ILLINOIS PUBLIC LABOR RELATIONS ACT: RECENT DEVELOPMENTS

Board and Court Decisions
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ILLINOIS PUBLIC LABOR RELATIONS ACT
CASE SUMMARIES

I. Jurisdiction

In Illinois Council of Police v. Ill. Labor Relations Bd., 404 Ill. App. 3d 589 (1st Dist. 2010), aff'g Illinois Council of Police/City of Chicago, 25 PERI ¶77 (IL LRB-LP 2009)(Case No. L-RC-07-032), the court dismissed a petition for review filed by a party which had prevailed before the Board, but not on the grounds it desired. Because it was not an "aggrieved party" under Section 9(i), it had no standing to seek administrative review. (The court affirmed the Board under consideration of a petition filed by the losing party in this consolidated appeal).

In Pace Suburban Bus Div. of Reg'l Transp. Auth. v. Ill. Labor Relations Bd., 406 Ill. App.3d 484 (1st Dist. 2010) the appellate court affirmed the Board's decision in Urszula T. Panikowski and PACE Nw. Div., 25 PERI ¶188 (IL LRB-SP 2009)(Case No. S-CA-05-217) in which the Board found that, although it is limited to remedying unfair labor practices to those occurring within six months of the charge, a Charging Party may properly use events outside the limitations period to show the true nature of the event timely pled. However, the Board noted that a Charging Party cannot prove the timely pled event simply by proving that the occurrences outside the six-month limitations period were in fact a series of unremedied unfair labor practices, citing the distinction made by the United States Supreme Court in Bryan Mfg. Co., 362 U.S. 411, 416-17 (1960).

Public Act 96-1257, amended Sections 3(n) and 3(o) of the Illinois Public Labor Relations Act so that the Illinois Labor Relations Board would have jurisdiction over "peace officers employed by a school district in its own police department." In Board of Educ. of Peoria School Dist. No. 150 v. Peoria Fed'n of Support Staff, Security/Policeman's Benevolent and Protective Ass'n Unit #114, Ill. Educ. Labor Relations Bd. & Ill. Labor Relations Bd., No. 2011 MR 000106 (7th Judicial Cir., Sangamon Cty.), appeal pending, No. 4-11-0875 (Ill. App. Ct., 4th Dist.), a school district sought to enjoin the Illinois Labor Relations Board from asserting jurisdiction on the basis that Public Act 96-1257 was special legislation and on the basis that it does not employ peace officers. The circuit court dismissed the complaint, and an appeal is now pending.

In SEIU, Local 73, and City of Chicago (Ofc. of Emergency Mgmt. and Commc'ns), 26 PERI ¶105 (IL LRB-LP 2010)(Case No. L-CA-10-042), the Charging Party alleged the Employer unilaterally assigned supervisory duties normally performed by full-time Supervising Traffic Control Aids to part-time "Hourlies." The Executive Director dismissed the charge as untimely and the Board upheld the dismissal. The Executive Director found that a letter from the Employer dated July 2, 2009 was sufficient evidence that the Charging Party had knowledge of the Employer's intent to change the policy, and therefore a charge dated January 6, 2010 failed to meet the six-month limitation period established in Section 11(a) of the Act.

The Board upheld the Executive Director's dismissal of a charge as untimely in Harlow R. Brown and State of Illinois, Dep't of Cent. Mgmt Serv. (Dep't of Corr.), 27 PERI ¶52 (IL LRB-SP 2011) (Case No. S-CA-10-046), in which the complained-of action occurred in January and February of 2008 and the charge was not filed until 2010.

In Karyn Thomas and SEIU, Local 73, 28 PERI ¶9 (IL LRB-LP 2011)(Case No. L-CB-10-022), the Board upheld the Executive Director's dismissal of a charge filed by Thomas because it was untimely filed. Thomas filed the charge two years after she learned of the unfair labor practice.

In Maryanne Tighe and Teamsters, Local 726, 28 PERI ¶48 (IL LRB-SP 2011)(Case No. S-CB-10-75), the Executive Director dismissed an untimely charge filed on April 27, 2010 for an incident that occurred during August 2009. The Board affirmed the dismissal, as the charge was clearly outside of the six-month limitation period established by Section 11(a) of the Act.

In Britt Weatherford and AFSCME, Council 31, 28 PERI ¶49 (IL LRB-SP 2011)(Case No. S-CB-11-002), the Board reversed the Executive Director's dismissal of an unfair labor practice charge, finding the Charging Party had timely filed and served the charge. The filing was timely because it was mailed within the six-month limitation period, even though it was not delivered within that timeframe. The service was also timely as the Board adopted the reasoning of Lyman v. Ill. Labor Relations Bd., No. 1-08-1900, 2009 WL 8154332 (Ill. App. Ct., 1st Dist., Sept. 10, 2009) (unpublished order). Lyman interpreted the Board's rules to mean that service is made when the charge is mailed, and not when the charge is received.

In Arlency Pitts and Chicago Fire Fighters Union, Local 2, 28 PERI ¶63 (IL LRB-LP 2011)(Case No. L-CB-10-018), the Board upheld the Executive Director's dismissal of an untimely unfair labor practice charge where Charging Party did not file his charge until nearly eight months after the alleged unlawful conduct occurred.

In William and Laura Foster and Chicago Transit Authority, _ PERI ¶ _ (IL LRB-LP, Oct. 21, 2011)(Case No. L-CA-11-006), the Board upheld the Executive Director's dismissal of the charge as untimely. It found the Charging Parties knew or reasonably should have known of Respondent's allegedly unlawful conduct of reaching an agreement with a coalition of trade unions on February 7 or 8, 2010 when the agreement was reached and widely reported in the media, instead of on February 18, 2010, when the coalition's representative explained his actions to them.

In SEIU, Local 73 and Illinois Secretary of State, _ PERI ¶ _ (IL LRB-SP, Oct. 24, 2011)(Case No. S-RC-11-006), the Board adopted the ALJ's recommendation that Executive Is and IIs are neither supervisors nor managers and should be added to the bargaining unit. The Board held that it retained authority to consider the petition for representation despite having failed to resolve the matter within the 120 days specified in Section 9(a-5), and rejected the Petitioner's countervailing argument that the Board should make the certification *nunc pro tunc* where it failed to meet this deadline.

In Sherwin Baker and Peoria Housing Auth., 27 PERI ¶64 (IL LRB-SP 2011)(Case No. S-CA-11-058), the Executive Director dismissed the unfair labor practice charge filed by Sherwin Baker, which alleged that the Peoria Housing Authority engaged in unfair labor practices within the meaning of Section 10(a) of the Act when the Peoria Housing Authority terminated Baker's employment. The Board upheld the Executive Director's dismissal, finding the charge was filed outside the six-month limitation period.

In John Michels and State of Illinois, 28 PERI ¶10 (IL LRB-SP 2011)(Case Nos. S-CA-09-250, S-CB-09-038), appeals pending, Nos. 4-11-0612, 4-11-0659 (Ill. App. Ct., 4th Dist.), the Board upheld the Executive Director's dismissal where the charge was not filed within six months of the termination forming the basis of the charge.

In Marvin Perez and State of Illinois, Dep't of Cent. Mgmt. Serv., 27 PERI ¶28 (IL LRB-SP 2011)(Case No. S-CA-10-208), the Board sustained the Executive Director's dismissal as untimely that portion of the charge alleging discharge in retaliation for union activity.

II. Representation Issues

A. Showing of interest

In Laborers Int'l Union of N. Am., Local 362 and Town of Normal (Employer) and David Olson, Keith Simpson, Craig Tackett and Jarod Windhorn (Objectors), 26 PERI ¶106 (IL LRB-SP 2010)(Case No. S-RC-10-234), the Board sustained the Executive Director's dismissal of a petition filed by objectors. Among other things, the objectors complained about aspects of the majority interest process. The Board found it was required to apply the statute as written.

In AFSCME, Council 31 and State of Illinois, Dep't of Cent. Mgmt. Serv. (Envtl. Prot. Agency), _ PERI ¶_ (IL LRB-SP June 15, 2011)(Case No. S-RC-09-180), appeal pending, No. 4-11-0638 (Ill. App. Ct., 4th Dist.), the Employer objected to an election, arguing it had insufficient opportunity to observe the tally of ballots after an election was held by mail. Due to its confusion over the date set for the tally, no Employer representative appeared at the time the ballots were to be counted. The Board agent was able to contact one of the Employer's attorneys who attended and verified the ballot signatures, objecting to a few under circumstances where the vote was overwhelmingly in favor of joining the Union. The Board agent later learned that this attorney was a member of a different bargaining unit represented by the same union. The Board dismissed the objection finding the Employer had sufficient opportunity to observe the tally.

B. Unit determination/appropriateness

In Illinois Council of Police v. Ill. Labor Relations Bd., 404 Ill. App. 3d 589 (1st Dist. 2010), aff'g Illinois Council of Police/City of Chicago, 25 PERI ¶77 (IL LRB-LP 2009)(Case No. L-RC-07-032), the court affirmed the Board's certification of a unit of aviation security sergeants employed by the City, expressing its approval of the Board's reconsideration of its preference for large units and recent certification of small, stand-alone units. The court stated that "the Board's decisions to certify smaller units were anything but arbitrary and capricious. The Board made the decisions consciously [sic] and with clear consideration of the past preference for larger bargaining units. The Board recognized that, although the elevation of the fragmentation factor may have had a place when the Act first came into effect, time and the changes it has wrought in the City's bargaining landscape meant that fragmentation, more so than ever, should not be the predominant factor in an appropriateness determination under section 9(b)." The court went on to consider the other section 9(b) factors to determine whether the Board's certification of the sergeants was clearly erroneous, and determined that it was not. (A consolidated petition for review filed by the prevailing party was dismissed by the court).

In Laborers Int'l Union of N. Am., Local 362 and Town of Normal (Employer) and David Olson, Keith Simpson, Craig Tackett and Jarod Windhorn (Objectors), 26 PERI ¶106 (IL LRB-SP 2010)(Case No. S-RC-10-234), the Board sustained the Executive Director's dismissal of a petition filed by objectors. A majority interest representation petition had been filed to represent 40 employees in the Employer's Public Works Department. The Employer had no objection, but four mechanics within the Equipment Maintenance Division of the Public Works Department objected to the appropriateness of the proposed unit because their duties differed from those of the other employees. The Executive Director found differing duties an insufficient basis for finding the unit inappropriate.

In County of Cook and Teamsters, Local 700, 27 PERI ¶50 (IL LRB-LP 2011) (Case No. L-AC-11-004), the Board found that the Executive Director correctly refused to amend the certification of a unit where the Employer had failed to post notice. However, the Board directed the Executive Director to order the Employer to provide the Petitioner access to its premises and to order Petitioner to post notice and certify the fact of posting to the Board.

SEIU, Local 73 and County of Cook and Sheriff of Cook County, 27 PERI ¶38 (IL LRB-LP 2011) (Case No. L-RC-10-025), involved two overlapping representation petitions. The Fraternal Order of Police sought to include three administrative assistants in a unit of other employees within the Office of Professional Review. The election petition was subject to objections by the Employer that were found to be without merit, after a hearing. After the FOP had filed its petition, but before its resolution, SEIU sought by majority interest petition to represent a unit of administrative personnel that included the administrative assistants within FOP's petition. The Board certified the unit, only later realizing that these employees were the subject of two petitions. Accordingly, the Executive Director issued a partial revocation of SEIU's unit with respect to the three employees at issue, and the ALJ assigned to FOP's petition ordered an election for the three administrative assistants with the following choices: (1) representation by FOP, (2) representation by SEIU, or (3) no representation. The Board upheld the Executive Director's partial revocation, finding that the Executive Director did not deny employees their choice of representative or improperly fragment a group of employees. The Board further found that the Executive Director had the authority to issue a partial revocation given the unusual circumstances in this petition.

In AFSCME, Council 31 and State of Illinois, Dep't Cent Mgmt. Serv. (Dep't of Agric.), _PERI ¶_ (IL LRB-SP, June 10, 2011)(Case No. S-RC-11-004), the Board rejected the ALJ's recommendation that nine employees in the title of Private Secretary I should be added to an existing bargaining unit. The Board rejected the Employer's contention that the employees needed to be excluded as a matter of law because they were exempt from Jurisdiction B of the Personnel Code, 20 ILCS 415 (2010), but found exemption "may be relevant in determining whether an employee shares a sufficient community of interest with Code-covered employees such that they should be included in a single bargaining unit." The Board remanded the case back to the ALJ to determine if these employees would be appropriately included in the existing bargaining unit.

In Teamsters, Local 700 and County of McHenry and McHenry Cnty. Health Dep't, _PERI ¶_ (IL LRB-SP, June 13, 2011)(Case No. S-RC-10-133), the Board remanded a case to the ALJ for further consideration of the Section 9(b) factors where the unit proposed consisted of our registered nurses and

two certified nurses' aides who were employed by the joint Employer along with 23 other unrepresented registered nurses.

