries; and an Alumnus of the Year from the University of Illinois Graduate School of Library and Information Science. She has also served as the Vice-Chair of the US National Commission on Libraries and Information Services and a member of the US National Commission on Adult Literacy.

Member Lamont is married to Thomas R. Lamont and they have two sons.

Jimmie E. Robinson

Jimmie E. Robinson was appointed to the Illinois Educational Labor Relations Board by Governor Rod Blagojevich in 2004. Mrs. Robinson taught elementary school in Blue Island for thirty-four (34) years. She was active in every aspect of collective bargaining during her teaching career and served as grievance chair for over ten (10) years. As a member of the Illinois Education Association and the National Education Association, she lobbied the US Congress on behalf of education and witnessed the signing of the Collective Bargaining Law in Illinois. As a retired teacher, Mrs. Robinson remained active in the Illinois Education Association.

Jimmie E. Robinson was educated in the public schools of Chicago. She holds a B.A. in Education from Pestalozzi Froebel Teachers College; M.A. in Education and a M.S. in English from Chicago State University and has taken Doctoral courses from Peabody/Vanderbilt.

Member Robinson is married to William Robinson and they have one daughter.

Ronald F. Ettinger

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

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

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

Victor E. Blackwell

Victor E. Blackwell was appointed Executive Director of the Illinois Educational Labor Relations Board in February, 1996. Prior to his appointment, Mr. Blackwell served as Chief of Prosecutions at the Illinois Department of Professional Regulations for five years. He was also Chicago Personnel Manager for the Illinois Secretary of State from 1987 to 1991.

He was Personnel Analyst for the Illinois Secretary of State, an Adjudicator for the Illinois Department of Rehabilitation Services, and a Securities Legal Intern and Reference Library intern for the Illinois Secretary of State. Mr. Blackwell received his Juris Doctorate degree from Loyola University's School of Law where he graduated with honors, and his Bachelor of Arts degree from the University of Illinois in Political Science with triple minors in Economics, Sociology and Spanish.

Helen Higgins

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

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

Susan J. Willenborg

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

graduated magna cum laude in Religion from Carleton College in 1980.

Kathleen Liu Lyons

Kathleen Liu Lyons returned to the Board in February, 2005 and is currently serving as Associate General Counsel. Ms. Lyons originally joined the IELRB in February, 1996 as an Administrative Law Judge. Ms. Lyons was an ALJ from 1996 to July, 2001, at which time she left the IELRB to become Associate Director of Career Resources at Loyola University Chicago School of Law. Prior to joining the Board in 1996, Ms. Lyons practiced labor and employment law at Vedder Price Kaufman and Kammholz in Chicago, Illinois. Ms. Lyons is currently a member of the ISBE Due Process Screening Committee, and has served as a volunteer mediator for the Center for Conflict Resolution and an adjunct faculty member at Loyola University Chicago School of Law. She has also been active in the Women's Bar Association, the Chicago Bar Association, and Mothers of Multiples. Prior to her career in law, Ms. Lyons was a management consultant in Detroit, Michigan. Ms. Lyons received her JD degree from Loyola University Chicago School of Law, and her Bachelors of Business Administration from the University of Michigan.

AGENCY ACTIVITIES

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

Representation Cases

The major types of representation cases are those involving majority interest petitions and those involving petitions

seeking an election. The majority interest procedure was established by Public Act 93-444. Majority interest cases arise when a union submits dues deduction authorizations, authorization cards, signatures on a petition or other evidence demonstrating that it is supported by a majority of the employees in the bargaining unit. The case is investigated, and the union is certified as the exclusive representative within 30 days after service of the petition if the legal requirements are met. However, the majority interest procedure may not be used to decertify a union or when another union has lawfully attained representation rights.

