

STATE OF ILLINOIS  
EDUCATIONAL LABOR RELATIONS BOARD

ANNUAL REPORT

FISCAL YEAR 2021

July 1, 2020 – June 30, 2021

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# ILLINOIS EDUCATIONAL LABOR RELATIONS BOARD

June 7, 2022

Dear Governor Pritzker:

Thank you for allowing the Illinois Educational Labor Relations Board the opportunity to present its annual report to you, the General Assembly and the citizens of Illinois for Fiscal Year 2021. The attached report summarizes the work performed by the Board during that period.

Fiscal Year 2021 presented unprecedented challenges for the Illinois Educational Labor Relations Board as it did for many other State agencies. COVID-19 affected nearly all of our operations to some degree or another. The Board made prompt and thoughtful decisions that were necessary to adapt our services to the unique needs of our constituents. Remote work became a reality for our employees at the apex of the pandemic following the Governor's Emergency Declaration. The Board made other adjustments to accommodate the circumstances of the pandemic. The Board changed the method of delivery for legal correspondence to its constituents; it offered electronic service of process via email; it reinstated mail ballot elections to avoid transmission of the COVID-19, subject to spread by voters gathering at polling places; it converted board meetings and administrative hearings to remote WebEx instead of in-person and it instituted office health and safety protocols to protect its workers and the public.

Fiscal Year 2021 was by no means a typical year for the Board. Our case intake went essentially unchanged from the previous year, even though most of the public educational institutions that we serve were temporarily closed for various periods of time, then later, only partially reopened, to resume remote and hybrid learning.

Nevertheless, in spite of the many challenges, the Board maintained its core services to the public and met its primary responsibilities of certifying newly established collective bargaining units and resolving unfair labor practice charges in Illinois public schools. Agency attorneys and staff adequately adjusted to the remote work requirements and transitioned away from the offices while maintaining case productivity levels, as reflected in the attached statistical case reports.

As we move forward into FY22, the Board intends to reinstitute many of its conventional pre-pandemic methods of operation without surrendering some of the functional advantages and innovations it learned from overcoming the challenges of the pandemic.

Finally, the Board is greatly appreciative of the Governor's leadership during this crisis year as his directives, attentiveness and concern for our employees' health and well-being allowed us to fully protect ourselves, while continuing to provide the high caliber of service to the public that they have come to expect.

Sincerely,

Lara Shayne

Chair

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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 2021. 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 FY21, 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 current Board Members are:**

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 2021

### **Representation Cases Filed in FY 2021:**

Petition to Determine Representative (RC)	18
Petition to Decertify Representative (RD)	2
Petition to Determine Unit (RS)	30
Petition to Determine Unit/Employer Filed (RM)	0
Voluntary Recognition Petition (VR)	0
Unit Clarification Petition (UC)	22
Amendment to Certification Petition (AC)	2
MIP Cases (includes RC and RS figures above/not added to total)	45
<b>Total</b>	<b>74</b>

### **Agency Activity on Representation Cases for FY 2021:**

Certification of Representation	1
Certification of Results	1
Certification of Voluntary Representation	0
MIP Order of Certification	38
Withdrawal	4
Executive Director's Recommended Decision & Order	21
ALJ's Recommended Decision & Order	1
Elections/Polls	3
Cases mediated by Board Agents	0
<b>Total</b>	<b>69</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 2021**

**Unfair Labor Practice Charges Filed in FY 2021:**

Charge Against Employer (CA)	89
Charge Against Labor Organization or Agents (CB)	10
<b>Total</b>	<b>99</b>

**Agency Activity on Unfair Labor Practice Cases for FY 2021:**

Withdrawn (including w/d by settlement)	47
Executive Director's Recommended Decision and Order	21
ALJ's Recommended Decision and Order	7
Complaints issued	33
Cases mediated by Board Agents	1
<b>Total</b>	<b>109</b>

**Board Activity FY 2021**

Board Opinion and Orders	26
Board Final Orders	40
<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 2021**  
(July 1, 2020 – June 30, 2021)

