ILLINOIS PUBLIC LABOR RELATIONS ACT:

RECENT DEVELOPMENTS

Board and Court Decisions
October 2005 – October 2006

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I. Jurisdiction

A. Joint employer status

In State of Illinois, Department of Central Management Services (Corrections), Case No. S-RC-05-126, 22 PERI __ (IL LRB SP 2006), the Board upheld the Administrative Law Judge's determination that the State was a joint employer of employees of an educational entity which, pursuant to contract with the State, provided educational services to individuals incarcerated in State correctional facilities. The American Federation of State, County and Municipal Employees (AFSCME) was the employees' exclusive bargaining representative pursuant to an Illinois Educational Labor Relations Board certification, and AFSCME sought an additional Board certification naming the State as employer.

The Board found that the Illinois Supreme Court's Wexford decision did not preclude dual-certification. Moreover, it determined that the facts were distinguishable from those presented in Wexford, because in the instant case the State exercised virtually total control over all economic matters affecting the employees' employment. The Board concluded that the presence of the State was essential to an effective bargaining relationship, and ordered it certified as an employer.

B. The six-month limitations period

In Londa Shamley v. Chicago Transit Authority et al., 22 PERI 38 (2006), the Illinois Appellate Court for the First District, in an unpublished order, upheld the Board's dismissals of charges as untimely because they were not filed within six months of the time that the Charging Party learned of the alleged unfair labor practice.

In Village of River Forest, 22 PERI 55 (IL LRB SP 2006), the Board upheld the Administrative Law Judge's dismissal of unilateral change charges as untimely. The Union filed its charges within six months of the unilateral elimination of a police lieutenant position. However, the Employer's Village Administrator had, more than a year earlier, clearly informed the Union president of the Employer's plan to eliminate the position by attrition, and had shortly thereafter implemented changes to the lieutenant position consistent with its plan. The Administrative Law Judge found, and the Board agreed, that the statute of limitations began to run at the time that the Employer informed the Union president of its intentions.

In State of Illinois, Department of Central Management Services (Corrections) and International Union of Operating Engineers, Local 399 (Wiggs), 22 PERI 85 (IL LRB SP 2006),

the Board upheld the Executive Director's dismissals of the charges as untimely. The Board found that the Charging Party was clearly aware, more than six months prior to the time he filed the charges, of the conduct he alleged violated the Act.

II. Representation issues

A. Bars to representation proceedings

(1) Blocking charges

In Village of Western Springs, Case No. S-RD-06-001, 22 PERI __ (IL LRB SP 2006), the Board agreed with the Executive Director that pending refusal to bargain charges alleging that the Employer had withheld regular annual wage increases from bargaining unit employees were sufficient to block a decertification election pending resolution of the charges. The Board noted that it was the Employer, not the petitioning employees, which contested the blocking order, and, upon consideration of all the circumstances, found that blocking the decertification election was justified. The Board cited NLRB caselaw holding that a pending refusal to bargain allegation is a particularly appropriate basis for blocking a decertification election.

In Pace Northwest Division, 22 PERI 15 (IL LRB SP 2006), the Board refused to block a representation election even though it ordered the issuance of a complaint alleging that the employer had maintained and enforced an overly broad no-solicitation rule. The Board found that the Charging Party, the incumbent representative, had failed to demonstrate that the Employer had discriminated between it and the rival union in its application of the rule.

(2) Other bars to an election

In City of Harvey, Case No. S-RC-06-179, 22 PERI __ (IL LRB SP 2006), the Board upheld the Administrative Law Judge's dismissal of a majority interest petition filed three weeks after the Board had conducted an election for the employees at issue. The Union argued that because it was seeking majority interest certification, not an election, the election bar rule should not apply, but the Board, noting its rules to the contrary, disagreed.

The following non-precedential decisions regarding bars to an election have issued this past year: Village of Winfield, 22 PERI 96 (IL LRB SP ALJ 2006); County of Perry (Health Department), 22 PERI 74 (IL LRB SP ALJ 2006); Chicago Park District, 22 PERI 75 (IL LRB LP ALJ 2006).