The second category of representation cases are those where the petitioner seeks an election. These generally arise when a petitioner seeks representation by a union that does not represent the petitioned-for bargaining unit in whole or in part (commonly referred to as "RC" cases); when a group of employees no longer wish to be represented by an exclusive bargaining representative (commonly referred to as "RD" cases); when an employer is faced with a situation in which there are competing claims between labor organizations that they are the exclusive bargaining representative, or when the employer has reason to believe that an incumbent union no longer represents the majority of employees in

the bargaining unit (commonly referred to as "RM" cases); or when an exclusive bargaining representative wishes to add a group or groups of employees to its existing bargaining unit (commonly referred to as

"RS" cases). Once a petition is properly filed and the necessary showing of interest is provided to the Board, the matter is assigned to a Board Agent who then contacts the parties to begin the investigation to determine whether the parties will agree to a consent election agreement. In the event that the parties are unable or unwilling to execute a consent election agreement, the matter is set for hearing on those issues upon which the parties cannot agree. After the hearing is closed, the Administrative Law Judge issues a Recommended Decision and, where appropriate, a Direction of Election. In those cases in which the Administrative Law Judge directs that the filing of an appeal will not prevent conducting an election pending the Board's review, the election will be conducted and the votes will be impounded, segregating the ballots of those individuals who are the subject of the appeal to the Board. The ballots will be counted only upon the Board's ultimate decision in the case and in accordance with that decision.

Representation Cases 2010

Representation Cases Filed in FY 2010

Petition to Determine Representative (RC)	24
Petition to Decertify Representative (RD)	6
Petition to Determine Unit (RS)	22
Petition to Determine Representative-Employer Filed (RM)	2
Voluntary Recognition Petition (VR)	0
Unit Clarification Petition (UC)	26
Amendment to Certification Petition (AC)	3
MIP Cases (included in RC, and RS figures above)	38
Total	83

Agency Activity on All Representation Cases for FY 2010

Certification of Representative	9
Certification of Voluntary Recognition	0
Certification of Results	1
MIP Order of Certification	33
Withdrawal	12
Executive Director's Recommended Decision & Order	32
ALJ's Recommended Decision & Order	3
Elections	17
Cases Mediated by Board Agents	3

Mediation Cases

The second major type of case processed by the Board, mediation cases, are cases in which the parties, once engaged in bargaining for a collective bargaining agreement, notify the Board of the status of their negotiations and at some point engage in the process of mediation, fact-finding and/or interest arbitration. In those bargaining units consisting of professional/instructional personnel, the parties must report on the status of negotiations to the

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

Strike Activity FY 2010
(July 1, 2009 – June 30, 2010)

School County	Union Unit Description/No.	Notice Filed Date Settled	Strike Date Strike Days
University of IL Chicago	IFT Grad Employees (1272)	03/18/10 04/05/10	
Peoria SD #150	IFT, Local 780 Certificated personnel (1150)	07/01/09 01/05/10	
Kankakee SD #111	IFT, Local 604 Teachers (360)	12/04/09 1/22/10	1/19/10 4 days
Sandridge SD 172	IEA Certified teachers (29)	11/18/09 12/10/09	
Prairie-Hills Elem	IEA (200) Teachers, nurses,speech/ language pathology assistants	11/17/09 12/14/09	12/3/09 3 dock days
University of IL	Graduate Employees, IFT Grad. Assistants (2700)	10/19/09 11/17/09	11/16/09
Leyden HS Dis. 212	WSTU, #571, IFT-AFT Certificated teachers (269)	10/29/09 11/16/09	
North Shore SD 112	IEA (450)	09/09/09	

	Certified teachers	11/09/09	
Schiller Park SD 81	IEA(109) Certified teachers	10/28/09 11/11/09	
Hononegah CHSD 207	IEA Certified (132)	08/17/09 08/19/09	
O'Fallon Twp HS 203	IFT, Local 3939 Teachers (47)	07/31/09 08/11/09	
Flossmoor #161	IEA Certified (187)	09/23/09 10/01/09	
Ottawa Twp. HSD 140	IEA Teachers (110)	09/01/09 10/26/09	9/30/09 16 days

Total Notices Filed for FY 2010: 13

Total Strikes: 4

Kankakee School Dist. #111 (IFT)

Ottawa Twp. HS District 140 (IEA)

University of Illinois (IFT)

Prairie-Hills Elem School Dist. 144 (IEA)

Unfair Labor Practice Cases

Unfair labor practice cases are charges alleging that the conduct of an employer and/or a union constitute conduct proscribed by the Act and can be filed by educational employers, unions or employees. Once properly filed, an unfair labor practice charge is assigned to a Board Agent who conducts an investigation by contacting both the charging party and the charged party to obtain whatever testimony and/or documents they may wish to provide in support of or in response to the charge. Upon conclusion of the investigation, the Executive Director can either dismiss the unfair labor practice charge, a decision

that is appealable to the Board, or he may decide to issue a complaint and set the matter for hearing, absent a voluntary settlement of the case by the parties. In those cases in which a complaint issues, the matter is set for hearing and the parties are provided an opportunity to present whatever witnesses and/or documentary evidence they may wish to provide. At the close of the hearing, the Administrative Law Judge issues a Recommended Decision and Order in which he or she will either find that an unfair labor practice has been committed and order the appropriate remedy or dismiss the charge. Either of those decisions is appealable to the Board.