In Int'l Bhd. of Elec. Workers, Local 21 v. Ill. Labor Relations Bd., 2011 IL App (1st) 1101671, the court affirmed the Board's decision to dismiss, without an evidentiary hearing, petitions filed by Int'l Brotherhood of Electrical Workers, Local 21, who wanted to sever three City of Chicago job classifications from the "Unit II" collective bargaining unit jointly represented by Local 21 and Service Employees Int'l Union, Local 73. The three job classifications were Police Communications Officers I and II (PCOs) and Aviation Communications Officers (ACOs). Local 21 filed three petitions including a unit clarification petition, a petition to amend certification, and a representation petition, all of which the Board found to be procedurally and substantively deficient. The court affirmed the Board's dismissal of both the unit clarification petition and the petition to amend certification on the grounds that neither was procedurally proper for severing a group of employees from a currently recognized bargaining unit and creating a new unit. The court also affirmed the Board's dismissal of the representation petition, filed as a majority interest petition, because Board rules do not allow labor organizations seeking recognition to use majority interest petitions when another labor organization is already recognized in accordance with the Act. See 80 Ill. Admin. Code 1210.20(a), (b).

Apart from the procedural issues, the court also affirmed the Board's finding that Local 21's petition was substantively deficient. Local 21 could not meet the two part test required for severance: 1) employees petitioning for severance must share a significant and distinct community interest; and 2) employees petitioning for severance must have had conflicts with other segments of the existing bargaining unit or a record of ineffective and unresponsive representation by the bargaining unit. See City of Chicago (Bridge Tenders), 2 PERI ¶3022 (IL LLRB 1986). The court found that the Board did not err in its findings that the interests of the ACOs and PCOs are not significantly different than those of the other segments of Unit II, and that the joint representation of Unit II had not subverted the interests of the PCOs and ACOs in order to better benefit the rest of Unit II anymore than what the courts have in the past called a "reasonable byproduct of the collective bargaining process."

C. Section 3(c) confidential employees

In Dep't of Cent. Mgmt. Serv. v. Ill. Labor Relations Bd., 2011 IL App. (4th) 090966, pet. for leave to appeal pending, the appellate court reversed in part, affirmed in part, and remanded the Board's decision in AFSCME, Council 31 and State of Illinois, Dep't of Cent. Mgmt. Serv., 25 PERI ¶161 (IL LRB-SP 2009)(Case No. S-RC-07-048) and ISEA and Laborers' Int'l Union, Local 2002 and SEIU, Local 73 and State of Illinois, Dep't of Cent. Mgmt. Serv., 25 PERI ¶161 (IL LRB-SP 2009) (Case No. S-RC-08-074). The court found to be confidential employees who have access to the Governor's nonpublic budget proposals, the employer's long range plans and staffing needs, financial data directly used in collective bargaining negotiations and budget and salary information which most certainly would be used in negotiations. With respect to the labor-nexus test, the court found the superior assisted by the employees at issue need not be primarily responsible for collective bargaining negotiations, merely that they be involved in formulating, determining and effectuating the employer's labor relations policy.

In AFSCME, Council 31, and State of Illinois, Dep't of Cent. Mgmt. Serv., 26 PERI ¶83 (IL LRB-SP 2010)(Case No. S-RC-10-052), appeal pending, No. 4-10-0729 (Ill. App. Ct., 4th Dist.), the Board affirmed the ALJ's finding that the duties of three employees in the title Public Service

Administrator Option 8L (PSA 8L) did not qualify them for exclusion as confidential under the labor nexus test because there was no evidence that they assist in a confidential capacity in the regular course of their duties a person or persons who formulate, determine, and effectuate labor relations policies. The Board found these employees were more akin to employees who provide financial information that may be relevant to collective bargaining strategy, which does not make them confidential under the Act. However, the Board found an issue of fact or law warranting a hearing concerning the confidential status of a third PSA 8L relating to her duties in representing State agencies before the Civil Service Commission in cases against the Petitioner.

In AFSCME, Council 31, and City of Chicago, 26 PERI ¶114 (IL LRB-LP 2010)(Case Nos. L-RC-09-018 and L-UC-09-008), the Board rejected the ALJ's recommended decision with respect to the confidential status of seven employees, but adopted her recommendation that the remaining 31 employees should be added to an existing bargaining unit. The Board found under the labor-nexus test that six employees had superiors who formulated, determined, and effectuated labor relations policies, and that they assisted these superiors in a confidential capacity in the regular course of their duties. In doing so, the Board rejected the notion that the superiors had to be the persons who are primarily responsible for formulation, determination, or effectuation of labor relations policies before the labor-nexus test could be applied. It also explained that infrequency of assistance does not necessarily mean that the assistance is not given in the regular course of duties. The Board further found that five of six employees who met the labor-nexus test also met the authorized access test, and it held that one employee who did not meet the labor-nexus test met the authorized access test because she has access to contract negotiation files. The Board found no merit in the Employer's argument that two other employees met either the labor-nexus test or the authorized access test when they had access to information that was confidential only in a general sense and not with regard to labor relations. Regarding the supervisory status of one employee, the Board determined that, although this employee has the authority to direct and discipline, she was not a supervisor according to the Act because she did not spend a preponderance of her employment time performing supervisory functions.

In AFSCME, Council 31 and State of Illinois, Dep't of Cent. Mgmt. Serv., 27 PERI ¶31 (IL LRB-SP 2011)(Case No. S-RC-10-122), appeal pending, No. 4-11-0356 (Ill. App. Ct., 4th Dist.), the Board found one of the petitioned-for employees, a Public Service Administrator, Option 8L at the Illinois State Police, was a confidential employee where, in preparation for interest arbitration, he assisted individuals who formulate, determine, and effectuate labor relations policy and had access to sensitive information regarding collective bargaining strategy. It further found the employee assisted in the "regular course of his duties," where the task appeared likely to be a normal task despite its infrequency.

In AFSCME, Council 31 and State of Illinois, Dep't of Cent. Mgmt. Serv., 28 PERI ¶51 (IL LRB-SP 2011)(Case No. S-RC-10-112), the Board adopted an ALJ's finding that an employee with the title of legislative liaison was a confidential employee under the authorized access test where she had access to information regarding contracts that was not yet known by the union. The Board found the fact that it had earlier found other legislative liaisons not to be confidential did not control, and it had to determine this case based on the particular facts before it.

In Laborers' Int'l Union of N. Am., Local 2002, Illinois State Employees Association and State of Illinois, Dep't of Cent. Mgmt. Serv. (Illinois Department of Corrections), 28 PERI ¶46 (IL LRB-SP

2011)(Case No. S-RC-10-214), the Board agreed with the ALJ's determination that employees in the job title of Public Service Administrator, Option 7, employed as Internal Security Investigator IIIs, were not confidential employees, but found they were supervisors where they spent a preponderance of their working time on supervisory tasks such as assigning cases to subordinates, reviewing subordinates' reports, and disciplining subordinates.

In Int'l Union of Operating Eng'rs, Local 965 and Pike Cnty. Housing Auth., 28 PERI ¶13 (IL LRB-SP 2011)(Case No. S-UC-10-256), the Board found an executive director was not a supervisor, but was a confidential employee using the "reasonable expectation" test. While the executive director performed many of the same functions as her subordinates, she was ultimately responsible for the Housing Authority's proper function. She routinely made financial and personnel recommendations to the Housing Authority's Board. The Board found there was a reasonable expectation the executive director would be performing confidential duties since she would be likely assisting the Housing Authority in developing the Housing Authority's collective bargaining strategy.

In AFSCME, Council 31 and State of Illinois, Dep't of Cent. Mgmt. Serv. (Dep't of Human Serv.), 28 PERI ¶16 (IL LRB-SP 2011)(Case No. S-RC-10-162), the Board found one of the employees at issue was a supervisor within the meaning of the Act, and remanded for hearing on the issue of whether the remaining employees were confidential or managerial within the meaning of the Act. All of the employees were attorneys. For nine, the Board found sufficient evidence to raise a question as to whether they were confidential employees. Using the "authorized access test" the Board found evidence some of the employees performed tasks directly related to issues associated with collective bargaining. The fact that these tasks were only performed occasionally was insufficient to determine whether the tasks were performed in the regular course of duties.

As for their managerial status, the Board agreed with the ALJ's determination that these employees were not managers "as a matter of law." There was no evidence suggesting these employees acted as "surrogates" for the Department of Human Services, a necessary element for finding employees managers as a matter of law. However, the Board did find sufficient evidence to raise an issue of whether the employees met the statutory criteria under Section 3(j).

The Board also found the last employee to be a supervisor within the meaning of the Act. He principally performed tasks substantially different from his subordinates, and performed those tasks a preponderance of the time. Further, the Board found he directed his subordinates with independent judgment by reviewing draft decisions and directing his subordinates in their editing process.

In Laborers' Int'l Union of N. Am., Local 751 and Cnty. of Kankakee and Coroner of Kankakee Cnty., 28 PERI ¶21 (IL LRB-SP 2011)(Case No. S-RC-11-005), the ALJ recommended certifying a unit of part-time and full-time deputy coroners, but that an administrative assistant was a confidential employee within the meaning of Section 3(c) of the Act, and that the chief deputy coroner should be excluded from the unit pursuant to a stipulation by both parties. While the Board agreed with and adopted two of the ALJ's findings, it reversed his finding that the administrative assistant was a confidential employee. The Board found that while the administrative assistant performed most of the administrative tasks of the office, there was not a reasonable expectation that she would function as a confidential employee once the collective bargaining unit was recognized. In a footnote, the Board stated that if after the bargaining relationship began the assistant started performing tasks related to collective bargaining, the Employer could file a unit clarification petition.

Board Member Kimbrough dissented from that part of the majority's holding that the administrative assistant was not a confidential employee. She would have found it reasonable to expect the assistant to be involved in the collective bargaining process, where the administrative assistant performed support functions, and it was reasonable to assume her support functions would inevitably involve her in the collective bargaining process.

See also Illinois Fraternal Order of Police Labor Council and City of Springfield, 27 PERI ¶69 (IL LRB-SP 2011)(Case No. S-RC-09-184), appeal pending, No. 1-11-1691 (Ill. App. Ct., 1st Dist.), discussed below in supervisory employee section.

D. Section 3(j) managerial employees

In Illinois, Dep't of Cent. Mgmt. Serv./Human Rights Comm'n v. Ill.Labor Relations Bd., 406 Ill. App. 3d. 310 (4th Dist. 2010), the court reversed the Board's decision and held ALJs were managerial employees as a matter of law. Referencing Cook County State's Attorney v. Ill. Local Labor Relations Bd. and Chief Judge of the 16th Judicial Circuit v. Ill. State Labor Relations Bd., the court stated the ALJs would be managerial employees if there was close identification between the employer and employee, if there was a unity of their professional interests, and if the employees had authority to act on behalf of the employer. Here, the actions of the ALJs were closely identified with the Commission. They carried out of the policies of the Commission and the Human Rights Act. Finally, they conducted investigations and hearings, and made recommendations to the Commission that in some circumstances served as the final agency decision. Therefore, the court held the ALJs were managerial employees as a matter of law.

In Illinois, Dep't of Cent. Mgmt. Serv./Commerce Comm'n v. Ill. Labor Relations Bd., 406 Ill. App. 3d 766 (4th Dist. 2010), the court reversed and remanded the Board's decision to include administrative law judges in a bargaining unit. The court held employees are considered managerial under the Act if they spend a majority of their time engaged in executive and management functions, as well as implementing department policies. The ALJs implemented the policies and mission of the Commerce Commission by making recommendations to the Commission which were almost always accepted. The court held these duties could qualify the ALJs as managerial employees, and therefore remanded for a hearing.

By means of a non-precedential decision issued in Illinois, Dep't of Cent. Mgmt. Serv./Dep't of Human Serv. v. Ill. Labor Relations Bd., and Illinois, Dep't of Cent. Mgmt. Serv./Dept of Healthcare and Family Serv. v. Ill. Labor Relations Bd., Nos. 4-09-0233, 4-09-0234, 27 PERI ¶11 (Ill. App. Ct., 4th Dist., Dec. 28, 2010)(Case Nos. S-RC-08-130 & S-RC-08-154), the appellate court reversed and remanded the Board's certification of units of administrative law judges employed at two agencies. Although the Employer, the State of Illinois, was not entitled to due process, it was entitled to have the Board follow its own administrative rules. After receiving the petition and the Employer's objection and finding the objections insufficient to state an issue of law or fact, the Board should have issued an order to show cause to allow the Employer to demonstrate there was such an issue warranting a hearing. The court reversed and remanded both cases and ordered the Board to issue an order to show cause.

By means of a non-precedential decision issued in Illinois Dep't of Cent. Mgmt. Serv./Prop. Tax Appeal Bd. v. Ill. Labor Relations Bd., 27 PERI ¶2 (Ill. App. Ct., 4th Dist., Dec. 28, 2010), the court reversed the Board's inclusion within a collective bargaining unit of the chief hearing officer of the Property Tax Appeal Board. Finding the chief hearing officer made recommendations to the Tax Appeal Board on appeals and other decisions that were predominately adopted by the Tax Appeal Board, the court found enough of a question about the officer's managerial status to require a hearing.

