# IPLRA Updates
# Board and Court Decisions
# November 2012 – October 2013



## Representation Issues

**11/16/12**
**4th DISTRICT OPINION**
**Supervisors**

In State of Illinois, Dep't of Cent. Mgmt. Servs. v. Ill. Labor Relations Bd., 2012 IL App (4th) 110013, 29 PERI ¶84, the court reversed the Board's decision in 26 PERI ¶131 (IL LRB-SP 2010) (Case Nos. S-RC-09-038 and S-RC-09-060), and held that the Board erred in affirming the ALJ's ruling that professional engineers in the State's Department of Human Resources, Environmental Protection Agency and Department of Natural Resources were not supervisors under the Act. In reversing the Board, the court determined that the engineers "collectively use independent judgment" to train, direct, evaluate, approve time off and discipline, that they spend "a predominate amount of time involved in supervisory functions," and that, to the extent the Board found otherwise, the Board's decision was clearly erroneous. In addressing the "preponderance" requirement under the Act, the court applied the "most significant allotment of time" standard articulated by the Illinois Supreme Court in City of Freeport v. Ill. State Labor Relations Bd., 135 Ill. 2d 499; 554 N.E.2d 155 (1990), and rejected the Employer's argument that the "State supervisors notwithstanding" language in the Act made the preponderance prong inapplicable to State supervisors, noting that the Fourth District had previously rejected the same argument in Dep't of Cent. Mgmt. Servs. v. Ill. State Labor Relations Bd., 249 Ill. App. 3d 740; 619 N.E.2d 239 (1993).

**11/29/12**
**4th DISTRICT ORDER**
**Supervisors, Managerial, Jurisdiction**

In Secretary of State v. Ill. Labor Relations Bd., 2012 IL App (4th) 111075-U, 29 PERI ¶94, the Fourth District, in a non-precedential decision, affirmed the Board's ruling in 28 PERI ¶68 (IL LRB-SP 2011) (Case Nos. S-RC-11-006) certifying the Union as the representative of the petitioned-for Executive Is and IIs, and rejecting the Employer's argument that the employees are supervisory and/or or managerial employees under the Act. The court found the Employer's evidence on supervisory status to be conclusory, particularly on the element of "independent judgment," and rejected the Employer's argument that the "preponderance" element need not be met for State employees. The court also agreed with the Board that the fact that many of the employees at issue are either the first or second highest ranking official at their facility was insufficient, in and of itself, to establish that they exercise supervisory direction, or that they in fact "run" the facilities in a sense that would qualify them as "managerial" within the meaning of the Act. In its ruling, the court also upheld the Board's determination that it does not lose jurisdiction over a representation petition after the statutory 120-day period to render a decision has run.

**11/30/12**

**4th DISTRICT OPINION**

**Supervisors**

In State of Illinois, Dep't of Cent. Mgmt. Servs. (Dep't of Public Health) v. Ill. Labor Relations Bd., 2012 IL App (4th) 110209, 29 PERI ¶93, a two-member majority of the Fourth District affirmed the Board's ruling in 27 PERI ¶10 (IL LRB-SP 2011) (Case Nos. S-RC-09-036) that three regional supervisors are not supervisors within the meaning of the Act, and that the Union should be certified as their representative within an existing bargaining unit. Citing its 2008 opinion in Dep't of Cent. Mgmt. Servs. v. Ill. Labor Relations Bd., 382 Ill. App. 3d 208 (4th Dist. 2008), the court deferred to the Board's determination that there was insufficient evidence that the regional supervisors exercised any supervisory authority with the requisite consistent use of independent judgment. With respect to discipline, the court ruled that it was apparent from the record that "disciplinary decisions are reached as a collaborative effort among several levels of supervisors and the personnel office," and that, in the absence of any evidence as to who initiates disciplinary proceedings, how they are conducted, and the regional supervisors' role in such proceedings, there was no basis for concluding that the regional supervisors have the authority to discipline with the required level of independent judgment. The court also noted a similar lack of evidence with respect to the extent of the regional supervisors' authority to direct by way of employee evaluations, and granting work schedule and time off requests. Justice Cook dissented, stating he believed the court's 2008 decision was wrongly decided.

**12/11/12**

**4th DISTRICT OPINION**

**Confidential, Managerial**

In State of Illinois, Dep't of Cent. Mgmt. Servs. (Dep't of State Police) v. Ill. Labor Relations Bd., 2012 IL App (4th) 110356, 29 PERI ¶92, the Employer appealed the Board's certification of the Union as representative of a civilian staff attorney in the State Department of Police (Case No. S-RC-10-122), challenging the Board's determination that the staff attorney was neither confidential nor managerial within the meaning of the Act. The court affirmed the Board's ruling that the employee was not managerial, but reversed the Board's finding that he was not confidential. In affirming the Board's determination that the staff attorney was not managerial, the court distinguished this case from the First District's decision in Salaried Employees of North America (SENA) v. Ill. Local Labor Relations Bd., 202 Ill. App. 3d 1013, 1022, 560 N.E.2d 926, 933 (1st Dist. 1990), noting the State Police legal department's clear hierarchy and division of labor, the attorneys' limited authority and independence, and the First District's emphasis on the uniqueness of the facts in the SENA case. In reversing the Board on the question of confidential status, the court found that, even though the attorney at issue had not as of yet handled any labor relations-specific matters, the fact that other attorneys in the same office have, and that, as reflected in his job description, work on collective bargaining matters is one of the job functions that his supervisor could assign to him at any time, the Board's decision that the attorney did not meet the "authorized access" test was clearly erroneous.

**1/11/13**

**ILRB SP**

**New Petition For Excluded Positions**

In International Association of Machinists and Aerospace Workers, District 8 and State of Illinois, Dep't of Cent. Mgmt. Servs. (Dep't of Human Servs.), 29 PERI ¶122 (IL LRB-SP 2013) (Case No. S-RC-12-109), the Union's petition sought to represent a unit of Public Service Administrators who had recently been the subject of petitions filed by AFSCME, and found by the Board in 2010 and 2011 to be supervisory, managerial or confidential. The Board affirmed the ALJ's dismissal of the Union's petition based on the Union's failure to respond to the ALJ's directive to provide information as to any changes in the employees' job duties, and why the Union should not be bound by the Board's prior rulings finding the employees to be excluded under the Act.