<b>School County</b>	<b>Union Unit /No.</b>	<b>Notice Filed Date Settled</b>	<b>Strike Date Strike Days</b>
Illinois Math & Science Academy	IMSA Council, Local 604, IFT/AFT (teachers, librarian, learning support)	3/29	0, 0, 0
Bourbonnais SD #53	Bourbonnais Ed Assoc., IEA	1/29; 3/4	6, 0, 6
Univ of IL (Chgo)	INA (Nurses)	9/1, 9/12, 9/19	7, 7, 0
Univ. of IL (Chgo)	Local 73 SEIU (Professional)	9/3, 9/14, 9/24	10, 10, 0
Univ. of IL (Chgo)	Local 73 SEIU (Technical)	9/3, 9/14, 9/24	10, 10, 0
Univ. of IL (Chgo)	Local 73 SEIU (Clerical)	9/3, 9/14, 9/24	10, 10, 0
Univ. of IL (Chgo)	Local 73 SEIU (Service & Maintenance)	9/3, 9/14, 9/24	10, 10, 0

**Total Notices Filed for FY2021: 7**  
**Total Strikes for FY2021: 6**

## **MAJOR BOARD AND COURT CASES**

### **REPRESENTATION CASES**

Exclusions from Status as Educational Employee  
Managerial Employee  
Confidential Employee  
Supervisory Employee

### **Unit Clarification**

- **Maine Teachers' Association, IEA-NEA/Maine Township High School District 207, 37 PERI 19, Case Nos. 2018-UC-0077-C & 2018-UC-0026-C (IELRB Opinion and Order, July 27, 2020) (appeal pending)**

The Union filed a charge alleging that the District committed unfair labor practices within the meaning of Section 14(a) of the Act by unilaterally removing bargaining unit work. That same day, the Union filed a unit clarification petition seeking to clarify the bargaining unit at issue in its unfair labor practice charge to include the newly created Specialist position. The charges were consolidated for hearing and the ALJ found that the District violated the Act when it refused to bargain over the Specialist or the removal of bargaining unit work and clarified the unit to include the Specialist. The Employer filed exceptions. The Board affirmed the ALJ's finding of a violation and clarification of the unit. However, the Board modified the ALJ's remedy to remove the restoration of the status quo because such a remedy, when put into place, could result in the three people hired as Specialists losing work that the ALJ and the Board had determined was bargaining unit work.

- **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**

- **DeBerry/Chicago Board of Education, 37 PERI \_\_\_\_, Case No. 2020-CA-0017-C (IELRB Opinion and Order, September 17, 2020) (appeal pending)**

The Board found that the Executive Director correctly dismissed charge where the Charging Party failed to make any showing of a causal connection between her protected activity and the Employer's adverse action against her.

- **Birtell/Northern Illinois University, 37 PERI 104, Case No. 2020-CA-0046-C (IELRB Opinion and Order, April 15, 2021)**

Unfair labor practice charge without any connection between the alleged misconduct and the Charging Party's union or protected activity was dismissed. Without that connection, there is no violation of the Act.

#### **Retaliation**

- **Service Employees International Union, Local 73/Cook County School District 130, 37 PERI \_\_\_\_, Case No. 2019-CA-0022-C (IELRB Opinion and Order, July 27, 2020) (appeal pending)**

The Board affirmed an ALJ RDO finding that the Employer violated Sections 14(a)(3) and 14(a)(5) of the Act in connection with its discharge of bargaining unit member bargaining unit member and refusal to arbitrate a grievance challenging her discharge. The Board found that there was a causal connection between bargaining unit member's union activity and her discharge and that the Employer's proffered business reason for discharging bargaining unit member, she took a Ziploc bag from a teacher's supply cabinet without asking, was not legitimate. Supervisor's anti-union animus was attributable to the Employer's decision makers, under an agency relationship, said the Board. The Board determined that the ALJ correctly relied upon a letter of reprimand the Employer issued to another employee accused of stealing as evidence of disparate treatment. The Board adopted the ALJ's finding that the election



of remedies clause did not apply and that the District violated Section 14(a)(1) by refusing to arbitrate the grievance.

○ **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.

Domination or Interference with a Labor Organization

Refusal to Bargain in Good Faith

○ **Maine Teachers' Association, IEA-NEA/Maine Township High School District 207, 37 PERI 19, Case Nos. 2018-UC-0077-C & 2018-UC-0026-C (IELRB Opinion and Order, July 27, 2020) (appeal pending) (see above)**

○ **Western Illinois University/UPI, Local 4100, IFT-AFT, AFL-CIO, 37 PERI \_\_\_\_, Case No. 2021-CA-0009-C (IELRB Opinion and Order, September 17, 2020) (see below)**

○ **Chicago Teachers Union, Local No. 1, IFT-AFT, AFL-CIO/Chicago Board of Education, 37 PERI \_\_\_\_, Case No. 2021-CA-0014-C (IELRB Opinion and Order, September 17, 2020) (see below)**