In Dep't of Cent. Mgmt. Serv. v. Ill. Labor Relations Bd., 2011 IL App. (4th) 090966, pet. for leave to appeal pending, the appellate court reversed in part, affirmed in part, and remanded the Board's decision in AFSCME, Council 31 and State of Illinois, Dep't of Cent. Mgmt. Serv., 25 PERI ¶161 (IL LRB-SP 2009)(Case No. S-RC-07-048) and ISEA and Laborers' Int'l Union, Local 2002 and SEIU, Local 73 and State of Illinois, Dep't of Cent. Mgmt. Serv., 25 PERI ¶161 (IL LRB-SP 2009) (Case No. S-RC-08-074). The court found the Board used too stringent a standard when determining whether employees were managerial, and that they do not need to independently formulate policy to qualify as managerial. The court found several Public Service Administrator Option 2s to be managerial because they developed and revised policies and directed the effectuation of the policies, even though they did not do so independently.

In AFSCME, Council 31, and State of Illinois, Dep't of Cent. Mgmt. Serv., 26 PERI ¶83 (IL LRB-SP 2010)(Case No. S-RC-10-052), appeal pending, No. 4-10-0729 (Ill. App. Ct., 4th Dist.), the Board affirmed the ALJ's finding that the duties of two employees in the title Public Service Administrator Option 8L (PSA 8L) did not qualify them for exclusion as managerial employees where their legal duties involved professional discretion and technical expertise, but not managerial authority. While the Employer contended that one of these PSA 8Ls was managerial because he "drafts legislation, regulations and executive and administrative orders" the Board found there was only evidence that he might assist his superiors in those tasks, and that the employee lacked "final responsibility and independent authority to establish and effectuate policy" necessary to establish managerial authority.

In General Teamsters/Professional & Technical Employees, Local 916 and State of Illinois Attorney General (Public Aid Bureau), 27 PERI ¶67 (IL LRB-SP 2011)(Case No. S-RC-10-232), the Board found that assistant attorneys general within the Public Aid Bureau of the Attorney General's Office were managerial employees by applying he alternative analysis articulated in Office of the Cook County State's Attorney v. Ill. Local Labor Relations Bd., 166 Ill. 2d 296 (1995).

In AFSCME, Council 31 and Illinois State Board of Elections, _ PERI ¶ _ (IL LRB-SP, Oct. 24, 2011)(Case No. S-RC-11-122), the Board adopted the ALJ's recommendation that 55 employees in a variety of titles employed at the Illinois Board of Elections were not managerial employees. The evidence provided by the Employer was mostly irrelevant to the issue of whether the employees met the statutory definition of a manager in section 3(j). The Board rejected the Employer's argument that all Board of Elections employees should be excluded from the bargaining unit under the managerial exclusion because of the unique nature of the Employer and because of the Petitioner's involvement in political activity. The Board found that because employees of the Board of Elections were not explicitly excluded under the Act's definition of public employee, while employees of other agencies were specifically excluded, the legislature did not intend for all Board of Elections employees to be excluded.

In SEIU, Local 73 and Illinois Secretary of State, _ PERI ¶ _ (IL LRB-SP, Oct. 24, 2011)(Case No. S-RC-11-006), the Board adopted the ALJ's recommendation that Executive Is and IIs are neither supervisors nor managers and should be added to the bargaining unit. The Board held that it retained authority to consider the petition for representation despite having failed to resolve the matter within the 120 days specified in Section 9(a-5), and rejected the Petitioner's countervailing argument that the Board should make the certification *nunc pro tunc* where it failed to meet this deadline. The Board also stated that it cannot base a determination of the public employee status of the Executive Is and IIs on the fact that they are already members of collective bargaining units, and must review evidence presented concerning their actual duties instead. The Board held that because the Employer failed to show evidence of how much time was spent in rewarding, disciplining, or discharging subordinates, the ALJ correctly concluded that the Executive Is and IIs did not spend a preponderance of their employment time exercising supervisory authority. The Board also held that the Employer had made no attempt at proving that the Executive Is and IIs spent most of their time in managerial functions, and failed at proving that they had a substantial amount of discretion to determine how policies would be affected. The Board rejected Employer's argument that some of the Executive Is and IIs must be managerial because they are the highest ranking employees at their facilities, finding no evidence that the employees make the sorts of managerial decisions to provide services in a manner unique to their particular facilities.

In AFSCME, Council 31 and State of Illinois, Dep't of Cent. Mgmt. Serv. (Commerce Comm'n), 26 PERI ¶132 (IL LRB-SP 2010)(Case No. S-RC-09-144), the Board upheld the ALJ's determination that employees in the job title Technical Advisor III were not managerial employees within the meaning of the Act, under either the traditional test applying the statutory criteria or under the alternative managerial as a matter of law analysis. The Board agreed that there was no issue of fact or law warranting a hearing. Under the traditional test, the Board found that the petitioned-for attorneys were not "broadly" affecting the Illinois Commerce Commission's (ICC) goals, but rather served a subordinate and advisory role. The Board noted that one Technical Advisor III's drafting of legislation did not make him managerial, in absence of any suggestion that he helps determine the policy sought to be implemented by the draft legislation. Instead, the drafting was a matter of applying professional, technical expertise to choices made by others. Under the managerial as a matter of law analysis, the Board found that the attorneys were not operating as surrogates for the ICC, rather they advised or sought direction from superiors. The Board noted that although the attorneys would typically have power to act on behalf of their clients in court, only the Attorney General could represent the ICC in court, or for limited purposes, those she designates as special assistant attorneys general. The Board found that in their capacity as special assistant attorneys general, the petitioned-for attorneys operated more as surrogates for the Attorney General as office holder, than as surrogates for the ICC.

The petitioner-union filed a representation/certification petition. It sought to represent a bargaining unit of 26 assistant Attorneys General in the Public Aid bureau of the state's Office of the Attorney General. The ALJ recommended dismissal of the petition. The ALJ found that the assistant Attorneys General qualified as managerial employees as a matter of law who were excluded from the PLRA's coverage. The ALJ reasoned that the petitioned-for employee maintain a close identification with the office-holder and, therefore, that they were managerial under the alternative analysis established in *Cook County State's Attorney*, 11 PERI 4011 (Ill. Ct. App. 1995). Upon review of the record and the petitioner-union's appeal from the ALJ's decision, the LRB, State Panel upheld the ALJ's decision. General Teamsters/Professional & Technical Employees, Local 916 v. Illinois Attorney General (Public

Aid Bureau), 27 PERI 67.

In AFSCME, Council 31 and State of Illinois, Dep't of Cent. Mgmt. Serv. (Commerce Comm'n), 27 PERI ¶30 (IL LRB-SP 2011)(Case No. S-RC-09-202), the Board remanded for a hearing to determine whether employees of the ICC in the job title Technical Advisor IV were managerial employees.

In State of Illinois, Dep't of Cent. Mgmt. Serv. and AFSCME, Council 31, 26 PERI ¶155 (IL LRB-SP)(Case No. S-RC-09-180), appeal pending, No. 4-11-0638 (Ill. App. Ct., 4th Dist.), the Board adopted the Executive Director's order directing an election to determine whether employees of the State of Illinois in the title of Senior Public Service Administrator, Option 4 wished to be represented. The Board found that even though the evidence showed that the petitioned-for employees are somewhat involved in real policy-making, the evidence is insufficient to conclude that they have "control" over or effectively recommend policies. Moreover, where the record was unclear as to whether policies and procedures that were drafted and implemented actually changed existing policies, the Board found it difficult to conclude that such managerial authority exists when there is no evidence that the petitioned-for employee has actually exercised said authority.

The Board further adopted the ALJ's decision that the Employer failed to provide sufficient evidence to conclude that the petitioned-for employees were supervisors as some did not perform work substantially different than that of their subordinates, and those that did (and also performed at least one of the 11 statutory indicia), did not meet the preponderance test.

Lastly, the Employer objected to the ALJ's decision not to address the "claim reserved" that two of the petitioned-for employees should be excluded as they are exempt from the Personnel Code under Section 4d(3) of that Code. The Board found the Employer had waived its alternative basis for exclusion because the Employer failed to argue the merits of its exception and because the claim was not "self-evident" in that the Act does not contain an explicit exclusion for Code-exempt persons.

In AFSCME, Council 31 and State of Illinois, Dep't of Cent. Mgmt. Serv., _ PERI ¶_ (IL LRB-SP, Aug. 24, 2011)(Case No. S-RC-10-196), the Board adopted the ALJ's recommended finding that four attorney assistants, working under the title of Public Service Administrator, Option 8L, at the Illinois Pollution Control Board were neither managerial nor confidential employees within the meaning of the Act. It rejected the Employer's contention that these employees were managerial pursuant to the rationales articulated in Chief Judge of the Cir. Ct. of Cook Cnty. v. AFSCME, Council 31, 229 Ill. App. 3d 180 (1st Dist. 1992) and Salaried Em. of N. Am. v. Ill. Local Labor Relations Bd., 202 Ill. App. 3d 1031 (1st Dist. 1990) (SENA). Members Coli and Kimbrough dissented, finding that the SENA case did control, because the attorney assistants in this case worked very closely with top management, as did the employees in SENA.

In AFSCME and State of Illinois,Dep't Cent. Mgmt. Serv., 26 PERI ¶149 (IL LRB-SP)(Case No. S-RC-09-188), the Board found employees in the job title of Senior Public Service Administrator who worked at either the Gaming Board or the Illinois Department of Revenue were neither managers nor supervisors within the meaning of the Act. It found the exercise of professional discretion and technical expertise does not constitute executive or management functions and are not indicative of managerial authority. The ability to develop policies and procedures that only affect one particular area or worksite and not the agency as a whole, does not approach the level of policy making required by the Act. And

enforcing existing law, rules and regulations and making determinations based on technical expertise and knowledge are not necessarily indicative of managerial authority.

See also AFSCME, Council 31, and State of Illinois, Dep't of Cent. Mgmt. Serv., 26 PERI ¶113 (IL LRB-SP 2010)(Case No. S-RC-10-138), and Illinois Fraternal Order of Police Labor Council and City of Springfield, 27 PERI ¶69 (IL LRB-SP 2011)(Case No. S-RC-09-184), appeal pending, No. 1-11-1691 (Ill. App. Ct., 1st Dist.), both discussed below in supervisory employee section.

E. Section 3(r) supervisory employees

In Village of Maryville v. Ill. Labor Relations Bd., 402 Ill. App. 3d 369, 932 N.E.2d 558 (5th Dist. 2010), rev'g Illinois Fraternal Order of Police Labor Council/Village of Maryville, 24 PERI ¶113 (IL LRB-SP 2008), a two-member majority of the court reversed the Board's determination that two sergeants were not supervisors and ordered the Board to deny a unit clarification petition filed to add them to an existing unit of subordinate officers. The Board had found the Village failed to provide evidence of specific instances where the sergeants disciplined, directed, or adjusted grievances in a manner that affected the terms and conditions of their subordinates' employment, but the court found this improperly assigned dispositive weight to the number of times the sergeants had exercised their supervisory authority. The court found the sergeants could deny requests for leave, and also had written authority via a policies and procedures manual to issue oral and written reprimands, conduct oral and written performance evaluations, and memorialize counseling sessions, which are placed in personnel files and axiomatically have the potential to be used in future discipline. Justice Spomer issued the opinion in which Justice Stewart joined.

Justice Chapman dissented, stating that precedent establishes that a written ability to perform indicia of supervisory status is insufficient and that there needs to be actual examples of the exercise of supervisory authority. She further noted that ability to review requests for time off and vacation has been deemed a routine, clerical function that does not mandate the use of independent judgment. And she stated that performance evaluations that do not have any bearing on an officer's pay or employment status fails to establish supervisory direction. While the majority did not discuss Village of Hazel Crest v. Ill. Labor Relations Bd., 385 Ill. App. 3d 109, 895 N.E.2d 1082 (1st Dist. 2008), the sole case relied upon by the Village, Justice Chapman distinguished it on the basis that the Employer there did have documented evidence that the disputed employees had actually recommended discipline on two occasions and that, following independent review, one of those recommendations had been accepted.

In the City of Sandwich v. Ill. Labor Relations Bd., 406 Ill. App. 3d 1006 (2d Dist. 2011), the court reversed the Board's decision and vacated a certification adding sergeants to a unit of police officers. The court held the sergeants' duty to investigate complaints about patrol officers and then report their findings to the chief was sufficient for the sergeants to be excluded from the bargaining unit. It found this created a conflict of interest section 3(s)(1) sought to avoid. The court also looked to the hierarchy of the department, where the sergeants were the highest ranking officer on duty the majority of time, and the chief would likely rely on the sergeants to run the department in his absence.