B. Employer petitions

The following non-precedential decision regarding employer representation petitions has issued this past year: County of Livingston (Livingston Manor), 22 PERI 76 (IL LRB SP ALJ 2006).

C. Unit determination/appropriateness

In State of Illinois, Department of Central Management Services, Case No. S-RC-07-032, 22 PERI __ (IL LRB SP 2006), the Board upheld the Administrative Law Judge's dismissal of a petition which sought to add approximately 18 employees in the Technical Manager IV title in the State Department of Central Management Services (CMS) to an existing unit of State employees, RC-62. The Board noted that there were 130 total employees in the title employed at various State departments, and concluded that the Union had not presented evidence sufficient to raise an issue as to whether the CMS employees had a separate and identifiable community of interest apart from the other employees in the same title. Thus, it found the petitioned-for unit inappropriate.

In City of Harvey, Case No. S-RC-06-179, 22 PERI __ (IL LRB SP 2006), the Board upheld the Administrative Law Judge's dismissal of a petition seeking a unit of telecommunicators. The Board noted that it has generally found such units inappropriate. In addition, the issue had been litigated in a previous case between the same parties, and the petitioning Union had not filed exceptions to that Administrative Law Judge's determination that the unit was not appropriate.

In County of Cook (Provident Hospital), 22 PERI 12 (IL LRB LP 2006), the Board reversed the Administrative Law Judge's conclusion that a bargaining unit of two administrative titles at one Cook County health care facility was not appropriate for the purposes of bargaining. The Employer and a rival union contended that the only appropriate unit consisted of all employees in those titles at all County healthcare facilities. The Board disagreed, noting that Provident, the facility at issue, was separately certified and accredited, and had its own chief operating officer, budget, labor relations/personnel office and payroll department. In addition, the Board relied upon the fact that the Employer had repeatedly stipulated to the appropriateness of other single-facility units at Provident, and thus its contention that the unit sought would result in undue proliferation lacked merit. The case is on appeal in the Illinois Appellate Court for the First District, 1-06-0770, 1-06-0894.

In Metropolitan Water Reclamation District of Greater Chicago, 22 PERI 61 (IL LRB LP 2006), the Board upheld the Administrative Law Judge's dismissal of a representation petition which sought to sever a group of peace officers from an existing unit which also included non-peace officers. The Board agreed with the Administrative Law Judge that the Petitioner had failed to meet the traditional severance standards and that Section 3(s)(1) of the Act did not provide a vehicle for a rival union to sever an existing mixed unit of peace officers and other employees. The case is pending on appeal in the Illinois Appellate Court for the First District, 1-06-1645.

The following non-precedential decisions regarding unit determination have issued this past year: County of Stephenson, et al., 22 PERI 30 (IL LRB SP ALJ 2006); City of Harvey, 22 PERI 29 (IL LRB SP ALJ 2006).

D. Unit clarification

The Board was reversed by the Illinois Appellate Court for the Fourth District in State of Illinois, Department of Central Management Services (Department of Corrections) v. State of Illinois, Illinois Labor Relations Board, State Panel et al., 364 Ill. App. 3d 1028, 848 N.E.2d 118, 22 PERI 54 (2006). The issue in the two consolidated cases concerned the circumstances under which an employer can seek to remove employees from an existing bargaining unit. The court found, contrary to the Board, that an allegation that an employee is confidential within the meaning of Section 3(c) of the Act is serious enough to be raised at any time, even years after the employee was first placed in a bargaining unit. The Board's petition for leave to appeal to the Illinois Supreme Court was denied.

In City of Bloomington, 22 PERI 22 (IL LRB SP 2006), the Board upheld the Executive Director's dismissal of a unit clarification petition which sought to add probationary patrol officers to an existing patrol officer unit. The Board found that the petition did not fit the established criteria for unit clarification and was also unnecessary, as the probationary officers were already included in the unit, which included all patrol officers.

E. Section 3(n) public employee status

The following non-precedential decision regarding public employee status has issued this past year: City of Ulin, 22 PERI 72 (IL LRB SP ALJ 2006).