- **West Suburban Federation of Teachers, Local 571, IFT-AFT, AFL-CIO/Proviso THSD 209, 37 PERI \_\_\_, Case No. 2021-CA-0041-C (IELRB Opinion and Order, November 5, 2020) (see below)**
- **Chicago Teachers Union, Local No. 1, IFT-AFT, AFL-CIO/Chicago Board of Education, Case No. 2021-CA-0043-C (Board Order, November 5, 2020) (see below)**
- **Governor's State University/UPI, Local 4100, Case No. 2020-CA-0041-C (IELRB Opinion and Order, April 15, 2021)**

The Board reversed an EDRDO and remanded the matter to the Executive Director for issuance of a complaint and notice of hearing. The charge alleged the University violated the Act by unilaterally terminating its tuition waivers policy with several other universities. The Board indicated that it was unclear from the investigatory record what the status quo was when the University implemented its policy, what the University's role was in the discontinuance of tuition waivers, and whether the Union's conduct amounted to a waiver of bargaining rights. The Board found that these unresolved questions of fact and or law warranted remand for hearing.

- **Deerfield Education Association, IEA-NEA/Deerfield School District 109, 2021 IL ERB LEXIS 16, Case No. 2019-CA-0053-C (IELRB Opinion and Order, May 20, 2021) (appeal pending)**

Applying the framework set forth by the NLRB addressing the issue of the work product doctrine and an employer's duty to provide information, the Board found that the District had not demonstrated that the requested information was protected by the work product and as a result, the District violated Section 14(a)(5) by its refusal to provide the Union with that information. The Board emphasized that its determination was specific to the facts of the case and that whether the work product doctrine applied would be determined on a case by case basis.

#### **Refusal to Arbitrate**

- **Service Employees International Union, Local 73/Cook County School District 130, 37 PERI \_\_\_, Case No. 2019-CA-0022-C (IELRB Opinion and Order, July 27, 2020) (appeal pending) (see above)**
- **Western Illinois University/UPI, Local 4100, IFT-AFT, AFL-CIO, 37 PERI \_\_\_, Case No. 2021-CA-0009-C (IELRB Opinion and Order, September 17, 2020) (see below)**

- **Chicago Teachers Union, Local No. 1, IFT-AFT, AFL-CIO/Chicago Board of Education, 37 PERI \_\_\_, Case No. 2021-CA-0014-C (IELRB Opinion and Order, September 17, 2020)** (see below)
- **West Suburban Federation of Teachers, Local 571, IFT-AFT, AFL-CIO/Proviso THSD 209, 37 PERI \_\_\_, Case No. 2021-CA-0041-C (IELRB Opinion and Order, November 5, 2020)** (see below)
- **Ball-Chatham Educational Association, IEA-NEA/Ball Chatham CUSD 5, 38 PERI 15, Case No. 2020-CA-0005-C (IELRB Opinion and Order, June 17, 2021)** (appeal pending)

The Board affirmed the ALJ's finding that the District committed an unfair labor practice by refusing to arbitrate a grievance. The grievance alleged that the Union was not informed of new hires as required by the CBA and that new hires were inappropriately placed on the salary scale. The grievance requested the District place all members on the salary schedule accordingly and provide back compensation to all affected employees. The Board dismissed the District's argument that the grievance was untimely as an objection to procedural arbitrability that was to be resolved by the arbitrator, not the Board. The Board found that neither the Illinois School Code nor Section 4 of the IELRA precluded arbitration. The Board found no merit in the District's argument that there was no contractual obligation to arbitrate the dispute. The grievance involving placement on the salary schedule fell within the terms of the CBA because the CBA provided that employees shall be paid in accordance with the salary schedule and acknowledged the possibility of horizontal movement.

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

### **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.

## **Union Unfair Labor Practices**

- **Wheeler/Local Education Association of District 300, IEA-NEA, 37 PERI \_\_\_, Case No. 2019-CB-0019-C (IELRB Opinion and Order, July 31, 2020)**

The Charging Party filed exceptions to an Executive Director's Recommended Decision and Order dismissing her charge. The Charging Party asserted that the Union violated the Act when it failed to provide her with legal representation or reimburse her for attorney's fees in litigation against her former employer, citing *NLRB v. Weingarten*. The Board found no merit to this assertion, indicating that *Weingarten* applies to conduct by an employer under Section 14(a)(1) of the Act, not to a union's duty of fair representation under Section 14(b)(1). The Board determined that the Charging Party, as an individual employee, did not have standing to pursue her claim that the Union violated Section 14(b)(5) of the Act (refusing to reduce a collective bargaining agreement in writing and signing such agreement). Furthermore, said the Board, the charge was barred by the doctrine of res judicata because it was based upon the same facts that she alleged in a previous charge.