**1/11/13**
**4th DISTRICT OPINION**
**Managerial**
In State of Illinois, Dep't of Cent. Mgmt. Servs. (Pollution Control Bd.) v. Ill. Labor Relations Bd., 2013 IL App (4th) 110877, 29 PERI ¶117 (Case No. S-RC-10-196), the Fourth District reversed the Board, and found attorney-assistants working for the Pollution Control Board to be managerial as a matter of law. Noting that the attorney-assistants work closely with PCB members, including in drafting and issuing administrative adjudicatory decisions, the court found that the attorney-assistants have "unique duties and independent authority as surrogates to the PCB members." The Court analogized their duties to those of judicial law clerks, and viewed them to be similar to the ALJs held to be managerial as a matter of law in Dep't of Cent. Mgmt. Servs./Ill. Human Rights Commn. v. Ill. Labor Relations Bd., 406 Ill. App. 3d 310 (4th Dist. 2010).

**1/17/13**
**ILRB SP**
**Supervisors**
In Village of Plainfield and Illinois Fraternal Order of Police Labor Council, 29 PERI ¶123 (IL LRB-SP 2013) (Case No. S-RC-09-111), the Board affirmed the ALJ's dismissal of the Union's petition to represent nine police sergeants, agreeing that they are supervisors under the Act. However, in its decision, the Board reversed the ALJ's ruling that the sergeants have the supervisory authority to effectively recommend subordinates for promotion. The ALJ based this ruling on the sergeants' significant discretionary authority to evaluate their subordinates, and the fact that the evaluations are a factor in the consideration of subordinates for promotion. The Board found this discretionary authority to evaluate equates to supervisory direction, rather than authority to effectively recommend promotion.

**1/28/13**
**4th DISTRICT OPINION**
**Supervisors**
In State of Illinois, Dep't of Cent. Mgmt. Servs. (Dep't of Transportation) v. Ill. Labor Relations Bd., 2013 IL App (4th) 110825, 29 PERI ¶118 (Case No. S-RC-10-194), the Fourth District reversed the Board, and held that Illinois Department of Transportation Field Technicians are supervisors, finding that the Field Technicians have the supervisory authority to effectively recommend discipline, and that they spend "a predominate amount of time" performing the supervisory functions of assigning work, scheduling overtime, considering time off requests and conducting evaluations with the consistent exercise of independent authority. In reaching this conclusion, the Court dismissed evidence that some of the Field Technicians do not exercise authority on a regular basis, noting that this fact "does not destroy the existence or the effectiveness of the authority," and citing the potential for a conflict of interest if both the Field Technicians and their subordinates were unionized. The Court also reversed the Board with respect to a petitioned-for Technical Manager position in the Department of Transportation's Sign Shop, finding that this position was also supervisory within the meaning of the Act, since the subject employee spends over 80% of his day assigning work, and also monitors and evaluates employees' performance, completes performance evaluations, approves or denies time off based on operational need, determines overtime, recommends discipline, and makes budget decisions for the Sign Shop.

**1/28/13**
**ILRB SP**
**Managerial**
In AFSCME Council 31 and State of Illinois, Dep't of Cent. Mgmt. Servs. (Ill. Commerce Commn.), 29 PERI ¶129 (IL LRB-SP 2013) (Case No. S-RC-09-202), the ALJ rejected the Employer's argument that four attorneys for the ICC in the title Technical Advisor IV should be excluded from representation as managerial employees under the "traditional test" (the Employer did not argue that they should be

excluded as "managerial as a matter of law"). A Board majority reversed the ALJ with respect to three of the attorneys, finding them to be managerial. The majority found one of those attorneys to be managerial based on his representation of the ICC in court litigation other than administrative review, noting that litigation advice in this context could "spill over" into more general advice regarding the way the agency operates and even its policy objectives, which the majority concluded suggested the performance of managerial functions. A second attorney was found to be managerial based on his provision of in-house legal advice in a non-litigation context, some of which, the majority reasoned, concerns how the agency will be run and the means the agency will use to achieve its mandate, notwithstanding the fact that the attorney does not necessarily have final authority in these matters. The majority found the third attorney to be managerial based on her responsibility for monitoring legal issues that arise with respect to outside entities, including agencies like the Federal Energy Regulatory Commission and Federal Communications Commission, and her recommendations to the ICC regarding potential ICC involvement in proceedings before these outside entities and agencies, which recommendations are sometimes followed. The majority characterized this attorney's role as that of "an advisor and gatekeeper with respect to those areas in which the ICC chooses to become involved," and found these functions to be indicative of managerial status. The majority determined that, even though this attorney's recommendations are not necessarily followed, she nevertheless has "power and influence on managerial decision-making sufficient to constitute managerial authority" under relevant precedent. Members Brennwald and Washington dissented from the majority's decision that the three attorneys are managerial, opining that the predominant function of all three employees is to perform the classic role of an attorney in representing and advising client decision-makers, and that there is no indication in the record that the attorneys themselves predominantly perform functions that are executive and managerial in nature, or which could fairly be characterized as anything other than purely advisory and subordinate.

**1/28/13**
**ILRB SP**
**Supervisors, Managerial and Confidential**

In AFSCME Council 31 and State of Illinois, Dep't of Cent. Mgmt. Servs., 30 PERI ¶38 (IL LRB-SP 2013) (Case No. S-RC-10-220), the Union petitioned to represent approximately 106 information technology employees in several State agencies. The Union and the Employer reached agreement on unit placement/exclusion with respect to 89 of the positions, and went to hearing on the Employer's various exclusion claims for the remaining 17. The ALJ rejected the Employer's exclusion claims with respect to 15 of the 17 positions. The Employer filed exceptions with respect to all of the ALJ's adverse rulings, and the Union cross-excepted to one of the two positions the ALJ ruled should be excluded. Of the 16 positions at issue on appeal, the Board affirmed the ALJ's ruling on the confidential exclusion to which the Union excepted, and reversed the ALJ in finding that a second employee should also have been excluded as confidential. The Board determined that both employees, in the regular course of their duties, have authorized access to confidential information related to the agency's grievance responses, and/or prior knowledge of discipline and promotions. The Board also reversed the ALJ in finding that five other employees should have been excluded as managerial, and that a sixth should have been excluded as a supervisor. In reversing the ALJ on the managerial question, the Board determined that the employees at issue were high-ranking IT personnel whose authority to broadly affect the agency's operations, and responsibility for an important component of the means by which the agency fulfills its policy objectives, went beyond merely providing technical IT expertise. The Board remanded the remaining eight positions at issue for further factual development regarding the Employer's contentions that the positions are managerial and/or supervisory within the meaning of the Act.