F. Independent contractors

In Metropolitan Pier and Exposition Authority, 22 PERI 87 (IL LRB LP 2006), the Board found, in agreement with the Administrative Law Judge, that the Emergency Service Providers (Providers) utilized by the Employer to provide basic life support services for events at McCormick Place and Navy Pier were independent contractors rather than employees within the meaning of the Act. The Board found that the Providers performed functions ancillary to the Employer's main enterprise, that all of the Providers had full-time employment elsewhere, that the Employer did not withhold taxes or social security, and that the Employer did not train or evaluate the Providers. In addition, the Board noted that the Providers received no fringe benefits, determined their own schedules and were free to refuse work, and worked independently, without direct supervision or monitoring. Thus, the Board concluded that they were independent contractors, notwithstanding the existence of certain indicators of an employer-employee relationship.

Member Sadlowski dissented. He noted that the Employer maintained detailed rules governing the Providers' conduct, and that the Employer penalized the Providers for non-compliance by declining to utilize their services for some period of time. He found that the Employer's disciplinary-type action was designed to correct the Providers' behavior and was indicative of an ongoing employer-employee relationship. He also concluded, contrary to the majority, that the Providers' services were an essential part of the Employer's operations, as they were necessary to obtain liability coverage, and the fact that the Providers worked independently was typical of emergency services work. He would have found that the Providers were employees within the meaning of the Act. The case is on appeal in the Illinois Appellate Court for the First District, 1-06-2241.

The following non-precedential decision regarding independent contractor status has issued this past year: State of Illinois, Department of Central Management Services, 21 PERI 41 (IL LRB SP ALJ 2005).

G. Section 3(c) confidential employees

In County of Cook (Provident Hospital), 22 PERI 12 (IL LRB LP 2006), the Board upheld the Administrative Law Judge's determination that none of the individuals the Employer sought to exclude as confidential employees satisfied the statutory standards for the exclusion. The Employer argued that administrative employees who were "direct reports" to members of its

Executive Staff and Medical Executive Committees were confidential employees, but the Board found that the committees did not effectuate labor relations policy so their assistants did not satisfy the "labor nexus" test. The Board also agreed with the Administrative Law Judge that there was no evidence that the employees had authorized access to collective bargaining proposals or any other information arising from the bargaining process.

The Board also agreed with the Administrative Law Judge that the Employer had not presented evidence sufficient to establish that the assistants to the Employer's labor relations director, who was solely responsible for bargaining and effectuating labor relations policy, assisted him in a confidential capacity. The case is on appeal in the Illinois Appellate Court for the First District, 1-06-0894.

In City of Delavan, 22 PERI 41 (IL LRB SP 2006), the Board remanded the case to the Administrative Law Judge to determine whether the Employer's Chief of Police was a confidential employee pursuant to the "reasonable expectation" test. The Board found that based upon the Chief's current role in his three-man department, there were issues as to whether, with the onset of collective bargaining, he would assist in the preparation of, or have access to, information concerning the Employer's collective bargaining policies. The case is on appeal in the Illinois Appellate Court for the Third District, 3-06-0303.

The following non-precedential decision regarding confidential status has issued during the past year: Village of Pleasant Hill, 22 PERI 87 (IL LRB SP ED 2006).

H. Section 3(j) managerial employees

In State of Illinois, Department of Central Management Services, 21 PERI 205 (IL LRB SP 2005), the Board affirmed the Administrative Law Judge's determination that attorneys employed in the Illinois Department of Revenue were not managerial under either the traditional statutory test or the "managerial as a matter of law" analysis developed by the Illinois courts. The Board agreed with the Administrative Law Judge that the attorneys, who performed functions such as preparing tax ruling letters, reviewing and drafting legislation and acting as hearing officers, were involved in the development of Department policy. Nevertheless, they were not managerial because they did not have final authority to establish policy. Rather, their role was subordinate and advisory, as evidenced by the fact that their work was subject to extensive review and approval by their supervisors. The Board also agreed with the Administrative Law Judge that the managerial as a matter of law analysis was not appropriate, as

it has been limited to attorneys whose positions are established by statute and who are closely aligned with a public office holder, circumstances not present in the instant situation.