- **Ibrahim-Smith/Cook County College Teachers Union, Local 1600, IFT-AFT, AFL-CIO, 37 PERI \_\_, Case No. 2019-CB-0014-C (IELRB Opinion and Order, October 15, 2020)**

The Board affirmed the Executive Director's dismissal of an unfair labor practice charge. The Charging Party alleged that the Union failed to represent her during the processing of grievances in violation of Section 14(b)(1), that it adjusted the grievance process in violation of 14(b)(2) and that it also violated 14(b)(5). The Board determined that the Union's conduct did not rise to the level to breach its duty of fair representation in violation of 14(b)(1) and that the Charging Party, as an individual employee, lacked standing to file 14(b)(2) (prohibits labor organizations from restraining or coercing an employer in the selection of its representative for the purposes of bargaining or adjustment of grievances) or 14(b)(5) (refusing to reduce a collective bargaining agreement in writing and signing such agreement) charges.

- **Smoler/West Northfield Township Teachers Association, IFT Local 1274, 37 PERI 88, Case No. 2020-CB-0002-C (IELRB Opinion and Order, February 18, 2021)** (see below in Untimely Charge)
- **McClain/Service Employees International Union, Local 73, 37 PERI 93, Case No. 2020-CB-0008-C (IELRB Opinion and Order, March 18, 2021)** (see below in Untimely Charge)
- **Rentsch/Rockford Education Association, IEA-NEA, 37 PERI 115, Case No. 2020-CB-0010-C (IELRB Opinion and Order, May 20, 2021)** (see below in Untimely Exceptions)

## **Unfair Labor Practice Procedures**

### **Untimely Charge**

- **Brzeski/Chicago Board of Education, Case No. 2019-CA-0082-C (IELRB Opinion and Order, November 19, 2020)**

Newly discovered evidence the Charging Party submitted with his exceptions to an EDRDO, even if admissible, did not establish that the charge was timely when evidence already in the record indicated that the Charging Party knew of the adverse action more than six months before he filed the charge.

- **Smoler/West Northfield Township Teachers Association, IFT Local 1274, 37 PERI 88, Case No. 2020-CB-0002-C (IELRB Opinion and Order, February 18, 2021)**

The six-month period used in the EDRDO to dismiss portions of charge as untimely was incorrect. Despite finding that these portions of charge were timely filed, the Board determined that the charge should still be dismissed because there was no evidence of intentional misconduct on the Union's part.

- **McClain/Service Employees International Union, Local 73, 37 PERI 93, Case No. 2020-CB-0008-C (IELRB Opinion and Order, March 18, 2021)**

The alleged misconduct the Charging Party alleged amounted to a violation of the Act occurred outside of the six month limit and cannot be the subject of a timely charge. The Board affirmed the EDRDO dismissing the charge.

### **Untimely Exceptions**

- **Rentsch/Rockford Education Association, IEA-NEA, 37 PERI 115, Case No. 2020-CB-0010-C (IELRB Opinion and Order, May 20, 2021)**

Where exceptions were filed by email after the close of business and were thus considered filed on the following business day, the Board struck the Charging Party's exceptions as untimely filed.

### **Failure to Serve Exception**

### **Injunctive Relief**

- **Western Illinois University/UPL, Local 4100, IFT-AFT, AFL-CIO, 37 PERI \_\_\_\_\_, Case No. 2021-CA-0009-C (IELRB Opinion and Order, September \_\_\_\_\_, 17, 2020)**

The Board granted the Union's request for preliminary injunctive relief under Section 16(d) of the Act in a charge alleging that the University violated the Act by publicly announcing that it was returning to face to face classes during the COVID-19 pandemic without bargaining with the Union, refusing to bargain about working conditions for bargaining unit members who work in the library, and refusing to respond to the Union's demand for arbitration except to state that relevant administrators were on vacation. The Board granted the Union's request to seek injunctive relief insofar as the portion of the Complaint alleging bad faith bargaining, not the alleged refusal to arbitrate. The Board found that requiring employees to be physically present for face to face instruction during the

