

STATE OF ILLINOIS  
EDUCATIONAL LABOR RELATIONS BOARD

ANNUAL REPORT

FISCAL YEAR 2015

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Governor Bruce Rauner  
Office of the Governor  
207 State Capitol  
Springfield, Illinois 62706

Dear Governor Rauner:

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 (the Board) for Fiscal Year 2015. This report summarizes the work performed by the Board over the course of the Fiscal Year.

Fiscal Year 2015 was a dynamic year for the Illinois Educational Labor Relations Board. Our newly elected Governor, Bruce Rauner, appointed two new Board Members to fill the expired vacancies on the Board. Attorney Andrea Waintroob was appointed Chair and former Congresswoman Judy Biggert was appointed a Board Member. They both assumed their respective roles in April of 2015.

In July, the Board restructured its staffing and operations to more efficiently manage and process unfair labor practice charges, representation cases and Board appellate work. This restructuring resulted in an increase in case productivity, diversification of staff duties and substantial cost savings to the State of Illinois. The restructuring included the separation from service of our longtime General Counsel whose vacancy was fortunately filled by the Board's Associate General Counsel, a 30 year veteran of legal practice with the Board. The duties of investigative and legal staffers were reassigned as well to balance and more efficiently manage the caseload. Finally, procedures for the agency's Mediation Program were tailored to make it more efficient. First, we made mediations voluntary. We also sped up the process and made it more cost-efficient by centralizing mediations at our Springfield and Chicago offices. Finally, we enhanced the efficiency of the process by returning the mediation role to the investigator who handled the charge, thus avoiding duplicative efforts by Board personnel. All of these beneficial measures were met with enthusiasm and support by the Board's Advisory Committee, labor law practitioners and the general public that we serve.

We expect to further enhance our services throughout the upcoming years. The Board intends to continue administering the Illinois Educational Labor Relations Act in a fair, prompt and efficient manner, exploring new and innovative ways to provide better future service to the public, while maintaining the high standards, quality of decisions and professional care that we have consistently afforded constituents in the past.

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

Sincerely yours,

Andrea R. Waintroob  
Chairman

## **HISTORY AND FUNDING SOURCES**

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

The Illinois Educational Labor Relations Board's had an appropriated budget of \$1,698,300 during Fiscal Year 2015. 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 the first 9 months of FY15, the Board was comprised of Chairman Lynne Sered and Board Members Ronald Ettinger, Gilbert O'Brien, Michael Prueter and Michael Smith<sup>1</sup>. In April, 2015 Governor Rauner appointed Andrea Waitroob as Chair and Judy Biggert was appointed to join Board Members Gilbert O'Brien, Michael Prueter and Lynne Sered.

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<sup>1</sup> Michael Smith passed away during the 2015 Fiscal Year.

## AGENCY MISSION AND STRUCTURE

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

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

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

After all unfair labor practice charges are fully investigated and reviewed by the Executive Director, the charge is either dismissed in the form of an Executive Director's Recommended Decision and Order, or sent to Complaint to be heard by an Administrative Law Judge (ALJ). The ALJ will conduct a full evidentiary hearing on the Complaint and at the conclusion of the hearing, issue a Recommended Decision and Order. All formal decisions issued by the Executive Director and an Administrative Law Judge are subject to review by the Board pursuant to a party filing exceptions or by the Board upon its own motion. The Board will review and discuss cases on its docket in open session. Thereafter, the Board will vote on the disposition of each case in open session. A Board decision may be appealed to the Illinois Appellate Court.

**The current Board Members are:**

Andrea Waitroob, Chair  
Appointment 04/06/15

Judy Biggert  
Appointed 04/06/15

Gilbert O'Brien  
Appointed 06/20/11

Michael H. Prueter  
Appointed 04/13/15

Lynne O. Sered  
Appointed 04/13/15

**Andrea R. Waitroob, Chair**

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

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

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

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

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

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

## **Judy Biggert, Member**

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

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

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

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

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

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

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

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

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

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

**Gilbert O’Brien, Member**

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

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

**Michael H. Prueter, Member**

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 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 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. He is a resident of Naperville.