In Dep't of Cent. Mgmt. Serv. v. Ill. Labor Relations Bd., 2011 IL App. (4th) 090966, pet. for leave to appeal pending, the appellate court reversed in part, affirmed in part, and remanded the Board's decision in AFSCME, Council 31 and State of Illinois, Dep't of Cent. Mgmt. Serv., 25 PERI ¶161 (IL

LRB-SP 2009)(Case No. S-RC-07-048) and ISEA and Laborers' Int'l Union, Local 2002 and SEIU, Local 73 and State of Illinois, Dep't of Cent. Mgmt. Serv., 25 PERI ¶161 (IL LRB-SP 2009) (Case No. S-RC-08-074). The court focused its analysis on the second prong of the supervisory analysis: having authority to hire, transfer, suspend, lay off, recall, promote, discharge, direct, reward, or discipline employees, adjust grievances, or recommend any of those actions. The court found that the Board improperly interpreted "independent judgment" to mean that the supervisory employee does not involve any other employee in her decision-making process. Additionally, the court found that an employee can have her work reviewed by a superior and still be a supervisor under the Act. The court also found that employees who have the authority to independently assign and monitor work of subordinates satisfy the requirement that a supervisor "direct" subordinates with independent judgment. Having found some of the employees performed some of the statutory indicia of supervisory authority, the court directed they be excluded without considering the final element of the statutory definition: that the employees spend a preponderance of their employment time on these tasks.

In a non-precedential decision in Village of Oak Brook v. Ill. Labor Relations Bd., No. 2-10-0168, 26 PERI ¶7 (Ill. App. Ct., 2d Dist., 2011), (IL LRB SP 2010)(Case No. S-RC-09-057), rev'g, 27 PERI ¶41, the court found that police sergeants were supervisory, finding the sergeants did not collaborate in making evaluations, sought guidance in discipline of their own volition, could reward subordinates, adjusted grievances by denying them at the first level, and engaged in "other indicia" of supervisory status in that they were often the highest ranking employees on duty.

In a non-precedential decision in MAP, Streamwood Sergeants Chapter 217 v. Ill. Labor Relations Bd., 2011 IL App (1st) 110144-U, the court affirmed the State Panel's determination in Village of Streamwood and Metropolitan Alliance of Police, Streamwood Sergeants Chapter #217, 26 PERI ¶134 (IL LRB-SP)(Case No. S-RC-09-145), that sergeants employed by the Village of Streamwood are supervisors within the meaning of the Act. The court agreed that the sergeants' principal work is substantially different from that of their subordinates under both the "obvious and visible" test and the "nature and essence" test. The court also found that the sergeants perform two of the 11 duties enumerated in Section 3(r) of the Act with independent judgment. The court found that the sergeants have the supervisory authority to recommend a suspension without substantial review by superiors. Additionally, the court found that sergeants have the authority to use independent judgment to reward officers and the fact that sergeants were told occasionally to change their evaluation scores does not change the fact that they used their supervisory authority to reward. Because of these reasons, the court affirmed the Board's determination that the sergeants are supervisors within the meaning of the Act.

In Laborers' Int'l Union of N. Am., Local 2002, Illinois State Employees Association and State of Illinois, Dep't of Cent. Mgmt. Serv. (Illinois Department of Corrections), 28 PERI ¶46 (IL LRB-SP 2011)(Case No. S-RC-10-214), the Board agreed with the ALJ's determination that employees in the job title of Public Service Administrator, Option 7, employed as Internal Security Investigator IIIs, were not confidential employees, but found they were supervisors where they spent a preponderance of their working time on supervisory tasks such as assigning cases to subordinates, reviewing subordinates' reports, and disciplining subordinates.

In SEIU, Local 73 and Illinois Secretary of State, _ PERI ¶ _ (IL LRB-SP, Oct. 24, 2011)(Case No. S-RC-11-006), the Board adopted the ALJ's recommendation that Executive Is and IIs are neither

supervisors or managers and should be added to the bargaining unit. The Board held that it retained authority to consider the petition for representation despite having failed to resolve the matter within the 120 days specified in Section 9(a-5), and rejected the Petitioner's countervailing argument that the Board should make the certification *nunc pro tunc* where it failed to meet this deadline. The Board also stated that it cannot base a determination of the public employee status of the Executive Is and IIs on the fact that they are already members of collective bargaining units, and must review evidence presented concerning their actual duties instead. The Board also held that because the Employer failed to show evidence of how much time was spent in rewarding, disciplining, or discharging subordinates, the ALJ correctly concluded that the Executive Is and IIs did not spend a preponderance of their employment time exercising supervisory authority. The Board also held that the Employer had made no attempt at proving that the Executive Is and IIs spent most of their time in managerial functions, and failed at proving that they had a substantial amount of discretion to determine how policies would be affected. The Board rejected Employer's argument that some of the Executive Is and IIs must be managerial because they are the highest ranking employees at their facilities because there was no evidence that the employees make the sorts of managerial decisions to provide services in a manner unique to their particular facilities.

In AFSCME, Council 31, and State of Illinois, Dep't of Cent. Mgmt. Serv., 26 PERI ¶116 (IL LRB-SP 2010)(Case No. S-UC-10-014), the Board adopted the ALJ's Recommended Decision that found human casework managers who served as local office administrators for the Department of Human Services' Division of Human Capital Development were supervisors within the meaning of the Act. The ALJ found the local office administrators had the authority to direct, discipline, and adjust grievances and that they spend a preponderance of their employment time performing such tasks. In reaching the latter finding, the ALJ noted the different court interpretations of the preponderance standard, and found adequate support in the record for the regional administrators' assessment of the percentage of time the local office administrators spend on supervisory functions from the fact that they were regularly informed of what the local office administrators are doing, and the fact that two of the regional administrators had formerly been local office administrators.

In AFSCME, Council 31, and Chief Judge of the Circuit Court of Cook County, 26 PERI ¶117 (IL LRB-SP 2010)(Case No. S-RC-10-007), the Board rejected the Employer's contention that the petitioned-for employees were managers or supervisors where the Employer declined to provide the ALJ with sufficient information to raise either issue. The Board adopted the ALJ's findings with two modifications: 1) The employees' assignment of cases based on who works well with whom and with specific residents is evidence of independent judgment and is not routine; and 2) The Board disavowed any contention in the RDO that the employees' reliance on skills, knowledge or experience necessarily precludes their exercise of independent judgment. The Board found these modifications did not alter the conclusion that the employees are not supervisors because, in any event, their supervisory tasks could not consume a preponderance of their employment time.

In AFSCME, Council 31, and State of Illinois, Dep't of Cent. Mgmt. Serv., 26 PERI ¶113 (IL LRB-SP 2010)(Case No. S-RC-10-138), the Board agreed with an ALJ that an Employer had failed to raise an issue as to whether employees with the title of public service administrator, option 8C, were supervisors or managers within the meaning of the Act, despite having been given a second opportunity to do so by means of a response to a detailed show-cause order specifying the requirements for a successful demonstration of the existence of such issues. Most generally, the Board rejected the Employer's position

that the standards used under the Civil Practice Act should govern whether the general and conclusory affidavits it submitted were sufficient to raise an issue for hearing. The Board noted that, in contrast to the adversarial court proceedings referenced by the Employer, its certification of bargaining units was a non-adversarial, largely ministerial administrative task. It found no need to deviate from its prior practice, particularly since courts have recently reviewed, and approved of, that practice.

More specifically, the Board found no issue regarding adjustment of grievances because there was no evidence that any of the employees in dispute had the authority to provide substantive relief at the first stage as required by the Act. However, the Board disavowed any implication from the ALJ's recommendation that the employee must be designated to resolve grievances at the final step of the grievance process. The Board rejected the Employer's position that it did not need to present evidence on the employees' authority to train except in response to a defense raised by the Petitioner, noting that Employers always bear the burden of demonstrating that their employees are precluded from the protections of the Act. The Board found there was an issue of fact or law as to whether some of the employees exercise discipline, but that there was no need for a hearing here where there was no evidence that this task could take a preponderance of the employees' time, at least no evidence other than a vague, generalized, and conclusory statement in an affidavit.

Lastly, the Board rejected the Employer's argument that one employee was a manager where the Employer presented evidence that the employee met the first prong of the two-part managerial test, but failed to provide any evidence that the employee was predominantly engaged in directing the effectuation of management policies and functions. The Board rejected the Employer's contention that evidence of supervisory tasks met this aspect of the managerial definition, finding that it had to follow the statutory definitions, and the statute defined managerial employees separately from supervisory employees.

In State of Illinois, Dep't of Cent. Mgmt. Serv. (Dep't of Human Serv.), 26 PERI ¶116 (IL LRB-SP 2010)(Case No. S-UC-10-014), the Board affirmed the ALJ's finding that certain employees in the classification of Human Casework Manager acting as Local Office Administrators (LOAs) were supervisory employees within the meaning of the Act. The Board upheld the ALJ's finding that the essence of the LOAs' work and the work of the subordinates was obviously and visibly different. The LOAs oversaw the entire local office, did not maintain their own caseloads, conducted various meetings and conferences with other employees, were the only local office employee responsible for interpreting and implementing new procedures, maintained relationships with community resources, and when a subordinate employee filled in for the LOA, the subordinate did not have the authority of the LOA.

With respect to supervisory indicia, the ALJ found that that the LOAs had the ability to direct through their use of independent judgment in assignment and reassignment of work, actively checking the caseload without review from others, being responsible for proper performance of their subordinates, using discretionary authority to effectuate DHS policies through staff meetings and trainings, approving and denying time off requests based on operational needs, and completing annual performance evaluations which determine whether or not a probationary employee will be certified. He found the LOAs used independent judgment when imposing discipline and adjusting grievances. The ALJ noted that the LOAs were the only persons in the local office who have the responsibility to monitor or report any violations and take any corrective or disciplinary action. Further, the ALJ found that the LOAs could deny or grant grievances at the first step without prior approval and have done so. Finally, the ALJ found that the LOAs spent a preponderance of their time engaged in supervisory functions because they spent more than 50 percent of their time engaged in supervisory activity.

In State of Illinois, Dep't of Cent. Mgmt. Serv. (Dep't of Public Health, Pollution Control Bd.), 26 PERI ¶113 (IL LRB-SP 2010)(Case No. S-RC-10-138), the Board upheld the ALJ's determination that eight employees with the title of Public Service Administrator, Option 8C were not supervisors or managers within the meaning of the Act. The Board agreed with the ALJ's finding that the Employer failed to raise an issue of fact or law warranting a hearing, and the Board's analysis differed only slightly from that of the ALJ.

As for supervisory status, the Board found that there was no evidence that any of the employees in dispute had the authority to provide substantive relief at the first stage of the grievance process or exercise discipline using independent authority. The Board found that the conclusory statements in the Employer's affidavits concerning authority to train were insufficient to raise an issue warranting hearing. The ALJ found that the Employer neglected to even address the preponderance of time requirement except to provide a broad statement that one employee spent an "overwhelming majority of her time supervising subordinates." The Employer did not raise the topic of whether one Option 8C employee had the authority to promote subordinates, but nevertheless excepted to the ALJ's finding on this point. The Board noted that in any event, because there was no issue of fact or law as to whether the employee engaged in supervisory tasks a preponderance of the time, no hearing was warranted.

As for managerial status, the ALJ found that one employee's preparation of the Illinois Pollution Control Board's budget met the first prong of the two-part managerial test. However, the ALJ found no facts or argument relating to the second prong. The Employer had stated that the employee's supervisory duties were to be considered part of her management function, but the Board rejected this sole basis for arguing that the employee was a manager, noting that the statute defines managers separately from supervisors.

In AFSCME, Council 31 and State of Illinois, Dep't of Cent. Mgmt. Serv., 26 PERI ¶131 (IL LRB-SP 2010) (Case Nos. S-RC-09-038 and S-RC-09-060) (Corrected Decision), appeal pending, No. 4-11-0013 (Ill. App. Ct., 4th Dist.), the Board upheld an ALJ's recommendation that approximately 20 professional engineers in the title of Senior Public Service Administrator Option 8E at the Department of Public Health (DPH), Department of Natural Resources (DNR), and the Illinois Environmental Protection Agency (IEPA) were not supervisors within the meaning of the Act. The Board agreed with the ALJ that the Option 8Es review of their subordinates' work was not indicative of supervisory status where the review was done to ensure work product met standards and not in order to correct the subordinates' work performance. However, the Board disagreed with the ALJ's analysis in regard to placement on proof status as indication of supervisory authority to discipline. The Board stated that it had previously found that the authority to place an employee on proof status, if exercised with independent judgment, is an indication of supervisory authority to discipline. Further, the Board found that counseling and oral reprimands constituted discipline because memoranda of the counselings were kept in the employees' personnel file and the memoranda warned that failure to take corrective action could result in disciplinary action. Nonetheless, the Board found that the Employer had failed to demonstrate that the Option 8Es spent a preponderance of time performing supervisory tasks where there was a lack of evidence concerning the number of disciplines and "repeated references to the professionalism of subordinates."