COVID-19 pandemic is a mandatory subject of bargaining because it is a health and safety issue. Acknowledging that it had not directly addressed the issue of employee safety as a mandatory subject of bargaining, the Board relied upon NLRB and ILRB cases in its determination that there was good cause to believe that the Union would succeed in its argument that employee safety is a mandatory subject of bargaining. The Board noted that the fact that the University already announced its decision on the matter being bargained required the Union to bargain uphill to reverse a decision that was made and publicly announced unilaterally. Such action, said the Board, violates the central command of the duty to bargain, which requires bargaining at a meaningful time over mandatory subjects of bargaining. The Board found there was a significant likelihood that the Union would be able to demonstrate that the University failed to bargain in good faith and therefore, reasonable cause to believe that the Act may have been violated. The Board concluded that preliminary relief was just and proper because the effects of the University's failure to bargain were serious and extraordinary. The Board recognized that the public interest, particularly that of the community surrounding the University, would be affected to a great degree by its alleged refusal to bargain because it could potentially lead to the further and unnecessary spread of COVID-19. Ordinary IELRB remedies, such as backpay, would not be adequate to remedy the irreparable harm resulting from the potential spread of COVID-19.

- **Chicago Teachers Union, Local No. 1, IFT-AFT, AFL-CIO/Chicago Board of Education, 37 PERI \_\_\_\_, Case No. 2021-CA-0014-C (IELRB Opinion and Order, September 17, 2020)**  
The Board denied the Union's request for preliminary injunctive relief under Section 16(d) of the Act in a charge alleging that the Employer violated Sections 14(a)(1) and 14(a)(5) of the Act by requiring bargaining unit employees in the title or classification of school clerk to be physically present in schools during the pandemic without bargaining in good faith with the Union and by preventing the Union's grievance from being arbitrated. The Board stated that there was good cause to believe the Union would succeed on its argument that employee safety is a mandatory subject of bargaining. Yet the Board did not find there was significant likelihood of the Union prevailing on the merits because critical facts as to whether the Employer's conduct amounted to bad faith bargaining were in dispute. Whether the Union succeeds on the merits depends on a relative assessment of the credibility of both parties' witnesses, which is done by the ALJ, not the Board. The Board further found that there was nothing in the record before it to indicate a significant likelihood that the Union would succeed on the merits as to its allegation that the Employer violated the Act by taking action to prevent the grievance from being arbitrated, thus there was not reasonable cause to believe that the Act may have been violated. The Board relied the

Union's hazard pay proposal as an indicator that ordinary remedies could suffice. The majority of the Board concluded that even if the Union had satisfied the first prong of test, preliminary injunctive relief would not be just and proper. In a footnote, Member Sered said that if the Union had satisfied the first prong, she would have found in favor of the Union because there may be irreparable harm that would make injunctive relief just and proper.

○ **West Suburban Federation of Teachers, Local 571, IFT-AFT, AFL-CIO/Proviso THSD 209, 37 PERI \_\_\_, Case No. 2021-CA-0041-C (IELRB Opinion and Order, November 5, 2020)**

The Board granted the Union's request for preliminary injunctive relief under Section 16(d) of the Act in a charge alleging that the Employer violated Section 14(a)(5) of the Act by requiring bargaining unit members to be physically present in schools during a pandemic to teach remote learning without bargaining in good faith with the Union over its decision. Prior to the start of the school year, the parties entered into a MOA that allowed bargaining unit members the choice of where to teach remote learning. About a month into the school year, the Superintendent directed bargaining unit members to teach from their classrooms as their student continued to learn remotely. Bargaining unit members returned to schools only to discover that there was no heat at Proviso East High School, no hot water at Proviso East or West, many rooms in all of the buildings had not been cleaned, school administrators failing to wear masks, and the District unable to supply appropriate personal protective equipment. The Board noted that employee safety is a mandatory subject of bargaining. The Board found there was a significant likelihood that the Union would be able to demonstrate that the District failed to bargain in good faith, and therefore reasonable cause to believe that the Act may have been violated. The Board determined that the public interest would be affected to a great degree by the District's refusal to bargain because it could lead to the further and unnecessary spread of COVID-19. Ordinary IELRB remedies, such as backpay, are not adequate to remedy the irreparable harm resulting from the potential spread of COVID-19, said the Board. The effects of the District's failure to bargain, are serious and extraordinary. Consequently, preliminary relief was just and proper. The Board granted the Union's request and authorized its General Counsel to seek the following injunctive relief: To enjoin the District from requiring bargaining unit members to teach remote learning from the District's



buildings until it has bargained in good faith with the Union over its decision to do so.