**Lynne O. Sered, Member**

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

Chairman Sered’s legal background includes serving as Counsel to the Honorable Wilford W. Johansen, Member of the National Labor Relations (“NLRB”) in



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

As an attorney in private practice with the law firm of Scariano, Kula, Elch & Himes, Chtd., Chicago and Chicago Heights, Illinois, she counseled school districts, private employers and labor clients regarding litigation, legal strategies and policy issues pertaining to labor law and collective bargaining issues.

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

In addition, Ms. Sered served as Legal Director of the American Jewish Congress, Midwest Region, in Chicago, where she managed the organization's not-for-profit legal program, focusing on civil liberties and civil rights and oversaw its pro bono clinic providing legal services to the indigent. Her professional experience is also highlighted by her roles as a domestic policy specialist with the Jewish Community Relations Council and as Midwest regional director of the Jewish Labor Committee.

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

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

### **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.

**Helen Higgins, General Counsel**

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

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

## **AGENCY ACTIVITIES**

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

### **Representation Cases**

The most common types of representation cases are petitions for representation and petitions for unit clarification. Petitions for representation are generally filed by a labor organization seeking to be certified as the exclusive bargaining representative of a unit of educational employees or seeking to add employees to a unit which is already represented. The Act provides for a majority interest procedure to expedite certification if the petition is supported by more than 50 percent of the proposed bargaining unit and there are no objections or other issues which could affect majority status. The Act also provides for representation elections to be conducted if the unit sought will contain professional and nonprofessional employees; the unit is an historical one; if the petition seeks to decertify an exclusive representative or, if the petition is supported by at least 30 percent of the proposed bargaining unit.

The second major category of representation cases are petitions for unit clarification. The unit clarification process is 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 2015

### **Representation Cases Filed in FY 2015**

Petition to Determine Representative (RC)	22
Petition to Decertify Representative (RD)	4
Petition to Determine Unit (RS)	13
Petition to Determine Unit/Employer Filed (RM)	0
Voluntary Recognition Petition (VR)	0
Unit Clarification Petition (UC)	24
Amendment to Certification Petition (AC)	4
MIP Cases (includes RC and RS figures above/not added to total)	(30)

**Total** **67**

### **Agency Activity on Representation Cases for FY 2015**

Certification of Representation	5
Certification of Results	1
Certification of Voluntary Representation	0
MIP Order of Certification	31
Withdrawal	16
Executive Director's Recommended Decision & Order	19
ALJ's Recommended Decision & Order	1
Elections/polls	9
Cases mediated by Board Agents	2

**Total** **84**

## **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 charged party and the charging party meet with a Board agent to attempt to resolve the dispute and withdraw the unfair labor practice charge. Mediation is an important case processing tool. The Illinois Educational Labor Relations Board is successfully using mediation to resolve disputes in an amicable manner often avoiding the more costly and adversarial process of litigation.

## Unfair Labor Practice Cases 2015

### **Unfair Labor Practice Cases Filed in FY 2015**

Unfair Labor Practice Charge Against Employer (CA)	132
Unfair Labor Practice Charge Against Labor Organization or Agents (CB)	32
Unfair Labor Practice Charge Contesting Fair Share Fees (FS)	58
<b>Total</b>	<b>222</b>

### **Agency Activity on All Unfair Labor Practice Cases for FY 2015**

Withdrawn Pursuant to Settlement Agreement	41
Withdrawn	41
Executive Director's Recommended Decision and Order	58
ALJ's Recommended Decision and Order	16
Complaints issued	48
Cases mediated by Board Agents	31
<b>Total</b>	<b>235</b>

### **Board Activity 2015**

Board Opinion & Orders	18
Final Orders	58
<b>Total</b>	<b>76</b>

**Impasse Cases**

The Board also processes impasse cases, where the parties engaged in collective bargaining, notified the Board of the status of their negotiations and at some point engaged in the process of mediation, fact-finding and/or interest arbitration. In bargaining units consisting of professional/instructional personnel, the parties must report on the status of negotiations to the Board at 90, 45 and 15 days prior to the beginning of the

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

**Strike Activity FY 2015**

(July 1, 2014 – June 30, 2015)