In AFSCME, Council 31 and State of Illinois, Dep't of Cent. Mgmt. Serv., _ PERI ¶ _ (IL LRB-SP Dec. 2, 2010) (Case No. S-RC-09-176), the Board affirmed the ALJ's determination that a Public Service Administrator Option 8L employee of the Environmental Protection Agency was a public employee under the Act. Though the employee performed substantially different principal work than her

subordinates, she did not perform any indicia of supervisory authority with the requisite independent judgment. For example, the employee automatically approved time off and compensatory time requests. Her review of subordinates' work was either routine, to ensure it was complete, correct and complied with agency requirements, or based on her superior technical knowledge. Finally, her evaluations did not have adverse consequences on her subordinates without approval of the agency head.

In Village of Lake Zurich and Illinois Fraternal Order of Police Labor Council, 27 PERI ¶26 (IL LRB-SP 2011)(Case No. S-RC-09-139), the Board found police sergeants were supervisors. It found the authority to issue written notices of counseling, as well as oral and written reprimands, was supervisory. Although command staff often directed sergeants to issue discipline, there were instances where the sergeants issued discipline on their own initiative. The sergeants also completed evaluations for their subordinates which played a significant role in determining whether the subordinates receive merit increases. Specifically, they had discretion, based on their personal observations of their subordinates' poor performance, to recommend against pay or step increases because of a subordinate's poor performance.

In Village of Richton Park and Illinois Fraternal Order of Police, 26 PERI ¶151 (IL LRB-SP 2011)(Case No. S-RC-10-055), appeal pending, No. 1-11-0289 (Ill. App. Ct., 1st Dist.), the Board found sergeants were not supervisors within the meaning of the Act because they lacked authority to effectively recommend discipline with independent judgment. The ability to issue counseling did not count, though they were documented, where the evidence failed to show the sergeants could decide to issue a counseling based on their own independent judgment.

In City of Washington and Policeman's Benevolent Labor Comm., 27 PERI ¶3 (IL LRB-SP 2011)(Case No. S-UC-09-242), the Board found an existing bargaining unit of sergeants and patrol officers should be clarified to exclude the sergeants as they are supervisory employees. The State Panel found that although there are only three circumstances under which a Petitioner can file a unit clarification petition, this type of petition may also be appropriate when the Petitioner is seeking to exclude individuals from a unit on the basis that they are statutorily exempt from collective bargaining under the Act. Lastly, the State Panel rejected the ALJ's finding that allowing subordinates to leave work early with pay is the authority to reward or that the authority to promote occurs when petitioned-for employees decide whether or not to retain a probationary employee since that employee retains the same rank.

In AFSCME and State of Illinois, Dep't of Cent. Mgmt. Serv., 27 PERI ¶10 (IL LRB-SP 2011)(Case No. S-RC-09-036), appeal pending, No. 4-11-0209 (Ill. App. Ct., 4th Dist.), the Board found the Employer failed to show that three employees in the job title of Senior Public Service Administrator Option 8(h) were supervisors within the meaning of the Act where there was no indication they performed any of the indicia of supervisory status. The Board rejected the assertion that the employees evaluated their subordinates where the evidence did not indicate the evaluations had any impact on terms and conditions of employment. The Employer's assertion that poor evaluations might lead to discipline was not supported with any evidence of such discipline having occurred.

In AFSCME, Council 31 and State of Illinois, Dep't of Cent. Mgmt. Serv. (Dep't of Commerce and Econ. Opportunity), 27 PERI ¶56 (IL LRB-SP 2011) (Case No. S-RC-10-238), the Board adopted the ALJ's findings of fact and his conclusion that Foreign Service Economic Development Executive IIs employed by the State of Illinois, Department of Central Management Services in offices located in various foreign countries are not supervisors within the meaning of the Act. However, contrary to the ALJ, it found that FSEDE IIs are managerial employees within the meaning of Section 3(j) of the Act. Specifically, the State Panel found that FSEDE IIs perform executive and management functions relating to their unique locations, and are also responsible for directing the effectuation of management policies and practices in their targeted countries. Accordingly, the Board dismissed the petition.

In Village of Roselle and Metropolitan Alliance of Police, Roselle Sergeants Chapter #259, 27 PERI ¶59 (IL LRB-SP 2011)(Case No. S-RC-10-023), the Board adopted the ALJ's finding that all full-time, sworn peace officers in the rank of sergeant employed by the Village of Roselle were supervisors within the meaning of Section 3(r) Act where they could discipline with independent judgment in ways that affected terms and conditions of employment, and adjusted grievances, though infrequently.

In AFSCME, Council 31 and County of Cook, 27 PERI ¶58 (IL LRB-LP 2011)(Case No. L-RC-10-027), the ALJ recommended that Nurse Managers and Tour Supervisors employed by the County of Cook at its Oak Forest Hospital be found to be public employees and not supervisors within the meaning of the Act, and that they be included in a historical bargaining unit represented by American Federation of State, County and Municipal Employees, Council 31. In support of its exceptions, County of Cook relied primarily on testimony in an earlier representation case concerning a petition for a larger unit that included the positions at issue. The Local Panel rejected County of Cook's exceptions and adopted the ALJ's recommendation. Local Panel Board Member Anderson dissented and would have instead held that these employees are not public employees but supervisors within the meaning of 3(r) of the Act and consequently would have dismissed the petition.

In Illinois Fraternal Order of Police Labor Council and City of Springfield, 27 PERI ¶69 (IL LRB-SP 2011)(Case No. S-RC-09-184), appeal pending, No. 1-11-1691 (Ill. App. Ct., 1st Dist.),the Board accepted the ALJ's recommendation and found that sergeants employed in the City of Springfield Police Department are supervisors and lieutenants confidential employees within the meaning of Sections 3(r) and 3(c) of the Act. It found enough had changed in the police department over the preceding 10 years to warrant re-examination of the issues rather than apply an earlier ALJ decision on one topic and an earlier party concession on the other. The sergeants were supervisors because they could direct, discipline and adjust grievances while exercising independent judgment. The lieutenants were not managerial because they did not broadly affect department goals, however they were confidential because they participated in meetings at which negotiation strategies were discussed and because they had access to information regarding negotiation strategies.

In Illinois Fraternal Order of Police Labor Council and City of Carbondale, 27 PERI ¶68 (IL LRB-SP 2011)(Case No. S-RC-11-034), appeal pending, No. 1-11-1692 (Ill. App. Ct., 1st Dist.), the Board dismissed a majority interest representation petition, finding that all but one of the petitioned-for sergeants were supervisors, and a bargaining unit of the one remaining sergeant would not be appropriate for the purposes of collective bargaining under the Act. Most of the sergeants were found to have the

authority to effectively recommend discipline and direct by making substantive corrections to their subordinate's reports.

In Chicago Joint Board, RWDSU, UFCW Local 200 and County of Cook, Health and Hospital System Board, 27 PERI ¶70 (IL LRB-LP 2011)(Case No. L-RC-10-037), the Board accepted the ALJ's recommendation to find employees in the title of Administrative Assistant V employed by the County of Cook Health and Hospital System Board are not supervisors within the meaning of Section 3(r) of the Act. The Board rejected the Employer's contention that these employees could direct and discipline with independent judgment.

In AFCSME, Council 31 and State of Illinois, Dep't of Cent. Mgmt. Serv. (Dep't of Human Serv.), 27 PERI ¶71 (IL LRB-SP 2011)(Case No. S-RC-10-176), the Board held that the two employees in question were supervisors within the meaning of 3(r) of the Act. Both employees were directors of the social work departments at two mental health centers. They oversaw 20 to 40 subordinates and reported to the medical director and hospital administrator at their respective health centers. The employees engaged in principal work substantially different from that of their subordinates, the first requirement for supervisory status. The Board found the first employee gave direct instructions to her subordinates, was consulted by her subordinates on difficult cases, and used independent judgment in the handling of those cases. Although she often consults with her superior on a variety of issues, there was no evidence to suggest her supervisor had ever countermanded her decisions. The Board also found she spent more time on supervisory tasks than on any one non-supervisory task, meeting the preponderance of the time standard. Although the record was significantly less detailed for the second employee, she held the same position as the first employee, just at a different facility. Because both employees held the same position, the Board held it was reasonable to conclude the second employee was also a supervisor under the Act.

Illinois Fraternal Order of Police Labor Council and County of Winnebago and Sheriff of Winnebago County, 28 PERI ¶19 (IL LRB-SP 2011)(Case No. S-RC-09-123), involved a majority interest representation petition to represent deputy sheriffs in the rank of sergeant. Based on an apparent concession in the existing collective bargaining unit, the ALJ recommended the Employer's motion for summary judgment be granted, the petition be dismissed, and the employees found to be supervisors within the meaning of Section 3(r) of the Act. There was language in the collective bargaining agreement between the parties stating that officers in the rank of sergeant and above were supervisors. The language in question had been a part of the agreement for 25 years. Under those circumstances, the Board questioned whether either party in fact viewed the contractual language as a true stipulation as to the sergeants' status, so it remanded the case for hearing on the issues of whether the Union, by means of the contract, had conceded that the sergeants were supervisors, and whether the evidence overall suggests the sergeants were supervisors under the meaning of the Act.

In Int'l Union of Operating Eng'rs, Local 150 and State of Illinois, Dep't of Cent. Mgmt. Serv. (Dep't of Transp.), 28 PERI ¶20 (IL LRB-SP 2011)(Case No. S-RC-10-194), appeal pending, No. 4-11-0825 (Ill. App. Ct., 4th Dist.), the Board found a group of employees were not supervisors within the meaning of Section 3(r) of the Act. The employees did not perform any of the tasks listed in Section 3(r), and thus also failed to meet the preponderance of time requirement. As a secondary matter, the Employer had attempted to raise additional arguments in its post hearing brief, but both parties had stipulated prior

to the hearing that the sole issue was whether the employees in question were supervisors, and the Board held they were bound to that stipulation and could not raise new issues.

In AFSCME, Council 31 and Illinois Dep't Cent. Mgmt. Serv. (Dep't of Healthcare and Family Serv.), _ PERI ¶ _ (IL LRB-SP, Oct. 24, 2011)(Case No. S-RC-11-086), the Board reversed an ALJ's recommendation and found that a Public Service Administrator, Option 7 was a supervisor. The ALJ found that the employee did not spend a preponderance of his employment time directing his subordinates, and therefore did not meet the requirements for supervisory status. The Board found the ALJ did not consider the full range of direction, and when that was properly considered, a finding that the employee spent a preponderance of his employment time in supervisory tasks was supported by the evidence of record.

In AFSCME, Council 31 and Illinois Dep't of Cent. Mgmt. Serv., _ PERI ¶ _ (IL LRB-SP, Oct. 24, 2011)(Case No. S-UC-09-182), the Board adopted the ALJ's recommendation that one employee in the title of Public Service Administrator, Option 6 should be added to the bargaining unit and that other Option 6 positions should not. Most broadly, the Board rejected the Employer's argument that State of Illinois employees are not subject to the statutory element for supervisory status requiring the employee to spend a preponderance of her employment time engaged in supervision, as this argument is directly contradicted by appellate court precedent and the 20 years' of court and Board precedent that followed. The Board also rejected the Employer's argument that the first employee was a supervisor simply because Petitioner had not demonstrated that some other employee supervised her subordinates. And the Board also rejected the Employer's argument that the ALJ erroneously analyzed the preponderance of time element where the ALJ had applied the most applicable appellate court precedent on that topic.

See also AFSCME, Council 31 and State of Illinois, Dep't of Cent. Mgmt. Serv. (Dep't of Human Serv.), 28 PERI ¶16 (IL LRB-SP 2011)(Case No. S-RC-10-162) discussed above concerning confidential employees; State of Illinois, Dep't of Cent. Mgmt. Serv. and AFSCME, Council 31, 26 PERI ¶155 (IL LRB-SP)(Case No. S-RC-09-180), appeal pending, No. 4-11-0638 (Ill. App. Ct., 4th Dist.), discussed above concerning managerial employees; and AFSCME, Council 31 and City of Chicago, 26 PERI ¶114 (IL LRB-LP 2010) (Case Nos. L-RC-09-018 and L-UC-09-008), discussed above concerning confidential employees.

III. Employer Unfair Labor Practices

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

In Ill. State Toll Hwy. Auth. v. Ill. Labor Relations Bd., 405 Ill. App. 3d 1022 (2d Dist. 2010), vacating SEIU, Local 73 and Illinois State Toll Highway Auth., 25 PERI ¶76 (IL LRB-SP 2009)(Case No. S-CA-07-155), the court ruled with respect to rights established under NLRB v. Weingarten, Inc., 420 U.S. 251 (1975), an employee has a right to know the subject matter prior to an investigatory interview, but that an employee can waive that right by not specifically asking.

In Pace Suburban Bus Div. of the Reg'l Transp. Auth., Nw. Div. v. Ill. Labor Relations Bd., 406 Ill. App. 3d 484 (1st Dist. 2010), the court affirmed the Board's decision that Pace had committed an unfair labor practice. The Board found that Pace had violated the Act by firing a bus driver in retaliation

for previously filing a successful grievance against it. Pace argued several theories on appeal. First, Pace argued the bus driver failed to prove that her termination was because of anti-union animus. However, the court held employees can establish a violation of 10(a)(1) by showing they engaged in protected activity, the Employer knew the nature of their activities, and the Employer took adverse employment action against them for engaging in those activities. Therefore, the employee is not required to specifically prove the Employer's anti-union animus.