Unfair Labor Practice Cases 2010

Unfair Labor Practice Cases Filed in FY 2010

Unfair Labor Practice Charge Against Employer (CA)	184
Unfair Labor Practice Charge Against Union (CB)	56
Unfair Labor Practice Charge Contesting Fair Share Fees (FS)	99
Total	339

Agency Activity on All Unfair Labor Practice Cases for FY 2010

Withdrawn Pursuant to Settlement Agreement	114
Withdrawn	69
Executive Director's Recommended Decision & Order	105
ALJ's Recommended Decision & Order (including Fair Share)	43
Complaints Issued	44
Cases Mediated by Board Agents	43

Board Activity 2010

Board Opinion & Orders	19
Board Final Orders	156

Board and Court Cases

JULY 1, 2009 THROUGH JUNE 30, 2010

I. Jurisdiction/Constitutionality

II. Unfair Labor Practices

A. Employer Unfair Labor Practices

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

2. **Violation of Employee Rights**

- (a) ***Southern Illinois University-Edwardsville, 26 PERI 46; Case Nos. 2009-CA-0021-S and 2009-CA-0022-S (IELRB Opinion and Order September 17, 2009)***

The IELRB affirmed the Executive Director's recommended dismissal of two unfair labor practice charges. The individual Charging Party alleged that the state university employer violated the IELRA by removing him from paid administrative leave and by refusing to allow him to return to work under light duty restrictions. The IELRB found no evidence indicating that the university took these actions in response to the charging party's protected activity of filing a prior unfair labor practice charge. It rejected, for lack of factual support, Charging Party's contention concerning the employer's allegedly improper grievance processing. The IELRB concluded that the charging party lacked standing to raise an alleged violation of Section 14(a)(5).

- (b) ***Chicago Board of Education (Pugh), 24 PERI 71; Case Nos. 2009-CA-0032-C and 2009-CA-0047-C (IELRB Opinion and Order April 13, 2010)***

Where no exceptions were filed to the Executive Director's recommended dismissal of unfair labor practice charges, the IELRB determined that the parties waived their exceptions to that non-precedential dismissal, which was binding only on the parties. The Executive Director found that a portion of the charges against the employer-school district were untimely filed over six months after the events in question. The timely portions of the charge lacked merit because charging party didn't show she engaged in any statutorily protected activity prior to the time the employer allegedly took the adverse action against the union. The Executive Director concluded the charge against the union lacked merit.

- (c) ***Chicago Board of Education (Santiago), Case No. 2009-CA-0023-C***

The Executive Director issued a Recommended Decision and Order dismissing an unfair labor practice charge against Chicago Board of Education. The Executive Director determined the Charging Party had not established that (1) he engaged in concerted activity prior to the adverse employment action; (2) the CBE was aware of his engaging in any protected union activity; or (3) there was any causal connection between the protected activity and the adverse employment action. Because the Charging Party's exception contained no discussion of the required elements to establish a *prima facie* case of a violation of the Act, the IELRB affirmed the Executive Director's Recommended Decision and Order.

- (d) ***Alden-Hebron School District 19, Case No. 2009-CA-0023-C (IELRB Opinion and Order June 17, 2010)***

The Charging Party filed a timely exception to the Executive Director's Recommended Decision and Order dismissing his unfair labor practice charge. Because the Charging Party had failed to allege sufficient facts to establish that adverse action was taken against him because he engaged in protected concerted activity, the IELRB affirmed the Executive Director's Recommended Decision and Order.