I. Section 3(r) supervisory employees

In Metropolitan Alliance of Police v. Illinois Labor Relations Board and Village of Woodridge, 839 N.E.2d 1073, 2005 Ill. App. LEXIS 1174, 21 PERI 218 (2005), the Illinois Appellate Court for the Second District affirmed the Board's ruling that the Employer's sergeants were supervisory employees because they had substantially different principal work than their subordinate patrol officers and had the authority to issue verbal reprimands and document them for future reference. There was no evidence that the documented reprimands were reviewed for appropriateness by the chief or deputy chief, and the reprimands could serve as the basis for further discipline.

The court disagreed, however, with the Board's finding that the sergeants' recommendations for more serious discipline were effective within the meaning of the Act. The court found that although the chief gave the recommendations "great weight," they were nonetheless subject to review and had on occasion been rejected, at least in part.

In State of Illinois, Department of Central Management Services, Case No. S-RC-06-042, 22 PERI __ (IL LRB SP 2006), the Board found that the Public Aid Quality Control Supervisor (Unit Supervisor) employed by the State in its Department of Healthcare and Family Services (formerly Public Aid) was not a supervisory employee. Although the Unit Supervisor spent virtually all of his time reviewing the work of his subordinates, the Administrative Law Judge found, and the Board agreed, that the purpose of the review was to ensure that the work was complete and followed specified, highly detailed State and federal guidelines; the record contained no evidence that the Unit Supervisor ever exercised independent judgment. In addition, while the Employer asserted that the Unit Supervisor had the supervisory authority to discipline his subordinates, the record evidence consisted of general, conclusory statements rather than specific examples and the Board found that it was insufficient to satisfy the Employer's burden of proof.

In City of Delavan, 22 PERI 41 (IL LRB SP 2006), the Board found that the Employer's Chief and Assistant Chief of Police, and its Superintendents of the Street and Alley and Water and Sewer Departments, were not supervisory employees. The Employer, a very small municipality, had a three-man Police Department, including the Chief, Assistant Chief, and a

sergeant, each of whom worked one of three shifts. The Board agreed with the Administrative Law Judge that the Mayor and City Council were responsible for the Police Department's day-to-day operations, and that both the Chief and Assistant Chief performed routine patrol duties and had no authority other than to issue informal verbal reprimands. With respect to the superintendents, the Board found that they were the sole employees in their departments, with only a pool of part-time employees to call upon for assistance, and that they had absolutely no supervisory authority. The case is on appeal in the Illinois Appellate Court for the Third District, 3-06-0303.

The following non-precedential decisions regarding supervisory employee status have issued this past year: Village of Pleasant Hill, Case No. S-RC-06-064, 22 PERI __ (IL LRB SP ALJ 2006); Village of McCook, Case No. S-RC-06-043, 22 PERI __ (IL LRB SP ALJ 2006); Village of New Baden (Public Works Department), 22 PERI 98 (IL LRB SP ALJ 2006); Village of Niles, 22 PERI 83 (IL LRB SP ALJ 2006); Chief Judge of the 12th Judicial Circuit (River Valley Detention Center), 22 PERI 73 (IL LRB SP ALJ 2006); Knox County Board/Knox County Nursing Home, 22 PERI 58 (IL LRB SP ALJ 2006); City of Fairview Heights, 22 PERI 14 (IL LRB SP ALJ 2006).

(J) Objections to election

In PACE Heritage Division, 22 PERI 59 (IL LRB SP 2006), the State Panel upheld the Executive Director's dismissal of objections to an election. The Incumbent Union had contended that the Petitioner improperly influenced the results of the election by giving gifts to bargaining unit employees, and that the Employer's failure to submit a complete Excelsior list warranted overturning the election.

The Board found the evidence insufficient to warrant a hearing, especially as all of the Incumbent's allegations were based upon the testimony of only one supporter. The Board further found that the value of the gifts was minimal, and that the failure to submit a complete list does not automatically invalidate the election. Under the circumstances, the Board agreed with the Executive Director that the error was harmless.