<b>School County</b>	<b>Union Unit /No.</b>	<b>Notice Filed Date Settled</b>	<b>Strike Date Strike Days</b>
Galesburg CUSD #205	IEA (680) teachers/paraprofessionals (4 make-up days, 6 dock)	8/04/14 8/28/14	8/13/14 10 days
Highland CUSD #5	IEA (182) Full & P-T certified (no dock, 6 personal days)	8/06/14 9/18/14	9/11/14 6 days
Richmond Burton HS #157	IEA (56) Teachers	8/15/14 9/23/14	
Hinsdale HS Dist. 86	IEA (377) Full & P-T certificated	10/3/14 10/9/14	
Belvidere CUSD 100	IEA (530) Certified	9/18/14 (amended 10/2/14) 10/14/14	
Waukegan SD 60	IFT (1200) Certificated (full & p-t) return to work (no dock, make-up)	09/19/14 10/30/14 10/31/14	10/02/14 20 days

<b>School County</b>	<b>Union Unit /No.</b>	<b>Notice Filed Date Settled</b>	<b>Strike Date Strike Days</b>
Univ. of IL Hospital & Health Sciences System	IL Nurses Association (1150)	10/10/14 10/20/14	
Pleasant Plains CUSD #8	IEA (93) Teachers, counselors, Athletic dir., nurses	11/13/14 12/11/14	
Maywood SD	SEIU Local 73 FT admin assist., sec. Clerks, instructional assist.	12/15/14	
Murphysboro CUSD #186	IEA (146) Certified employees	12/18/14 12/18/14	
Kishwaukee College	IFT (81) Faculty	01/05/15 01/19/15 TA	
Kinnikinnick SD131	IEA (105) Full & P-T cert. teachers	01/13/15 02/20/15 TA	
Rockton SD #140	IEA (85) Full & P-T cert. teachers	02/13/15 02/23/15	
Roxana CUSD #1	IEA (133) Teachers	3/16/15 4/01/15	

**Total Notices Filed for FY2015:** 14  
**Total Strikes for FY2015:** 3



## **MAJOR BOARD AND COURT CASES**

July 1, 2014 through June 30, 2015

### **Representation Cases**

#### **Appropriate Bargaining Unit**

**Board of Trustees of University of Illinois v. IELRB, et al., 2015 IL App (4<sup>th</sup>) 140557, \_\_\_ N.E.3d \_\_\_, 2015 WL 782392 (4<sup>th</sup> Dist. 2015)**

The IELRB certified a union as the exclusive bargaining representative of bargaining unit composed of high school teachers at the University of Illinois Laboratory High School and another union as the exclusive representative of a separate bargaining unit composed of the other nontenure-track faculty at the University's Urbana-Champaign campus. The University challenged the certifications on the basis that they were not consistent with the IELRB's Rules concerning presumptively appropriate bargaining units at the University of Illinois. The Appellate Court found that the IELRB's determination that the bargaining unit of teachers at the University of Illinois Laboratory High School met the standards of the IELRB's University of Illinois Rules was not clearly erroneous. The Appellate Court upheld the IELRB's conclusion that the requirements for certifying a bargaining unit other than the presumptively appropriate unit had been satisfied: that the unit was otherwise appropriate under Section 7(a) of the Act; that there were special circumstances and compelling justifications making it appropriate for the IELRB to establish a bargaining unit different from the presumptively appropriate units; and that establishment of a different unit would not cause undue fragmentation of bargaining units or proliferation of bargaining units. The Appellate Court also found that, since the IELRB did not err in certifying the bargaining unit at the University of Illinois Laboratory High School, the University's argument that the other bargaining unit which the IELRB had certified must be deemed inappropriate to the extent that it did not include the teachers at the Laboratory High School must fail. Accordingly, the Appellate Court affirmed the IELRB's certification of the two bargaining units.