**1/28/13**
**ILRB SP**
**Confidential and Short-Term Employee**

In I.U.O.E. Local 649 and Village of Germantown Hills, 29 PERI ¶130 (IL LRB-SP 2013) (Case No. S-RC-11-128), the Employer challenged the Union's majority interest petition to represent three

maintenance employees on the ground that the Employer employs fewer than five "public employees" within the meaning of the Act, and that the Board therefore lacked authority to certify the proposed unit under Section 20(b) of the Act. The ALJ rejected the Employer's argument and recommended certification of the proposed bargaining unit, finding that, although the Employer's Superintendent of Public Works meets the "confidential" exclusion from the definition of public employee, both a part-time maintenance employee and the Village Treasurer/Deputy Clerk are public employees within the meaning of the Act, and the Employer therefore employs a total of five public employees. The Employer filed exceptions to the ALJ's ruling that the part-time maintenance employee and Village Treasurer/Deputy Clerk and are public employees within the meaning of the Act. The Board reversed the ALJ with respect to both employees, finding that the part-time maintenance employee is a "short-term employee" under Section 3(q) of the Act, and that the Village Treasurer/Deputy Clerk meets the definition of a confidential employee under Section 3(c), since it expected that she would be assisting the Village Clerk in collective bargaining negotiations in the event the unit were certified.

**4/8/13**
**ILRB SP**
**Contract Bar**

In Illinois Council of Police and County of Lake/Sheriff of Lake County and Illinois Fraternal Order of Police Labor Council, 29 PERI ¶165 (IL LRB-SP 2013) (Case No. S-RC-13-031), approximately 18 months after the stated expiration date of its collective bargaining agreement with the Employer, the incumbent collective bargaining representative, IFOP, filed for interest arbitration to resolve an impasse in the parties' negotiations for a successor collective bargaining agreement. The interest arbitration hearing was held approximately eight months later, and the parties exchanged briefs another six months after the hearing. Approximately four months after the parties exchanged briefs (three years after the stated expiration date of the CBA), and one month prior to the interest arbitrator's issuance of an award, a rival union, ICOP, filed the subject majority interest petition seeking to replace IFOP as the collective bargaining representative of the unit. IFOP argued that ICOP's petition should be dismissed pursuant to the "contract bar" doctrine incorporated in Section 9(h) of the Act and Section 1210.35(a) of the Board's rules. Citing a "bright line" rule established by Board precedent to the effect that, in order to constitute a "contract" that would bar an election under the doctrine, an agreement must (1) be signed by the parties prior to the filing of the election petition; and (2) contain terms and conditions substantial enough to stabilize the parties' bargaining relationship, the ALJ rejected IFOP's argument and directed an election, finding that neither condition pertained with respect to the pendency of the interest arbitration proceeding at the time ICOP's petition was filed. The Board affirmed the ALJ's recommended decision. In its ruling, the Board also declined to accept the invitation of amicus Illinois Public Employer Labor Relations Association to adopt an "interest arbitration bar" doctrine applicable to cases such as this, citing as the essential determining principle "stability in bargaining relationships requires predictability and a bright line," and rejecting the notion that adopting an "interest arbitration bar" would necessarily promote stability in bargaining relationships. On a procedural note, and over the dissent of Chairman Hartnett, the Board rejected IFOP's request for oral argument on appeal, deciding that the issues had been adequately addressed through the briefing process, and that any added benefit of hearing oral argument would be outweighed by the resulting further delay in the processing of the election petition.

**5/16/13**
**ILRB SP**
**Revocation of Certification Pursuant to Court Order**

In AFSCME Council 31 and Illinois State Board of Elections, 28 PERI ¶70 (IL LRB-SP 2013) (Case No. S-RC-11-122), the Board directed the Executive Director to revoke the certification of a bargaining unit of approximately 55 employees in accordance with an April 30, 2013 order issued by the Fourth District Appellate Court. As noted in the Board's order, the certification of the unit had been issued on October 28, 2011, following an October 24, 2011 decision of the Board, and the Employer appealed the certification to the Appellate Court. On April 5, 2013, while the Employer's appeal was pending, the

Governor signed into law Public Act 97-1172, which, among other amendments to the Act, revised the definition of "public employer" to exclude the State Board of Elections. Based on this change in law, the Employer moved the Appellate Court to vacate both the certification and the Board's October 24, 2011 decision directing certification. The court denied the Employer's motion to vacate the Board's decision, but granted the Employer's motion to vacate the certification.

**6/12/13**
**ILRB SP**
**Revocation of Certification Pursuant to Court Order**
In SEIU Local 73 and Illinois Secretary of State, 29 PERI ¶28 (IL LRB-SP 2013) (Case No. S-UC-12-034), in accordance with a May 7, 2013 order issued by the Fourth District Appellate Court, the Board vacated its July 26, 2012 decision and order clarifying an existing unit by adding certain Executive I and Executive II positions that had been inadvertently excluded, and directed the Executive Director to revoke the subsequent certification adding those positions to the unit. The Court's order came while the Employer's appeal of the certification was pending, and in the wake of the April 5, 2013 enactment of Public Act 97-1172, which, among other amendments to the Act, revised the definition of "public employee" to exclude Executive I and higher positions in the Office of the Secretary of State. Also in accordance with the order of the Court, the Board remanded the matter for further proceedings before an administrative law judge in order to apply the relevant terms of the amended Act.