3. **Employer Domination of Labor Organizations**

4. **Failure to Comply with a Binding Arbitration Award**

- (a) ***Illinois State University, Case No. 2009-CA-0001-S (IELRB Opinion and Order December 17, 2009)***

The International Brotherhood of Electrical Workers #197 filed an unfair labor practice charge against the University alleging that it had violated Sections 14(a)(8) and 14(a)(1) of the Act by failing to comply with an arbitration award. An ALJ determined a violation had occurred but denied the Union's motion for attorney's fees. The Union filed exceptions solely on the denial of attorney's fees and the University filed cross-exceptions to the ALJ's conclusion that it had violated the Act.

The Union filed a grievance alleging that the placement of approximately 80 light fixture lenses was awarded by Facilities Management personnel to building maintenance workers in violation of the collective bargaining agreement. The grievance proceeded to arbitration. Before the University rested, the University's attorney asked for and was granted a five minute recess to wait for a final witness to arrive. Following the recess, the University asked for an additional ten minute break because its witness was still ten minutes away. The University mentioned stipulating to what its witness would say, but ultimately decided to rest its case when the arbitrator refused to grant an additional ten minute recess.

On June 18, 2008, the arbitrator issued his decision sustaining the grievance and finding that the University violated the Agreement. The arbitrator ordered the University "to cease giving the assignments to maintenance repair workers and that the work will be assigned to the electricians." The University subsequently advised the Union that it would not comply with the arbitrator's award. The Union then filed charges with the IELRB.

In considering the University's exceptions, the only issue for the IELRB to decide was whether the arbitration award was binding. The University argued that the ALJ misconstrued its position and applied an improper burden of proof in his decision.

The IELRB held that the ALJ addressed all of the University's specific objections to the arbitrator's substantive and procedural rulings during the arbitration hearing, as well as the University's objections to the award and the arbitrator's conclusions therein, and properly rejected the University's contention that the arbitration hearing was not fair and impartial.

The University also contended that it was denied due process when the ALJ granted the Union's summary dispositive motion and did not hold a hearing in this matter. The IELRB concluded that there is nothing in the Act or Rules and Regulations precluding the ALJ from granting such a motion and the University was not denied due process as it received notice of the motion and an opportunity to respond.

The IELRB affirmed the ALJ's denial of the Union's motion for attorney's fees because, while the University's reasons for not complying with the arbitration award were not meritorious, its arguments did not constitute "frivolous litigation" under the Act.

(b) *Griggsville-Perry Community Unit School District No. 4, Case No. 2009-CA-0027-S (IELRB Opinion and Order February 18, 2010)*

The District filed exceptions after an ALJ determined that the District violated Section 14(a)(8) and 14(a)(1) by refusing to comply with an arbitration award. The District asserted that the ALJ erred in concluding the arbitration was binding because the arbitrator exceeded his authority by reading into the parties' collective bargaining agreement a "reasonable cause" standard for dismissal of an employee and by ordering his reinstatement. The District cited *Board of Educ. of Harrisburg Community School District No. 3 v. IELRB*, 227 Ill. App. 3d 208, 591 N.E.2d 85 (4th Dist. 1992). In *Harrisburg*, the Appellate Court found that an arbitrator had exceeded his authority in requiring "just cause" for a dismissal from an extra-duty coach position where the parties' agreement contained no such provision, and, in fact, the parties' bargaining history indicated that the employer had specifically refused to adopt such a requirement. The Court determined, however, that the arbitrator properly decided that the employer violated a contractual due process requirement. The Court remanded the case to the IELRB to remand to the arbitrator to fashion a remedy not based on an assumption that the employer was required to have "just cause" to terminate the extra-curricular duty.

The IELRB found that the arbitrator did not consider *Harrisburg* in rendering his decision. Accordingly, the IELRB remanded the case to the arbitrator with instructions to address the *Harrisburg* decision.

2. Employer Free Speech

B. Union Unfair Labor Practices

1. **Duty of Fair Representation**

- (a) ***Proviso Teachers Union, a council of the West Suburban Teachers Union, Local 571, IFT-AFT, Case No. 2008-CB-0015-C (IELRB Opinion and Order August 11, 2009)***

The Charging Party alleged that the Union violated Section 14(b)(1) of the Act when it failed to file a grievance on his behalf following his termination. The IELRB affirmed the Executive Director's Recommended Decision and Order dismissing the charges on the grounds that the Charging Party produced no evidence that the Union acted in a deliberate and severely hostile manner or engaged in fraudulent or deceitful conduct in its decision not to grieve his dismissal.