Second, Pace argued the driver did not prove a causal connection between the employee's protected activity and the adverse employment action. Specifically, Pace argued the Board's determination that Pace had "shifting explanations" for the driver's termination was insufficient to establish an improper motive. The court disagreed. The bus driver had presented evidence she suffered disparate treatment during the investigation of incidents she allegedly committed, as well as in the discipline she received. The court found that the Board's conclusion that Pace had an improper motive was not against the manifest weight of the evidence.

Finally, Pace argued the Board improperly considered evidence outside the six month statute of limitations period. The bus driver's claim related back to an earlier grievance which was outside of the statute of limitations. Furthermore, Pace stated in its termination letter to the driver she was being let go due to her entire work history. Pace also used several incidents outside the limitations period to support the argument it had legitimate reasons for terminating the driver's employment. The court stated Pace could not use evidence outside the six month period to support its claim and then deny the driver the same evidence. Because of the nature of the bus driver's claim, the Board did not improperly consider evidence outside the six month period.

In City of Ottawa v. Ill. Labor Relations Bd., 2011 IL App (3rd) 090365 (non-precedential order), the City appealed the Board's decision in Policemen's Benevolent Labor Committee and City of Ottawa, 25 PERI ¶43 (IL LRB-SP 2009) that it had violated Section 10(a)(1) of the Act when it denied an employee's request for Union representation and subsequently terminated him. The Board ordered that the employee be reinstated with back pay and that the City stop interviewing employees in a manner which violated their Weingarten rights. The Court agreed with the Board's finding that the City had violated the employee's Weingarten rights. The employee had asked for Union representation, but was talked out of it by the City's representative. The Court stated that talking an employee out of representation did not constitute the employee's knowing and voluntary waiver of his rights. However, the Court found the Board had abused its discretion by awarding make-whole relief to the employee. The Court stated that nothing in the record supported the conclusion that the employee had been terminated for asserting his right to Union representation. Therefore, the Board's order that he be reinstated was an abuse of its discretion. The Court remanded the case to the Board to amend its decision, which it did in Policemen's Benevolent Labor Comm. and City of Ottawa, 28 PERI ¶15 (IL LRB-SP June 17, 2011) (Case No. S-CA-04-193), appeal pending, No. 3-11-0625 (Ill. App. Ct., 3d Dist.), which itself has been appealed, this time by the union.

In Teamsters, Local 700 and Chief Judge of the Circuit Court of Cook County, 27 PERI ¶63 (IL LRB-SP 2011)(Case No. S-CA-10-281), the ALJ recommended that the State Panel found that Chief Judge of the Circuit Court of Cook County failed to timely answer the Complaint, and had therefore admitted the material allegations of fact and law. Accordingly, he recommended that the Board find that the Respondent violated Section 10(a)(1) of the Act by taking adverse action against certain employees because they had engaged in union and/or protected concerted activity, and also violated Section 10(a)(4)

and (1) of the Act in that it refused to bargain in good faith by denying requests for performance evaluations and disciplinary records of these employees. The Board upheld the ALJ's recommendation for the reasons set forth by the ALJ.

In Beverly Joseph and Leslie Mitchner and County of Cook, 27 PERI ¶57 (IL LRB-LP 2011)(Case Nos. L-CA-09-046 and L-CA-09-099), appeal pending, No. 1-11-1514 (Ill. App. Ct., 1st Dist.), the ALJ found the County of Cook violated Section 10(a)(2) and (1) of the Act by discharging Beverly Joseph for her refusal to sign a background check authorization form. (Leslie Mitchner's termination charge concerning this matter was untimely and was dismissed.) The ALJ further determined the County violated Section 10(a)(2) and (1) of the Act by refusing to reinstate the employment of Joseph and of Mitchner. The Board adopted the ALJ's findings of fact but rejected his analysis and legal conclusion that Joseph's discharge violated the Act. Contrary to the ALJ, the Local Panel found that Joseph's refusal was not activity protected by the Act and dismissed this element of the complaint. However, the Local Panel recognized that the Charging Parties' grievance filing did constitute protected activity and accordingly found that the Respondent violated Section 10(a)(2) and (1) of the Act by refusing to reinstate Joseph and Mitchner.

Local Panel Board Member Anderson concurred in his colleagues' determination that the County did not violate the Act by terminating Mitchner and Joseph because they refused to sign the background authorization forms, but dissented from the determination that the County violated the Act by refusing to reinstate them. Member Anderson found the strength of certain evidence insufficient to bear the Charging Parties' burden of demonstrating that County of Cook's motive in refusing to reinstate Mitchner and Joseph was union animus, and would have dismissed the complaint in its entirety.

B. Section 10(a)(2) discrimination

In Homero Bautista and AFSCME, Council 31 and Homero Bautista and State of Illinois, Dep't of Cent. Mgmt. Serv. (Envtl. Prot. Agency) 27 PERI ¶29 (IL LRB-SP 2011)(Case Nos. S-CB-10-079 and S-CA-10-307), the Board affirmed the Executive Director's dismissal of two related charges, one because the Charging Party did not allege that his Employer's actions were in retaliation for rights protected by the Act, and the other because there was no evidence his union's decision not to pursue a grievance was motivated by vindictiveness, discrimination or enmity.

In Int'l Union of Operating Engineers, Local 150 and Town of Cicero, 27 PERI ¶5 (IL LRB-SP 2011)(Case No. S-CA-06-307), the Board found the Town of Cicero did not violate Sections 10(a)(1) and (2) when it discharged two employees of its Public Works Department, noting that the Union had not proved by a preponderance of evidence that the Respondent discharged the employees based on union animus.

In Shannon Watkins and Village of Dolton, 28 PERI ¶37 (IL LRB-SP 2011)(Case No. S-CA-11-121), the Board upheld the dismissal of an unfair labor practice charge against her Employer. Charging Party had alleged that the Village had violated Section 10(a)(2) of the Act by failing to inform her union that she had been removed from the bargaining unit and subsequently laying her off when her superior's employment was terminated. Charging Party failed to indicate her lay off was in retaliation for the exercise of rights protected under the Act.

In Ass'n of Prof'l Police Officers and City of Aurora, 28 PERI ¶38 (IL LRB-SP 2011)(Case No. S-CA-11-137) the Board upheld the Executive Director's dismissal of a charge where the Union alleged the City had retaliated against employees by laying them off after an informational picket. The Board found the facts did not support the charge because the Employer had attempted to negotiate with the union prior to implementing the budget-related layoffs.

In Marvin Perez and State of Illinois, Dep't of Cent. Mgmt. Serv., 27 PERI ¶28 (IL LRB-SP 2011)(Case No. S-CA-10-208), the Board sustained the Executive Director's Dismissal of an unfair labor practice charge alleging that the State of Illinois violated the Act by terminating the Charging Party in retaliation for union activity and by offering him an unfavorable settlement of a subsequent grievance. The Board agreed with the Executive Director's dismissal of the portion of the charge alleging that the Charging Party received an unfavorable offer to resolve his discharge grievance. The comparison of an offer made to another employee was insufficient where that employee was not similarly situated to the Charging Party. The Board dismissed as untimely the portion of the charge alleging discharge in retaliation for union activity.

In Beverly Joseph and Leslie Mitchner and County of Cook, 27 PERI ¶57 (IL LRB-LP 2011)(Case Nos. L-CA-09-046 and L-CA-09-099), appeal pending, No. 1-11-1514 (Ill. App. Ct., 1st Dist.), the ALJ found the County of Cook violated Section 10(a)(2) and (1) of the Act by discharging Beverly Joseph for her refusal to sign a background check authorization form. (Leslie Mitchner's termination charge concerning this matter was untimely and was dismissed.) The ALJ further determined the County violated Section 10(a)(2) and (1) of the Act by refusing to reinstate the employment of Joseph and of Mitchner. The Board adopted the ALJ's findings of fact but rejected his analysis and legal conclusion that Joseph's discharge violated the Act. Contrary to the ALJ, the Local Panel found that Joseph's refusal was not activity protected by the Act and dismissed this element of the complaint. However, the Local Panel recognized that the Charging Parties' grievance filing did constitute protected activity and accordingly found that the Respondent violated Section 10(a)(2) and (1) of the Act by refusing to reinstate Joseph and Mitchner.

Local Panel Board Member Anderson concurred in his colleagues' determination that the County did not violate the Act by terminating Mitchner and Joseph because they refused to sign the background authorization forms, but dissented from the determination that the County violated the Act by refusing to reinstate them. Member Anderson found the strength of certain evidence insufficient to bear the Charging Parties' burden of demonstrating that County of Cook's motive in refusing to reinstate Mitchner and Joseph was union animus, and would have dismissed the complaint in its entirety.

In Teamsters, Local 700 and City of Chicago, _ PERI ¶_ (IL LRB-LP, Aug. 26, 2011)(Case No. L-CA-10-045), the Board upheld the Executive Director's Partial Dismissal of two unfair labor practice claims in a charge filed by the Int'l Brotherhood of Teamsters, Local 700 regarding treatment of Pool Motor Truck Drivers (PMTDs), Motor Truck Drivers (MTDs), and Motor Truck Operators (MTOs) working for the City of Chicago. The first claim alleged that unit work had been assigned outside of the bargaining unit, but finding no evidence of such, the claim was dismissed. The second claim alleged that the City imposed a shutdown to retaliate against the MTOs for refusing to agree to furlough days. Because the City's treatment of the MTOs was not disparate from the treatment given to other employees, the Executive Director and Board found no issue of fact or law regarding retaliation.

In Sahin Cakir and State of Illinois, Dep't of Cent. Mgmt. Serv., _ PERI ¶_ (IL LRB-SP, Aug. 19, 2011)(Case No. S-CA-09-228), the Board upheld the Executive Director's dismissal of the charge that the Employer wrongfully deducted money from the employee's pay to cover insurance costs while he was on leave under the Family Medical Leave Act, 29 U.S.C. §§ 2601-2654. The Board agreed with the Executive Director that because the charge made no allegation that the Employer's act was taken in retaliation for the exercise of rights under the Illinois Public Relations Act, the charge raised no issue of law or fact to warrant a hearing.

The Board upheld the Executive Director's dismissal of a charge in Donald Blair and State of Illinois, Dep't of Cent. Mgmt. Serv. (Dep't of Human Serv.), 27 PERI ¶ 53 (IL LRB-SP 2011) (Case No. S-CA-10-156), because the Charging Party failed to respond to the Board agent's two requests for information in support of the charge.

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

In Village of Oak Lawn v. Ill. Labor Relations Bd., 2011 IL App (1st) 103417, the court affirmed the Board's determination in Oak Lawn Pro. Fire Fighters Ass'n, Local 3405, Int'l Ass'n of Fire Fighters and Village of Oak Lawn, 26 PERI ¶118 (IL LRB-SP 2010)(Case No. S-CA-09-007), that Petitioner, Village of Oak Lawn, violated sections 10(a)(1) and 10(a)(4) of the Act by failing to bargain in good faith over a "minimum manning" provision in its collective bargaining agreement with the Oak Lawn Professional Firefighters Association, Local 3405, Int'l Association of Firefighters (Union). The court determined that section 14(i) of the Act is not "determinative as to whether and to what extent 'manning' is a mandatory bargaining subject." The court stated that unless a matter is excluded from arbitration by section 14(i), meaning the matter cannot be a mandatory bargaining subject, then the Central City balancing test will be applied to determine whether a matter is a mandatory bargaining subject. "Manning" is not a term that the Act excludes from arbitration for firefighters, so whether Petitioner's use of the term "manning" goes beyond the meaning intended by section 14(i) has no bearing on whether it is a mandatory bargaining subject. The court also noted that the "minimum manning" provision was not about the total number of employees to be employed by the department, but rather it was a minimum number of employees who must be assigned to each shift, which is not excluded from arbitration under 14(i).

In SEIU, Local 73 v. Ill. Labor Relations Bd., 2011 IL App. (1st) 101636U, pet. for leave to appeal pending, the court affirmed in a non-precedential decision a Local Panel decision in SEIU Local 73 and County of Cook, 26 PERI ¶43 (IL LRB-LP 2010)(Case No. L-CA-07-049), that the County of Cook had not violated the Act by implementing a change in hours. Prior to implementing a change in hours, the Employer sent a notice of the change to the Union and requested the Union contact the Employer if there were any questions or concerns regarding the change, and the court determined that this invitation to discuss the change meant that it was not a fait accompli. The Union did not reply to the Employer's notice until a week after the new hours were to be implemented, arguing the Employer did not give enough notice to provide for a reasonable opportunity to engage in bargaining before the implementation of the change. The court rejected this argument, finding the Union waived its right to bargain over the changes because the Union did not take any action at all until after the changes were underway. The court concluded that the Board's determination was not clearly erroneous.