**6/14/13**
**1ST DISTRICT OPINION**
**Supervisors**
In SEIU Local 73 v. Ill. Labor Relations Bd., 2013 IL App (1st) 120279, 30 PERI ¶13, the First District affirmed the Board's decision in SEIU Local 73 and City of Chicago, 28 PERI ¶86 (IL LRB-LP 2011) (Case No. L-RC-11-006), reversing the ALJ's recommended decision and order and finding that 11 Supervising Investigators employed by the City of Chicago's Independent Police Review Authority are supervisors under the Act. The Court determined that, based on the record, the Supervising Investigators employ independent judgment in assigning work to their subordinates and monitoring their work, that these are the most important and predominant tasks performed by the Supervising Investigators, and that this work constitutes supervisory "direction" within the meaning of the Act. The Court also found that the Supervising Investigators exercise significant discretionary authority that affects their subordinates' wages, discipline and other working conditions, and concluded that the Board's ruling that the Supervising Investigators are supervisors under the Act was not clearly erroneous.

**6/28/13**
**ILRB SP**
**Voter Eligibility**
In Bruce Auer and Town of Normal (Public Works Dep't) and Laborers Int'l Union of North America, 30 PERI ¶32 (IL LRB-SP 2013) (Case No. S-RD-12-006), the ALJ ruled that two six-month employees, whose terms had expired by the date of the decertification election, were ineligible to vote in that election, with the result that the incumbent prevailed in the election by a margin of one vote. A Board majority reversed the ALJ, finding that the two six-month employees had a reasonable expectation of future employment, based on the employer's long history of re-hiring term employees who had performed well, and representations to the two that they had indeed performed well, and notwithstanding the fact that they would have to re-apply to be re-hired the following summer. The Board therefore ordered that the two ballots be opened and counted. Members Besson and Brennwald dissented, opining that, because it was clear that, as of the date of the election, neither individual was an employee of the employer, and any future employment depended entirely on a decision by each to re-apply, and a separate decision by the employer to re-hire, these individuals should not be deemed to have a reasonable expectation of future employment for purposes of determining their eligibility to vote.

**7/19/13**
**ILRB SP**
**Confidential Employees; UC Petitions**
In Treasurer of the State of Illinois and AFSCME Council 31, 30 PERI ¶53 (IL LRB-SP 2013) (Case No. S-UC-12-056), the Employer filed a unit clarification petition seeking to remove an Information Systems Analyst from a bargaining unit represented by the Union. The Board affirmed the ALJ's finding that, although none of the three conditions for filing a UC petition under Section 1210.170(a) of the Board's rules applied, the Employer's UC petition was nevertheless procedurally appropriate under the Fourth District Appellate Court's decision in Dep't of Cent. Mgmt. Servs. (Dep't of Corrections) v. Ill. Labor Relations Bd., 364 Ill.App.3d 1028 (4th Dist. 2006), in which the Court held that the UC mechanism may be used by an employer at any time to sever confidential employees from a bargaining unit. The Board also affirmed the ALJ's finding that the position at issue met the confidential exclusion under the "authorized access" test, based on the employee's responsibility, in the regular course of her duties as a network administrator for the Treasurer's Office, for troubleshooting Excel documents, including budgetary documents upon which collective bargaining proposals and responses may be based.

**7/19/13**
**ILRB SP**
**Appropriate Bargaining Unit**
In Teamsters Local 700 and Vill. of Franklin Pk. (Dep't of Public Works and Utilities), 30 PERI ¶52 (IL LRB-SP 2013) (Case No. S-RC-13-017), the Union petitioned to represent in a single bargaining unit employees in three different divisions of the Employer's utilities department. The Employer objected, arguing that the proposed unit was not appropriate because the employees are not sufficiently functionally integrated, and because less than a majority of the employees in one of the three divisions indicated support for representation. The Board adopted the ALJ's decision finding the petitioned-for unit appropriate, citing the well-established principle that the petitioner need only show that the proposed unit is *an* appropriate unit; a petitioner does not have to demonstrate that the proposed unit is *the most* appropriate. The Board agreed with the ALJ's determination that there was sufficient functional integration among the subject employees in the three divisions to find the proposed unit appropriate. The Board also rejected the Employer's argument based on the apparent lack of majority support in one division, concluding that accepting the Employer's argument would impose an artificial construct on the representation process that is not contemplated by the Board's rules.

**8/30/13**
**ILRB SP**
**Executive Director Dismissal – Objections to Election**
In Jane Reynolds Arts and Illinois Council of Police and County of Lake and Sheriff of Lake County and Illinois Fraternal Order of Police Labor Council and Policemen's Benevolent Labor Committee, 30 PERI ¶71 (IL LRB-SP 2013) (Case No. S-RC-13-031), a bargaining unit employee filed objections to an election conducted between an incumbent union, a petitioning rival union, and a third union/intervenor, in which the petitioning rival union prevailed. The Executive Director issued a report dismissing the objections on the primary ground that the employee did not have standing to file objections. The employee did not appeal from the dismissal, but the incumbent union did, arguing for reversal on other grounds. The Board affirmed the Executive Director's dismissal, ruling that, although she was an eligible voter, the employee who filed the objections was not a "party" to the election within the meaning of Section 1210.150(a) of the Board's rules, and therefore lacked standing to file the objections. The Board declined to address the substance of the incumbent union's appeal of the dismissal because the appeal did not address the standing issue.

## Employer Unfair Labor Practices

**12/29/12**
**ILRB LP**
**Executive Director Dismissal – Status as Union Officer**
In Karl Cook and Chicago Transit Auth., 29 PERI ¶114 (IL LRB-LP 2012) (Case No. L-CA-12-067), the Charging Party alleged that his Employer violated the Act by failing to acknowledge his status as a Union representative. The Board upheld the Executive Director's dismissal of the charge, finding that the Employer properly acted in accordance with information provided to the Employer by the Union's vice president that Charging Party had, in fact, been removed from his duties as a Union officer.