- (b) ***Chicago Teachers Union (Santiago), Case No. 2009-CB-0004-C (IELRB Opinion and Order August 11, 2009)***

The Charging Party filed exceptions to the Executive Director's Recommended Decision and Order finding that there was no evidence of intentional misconduct by the Union in failing to appeal the denial of Charging Party's grievance. The IELRB affirmed the Executive Director's Recommended Decision and Order as the exceptions only restated certain facts and point out instances where the charging party asserts that the Union or the Chicago Board of Education violated their collective bargaining agreement.

- (c) ***Chicago Teachers Union (Pugh), 24 PERI 71; Case Nos. 2009-CB-0013-C and 2009-CB-0014-C (IELRB Opinion and Order April 13, 2010)***

The Executive Director dismissed unfair labor practice charges finding that the Charging Party had not presented any evidence that the Union engaged in intentional misconduct. After reviewing her exceptions, the IELRB affirmed the Executive Director's dismissal as the Charging Party presented certain evidence in her exceptions that she did not produce during the investigation which the IELRB is precluded from considering. The IELRB further held that the Charging Party had presented no evidence that the Union failed to file grievances on her behalf due to any fraudulent, deceitful or deliberate and severely hostile action.

2. **Unlawful Restraint and Coercion**
3. **Duty to Bargain in Good Faith**

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

1. **Timely Filed**
(a) ***Service Employees International Union, Local 73 (Hannah), Case No. 2009-CB-0008-S (IELRB Opinion and Order January 21, 2010)***

The IELRB affirmed the Executive Director's Recommended Decision and Order dismissing the unfair labor practice charges against the Union as untimely filed.

- (b) ***Joliet Public School District 86, Case No. 2009-CA-0057-C (IELRB Opinion and Order April 13, 2010)***

The IELRB struck the Charging Party's exceptions to the Executive Director's dismissal of her charges. Section 1120.30(c) of the IELRB's Rules and Regulations provides that parties may file exceptions no later than fourteen days after receipt of the Executive Director's Recommended Decision and Order. Section 1100.30(d) of the IELRB's Rules provides that in proceedings before the IELRB,

“extensions of time will be granted only upon timely written motion...” Here, although the Charging Party’s attorney requested an extension of time for filing exceptions, the request was not made within the fourteen day period following issuance of the Executive Director’s Recommended Decision and Order.

- (c) *American Federation of State, County and Municipal Employees, Local 949, Case No. 2009-CB-0017-C (IELRB Opinion and Order April 13, 2010)*

(See II.C.1.b)

- 2. Failure to Serve Exceptions
- 3. Consideration of New Evidence, Arguments

- a. *Chicago Teachers Union (Pugh), 24 PERI 71; Case Nos. 2009-CB-0013-C and 2009-CB-0014-C (IELRB Opinion and Order April 13, 2010)*

(See II.B.1.c)

- 4. Standard for Issuance of Complaint
- 5. Settlement Agreement
- 6. Bias
- 7. Agency
- 8. Interference with a Witness
- 9. Investigation Procedures
- 10. Failure to File a Timely Answer

- 11. Interlocutory Appeals

- i. *Matteson School District No. 162, Case No. 2009-CA-0041-C (IELRB Opinion and Order March 16, 2010)*

Complainant filed an unfair labor practice charge against the District alleging that it violated Section 14(a)(1), (2), (3), (4) and (7) of the Act. The Acting Executive Director issued a Complaint and Notice of Hearing solely on Complainant’s allegation that the District refused to process Complainant’s grievance and dismissed all of the remaining allegations. The District filed timely exceptions. The IELRB struck the District exceptions, noting that the Executive Director’s issuance of a complaint is not a final order appealable to the IELRB. The IELRB further noted that a respondent’s recourse is to present its evidence to an Administrative Law Judge at the hearing.