## **Unfair Labor Practices**

### **Employer Unfair Labor Practices**

#### **Violation of Employee Rights**

#### **Chicago Board of Education/Chicago Teachers Union, Local No. 1, IFT-AFT, AFL-CIO, 31 PERI 24, Case No. 2012-CA-0016-C (IELRB Opinion and Order, July 17, 2014) (appeal pending)**

The IELRB concluded that the Employer had violated Sections 14(a)(3) and (1) of the Act by issuing an employee a final “unsatisfactory” performance rating, removing him from his position, and reassigning him to the Network Office. The IELRB found that the Union had established a prima facie case, and that the alleged legitimate reasons that the Employer offered for its conduct were pretextual. The IELRB determined that the Employer could not avoid responsibility for the unfair labor practice based on the fact that the administrator who ordered the employee to be removed from his position was not shown to have had an improper motivation. The IELRB found that the administrator who ordered the employee to be removed from his position based his decision on the recommendation of a supervisor who was improperly motivated and did not conduct an independent or substantive investigation.

#### **Decatur School District 61/Vicki Lynn Maddox, 31 PERI 45, Case No. 2010-CA-0018-S (IELRB Opinion and Order, August 21, 2014)**

The IELRB determined that the Employer did not violate Sections 14 (a)(3) and (1) of the Act by taking various actions against the Complainant. The IELRB rejected the procedural points raised by the Complainant concerning the number of continuances the Employer was granted and the fact that the ALJ did not ask her how she wished to proceed with the closing argument. The IELRB noted that the ALJ had granted the Employer’s motion for a directed version, and that the Complainant’s representative was given the opportunity to respond, and did respond, to that motion. As to the merits, the IELRB concluded that the Complainant did not establish a prima facie case that the Employer violated Section 14(a)(1) or 14(a)(3) of the Act. The IELRB found that the Complainant engaged in protected activity when she and another employee met with the Employer’s Director of Human

Resources, but that the Complainant failed to prove that the person whom she contended took the actions against her ever learned of her protected activity. The IELRB found that the Complainant engaged in union activity and that the Employer knew of that activity, but that she had failed to prove that the Employer took adverse employment actions against her. The IELRB determined that, even if the Complainant had shown that the Employer took adverse action against her, she did not establish that there was any causal connection between her protected activity and any adverse employment action.

**Lake Forest School District 115/Lake Forest Education Association, IEA-NEA, 31 PERI 67, Case No. 2013-CA-0069-C (IELRB Opinion and Order, October 16, 2014)**

The IELRB found that the Employer did not violate Sections 14(a)(3), (5) and (1) of the Act by paying non-striking employees for the make-up days that they worked, as well as for the days that they worked during the strike. The IELRB stated that the employer and the union must bargain the amount due to employees who work during a strike. The parties disputed the meaning of their agreements. The IELRB found that, although there was some evidence in support of the Union's position, the Union had the burden of proof, and the record was too ambiguous on this point to conclude that the Employer had violated Section 14(a)(3) of the Act. The IELRB found that it could not conclude that the Employer violated Section 14(a)(5) of the Act for the same reason.

**Aurora East School District 131/Robert Green, 31 PERI 99, Case No. 2014-CA-0010-C (IELRB Opinion and Order, December 18, 2014)**  
(appeal pending)

The IELRB determined that the Employer did not violate Sections 14(a)(1), 14(a)(3) or 14(a)(4) when it terminated the Charging Party. The IELRB found that the Charging Party did not present any evidence that the Employer took adverse action against him because he engaged in protected concerted activity, because he engaged in union activity, or because he used or participated in the IELRB's processes. The IELRB noted that it had ruled that mere contract violations do not constitute unfair labor practices. The IELRB determined that the Charging Party's claims that his dismissal violated the Illinois and United States Constitutions were outside of the IELRB's jurisdiction.

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

### **Mundelein Consolidated High School District 120/Mundelein Education Association, IEA-NEA, 31 PERI 57, Case No. 2012-CA-0088-C (IELRB Opinion and Order, September 18, 2014)**

The IELRB determined that the Employer violated Sections 14(a)(5) and (1) by unilaterally changing employees' job qualifications. The IELRB found that the Employer's actions changed the status quo with respect to job qualifications and that the job qualifications of the Employer's certified employees were a mandatory subject of bargaining. The IELRB also found that the fact that the Union did not demand bargaining over changes to job descriptions implemented in 2010 did not waive the Union's right to bargain over changes to job qualifications implemented in 2012, where the Union demanded bargaining over the changes implemented in 2012.