**12/29/12**
**ILRB LP**
**Executive Director Dismissal Reversed – Failure to Provide Information**
In Megan Curry and Fraternal Order of Police, Lodge 7, 29 PERI ¶116 (IL LRB-LP 2012) (Case No. L-CB-13-007), the Executive Director dismissed the charge on a finding that the Charging Party had failed to respond to the request of the investigating Board agent for information in support of her charge. Based on a copy of an email submitted by Charging Party with her appeal, reflecting that she had in fact submitted a position statement by the deadline imposed by the Board agent, the Board reversed the Executive Director's dismissal and remanded the charge for further investigation.

**1/28/13**
**ILRB SP**
**Duty to Provide Information**
In Teamsters Local 916 and Dep't of Cent. Mgmt. Servs. (Dep't of Transportation), 29 PERI ¶124 (IL LRB-SP 2013) (Case No. S-CA-09-248), the Union charged that the Employer violated Section 10(a)(4) by refusing to supply information it claimed was necessary to represent a grievant in connection with his 10-day suspension for alleged racial harassment of a co-employee. Specifically, the Union requested that the Employer provide information regarding internal complaints filed by the co-employee against the grievant, as well as information regarding prior racial harassment complaints filed by the co-employee against other employees. The Board reversed the ALJ's ruling that the Employer was required to produce the requested information pertaining to prior complaints against other employees, finding that the Employer's interest in maintaining the confidentiality of those matters, including the identities of employees involved, outweighed the marginal relevance of the information to the Union's representation of the grievant on the 10-day suspension. The Board affirmed the ALJ's finding of a violation with respect to the information pertaining to the internal complaints leading to the grievant's 10-day suspension, but limited the remedy to a notice posting, in recognition of the fact that the Employer had belatedly supplied part of the information requested, in a manner the Board deemed to be a reasonable accommodation of the Union's information request.

**1/28/13**
**ILRB SP**
**Permissive Subject of Bargaining**
In Midlothian Professional Firefighters Local 3148 and Village of Midlothian, 29 PERI ¶125 (IL LRB-SP 2013) (Case No. S-CA-10-287), the Board affirmed the ALJ's ruling that the Employer violated Section 10(a)(4) by bargaining to impasse on its proposal to exclude discipline and discharge from the grievance arbitration procedures of the parties' collective bargaining agreement. In so ruling, the Board followed its holding in Village of Wheeling, 17 PERI ¶2018 (IL LRB-SP 2001), to the effect that such a proposal is a permissive subject of bargaining under the Act. The Board rejected the Employer's argument that Village of Wheeling was wrongly decided, as well as its argument that a 2007 amendment to the State Municipal Code was intended to overrule the Village of Wheeling decision, concluding instead that, to the contrary,

the amendment was intended to make the decision universally applicable to both home rule and non-home rule municipalities.

**1/28/13**
**ILRB SP**
**Executive Director Dismissal – Threatening Statement, Retaliation**
In Geraldine Armstrong and Village of Maywood (Police Dep't), 29 PERI ¶127 (IL LRB-SP 2013) (Case No. S-CA-12-135), Charging Party, a Union steward, alleged that, after she handed her supervisor a grievance challenging her supervisor's instruction that Charging Party provide training to a co-employee, the supervisor became agitated, waved her finger at Charging Party, and angrily repeated the directive. The Executive Director dismissed Charging Party's claim that the supervisor's conduct violated Section 10(a)(1), concluding that no reasonable employee would have viewed the supervisor's statement as conveying a threat of reprisal or force. The Executive Director also dismissed Charging Party's Section 10(a)(2) and 10(a)(3) claims, to the effect that the Employer had disciplined her in retaliation for her attendance at collective bargaining negotiations, and her participation in an unfair labor practice proceeding before the Board, finding that the basis for the discipline (a two-day suspension which was eventually reduced to a written warning) was Charging Party's leaving work early without permission, not retaliation for any protected activity. The Board affirmed the Executive Director's dismissal in its entirety.

**1/28/13**
**ILRB SP**
**Executive Director Deferral**
In SEIU Local 73 and City of Waukegan, 29 PERI ¶128 (IL LRB-SP 2013) (Case No. S-CA-12-159), the Board upheld the Executive Director's decision to defer to grievance/arbitration the Union's 10(a)(1), (2) and (4) charges alleging that a one-day suspension given to a Union steward was issued in retaliation for his Union activities, and that the Employer had failed to provide information it had requested related to the suspension. The Executive Director found deferral appropriate under the standard articulated by the NLRB in Dubo Mfg. Corp., 142 NLRB 431 (1963), as the Union had already filed a grievance over the suspension, and the parties were prepared to proceed to arbitration.

**2/15/13**
**ILRB LP**
**Executive Director Dismissal – Retaliation, Weingarten**
In Brenda Carter and County of Cook and Health and Hospital Systems (Stroger Hospital), 29 PERI ¶133 (IL LRB-LP 2013) (Case No. L-CA-13-008), Charging Party alleged that the Employer violated Section 10(a)(1) by unjustly terminating her employment and/or denying her Union representation during the discipline process. The Executive Director dismissed the charge, finding no evidence of any connection between Charging Party's termination and any protected activity of which the Employer could have been aware, and no basis for her Weingarten claims. With respect to the latter, the Executive Director found that one claim arose in the context of a directive issued by a supervisor, rather than an investigatory interview. In the other instance, Charging Party made no attempt prior to the scheduled disciplinary meeting to obtain Union representation, and the Employer in any event offered to postpone the meeting, and Charging Party did in fact have a Union representative at the re-scheduled meeting. The Board affirmed the Executive Director's dismissal of the charge.