In Policeman's Benevolent Labor Comm. and City of Madison, 27 PERI ¶8 (IL LRB-SP 2011)(Case No. S-CA-10-256), the Board upheld the Executive Director's dismissal where the Union alleged that the Employer engaged in unfair labor practices within the meaning of Sections 10(a)(4) and (1) by repudiating a minimum manning clause in the parties' collective bargaining agreement. The Board found the charging party improperly sought to remedy a breach of the collective bargaining agreement through the Board's processes.

In PACE South Suburban Bus Service and Amalgamated Transit Union, Local 1028 (Delores Atterbery), 26 PERI ¶123 (IL LRB-SP 2010) (Case Nos. S-CA-10-129 and S-CB-10-031), the Board upheld the Executive Director's dismissal of unfair labor practice charges brought against the Employer and the Union. The Charging Parties alleged that the Employer and Union violated the Act by negotiating and agreeing to a collective bargaining agreement that denied non-roll up bonuses and retroactive pay to employees who had retired or left PACE's employment, prior to certain dates. The Executive Director dismissed the charge against the Employer because although the Charging Parties were able to demonstrate adverse action, they did not allege, nor did the facts indicate, that the complained of act was committed against them because of, or in retaliation for, the exercise of rights protected under the Act.

PACE separately requested sanctions against the Charging Parties. The Executive Director found that PACE failed to request sanctions through a motion, as required by the Rules. The Executive Director found that even if PACE had timely filed such a motion, it would likely have lacked merit because there was no evidence that the Charging Parties lacked good faith in bringing the charge.

In Metropolitan Alliance Police, Western Springs Sergeants Chapter 456 and Village of Western Springs, 27 PERI ¶4 (IL LRB-SP 2011)(Case No. S-CA-10-219), the Board upheld the Executive Director's dismissal of an unfair labor practice charge filed by MAP alleging that the Village of Western Springs engaged in unfair labor practices by making a unilateral change when it hired a part-time Accreditation Manager to perform duties historically performed by an Administrative Sergeant. The employer gave notice of its intentions months before implementation, and the union waived its rights by failing to request bargaining.

In Metropolitan Alliance of Police, Chapter. No. 357 and Village of Niles, 27 PERI ¶9 (IL LRB-SP 2011)(Case No. S-CA-10-323), the Board upheld the Executive Director's dismissal of a charge alleging violations of Sections 10(a)(1) and (4) when, at an interest arbitration hearing, the Village Manager stated that the Employer might have to lay off personnel in response to an adverse arbitration award. The Executive Director found that under the facts of the case, no reasonable employee would have interpreted this statement as a threat of reprisal or force.

In Teamsters, Local 700 and Chief Judge of the Circuit Court of Cook County, 27 PERI ¶63 (IL LRB-SP 2011)(Case No. S-CA-10-281), the State Panel found that Chief Judge of the Circuit Court of Cook County failed to timely answer the Complaint, and had therefore admitted the material allegations of fact and law. Accordingly, the Board found that the Respondent violated Sections 10(a)(1) of the Act by taking adverse action against certain employees because they had engaged in union and/or protected concerted activity, and also violated Section 10(a)(4) and (1) of the Act in that it refused to bargain in good faith by denying requests for performance evaluations and disciplinary records of these employees.

In AFSCME, Council 31 and County of Lake, _ PERI ¶ _ (IL LRB- SP Oct. 24, 2011)(Case No. S-CA-10-063), the Board affirmed the ALJ's recommended decision that the Employer violated Sections 10(a)(4) and (1) of the Act by unilaterally consolidating operations, causing work performed by bargaining unit employees to be transferred to non-unit employees.

In SEIU, Local 73 and City of Waukegan, _ PERI ¶_ (IL LRB-SP, Aug. 5, 2011)(Case No. S-CA-10-283), the Board reversed the Executive Director's partial dismissal of the unfair labor charges filed by the SEIU, Local 73. the Executive Director dismissed of the part of the charge that alleged layoffs violated the collective bargaining agreement, reading a management rights clause as a waiver of the right to bargain over layoffs, but the Board reversed, finding that the Charging Party raised an issue as to whether it was required to demand bargaining before Employer provided the official notice of the layoff. The Executive Director also dismissed the part of the charge that alleged a violation of the Act when it made unilateral changes to employees' health benefits. The Board reversed, finding that the Charging Party should be allowed the opportunity to establish that health care changes were not just a breach of contract. Chairman Zimmerman and Member Kimbrough concurred, but would have referred these issues to arbitration because they invoke application of the collective bargaining contract.

In Fraternal Order of Police, Lodge 7 and City of Chicago, 26 PERI ¶115 (IL LRB-LP 2010)(Case No. L-CA-09-009), appeal pending, No. 1-10-3215 (Ill. App. Ct., 1st Dist.), the Board rejected the ALJ's finding that the City violated the Act by refusing to bargain over a decision to reduce the number of Field Training Officer (FTO) Districts. The Board applied the Central City test to reach this decision. First, the Board determined that the reduction in number of Field Training Officer (FTO) Districts concerned wages, hours, terms and conditions of employment. Second, the Board found that the means of improving the quality of training for probationary employees was a matter of inherent managerial authority. For this reason, the Board also noted that it was not necessary to decide whether the decision was a change to the department's organizational structure. The Board concluded by balancing the benefits of bargaining on the burdens imposed on the Employer's authority: Though there were benefits to discussing the FTO program with the Union, such as obtaining suggestions regarding improvements, the burden on managerial authority to determine how best to train its new hires outweighed that benefit. Consequently, the Board held that the City's refusal to bargain over its reduction of FTOs did not violate the Act. The Board also rejected the ALJ's finding that the Employer failed to bargain in good faith over the effects of this decision. Since the effects bargaining allegation was never properly alleged as a violation, the Board held it was improper for the ALJ to decide that issue.

In SEIU, Local 73 and Village of Carpentersville, _ PERI ¶_ (IL LRB-SP March 25, 2011)(Case No. S-CA-11-027), the Board, State Panel, upheld the Executive Director's Partial Dismissal of an unfair labor practice charge filed by the Union against the Employer alleging that it had violated Sections 10(a)(4) and (1) of the Act by misrepresenting its finances, engaging in direct dealing, and engaging in regressive bargaining. The Executive Director issued a Complaint with respect to the allegation of direct dealing, but dismissed the allegations of misrepresentation and regressive bargaining as moot because the parties had already ceased the mid-term bargaining during which the alleged violations occurred.

In Teamsters, Local 714 and County of Cook and Sheriff of Cook County, 27 PERI ¶51 (IL LRB-LP 2011) (Case No. L-CA-09-092), the Board upheld the dismissal of a charge where the

Charging Party had alleged that the Employer unilaterally changed the bidding process but failed to respond to the Board agent's repeated requests for information supporting the charge.

In SEIU, Local 73 and Cook County Recorder of Deeds, 28 PERI ¶14 (IL LRB-LP 2011)(Case No. L-CA-11-027), SEIU alleged the Recorder of Deeds violated the Act by refusing to execute an agreement to an earlier unfair labor practice and repudiated that same unexecuted agreement. The Executive Director held there were no issues of law or fact meriting a hearing because "an unexecuted settlement agreement is categorically non-binding." However, the Board disagreed. Using Illinois contract law, the Board determined settlement agreements do not have to be executed to be binding as long as there was offer, acceptance and a meeting of the minds. Here, the Board found there was sufficient evidence to infer the parties intended to be bound by the agreement. Since there was a question concerning the parties' intent, the Board held the matter needed to be resolved at hearing. Therefore, the Board reversed the Executive Director's dismissal and directed that a complaint be issued.

In SEIU, Local 73 and County of McHenry and McHenry County Coroner, 28 PERI ¶17 (IL LRB-SP 2011)(Case No. S-CA-10-127), the Executive Director had dismissed the Union's charge which alleged the County had violated Sections 10(a)(4) and (1) of the Act by failing to bargain in good faith. The Board found there were issues of law or fact regarding the County's good faith efforts in bargaining. The Board reversed the Executive Director's dismissal and ordered that issue a complaint.

In Illinois Fraternal Order of Police Labor Council and County of St. Clair and Sheriff of St. Clair County, 28 PERI ¶18 (IL LRB-SP 2011)(Case No. S-CA-10-228), appeal pending, No. 5-11-0317 (Ill. App. Ct., 5th Dist.), the Board held the County had failed to bargain in good faith when it changed wages, hours and conditions of employment during the pendency of an interest arbitration. The Board found that the County had "changed the status quo by transferring bargaining unit work out of the unit even though no bargaining unit members lost work or hours of employment." Among its exceptions, the County argued that it had no duty to bargain absent a demand from the Union. However, the Board stated that the County was required to get the Union's approval for a change during interest arbitration. The County also argued that the ALJ incorrectly determined that the benefits of bargaining over the issue outweighed the burden on the County, because the Union never presented a counterproposal. To determine if an issue is a mandatory subject of bargaining, the Board analyzes whether an issue is "amenable to bargaining," and if the other party was capable of making a counterproposal. See Village of Bensenville, 19 PERI ¶119 (IL LRB-SP 2003). Since the bargaining issue in question was an economic concern, the Board found the issue was "amenable to bargaining" and that the Union *could* have presented a counterproposal. Id. Therefore, the Board held the benefits of bargaining over the issue outweighed any burden on the County.

IV. Union Unfair Labor Practices

In Chicago Joint Board, Local 200, Retail, Wholesale, and Department Store Union v. Ill. Labor Relations Bd., 2011 IL App. (3d) 101,497, the court affirmed the Board's decision that a union had committed an unfair labor practice. In the original charge, the Charging Parties alleged the union had not properly divided funds from an arbitration award. Initially, the court found the charge had been timely filed. Although the consent order for the arbitration award had been issued on September 16, 2005, the evidence indicated the Charging Parties did not know or have reason to know of an unfair labor issue until January 2006. The union argued the Charging Parties had notice based on its requests for tax forms in

order to determine how the award would be divided. However, the court stated that because these requests were made prior to the consent order, it did not constitute notice. Second, the court affirmed the decision of the Board that the union committed an unfair labor practice by committing intentional misconduct in representing an employee. The union argued its representative was unaware of the Charging Parties' actions which would have "engendered his animosity." The court found the Board correctly applied the "small plant" doctrine to an office of 12 people in determining that the Union's agent was aware of certain information. Finally, the court found the Union had failed to support its claim that the Charging Parties lacked standing to bring the charge and dismissed the argument.

In a non-precedential decision in Michael Lyman v. Ill.Labor Relations Bd., 27 PERI ¶54 (Ill. App. Ct., 1st Dist., 2011), the court affirmed the Board's decision to dismiss the charge against the Union for failing to process a grievance through intentional misconduct. Although the Charging Party alleged his grievance had not been arbitrated because he was suspected of engaging in payroll fraud, the court stated the employee had failed to prove "that any misconduct occurred because of and in retaliation for some past activity by the employee or because of the employee's status or animosity between the employee and the Union's representatives."

In Village of Willow Springs and Teamsters, Local 700, 27 PERI ¶66 (IL LRB-SP 2011)(Case No. S-CB-11-031), the Executive Director dismissed the unfair labor practice charge filed by Village of Willow Springs, which alleged that the Int'l Brotherhood of Teamsters, Local 700 engaged in unfair labor practices within the meaning of Section 10(b) of the Act by coordinating a work stoppage during contract negotiations. However, the Village of Willow Springs did not respond to the Board investigator's request for a position statement the Executive Director found necessary to determine whether there was an issue of fact or law warranting a hearing. The Executive Director dismissed the charge for that reason, ant the State Panel upheld the Executive Director's dismissal.

In PACE South Suburban Bus Service and Amalgamated Transit Union, Local 1028 (Delores Atterbery), 26 PERI ¶123 (IL LRB-SP 2010) (Case Nos. S-CA-10-129 and S-CB-10-031), the Board upheld the Executive Director's dismissal of unfair labor practice charges brought against the Employer and the Union. The Charging Parties alleged that the Employer and Union violated the Act by negotiating and agreeing to a collective bargaining agreement that denied non-roll up bonuses and retroactive pay to employees who had retired or left PACE's employment prior to certain dates. The Executive Director dismissed the charge against the Union because there was no evidence that the Union intentionally took any action either designed to retaliate against the Charging Parties or due to their status. He noted that exclusive representatives have a broad range of discretion in negotiations, and a Union's failure to take all the steps it might have taken to achieve the results desired by a particular employee or group of employees does not violate the Act unless there is unlawful motive. He noted that agreeing to a collective bargaining agreement under which the employees failed to qualify for bonus and retroactive wage payments, did not appear to be motivated by anything other than an honest desire by the Employer and the Union to forge a collective bargaining agreement acceptable to both sides.

In Homero Bautista and AFSCME, Council 31 and Homero Bautista and State of Illinois, Dep't of Cent. Mgmt. Serv. (Envtl. Prot. Agency) 27 PERI ¶29 (IL LRB-SP 2011)(Case Nos. S-CB-10-079 and S-CA-10-307), the Board affirmed the Executive Director's dismissal of two related charges, one because the Charging Party did not allege that his Employer's actions were in retaliation for rights protected by

the Act, and the other because there was no evidence his union's decision not to pursue a grievance was motivated by vindictiveness, discrimination or enmity.