### **Lake Forest School District 115/Lake Forest Education Association, IEA-NEA, 31 PERI 67, Case No. 2013-CA-0069-C (IELRB Opinion and Order, October 16, 2014) (above)**

### **Southern Illinois University Carbondale/SIUC Non-Tenure Track Association, IEA-NEA, Case No. 2011-CA-0037-S; Southern Illinois University Carbondale/Association of Civil Service Employees, IEA-NEA, Case No. 2011-CA-0038-S; Southern Illinois University Carbondale/SIUC Tenure Tenure-Track Faculty Association, IEA-NEA, Case No. 2011-CA-0039-S, 31 PERI 98 (IELRB Opinion and Order, December 18, 2014)**

These three consolidated cases involved, respectively, the negotiation of successor collective bargaining agreements for three bargaining units at the University represented by the IEA-NEA. The IELRB found that the University did not bargain in good faith to impasse before implementing its "last, best, and final" offers for new collective bargaining agreements. The IELRB noted that, during the negotiations in each case, the University held to its position that a budgetary shortfall should be resolved by requiring employees to take four unpaid furlough days. The IELRB found that the University took a take-it-or-leave-it approach to this issue. The IELRB found that the overall record demonstrated that the University went through the motions of bargaining without an open mind or a sincere desire to reach

an agreement, and that, instead, the University wanted to get to a point where it could declare “impasse” as quickly as possible, so that it could impose the terms that it wanted. The IELRB concluded that the University violated Sections 14(a)(5) and (1) of the Act.

### **Refusal to Arbitrate**

### **Refusal to Comply with a Binding Arbitration Award**

### **Chicago Board of Education/Chicago Teachers Union, Local No. 1, IFT-AFT, AFL-CIO, \_\_ PERI \_\_, Case No. 2014-CA-0032-C (IELRB Opinion and Order, February 19, 2015)**

The arbitrator determined that the Employer violated the collective bargaining agreement when it assigned all counselors at a high school the responsibility to teach a class in addition to their regularly scheduled counseling duties without additional compensation. The Employer claimed that the arbitration award was not binding because the parties allegedly removed violations of the applicable section of the collective bargaining agreement from the grievance procedure by agreeing to the language in that section which provided as follows: “Disagreements over this section shall be resolved by the counselor, the principal and the Professional Problems Committee.” The IELRB determined that the arbitrator’s decision drew its essence from the collective bargaining agreement. The IELRB also found that the arbitrator implicitly decided that the grievance was contractually arbitrable in spite of the above contract language. The IELRB concluded that, given the deference given to arbitrators and the extremely limited nature of review of arbitration awards, the arbitrator did not exceed her authority, and thus, the award was binding. The IELRB also emphasized that the Employer waived its argument that the grievance was inarbitrable because of the above contract language by failing to raise that argument before the arbitrator and by agreeing with the Union to submit the dispute to arbitration.

## **Union Unfair Labor Practices**

### **Duty of Fair Representation**

#### **McHenry County College Adjunct Faculty Association, IEA-NEA/James Campbell, 31 PERI 48, Case No. 2014-CB-0006-C (IELRB Opinion and Order, August 21, 2014)**

The IELRB determined that the Union did not commit a breach of its duty of fair representation in violation of Section 14(b)(1) of the Act by allegedly violating its bylaws with respect to a memorandum entered into with the Employer. The IELRB stated that, as a general matter, contract ratification issues are regarded as internal union matters. The IELRB determined that, thus, the Charging Party's claim that the Union violated its bylaws with respect to the approval of a grievance settlement document as to which the Charging Party's role was as a member of the Union's Executive Committee considering the document did not establish a breach of the Union's duty of fair representation. The IELRB also determined that, even if the duty of fair representation applied, the Charging Party had not provided sufficient evidence that the Union had violated its duty of fair representation. The IELRB found that stray language used by union officials did not reflect the severe level of hostility necessary to establish a violation of the duty of fair representation.