**4/8/13**
**ILRB SP**
**Retaliatory Discharge, Repudiation**
In Policemen's Benevolent Labor Committee and County of Bureau and Bureau County Sheriff, 29 PERI ¶163 (IL LRB-SP 2013) (Case No. S-CA-11-169), the Board affirmed the ALJ's ruling that (1) the Employer violated Sections 10(a)(2) and (1) of the Act by moving to discharge a Deputy Sheriff in

retaliation for her grievance filing activity and her efforts to replace the former collective bargaining representative; (2) the Employer did not repudiate the collective bargaining agreement by filing a declaratory judgment action in court contesting any obligation to arbitrate the Deputy's discharge grievance; and (3) the allegations involving an earlier 27-day suspension issued to the Deputy be deferred to the terms of a settlement agreement between the Employer and the Union. In affirming the finding of retaliatory discharge, the Board noted the arbitrary and pretextual nature of some of the disciplinary allegations brought by the Employer, as well as record evidence of anti-union animus on the Employer's part. With respect to the repudiation charge, the Board limited the basis for affirming the ALJ to her finding that, because the Employer's refusal to arbitrate involved only a discrete class of grievances (those filed after the Union replaced the former collective bargaining representative), that refusal to arbitrate would not constitute repudiation under Section 10(a)(4), even if the Employer were found to have a continuing duty to arbitrate the discharge grievance after the decertification of the incumbent collective bargaining representative. In so limiting its holding, the Board specifically declined to adopt the ALJ's recommended ruling that the collective bargaining agreement terminated upon the decertification of the former collective bargaining representative, and that the duty to arbitrate the discharge grievance nevertheless survived the decertification and termination of the collective bargaining agreement. Regarding the former point, the Board noted that, in Thompson v. Policemen's Benevolent Labor Committee, 2012 IL App (3d) 110926, the Third District Appellate Court specifically held that the same collective bargaining agreement at issue in this case continued in full force and effect despite the decertification of the incumbent. The Board therefore reasoned that, although the Court's ruling on this point is not necessarily the same result the Board would have reached, it is binding on the parties to this case.

**4/8/13**
**ILRB SP**
**Executive Director Dismissal Reversed – Duty to Bargain**
In Teamsters Local 916 and State of Illinois (Treasurer), 29 PERI ¶164 (IL LRB-SP 2013) (Case No. S-CA-12-094), the Executive Director dismissed the Union's Section 10(a)(4) charge alleging that the Employer bargained in bad faith by proposing a wage freeze after unilaterally reducing its own budget by 2%, sending representatives to the bargaining table who lacked sufficient authority to negotiate, and denying bargaining unit employees salary increases granted to non-represented employees. The Board reversed the dismissal and ordered that a complaint be issued, finding that, based on the totality of the circumstances, there was an issue of law or fact sufficient to warrant hearing on the question of whether the Employer was bargaining with the good faith intention of reaching an agreement.

**4/8/13**
**ILRB SP**
**Duty to Bargain**
In AFSCME Council 31 and Teamsters Local 700 and City of Evanston, 29 PERI ¶162 (IL LRB-SP 2013) (Case Nos. S-CA-11-057, S-UC-11-015 and S-UC-11-019), the Board affirmed the ALJ's recommended decision dismissing the Union's charge alleging that the Employer violated Section 10(a)(4) by establishing a new 3-1-1 call center operation and laying off employees without providing the Union with notice and an opportunity to bargain. The Board agreed with the ALJ's determination that the Employer had no duty to bargain over the decision to establish the call center or implement the layoffs under Central City Education Assn. v. Ill. Educ. Labor Relations Bd., 149 Ill.2d 496 (1992). The Board also agreed with the ALJ's finding that the Employer provided the Union sufficient notice of the changes, and that the Union's failure to thereafter make a demand to bargain constituted a waiver of its right to bargain over the effects of the Employer's decision.

**4/10/13**
**ILRB SP**
**Refusal to Comply With Settlement Agreement**
In AFSCME Council 31 and City of Clinton (Dr. John Warner Hospital), 29 PERI ¶167 (IL LRB-SP 2013) (Case No. S-CA-11-148), a grievant was the subject of state criminal charges alleging his possession and manufacture of illegal substances, and that he had stolen supplies from the Employer-run hospital where he worked. The Union and the Employer entered into a settlement agreement whereby the grievant was placed on unpaid leave of absence for seven months, until April 1, 2011, at which time the leave of absence would expire. The settlement agreement further provided that "Grievant's employment status shall be terminated on April 1, 2011, should he fail or be unable to work at that time." The criminal charges against the grievant were dropped on March 29, 2011. The Employer refused to reinstate the grievant, and the Union filed the subject charge, alleging that the Employer violated Section 10(a)(4) by failing to comply with the settlement agreement. At hearing, the Employer argued that the agreement did not require reinstatement because, although the State charges had been dropped, the grievant was also the subject of a pending Federal criminal investigation. The ALJ found a violation of Section 10(a)(4) based on her determination that the Employer failed to prove that it was aware of the pending federal criminal investigation as of April 1, 2011, and that the Employer's construction of the agreement was therefore incorrect. A majority of the Board agreed with the ALJ and affirmed her finding of a 10(a)(4) violation, and ordered the grievant reinstated. Members Brennwald and Coli dissented, stating their opinion that, even though the ALJ's construction of the agreement may be correct, the interpretation of settlement agreements is a matter for the courts, and not the Board, and because the agreement at issue was neither undisputed nor unambiguous, and therefore required interpretation, this case did not meet the standard for finding a Section 10(a)(4) violation under established Board precedent.

**4/18/13**
**2d DISTRICT OPINION**
**Deferral to Arbitration**
In Ann Moehring v. Ill. Labor Relations Bd., 2013 IL App (2d) 120342, 29 PERI ¶166**,** the Second District affirmed the Board's ruling in 29 PERI ¶50 (IL LRB-SP 2012) (Case Nos. S-CA-10-241) dismissing the Charging Party's retaliatory termination charge, and deferring to an arbitration award in which the arbitrator ruled that the Employer had just cause to terminate Charging Party's employment. The court rejected the Charging Party's contention that her 10(a)(1) and (2) claims were never presented to the arbitrator, and that the Board had therefore improperly applied post-arbitral deferral standards under Spielberg Mfg. Co. In rejecting this argument, the court cited the testimony and arguments presented by the Union at hearing, as well as the express language of the award, all of which reflected that Charging Party's allegations of improper retaliation for union activities had in fact been presented to the arbitrator. The court also declined to address Charging Party's arguments to the effect that the arbitrator misapplied the facts in reaching his decision, noting that such an inquiry is irrelevant to a Spielberg deferral analysis.