IV. Employer unfair labor practices

A. Section 10(a)(1) restraint, interference and coercion

(1) <u>Weingarten</u> rights

In <u>Stephenson County Sheriff and County of Stephenson,</u> 21 PERI 223 (IL LRB SP 2005), the State Panel affirmed the Administrative Law Judge's finding that the Employer violated Section 10(a)(1) of the Act when it continued an investigatory interview after denying an employee's request for Union representation. The Respondent contended that the Administrative Law Judge erred because the individual at issue was not an employee at the time of the interview, he did not make a request for Union representation and he had no right to Union representation because the incorporation of the Uniform Police Officers Disciplinary Act into the collective bargaining agreement constituted a waiver of that right. The Board agreed with the Administrative Law Judge that all of these arguments lacked merit. The case is pending on appeal in the Illinois Appellate Court for the Second District, 2-06-0018.

(2) General Section 10(a)(1) restraint, interference and coercion

In <u>Sarah D. Culbertson Memorial Hospital</u>, Case No. S-CA-04-044, 22 PERI __ (IL LRB SP 2006), the Board upheld the Administrative Law Judge's determination that the Employer had not violated Section 10(a)(1) of the Act when, during the period between the Union's filing of majority interest petitions and certification, it implemented changes to its employee health insurance plan. The Board, in agreement with the Administrative Law Judge, found that the Employer had fulfilled its obligation to maintain the status quo, as it had produced credible evidence of the financial need to make the changes and had applied them equally to all employees.

The Board noted that the Employer made the changes in a manner which suggested that it was attempting to avoid its upcoming bargaining obligation. However, it found that such an action could not violate the Act, as the statute clearly provides that the duty to bargain does not attach until certification.

In <u>Village of Calumet Park</u>, 22 PERI 23 (IL LRB SP 2006), the Board affirmed the Administrative Law Judge's conclusion that the Employer threatened its union president with retaliation, thereby violating the Act, when it issued him a memorandum stating that his grievance filing was impeding the operations of the Employer's police department and would "not be tolerated."

B. Section 10(a)(2) discrimination

In City of Princeton, Case No. S-CA-06-109, 22 PERI __ (IL LRB SP 2006), the Board upheld the Executive Director's dismissal of the charge alleging that the Employer had discriminated against the Union president by suspending him for five days. The Board found that although there was some evidence that the Employer's Fire Chief, who issued the discipline, harbored hostility towards the Union, the Union president was involved in an incident concerning a patient and there was no evidence of a causal connection between his Union activities and the discipline at issue.

In County of Winnebago, Department of Public Health, 22 PERI 25 (IL LRB SP 2006), the Board upheld the Executive Director's dismissal of the unfair labor practice charge where the Charging Party failed to substantiate that she had been engaged in union and/or protected concerted activities. While the Charging Party contended that she had sent letters to other employees seeking their support for a union, that she had attended union meetings, and that her employer was aware of these activities, the Board noted that she had never identified the union, had not produced any co-workers to support her claims and had failed to establish that any sort of organizing campaign was actually in progress. As the charge lacked an essential element, the Board agreed that it was properly dismissed.

In County of Cook (John H. Stroger Hospital), 22 PERI 40 (IL LRB LP 2006), the Board upheld the dismissal of the Charging Party's allegation that he was discharged in retaliation for his activities as a union steward, in particular the assertion of safety complaints. The Board agreed with the Executive Director that the discharge was remote in time from the protected activity, and that earlier, time-barred incidents of alleged retaliation did not demonstrate an illegal motive for the discharge.

The following non-precedential decisions regarding Section 10(a)(2) and/or 10(a)(3) employer discrimination have issued this past year: Village of Plainfield, 22 PERI 71 (IL LRB SP ALJ 2006); City of Calumet City, 22 PERI 24 (IL LRB SP ALJ 2006); City of Elgin (Burkert), 21 PERI 203 (IL LRB SP ALJ 2005).

The Board also upheld dismissals of the following charges alleging employer discrimination: Kankakee County Housing Authority, Case No. S-CA-06-155, 22 PERI __ (IL LRB SP 2006); Pace Northwest Division, 22 PERI 28 (IL LRB SP 2006); County of Cook, 22 PERI 40 (IL LRB LP 2006).