#### **Local 604, IFT-AFT, AFL-CIO/Robert Green, 31 PERI 102, Case No. 2014-CB-0002-C (IELRB Opinion and Order, December 18, 2014)** (appeal pending)

The IELRB concluded that the Union did not violate Section 14(b)(1) of the Act by failing to represent the Charging Party in his appeal to the Illinois State Board of Education following his termination. The IELRB found that the Charging Party's claim was not within the scope of the Union's duty of fair representation. The IELRB noted that it had ruled that mere contract violations do not constitute unfair labor practices. The IELRB determined that the Charging Party's claims that his dismissal violated the Illinois and United States Constitutions were outside of the IELRB's jurisdiction.

**Oswego Transportation Association, IEA-NEA, Kelly Young, 31 PERI 103, Case No. 2014-CB-0009-C (IELRB Opinion and Order, December 18, 2014)**

The Charging Party claimed that the Union had violated Section 14(b)(1) of the Act by failing to file and/or properly process her grievances. The IELRB concluded that the Union did not violate Section 14(b)(1). The IELRB determined that the Union did not engage in intentional misconduct. The IELRB found that the Charging Party had provided no evidence that the Union had displayed hostility toward her, let alone the severe level of hostility required to demonstrate intentional misconduct. Similarly, the Charging Party found that a Union officer's alleged comments did not rise to the level of dishonesty required to establish intentional misconduct under the Act. The IELRB noted that, as to one of the Charging Party's concerns, the Union met with the Employer and came to an agreement they considered favorable for the Charging Party, and that, as to her other concern, the Union met with the Employer and obtained information showing that she had been treated similarly to other employees. The IELRB stated that there was no evidence that the Union's conduct was intentionally aimed at harming the Charging Party.

**University Professionals of Illinois, Local 4100, IFT-AFT, AFL-CIO/Brian McKenna, \_\_ PERI \_\_, Case No. 2014-CB-0015-C (IELRB Opinion and Order, February 19, 2015) (appeal pending)**

The Charging Party claimed that the Union had violated Section 14(b)(1) of the Act by improperly "trading-off" the interests of one bargaining unit in order to achieve benefits for another bargaining unit. The IELRB determined that multi-unit bargaining is permissible under the Act, and that therefore, a union must logically have the same discretion to balance the differing interests of the different units when it is engaging in multi-unit bargaining as a union does to balance the differing interests within a single unit when it is bargaining on behalf of that unit alone. The IELRB found that there was no evidence of severe hostility toward the Charging Party on the part of the Union, but at most, evidence of disagreement within the Union's bargaining team about the direction bargaining should take. The IELRB also found that there was no evidence that the union was dishonest in any way, or that the union targeted the Charging Party. The IELRB concluded that there was no evidence of intentional misconduct on the part

of the Union, and that therefore, the Union did not violate its duty of fair representation.

The Charging Party also claimed that the Union should have filed an amendment of certification petition when the Employer, the Board of Governors of State Colleges and Universities, was replaced by an independent board of trustees for each of the universities previously under the authority of the Board of Governors. The IELRB concluded that whether the Union should have filed an amendment of certification petition was a matter within the Union's discretion and did not relate to the Union's representation of the Charging Party under the collective bargaining agreement. The IELRB concluded that the Union did not violate Section 14(b)(1) of the Act.

### **Unfair Labor Practice Procedure and Related Issues**

#### **Timely Filed**

**Rodney Finley v. Chicago Board of Education, et al., 2014 IL App (1<sup>st</sup>) 132644-U (Nov. 24, 2014) (unpublished order)**

The Appellate Court noted that the Charging Party's brief failed to comply with Illinois Supreme Court Rule 342(a), but nonetheless chose to address his arguments. The Charging Party received an email more than six months before he filed his charge which stated that the Union was withdrawing its demand for arbitration of his grievance. Accordingly, the Appellate Court found that the Charging Party's unfair labor practice charges were time-barred, and affirmed the IELRB's dismissal of the charges.

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

**AFSCME Council 31, Local 2338/Emma Cleggett, 31 PERI 27, Case No. 2014-CB-0002-S (IELRB Opinion and Order, July 17, 2014)**

The IELRB struck the Charging Party's exceptions due to her failure to attach a certificate of service or otherwise demonstrate that she had served her exceptions on the Respondent.