**5/13/13**
**ILRB SP**
**Duty to Bargain**
In Teamsters Local 700 and Lake County Circuit Clerk, 29 PERI ¶179 (IL LRB-SP 2013) (Case No. S-CA-10-057), the Union alleged that the Employer violated Section 10(a)(4) of the Act by engaging in "surface bargaining" in its negotiations with the Union for a first collective bargaining agreement covering a unit of the Employer's employees, based on the Employer's refusal to make any concessions with respect to the Union's proposal that non-member employees in the bargaining unit be required to pay a fair share fee to the Union. The ALJ found that the Employer violated Section 10(a)(4) by refusing to bargain in good faith with respect to the Union's fair share proposal. A majority of the Board reversed the ALJ's recommended decision and dismissed the complaint. In its decision, the majority considered "the totality of the circumstances," and noted that, as of the date of hearing, the parties had reached a

number of tentative agreements, including an agreement on dues checkoff for employees submitting authorization cards, and that, other than the Employer's intransigence with respect to the Union's fair share proposal, there was nothing in the record to suggest any bad faith on the part of the Employer in its bargaining with the Union. Citing the well-established principle, incorporated in Section 7 of the Act, that the duty to bargain does not require any party to agree to a proposal or make a concession, and extensive NLRB authority on surface bargaining, the majority reasoned that it was unwilling to infer, solely on the basis of the Employer's position on fair share, that the Employer was motivated by a bad faith desire to avoid reaching agreement altogether, and concluded that the Union had failed to meet its burden of proving a Section 10(a)(4) surface bargaining violation. Members Coli and Washington dissented, stating that they would have found a violation, noting the particularly keen concern over bad faith bargaining tactics by an employer when a collective bargaining relationship is in its infancy and the parties are negotiating a first CBA. The dissenting members also saw evidence of bad faith in statements made by the Employer at the table, which they saw to be inconsistent with the Employer's stated rationale for rejecting fair share, and as demonstrating the Employer's refusal to acknowledge the role of the Union as the employees' certified bargaining representative.

**5/20/13**
**ILRB SP**
**Deferral; Executive Director Dismissal – Refusal to Bargain**

In IAFF Local 439 and City of Elgin, 30 PERI ¶8 (IL LRB-SP 2013) (Case No. S-CA-12-125), the Board addressed in one decision two separate sets of exceptions arising from the same charge: the Employer/Respondent's exceptions to the ALJ's denial of its motion to defer two allegations in the complaint for hearing; and the Union/Charging Party's exceptions to the Executive Director's partial dismissal of its allegation that the Employer violated Section 10(a)(4) by insisting to impasse on a mandatory subject of bargaining in the process of proceeding to interest arbitration. The Board reversed the ALJ and found deferral to be appropriate under Collyer with respect to the Union's allegation that the Employer had repudiated a side agreement, holding that, because the agreement was susceptible of more than one credible reading, contract interpretation is at the heart of the dispute, and an arbitrator's decision could therefore resolve the matter. The Board reached a different result with respect to the Union's allegation that the Employer violated Section 10(a)(4) by implementing a unilateral change without providing the Union with notice and an opportunity to bargain, finding that deferral was not appropriate under Collyer because contract interpretation was not at the center of the dispute, inasmuch as CBA language was relevant only to the question of whether the language constituted a waiver by the Union of any right to bargain, and this is a statutory issue for the Board to address, and not a question that falls within an arbitrator's purview. Finally, as the result of a rare split decision among four voting members of the State Panel – two voting to affirm and two voting to reverse and issue a complaint for hearing – the Executive Director's dismissal of the Union's allegation that the Employer improperly insisted to impasse on a permissive subject prior to an interest arbitration hearing became the final and binding, but non-precedential, determination of the Board.

**5/20/13**
**ILRB SP**
**Executive Director Dismissal – Right of Non-Association Based on Religious Beliefs**

In Brian Trygg and State of Illinois, Dep't of Cent. Mgmt. Servs. (Dep't of Transportation Region 3, District 5), 29 PERI ¶185 (IL LRB-SP 2013) (Case No. S-CA-10-092), the Charging Party requested that all notices to employees involved in union representation cases include advisement of the right of non-association based upon religious beliefs provided in Section 6(g) of the Act. The Board upheld the Acting Executive Director's dismissal of the charge on the ground that the issuance of such notices to employees is not the responsibility of the Employer, but of the Board, that consideration of any amendment of Board notices is a matter for the Board, and that the charge therefore failed to raise an issue for hearing on the question of whether the Employer violated the Act.

**5/20/13**
**1ST DISTRICT ORDER**
**Refusal to Bargain, Retaliation, Discrimination**
By issuance of a non-precedential order in Village of Barrington Hills v. Ill. Labor Relations Bd., Metropolitan Alliance of Police, 2013 IL App (1st) 121832-U, 29 PERI ¶180, the First District affirmed the Board's decision in Metropolitan Alliance of Police, Barrington Hills Chapter #576 and Village of Barrington Hills, 29 PERI ¶15 (IL LRB-SP 2012) (Case No. S-CA-10-189), in which the Board adopted the ALJ's ruling that the Employer violated Sections 10(a)(3) and (1) of the Act when it withheld a previously announced wage increase for employees who were the subject of a pending representation petition, and also when it withheld a previously approved tuition reimbursement benefit from Charging Party's chapter president. The court agreed with the Board's and ALJ's finding of union animus, based in large part on the fact that other, non-represented employees received increases, and the only changed circumstance between the announcement of the planned increase and its revocation for the subject employees was the filing of the representation petition. The court rejected the Employer's argument that the revocation of the increase and tuition reimbursement did not constitute adverse employment actions, and that the Board's make-whole remedy order, including retroactive payment of the announced wage increase, improperly usurped the Employer's discretionary powers.