C. Section 10(a)(4) refusal to bargain

(1) In general

In State of Illinois, Department of Central Management Services (Corrections), Case No. S-CA-058, 22 PERI __ (IL LRB SP 2006), the Board dismissed a refusal to bargain charge arising out of conduct which occurred prior to Board certification of the unit in question. The Board held that it is well established that the Act dictates that the duty to bargain arises only upon certification by the Board of an exclusive representative.

The following non-precedential decisions regarding Section 10(a)(4) refusal to bargain have issued this past year: City of Carlinville, 22 PERI 35 (IL LRB SP ALJ 2006); Chicago Transit Authority, Case No. L-CA-05-039, 22 PERI __ (IL LRB LP ALJ 2006).

(2) Subjects of bargaining

The Illinois Supreme Court heard oral arguments on September 19, 2006 in Board of Trustees of the University of Illinois v. Illinois Labor Relations Board, State Panel and the Illinois Fraternal Order of Police Labor Council. The Illinois Appellate Court for the Fourth District had held, contrary to the Board, that parking access and costs for University peace officers were not mandatory subjects of bargaining. Although the appellate court agreed with the Board that the parking issue affected unit members' terms and conditions of employment, it accepted the Employer's argument that the issue was a matter of inherent managerial authority. The appellate court found that the income stream from parking, the control of University land, equal treatment of all employees and staff, and the need to consider the impact of bargaining with 16 other bargaining units were central to the Employer's entrepreneurial control. Additionally, the court found that the parking budget and locations were intimately tied to the Employer's master plan for the University.

The appellate court then considered, without remanding the matter to the Board to perform the Central City balancing analysis, whether the benefits of bargaining outweighed the burdens on the Employer, and concluded that the burdens greatly outweighed the benefits. The court stated that the existence, location and cost of parking were components of the Employer's daily business and overall educational mission. As such, the court ruled that if the Employer were required to bargain over the issue, it would adversely affect the Employer's master plan for the University. Justice Myerscough dissented. 361 Ill. App. 3d 256; 836 N.E.2d 187, 21 PERI 170 (2005).

In City of Chicago v. Illinois Labor Relations Board et al., 22 PERI 82 (2006), the Illinois Appellate Court for the First District, in an unpublished order, upheld the Board's determination that the Employer violated the Act when it failed to bargain with the representative of its police officers over its decision to grant traffic control assignments for certain Soldier Field events to the Chicago Park District and the Metropolitan Pier and Exposition Authority. The court, applying the standards established by the Illinois Supreme Court in the Central City and Belvidere cases, determined that the City's decision constituted a departure from its previous practices because the City had divested itself of the traffic control work which had previously been performed by City patrol officers and civilian employees and assigned it to non-employees. As the Employer did not maintain that the decision involved a matter of inherent managerial authority, and did not file exceptions to the Administrative Law Judge's finding that, under the third step of the Central City test, the decision was amenable to bargaining, the court concluded that the decision was mandatorily negotiable.

In Village of Libertyville, 21 PERI 211 (IL LRB SP 2005), the Board reversed the Administrative Law Judge and held that the Employer committed violations of Section 10(a)(4) and (1) of the Act when it refused to bargain with the exclusive representative of its firefighters over a proposal concerning promotions to a non-unit position immediately above the highest unit rank. The Board held that the Fire Department Promotion Act, 50 ILCS 742/1 *et seq.* (2003) legislatively overruled previous caselaw on this issue and made such bargaining mandatory. The Fire Department Promotion Act was amended by Public Act 094-0809, effective May 26, 2006, to more clearly provide that such bargaining is mandatory.

In Village of Bloomington, Case No. S-CA-04-166, 22 PERI __ (IL LRB SP 2006), which arose before the amendment to the Fire Department Promotion Act, the Board found that the Employer violated Section 10(a)(4) and (1) of the Act by refusing to bargain over promotional criteria concerning the first rank outside the firefighter bargaining unit. The Employer argued that the original language of the Fire Department Promotion Act did not make such bargaining mandatory. The case is on appeal in the Illinois Appellate Court for the Fourth District, 4-06-0774.