### **Failure to File Brief Conforming to Court Rules**

**Madeline Richard v. IELRB, et al., 2014 IL App (1<sup>st</sup>) 133312-U, 2014 WL 7495322, 31 PERI 89 (Dec. 5, 2014) (unpublished order)**

The IELRB moved to strike the Charging Party's brief on the basis that it failed to conform to Illinois Supreme Court Rule 341(h) and to dismiss the appeal or, alternatively, to extend the time to file the IELRB's brief. The court denied the IELRB's motion to dismiss the appeal, but struck the Charging Party's brief. The Charging Party filed a new brief, but the court found that the new brief failed to comply with Illinois Supreme Court Rules 341(h)(6), (h)(7) and (h)(9). The court found that, due to the inadequacies in the Charging Party's brief, it was unable to fully decipher what, if any, possible arguments or claims of error were being presented or existed. The court determined that the Charging Party's failure to comply with the Illinois Supreme Court Rules resulted in a forfeiture of her arguments on appeal and affirmed the IELRB's decision dismissing her unfair labor practice charge.

### **Preliminary Injunctive Relief**

**Board of Trustees of the University of Illinois/Campus Faculty Association, Non-Tenure Track, Local 6546, AFT/IFT/AAUP, AFL-CIO, 31 PERI 72, Case No. 2015-CA-0006-S (IELRB Opinion and Order, October 16, 2014)**

The IELRB granted the Union's request that it seek preliminary injunctive relief. The IELRB found that there was reasonable cause to believe that the Employer had violated Sections 14(a)(5) and 14(a)(1) of the Act by unilaterally deciding not to grant a salary increase to the members of a newly certified bargaining unit until an agreement was bargained with the Union. The IELRB found that there was an established practice of granting employees merit-based increases on an annual basis. The IELRB determined that the status quo as to the non-tenure track faculty was the increase which the Employer had decided to grant for the 2014-2015 academic year. The IELRB found that the Employer's actions with respect to other bargaining units were not controlling. Therefore, the IELRB concluded that there was a significant likelihood that the Union would prevail on the merits of its claim that the Employer violated Sections 14(a)(5) of the (1) by withholding salary increases. The IELRB determined

that there was a significant likelihood that the Union would prevail on the merits of its claim that the Employer violated Section 14(a)(1) of the Act, based on a theory that the Employer's conduct would predictably undermine employees' exercise of their statutory rights.

The IELRB also concluded that preliminary injunctive relief was "just and proper." The IELRB found that there would be irreparable harm because the injury was of a continuing nature and because the IELRB's remedies are not designed to correct the unquantifiable harm to the parties' newly formed collective bargaining relationship. The IELRB also found that, if a preliminary injunction were not issued, it would allow the Employer to undermine the statutory scheme for certifying unions as the exclusive representatives of educational employees and, thus, would be contrary to the public interest. The IELRB also found that the Employer's conduct, if not restrained, could potentially erode the Union's support among bargaining unit employees, as well as create a chilling effect on other employees who might be considering union representation.

Chairman Sered dissented. She stated that there would not be any irreparable harm if preliminary injunctive relief were denied. She stated that the IELRB's traditional remedies would be adequate to compensate the employees, and that any "chilling effect" was purely speculative. She also stated that the effect of the withholding of salary increases until the parties reached an agreement was not so serious and extraordinary as to warrant injunctive relief.

### **Motion to Stay**

### **Board of Trustees of the University of Illinois/Uni Faculty Organization, IEA-NEA, Case No. 2013-RC-0008-S (IELRB Order, July 17, 2014)**

The Employer filed a motion to stay enforcement of the bargaining obligation arising from the IELRB's Order of Certification in this case. The IELRB denied the Employer's motion. The IELRB found that requiring the Employer to bargain in good faith with the Union would not endanger the public, that granting a stay would be contrary to the public policy promoting orderly and constructive relationships between educational employers and their employees, and that there was not a reasonable likelihood that the Employer would succeed on the merits.

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