- **Chicago Teachers Union, Local No. 1, IFT-AFT, AFL-CIO/Chicago Board of Education, Case No. 2021-CA-0043-C (Board Order, November 5, 2020)** [*Opinion and Order expected following November 19, 2020 meeting*]

The Board denied the Union's request for preliminary injunctive relief under Section 16(d) of the Act. The Board's Executive Director issued a Complaint and Notice of Hearing alleging that the Employer violated Section 14(a)(5), and derivatively 14(a)(1) of the Act, by failing to provide the Union with information and by announcing its intent to re-open school buildings for pre-kindergarten and students enrolled in moderate and cluster intensive programs later in its second quarter of the school year. The Board stated that although employee safety is a mandatory subject of bargaining, there was no showing by the Union that the Employer took, or was about to take, any action to the require bargaining unit members at issue to be physically present in schools. The Board found there was not reasonable cause to believe that the Act had been violated because the record did not indicate that the Employer made any movement in furtherance of its goal that would amount to a unilateral change. The Board specified that it made no finding as to the Employer's argument that Section 4.5 of the Act renders the resumption of in person learning a permissive subject of bargaining. The Board concluded that even if there was reasonable cause to believe that the Act may have been violated as to the alleged refusal to provide information, there is nothing extraordinary to warrant injunctive relief.

- **CTU, Local No. 1, IFT-AFT, AFL-CIO/Chicago Board of Education, Case No. 2021-CA-0043-C (IELRB Opinion and Order, January 21, 2021)**

The Board previously denied the Union's original request for preliminary injunctive relief in its charge alleging the Employer violated the Act by announcing its intent to require certain bargaining unit members to return to schools during the COVID-19 pandemic later in its second quarter of the school year. Therein, the Board recognized that while employee safety is a mandatory subject of bargaining, there was not reasonable cause to believe that the Act was violated where there was nothing to indicate that the Employer made any movement in furtherance of its goal. The Employer subsequently announced specific dates for bargaining unit members to return

to schools for in-person learning, and the Union filed a renewed motion for injunctive relief. The Board denied the renewed motion because there were factual disputes as to whether the Employer's conduct amounted to bad faith bargaining that needed to be resolved in an evidentiary hearing before an ALJ and an unresolved issue of law as to whether Section 4.5 of the Act applied.

○ **Cicero School District No. 99/Cicero Council, West Suburban Teachers Union, Local 571, IFT-AFT, AFL-CIO, Case No. 2021-CA-0051-C (January 21, 2021)**

The Union filed a request that the Board seek preliminary injunctive relief in its charge alleging the Employer violated Section 14(a)(5) by refusing to disclose and or refusing to bargain over the public health data it used or will use to make decisions concerning the COVID-19 pandemic status and designated modes of instruction and by unilaterally announcing its intent to transition to a blended hybrid learning model that would require all bargaining members to return to work in-person on a date certain. The Board authorized its General Counsel to seek injunctive relief to prevent the District from requiring bargaining unit members to report for in-person learning pending the Board's resolution of the unfair labor practice charge.

○ **Elmhurst Community Unit School District No. 205/Elmhurst Teachers Council, Local 571, IFT-AFT, AFL-CIO & Elmhurst Paraprofessional and School Related Personnel Council, Local 571, Case Nos. 2021-CA-0049-C & 2021-CA-0050-C (IELRB Opinion and Order, February 18, 2021)**

The Board denied the Union's request for injunctive relief in its two charges against the District. The charges alleged that the District violated Section 14(a)(5) when it refused to bargain in good faith over its decision to resume hybrid learning during the COVID-19 pandemic and unilaterally changing the criteria for the resumption of hybrid learning. The Board emphasized that these cases were about the process of bargaining and noted that employee safety is a mandatory subject of bargaining. The Board found that the Union could not meet the threshold requirement necessary for injunctive relief, success on the merits of the case, because it was not clear that the District engaged in bad faith bargaining.

○ **West Suburban Federation of Teachers, Local 571/Proviso THSD 209, Case No. 2021-CA-0041-C (Board Order, March 4, 2021)**

The Board previously sought injunctive relief to enjoin the District from requiring bargaining unit members to teach remote learning from the District's buildings until it bargained in good faith with the Union over its decision to do so. As the matter was pending in the Circuit Court of Cook County, the Union filed a motion for supplemental relief requesting the Board seek supplemental relief in the pending matter to prevent the District from resuming its proposed

hybrid learning schedule pending a full administrative hearing on the merits of the unfair labor practice charge. The Board denied the Union's motion.