In Village of Bellwood, Case No. S-CA-05-079, 22 PERI __ (IL LRB SP 2006), the Board upheld the Executive Director's dismissal of a charge alleging that the Respondent refused to bargain over the effects of its decision to subcontract with a private company for the provision

of paramedic services. The Board agreed with the Executive Director that the Charging Party had failed to demonstrate that the bargaining unit employees had lost any emergency services work as a result of the Respondent's decision.

In Town of Cicero, Case No. S-CA-05-1112, 22 PERI __ (IL LRB SP 2006), the Board upheld the Executive Director's dismissal of charges alleging that the Employer had failed to bargain in good faith by failing to provide bargaining unit firefighters with new mattresses and failing to provide the Union with a job description for a training officer position.

In State of Illinois, Department of Central Management Services (Corrections), Case No. S-CA-04-112, 22 PERI __ (IL LRB SP 2006), the Board upheld the Executive Director's dismissal of a refusal to provide information allegation, as the specific charge concerning that allegation had been withdrawn and it was not sufficiently related to a pending charge.

The following non-precedential decisions regarding unilateral changes and subjects of bargaining have issued this past year: Village of Bridgeview, 22 PERI 101 (IL LRB SP ALJ 2006); City of Waukegan (Fire Department), 22 PERI 100 (IL LRB SP ALJ 2006); Village of Elk Grove Village, Case No. S-CA-04-327, 22 PERI __ (IL LRB SP GC 2006); Chicago Transit Authority, Case No. L-CA-05-039, 22 PERI __ (IL LRB LP ALJ 2006).

(3) Mid-term interest arbitration

In State of Illinois, Department of Central Management Services (Corrections), 22 PERI 10 (IL LRB SP 2006), the Board found, in agreement with the Administrative Law Judge, that the Act authorized mid-contract term interest arbitration for security employees who, pursuant to Section 14 of the Act, lacked the right to strike. The Board considered the fact that Section 14 details interest arbitration procedures only for initial and successor, and not mid-term, disputes. However, the Board relied upon the strong policy language in Section 2 of the Act , including the provision that interest arbitration should be utilized to resolve "all collective bargaining disputes" involving Section 14 employees, to support its conclusion. The case is on appeal in the Illinois Appellate Court for the Fourth District, 4-06-0083.

(4) Waiver of the right to bargain

In City of Chicago v. Illinois Labor Relations Board et al., 22 PERI 82 (2006), the Illinois Appellate Court for the First District, in an unpublished order, upheld the Board's determination that the management rights and complete agreement clauses of the parties' collective bargaining agreement did not constitute a waiver of bargaining over the Employer's decision to assign work

performed by City Police Department employees to other governmental entities. Reciting the well-established principle that a waiver must be clear and unequivocal, the court agreed with the Board that the contract language did not contemplate the subcontracting of the work to non-City employees, and therefore did not meet the standard for a waiver.

In State of Illinois, Department of Central Management Services (Corrections), 22 PERI 10 (IL LRB SP 2006), the Board found that a no-strike clause contained in the parties' collective bargaining agreement was not a waiver of mid-term interest arbitration for employees who lacked the right to strike. The Board noted that the clause at issue nowhere referenced interest arbitration and, it concluded, was thus ineffective to establish a clear and unmistakable waiver.

The Board also rejected the Employer's argument that another contractual provision, stating that the parties had agreed to "negotiate" the impact of facilities closures, could not be read to include interest arbitration. The Board found that for Section 14 employees, interest arbitration was an integral component of the duty to bargain in good faith. The case is on appeal in the Illinois Appellate Court for the Fourth District, 4-06-0083.

(5) Refusal to honor grievance settlement

In City of Oak Forest, 22 PERI 13 (IL LRB SP 2006), the Board upheld the Administrative Law Judge's conclusion that the Employer had failed to bargain in violation of the Act when it refused to pay salary increases its City Clerk had agreed to in a grievance settlement. The City contended that the Clerk lacked authority to change employee salaries. The Board disagreed, noting that the parties' contract gave the Clerk specific authority to settle grievances, he had previously granted other monetary grievances, and the City had never communicated to the Union any limitations on the Clerk's authority.