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

III. Representation Cases

- A. Contract Bar
- B. Blocking Charge Rule
- C. Appropriate Unit
- D. Statutory Exclusions

- 1. Supervisor
- 2. Confidential
- 3. Managerial
- 4. Short-term

(a) ***College of DuPage, Case No. 2009-RS-0011-C
(IELRB Opinion and Order October 15, 2009)***

The College of DuPage Adjuncts Association, IEA-NEA filed a majority interest petition with the IELRB seeking to add all part-time counselors and advisors employed by the College of DuPage to an existing unit of part-time adjunct faculty. An ALJ found that the part-time counselors and advisors were educational employees pursuant to Section 2(b) of the Act, were not short-term employees excluded by Section 2(q) of the Act, and shared a sufficient community of interest with the existing bargaining unit members that the proposed unit was appropriate. The College filed timely exceptions.

The IELRB held that if the language of Section 2(b) were applied to exclude all part-time counselors and advisors who do not each a minimum of three credit hours it would lead to the absurd and unjust result that part-time counselors and advisors who may have worked up to 80% of a full-time position would be excluded from the protections of the Act while faculty who teach one three-credit course per semester would be included. The IELRB further held that College did not meet their burden of establishing that the petitioned-for employees do not have a reasonable expectation that they will be rehired by the College for the same service in a subsequent educational calendar year necessary to exclude them as short-term employees under Section 2(q) of the Act. Taking into consideration the historical pattern of recognition, whether the employees share a community of interest based on the similarity of their skills and functions, the degree to which they have contact and their work processes are integrated, their interchangeability, supervision, wages hours and working conditions and the desires of the employees, the IELRB concluded that the petitioned-for unit was an appropriate unit under Section 7(a) of the Act.

5. Part-time Academic Employees of Community Colleges

E. Unit Clarification/Self-Determination Petitions

F. Election Objections

G. Employer Filed Petitions

IV. The IELRB and Arbitration

A. Failure to Arbitrate/Arbitrability

(a) ***Cobden School Unit District No. 17, _____ PERI _____; Case No. 2008-CA-0023-S (IELRB Opinion and Order May 20, 2010)***

The Cobden Education Association, IEA-NEA filed an unfair labor practice charge with the IELRB alleging that the school district violated Section 14(a)(1) of the Act by refusing to arbitrate a grievance filed by a non-tenured teacher over the District's decision non-renew the teacher's employment. The grievance alleged that the District (1) failed to give any irremediable cause for non-renewal of employment; and (2) failed to maintain a personnel file as required by the collective bargaining agreement in that when the teacher and the Association Representative went to review materials which may have been used in determining a decision for non renewal, the file contained no evidence that would support a non renewal. The grievance was denied at each level.

Before the IELRB, the District argued the grievance was substantively inarbitrable both because there was no contractual agreement to arbitrate the substance of the dispute and the dispute is not arbitrable under Section 10(b) of the Act. The District further argued that *Niles Township High School District 219 v. IELRB*, which held that grievances concerning violations of certain provisions in the collective bargaining agreement concerning evaluations and personnel files were not arbitrable, was controlling. 379 Ill.App.3d 22, 883 N.E.2d 29 (1st Dist. 2007).

The IELRB distinguished this case from *Niles Township* while holding that the District violated Section 14(a)(1). The IELRB noted that the grievances in *Niles Township* claimed that, because the reason for non-renewal of certain non-tenured teachers was not apparent in or supported by the evaluations, the employer had to make the case that evaluation is meaningless. In contrast, the IELRB found that here the Association's claims are tied to specific language in the evaluation plan and the collective bargaining agreement, and as a result the grievance is contractually arbitrable in its entirety. However, the IELRB also held that portions of the grievance concerning whether the teacher was non-renewed for just cause is not arbitrable under the Illinois Supreme Court's interpretation of Section 10-22.4 of the School Code in *Board of Education of Rockford School District No. 205 v. IELRB*, 165 Ill.2d 80, 649 N.E.2d 369 (1995).

As a result, the IELRB concluded that the District violated Section 14(a)(1) by refusing to arbitrate the portions of Cox's grievance concerning evaluations and his personnel file, but not by refusing to arbitrate the portion of his grievance concerning whether he was dismissed for just cause.

Board Chairman Sered and Board Member Lamont dissented in part finding that there was not a contractual agreement to arbitrate the remainder of the teacher's grievance.

- (a) **Enforcement of Awards**
- (b) **Referral to Arbitration/Deferral to Awards**

H. Compliance/Remedies/Sanctions

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

J. Fair Share

K. Other

Printed by Authority of the State of Illinois
Printed on Recycled Paper
Printed by the IELRB
100 – 1/2011