In Linda S. Brooks and AFSCME, Council 31, 27 PERI ¶12 (IL LRB-SP 2011)(Case No. S-CB-10-035), the Board, State Panel, upheld the Executive Director's Dismissal of an unfair labor practice charge alleging that a union had violated Section 10(b)(1) of the Act by failing to keep Charging Party informed of the status of a grievance and by failing to bargain in good faith on her behalf where there was no indication of intentional retaliation.

The Board upheld the Executive Director's dismissal of a charge in Billy McCaskill and AFSCME, Council 31, 27 PERI ¶47 (IL LRB-SP 2011) (Case No. S-CB-09-005), where the Charging Party alleged that the Union failed to keep him informed of the status of his grievance and failed to advance the grievance to arbitration, but provided no evidence of intentional misconduct.

In David W. Jarvis and United Bhd. of Carpenters and Joiners of America, Local Union 792 and Chicago Reg'l Council of Carpenters, 27 PERI ¶48 (IL LRB-SP 2011) (Case Nos. S-CB-10-043 and S-CB-10-045), the Board upheld the Executive Director's dismissal of a charge alleging that the Respondent had violated 10(b)(1) by intentionally failing to pursue a grievance contesting the Charging Party's termination. The overall evidence of potential bias against the Charging Party was insufficient to warrant issuance of a complaint.

The Board upheld the Executive Director's dismissal of a charge in Kearon F. Sharp and SEIU, Local 73, 27 PERI ¶49 (IL LRB-SP 2011) (Case No. S-CB-10-067), where the charge alleged that the Respondent had declined to advance the Charging Party's grievance to arbitration but the Charging Party produced no evidence indicating that the decision was retaliatory.

In Jeanette Mallette and AFSCME, Council 31, 27 PERI ¶62 (IL LRB-LP 2011)(Case No. L-CB-11-001), the Executive Director dismissed an unfair labor practice charge which alleged that the union engaged in unfair labor practices within the meaning of Section 10(b) of the Act by failing to assist the Charging Party in having her reassignment to a different work location rescinded. The Local Panel upheld the Executive Director's dismissal where the Charging Party failed to indicate she had ever asked for her union's assistance in the matter.

In Nicholas Brais and Illinois Fraternal Order of Police Labor Council, 28 PERI ¶11 (IL LRB-SP 2011)(Case No. S-CB-11-021), the Board upheld the Executive Director's dismissal where the Charging Party failed to respond to requests for specific information made by the Board agent.

In Violar Murry and AFSCME, Council 31, 28 PERI ¶36 (IL LRB-LP 2011)(Case No. L-CB-11-014), the Board upheld the Executive Director's dismissal. Charging Party alleged that her union violated Section 10(b) of the Act by failing to file a complaint to vacate an arbitration award. The Board found she failed to allege any legally justifiable basis for overturning the arbitration award.

In Todd Baran and AFSCME, Council 31, 28 PERI ¶39 (IL LRB-SP 2011)(Case No. S-CB-10-027), the Board upheld the Executive Director's dismissal of an unfair labor practice charge. Baran alleged that AFSCME had violated Section 10(b) of the Act when it failed to arbitrate his lay-off

grievance related to his Employer's reduction-in-force policy, but he did not indicate there was any bias, animus or unlawful motivation.

V. Procedural Issues

A. Default and waiver

In a non-precedential decision issued in River Valley Mass Transit Dist. v. Ill. Labor Relations Bd., No. 3-10-442, 27 PERI ¶61 (Ill. App. Ct., 3d Dist., May 23, 2011) the court affirmed the Board's finding of default in Christine Johnson and First Transit/River Valley Metro, 26 PERI ¶38 (IL LRB-SP May 4, 2010)(Case No. S-CA-09-037), aff'd, 27 PERI ¶61 (Ill. App. Ct., 3d Dist., 2011).

In Teamsters, Local 26 and Village of Mahomet, 26 PERI ¶150 (IL LRB-SP 2011)(Case No. S-UC-10-252), the State Panel upheld the Executive Director's decision and order directing that the unit be certified to include part-time employee classifications in the Village of Mahomet. The Panel concluded that serving the petition on the Employer, instead of its counsel, is proper service, and the Employer's failure to respond out of inadvertence constituted a waiver of its objections.

In Policemen's Benevolent Labor Comm. and City of Ottawa, 27 PERI ¶6 (IL LRB-SP 2011)(Case No. S-CA-09-217), the State Panel adopted ALJ's determination that Respondent's failure to timely answer the Complaint constituted an admission of the material allegations of fact and law in the Complaint. The Complaint alleged that the City of Ottawa violated Sections 10(a)(4) and (1) by refusing to bargain in good faith with the Policemen's Benevolent Labor Committee in that their agents failed to recommend that their City Council adopt a tentative agreement reached during an interest arbitration and that it either failed to disclose restrictions placed on its legal representative's authority to bargain on its behalf, or retroactively repudiated that authority. The Panel added that any potential conflict between the remedy provided in the RDO and an interest arbitration award that may issue may be addressed during potential Board compliance proceedings.

In Teamsters, Local 700 and City of Markham, 27 PERI ¶7 (IL LRB-SP 2011)(Case No. S-CA-09-233), the State Panel adopted the ALJ's finding that Respondent failed to timely answer the Complaint and therefore admitted the material allegations of fact and law. A motion by the Charging Party for the award of costs and attorney's fees as sanctions was denied.

The LRB, State Panel upheld the Executive Director's dismissal of an unfair practice charge. Charging party alleged that the municipal employer violated Section 10(a)(4) and, derivatively,(1) of the PLRA by unilaterally hiring a part-time accreditation manager to perform duties historically performed by an administrative sergeant. The Executive Director explained that the employer gave notice of its hiring decision to charging party months before the planned implementation date. Therefore, charging party's failure to demand negotiations before the accreditation manager's start date amounted to a waiver by inaction, the Executive Director determined. The same reasoning applied to any claim regarding the scheduled elimination of the administrative sergeant position, the Executive Director concluded. *MAP, Western Springs Sergeants Chapter 456 v. Western Springs, Village of*, 27 PERI 4 .

B. Deferral

In AFSCME, Council 31 and County of Cook, _ PERI ¶ _ (IL LRB-LP, Oct. 21, 2011)(Case No. L-CA-11-054), the Board upheld the Executive Director's order deferring the matter to arbitration when the Charging Party alleged that the Respondent failed to bargain in good faith over Respondent's decision to implement a furlough day policy.

VI. Right to Interest Arbitration

In AFSCME, Council 31 and County of Warren and Warren County Sheriff, 27 PERI ¶37 (IL LRB-SP 2011) (Case No. S-CA-11-008), the Board reversed an Executive Director's dismissal and found that security officers have a right to interest arbitration under Section 14 of the Act, even where those employees comprise a minority of a mixed bargaining unit with non-public safety employees. Unlike City of Rockford, 14 PERI ¶ 2030 (IL SLRB 1998), which addressed the applicability of Section 14 where the mixed bargaining unit is composed of a majority public safety employees, only the security officers in this instance have the right to interest arbitration.

Public Act 96-0598 amends the Illinois Public Labor Relations Act to provide for binding interest arbitration for units of employers employing less than 35 employees if the parties are negotiating a first contract. In Teamsters Local 700 and City of Marengo, 27 PERI ¶36 (IL LRB-SP 2011) (Case No. S-CA-11-045), appeal pending, No. 2-11-0439 (Ill. App. Ct., 2d Dist.), and SEIU, Local 73 and County of McHenry and McHenry County Coroner, 27 PERI ¶34 (IL LRB-SP 2011) (Case No. S-CA-11-017), appeal pending, No. 2-11-0438 (Ill. App. Ct., 2d Dist.), the Board found that amendment applies where the unit was certified before the January 1, 2011, effective date of the amendment, but the negotiations have not yet resulted in an agreement. In a related case, SEIU, Local 73 and County of McHenry and McHenry County Coroner, 27 PERI ¶35 (IL LRB-SP 2011) (Case No. S-CA-10-153), the Board reversed the Executive Director's dismissal of an unfair labor practice charge resulting from an Employer's refusal to submit to interest arbitration pursuant to Section 14 of the Act. The Board found that the issue in the charge, whether deputy coroners were peace officers within the meaning of the Act, required a hearing for resolution. However, the Board ordered the matter held in abeyance pending the interest arbitration ordered in S-CA-11-017.

Although the Illinois Labor Relations Board had not been made a party to the proceedings, in Police Benevolent Labor Committee v. County of Kane, No. 10 CH 2587 (16th Judicial Circuit, County of Kane), appeal pending, No. 2-11-0993 (Ill. App. Ct., 2d Dist.), a circuit court directed the Board to process a request for interest arbitration on the basis that the parties' most recent collective bargaining agreement contained a "no strike commitment" and that Section 2 of the Illinois Public Labor Relations Act provides that "[i]t is the public policy of the State of Illinois that where the right of employees to strike is prohibited by law, it is necessary to afford an alternate, expeditious, equitable and effective procedure of the resolution of labor disputes subject to approval procedures mandated by this Act." An appeal is pending.

VII. Sanctions

In City of Bloomington v. Ill. Labor Relations Bd., 2011 IL App. (4th) 100,778, the court affirmed the Board's decision in Policemen's Benevolent and Protective Ass'n Labor Comm. and City of

Bloomington, 26 PERI ¶99 (IL LRB-SP 2010)(Case No. S-CA-04-120), where the Board granted the Charging Party's motion for attorney's fees and costs. The motion had been filed after issuance of the ALJ's Recommended Decision and Order finding Respondent violated Sections 10(a)(2) and (1) by denying a lieutenant a promotion because of his union activity and Sections 10(a)(4) and (1) by refusing to bargain. (The ALJ's non-precedential RDO had become final and binding on the parties when neither party filed exceptions and the Board declined to take the case up on its own motion.) The Charging Party's motion for attorney's fees and costs was based on Respondent's denials in response to the complaint which were found to be untrue and made without reasonable cause, as well as on Respondent's factual assertions offered at hearing which were found to be untrue and made without reasonable cause. In analyzing the motion under Section 1220.90(e) of the Board's Rules and Regulations, the Board reiterated that its test for determining whether a party has made factual assertions which were untrue and made without reasonable cause is an objective one – of reasonableness under the circumstances. The Board declined to impose sanctions based on Respondent's denials in answer to the complaint, but, with Member Kimbrough dissenting, did impose sanctions based on the factual assertions made at hearing because Respondent had full opportunity to understand its case at that point in time and "could be properly criticized for presenting never-before-offered false alternative reasons for its conduct toward [the lieutenant]." The court found the Board had not abused its discretion in this matter.

In Teamsters, Local 700 and City of Markham, 27 PERI ¶7 (IL LRB-SP 2011)(Case No. S-CA-09-233), the State Panel adopted the ALJ's finding that Respondent failed to timely answer the Complaint and therefore admitted the material allegations of fact and law. A motion by the Charging Party for the award of costs and attorney's fees as sanctions was denied.

ILLINOIS PUBLIC LABOR RELATIONS ACT: RECENT DEVELOPMENTS

House Joint Resolution No. 45

(As of Nov. 10, 2011, pending in the House Revenue & Finance Committee)

HOUSE JOINT RESOLUTION

WHEREAS, The Illinois House of Representatives has established prudent fiscal parameters for the State budget with House Resolution 110, which required the House Revenue & Finance Committee to set the total amount of general fund expenses for Fiscal Year 2012, and House Resolution 158, which required that any amount of additional State revenue be used to pay the backlog of unpaid State obligations rather than being spent on more State services; and

WHEREAS, The Illinois House and the Illinois Senate passed several State budget bills that held spending under the House Revenue & Finance Committee's State revenue estimate; and

WHEREAS, The Illinois House of Representatives passed the two fiscally responsible resolutions by a vote of 112-0-0 for House Resolution 110 and 114-0-2 for House Resolution 158, respectively; and

WHEREAS, The State of Illinois would have paid employees represented by the American Federation of State, County, and Municipal Employees (AFSCME) an estimated $2,762,956,700 in all funds for payroll costs before the House of Representatives and the Senate reduced the budget for Fiscal Year 2012; and

WHEREAS, The Cost of Living Allowance (COLA) for employees represented by the American Federation of State, County, and Municipal Employees (AFSCME) has averaged an increase of 4.25% over the past 5 fiscal years; and

WHEREAS, The Consumer Price Index has averaged an increase of 1.95% from the years 2007 to 2010; therefore, be it

RESOLVED, BY THE HOUSE OF REPRESENTATIVES OF THE NINETY-SEVENTH GENERAL ASSEMBLY OF THE STATE OF ILLINOIS, THE SENATE CONCURRING HEREIN, that the State shall appropriate for no more than an X% increase for wage increases associated with any and all collectively bargained contracts throughout State government; and be it further

RESOLVED, That it shall be the policy of the State of Illinois that the size of, or a reduction in, the State employee workforce shall not be a topic of collective bargaining.