V. Union unfair labor practices

A. Section 10(b)(1) duty of fair representation

In Illinois Federation of Public Employees, Local 4408 (Tipsword), 22 PERI 60 (IL LRB SP 2006), the State Panel upheld the Administrative Law Judge's conclusion that the Union violated Section 10(b)(1) of the Act when its steward acted to his own advantage at the expense of bargaining unit members. A unit employee had asked the steward to file a grievance over the manner in which a vacancy had been filled, but the steward filed his own grievance, misled the unit employee and ultimately obtained the position for himself.

In Fraternal Order of Police, Lodge #7 (Harej), 22 PERI 63 (IL LRB LP 2006), the Local Panel upheld the Executive Director's dismissal because all of the Charging Party's allegations involved internal Union matters.

The Board dismissed the following cases because the charging parties had failed to present evidence of union intentional misconduct sufficient to warrant a hearing: International Union of Operating Engineers, Local 318 (Wright), Case No. S-CB-06-010, 22 PERI __ (IL LRB SP 2006); Amalgamated Transit Union, Local 241 (Cook), 22 PERI 27 (IL LRB LP 2006); Transportation Communications International Union (Brewer), 21 PERI 210 (IL LRB SP 2005); American Federation of State, County and Municipal Employees, Council 31 (Smith), 21 PERI 209 (IL LRB SP 2005); Service Employees International Union, Local 73 (Chaney), L-CB-06-019, 22 PERI 64 (IL LRB LP 2006); Illinois Nurses Association (Williams), Case No. L-CB-06-001, 22 PERI __ (IL LRB LP 2005).

The following non-precedential decision regarding Section 10(b)(1) duty of fair representation has issued this past year: American Federation of State, County and Municipal Employees, Council 31 (Chris Pitts et al.), 21 PERI 204 (IL LRB SP ALJ 2005).

VI. Procedural issues

A. Deferral to arbitration

In City of Alton, 22 PERI 102 (IL LRB SP 2006), the Board upheld the Executive Director's dismissal of unfair labor practice charges on the basis of post-arbitration deferral. In two discharge cases, arbitrators had found that the terminations were not supported by just cause and had ordered the employees reinstated with backpay, but had not awarded interest on the backpay awards. The Union asserted that the Spielberg standards had not been satisfied, but the Board found that the arbitrators had had the opportunity to consider whether the employees had been discharged in retaliation for their union activities, thus satisfying the requirement that the unfair labor practice issues be presented to and considered by the arbitrator. The Union also argued that the arbitrators' failure to award interest rendered their awards repugnant to the Act, but the Board found that the violations had been substantially remedied, and administrative efficiency would not be served by further proceedings.

B. Amendment of complaint

The following non-precedential decision regarding complaint amendment has issued this past year: Cook County Recorder of Deeds, 22 PERI 99 (IL LRB LP ALJ 2006).

C. Want of prosecution

In Teamsters Local 705 (Coleman), 22 PERI 25 (IL LRB SP 2006), the State Panel upheld the Administrative Law Judge's dismissal of the complaint when the Charging Party failed to appear for the hearing. The notice of hearing had been sent by certified mail to the Charging Party's attorney, and had been accepted by an employee of his law firm. The Board rejected the attorney's contention that he should be excused for his failure to appear because he had not actually received the notice of hearing.

The following non-precedential decision regarding failure to prosecute issued this past year: City of Chicago (Randazzo), Case No. L-CB-02-035, 22 PERI __ (IL LRB LP 2005).

D. Default

In County of Cook and Sheriff of Cook County, 22 PERI 94 (IL LRB SP 2006), the Board upheld the Administrative Law Judge's recommendation that the Employers be found in default for failing to file a timely answer. The answer was filed 22 days late, and the Board found that there were no circumstances warranting a variance from the Board's Rules requiring timely filing.

The following non-precedential cases involving default judgment have issued in the past year: City of East St. Louis, 22 PERI 95 (Il LRB SP ALJ 2006); City of Cairo, Case Nos. S-CA-05-034, 072, 074, 076, 078, 086, 22 PERI __ (IL LRB SP ALJ 2005); Chicago Park District, 22 PERI 9 (IL LRB LP ALJ 2005).