**5/24/13**
**ILRB LP**
**Retaliation, Refusal to Bargain**
In Amalgamated Transit Union, Local 241 and Chicago Transit Auth., 30 PERI ¶9 (IL LRB-LP 2013) (Case Nos. L-CA-11-052 and L-CA-11-056), the Board adopted the ALJ's ruling that the Employer violated Section 10(a)(1) when it threatened to move the Union's bulletin board, eliminated the Union's designated parking space, and placed a parking warning sticker on a Union official's car. However, the Board reversed the ALJ's ruling dismissing two other allegations against the Employer, and found that the Employer also violated Section 10(a)(1) when it issued the Union official a written reprimand and 1-day suspension, and Section 10(a)(4) by locking the Union out of its designated office. In finding a violation by the issuance of the discipline, the Board concluded that the Union official was disciplined for engaging in protected activity; specifically, for complaining to the Employer's representative about the parking warning sticker. The Board reasoned that, although the official's complaints were registered in a loud and profane manner, he was engaging in Union, and not personal business, and his conduct did not lose its protection because he did not engage in violent conduct, and his conduct did not threaten safety, efficiency or discipline in the workplace, as it occurred in the Employer's office, away from other workers. The Board reversed the ALJ's ruling that the Employer did not violate Section 10(a)(4) because it never demanded bargaining over the decision to move the Union out of its designated office, concluding instead that a Union official's statement that he would not move the Union's belongings from the office, together with his later verbal complaint, made it clear that the Union was objecting to the Employer's action, and constituted a request to bargain over the matter.

**5/24/13**
**ILRB SP**
**Executive Director Dismissal Reversed – Failure to Provide Information**
In AFSCME Council 31 and State of Illinois, Dep't of Cent. Mgmt. Servs., 30 PERI ¶10 (IL LRB-SP 2013) (Case No. S-CA-13-040), the Board reversed the Acting Executive Director's dismissal of the charge for failure to provide requested information during the course of the investigation, finding that the Union had in fact submitted the requested information in a timely manner as an email attachment, albeit in a format the investigator was unable to access. Because the Union was never made aware of this problem, and had made a good faith submission of the requested information, the Board remanded the matter to the Executive Director for further investigation.

**5/24/13**
**ILRB SP**
**Executive Director Dismissal - Retaliation**
In Julius C. Perryman and State of Illinois, Department of Central Management Services, 30 PERI ¶11 (IL LRB-SP 2013) (Case No. S-CA-13-073), the Charging Party claimed that he was discharged in retaliation for having served as a witness in the EEOC's investigation of a co-employee's charge. The Board upheld the Acting Executive Director's dismissal of the charge for the Charging Party's failure to provide evidence of a causal connection between the co-employee's EEOC charge and Charging Party's dismissal.

**5/30/13**
**ILRB LP**
**Refusal to Bargain**
In Teamsters Local 700 and County of Cook and Sheriff of Cook County, 30 PERI ¶14 (IL LRB-LP 2013) (Case No. L-CA-12-044), the Board affirmed the ALJ's dismissal of the Union's charge that the Employer violated Section 10(a)(4) by unilaterally modifying bidding criteria without providing the Union with notice and an opportunity to bargain. The ALJ found that, even though the Employer's action in setting bidding requirements related to attendance and disciplinary history was a unilateral change in a mandatory subject of bargaining, the Union failed to prove by a preponderance of the evidence that the Employer's notice to the Union regarding the change was inadequate, that the Union ever made a timely demand to bargain, or that the Employer presented the change as a *fait accompli*.

**6/26/13**
**ILRB LP**
**Executive Director Dismissal Reversed – Refusal to Bargain; Failure to Provide Information**
In SEIU Local 73 and County of Cook, 30 PERI ¶25 (IL LRB-LP 2013) (Case No. L-CA-13-035), the Executive Director dismissed the Union's allegations that the Employer violated Section 10(a)(4) and (1) by unilaterally changing a past practice regarding when employees added to a bargaining unit through the Board's unit clarification procedures begin receiving payment under the collective bargaining agreement; and (2) failing to respond to a request for information pertaining to the alleged unilateral change. The Board upheld the Executive Director's dismissal of the unilateral change allegation on timeliness grounds. However, the Board reversed the Executive Director's dismissal of the second allegation, deciding that, contrary to the determination of the Executive Director, the Union did in fact provide evidence in support of its claim as had been requested by the Board's investigator. Although the Board noted that the Union's appeal still failed to provide a clear statement of the information it is seeking from the Employer, the accompanying supporting documentation, which was also provided to the Board's investigator, presented a claim warranting issuance of a complaint.

**6/28/13**
**ILRB SP**
**Executive Director Dismissal - Retaliation**
In Joseph S. McGreal and Vill. of Orland Park, 30 PERI ¶28 (IL LRB-SP 2013) (Case No. S-CA-13-001), the Union and the Employer selected an arbitrator to hear consolidated grievances pertaining to Charging Party's discharge. During the course of the hearing, Charging Party attempted to file a grievance, as well as his own motion before the arbitrator to stay the arbitration proceedings, complaining that the arbitrator was not a member of the National Academy of Arbitrators, in violation of a specific term of the collective bargaining agreement between the Union and the Employer. The Union disclaimed the new grievance, and the arbitrator denied the Charging Party's motion upon opposition from both the Union and the Employer. The arbitrator ultimately ruled that the Employer had just cause to terminate Charging Party's employment. In his charge, Charging Party alleged that the Employer violated Sections 10(a)(2) and (3) of the Act by agreeing to the selection of an arbitrator who was not a member of the NAA, contrary to the

terms of the collective bargaining agreement. The Board affirmed the Executive Director's dismissal on the basis of the well-established principle that it is not the Board's role to police collective bargaining agreements. The Board also concluded that there was no evidence that the manner in which the Employer processed and handled the arbitration was motivated by anti-union bias, or by Charging Party's having engaged in conduct protected by the Act.

**6/28/13**
**ILRB SP**
**Executive Director Dismissal Reversed – Refusal to Bargain**
In AFSCME Council 31 and Peoria Housing Auth., 30 PERI ¶27 (IL LRB-SP 2013) (Case No. S-CA-13-052), the Executive Director dismissed the Union's charge alleging bad faith bargaining by the Employer's submission of regressive bargaining proposals, finding that the charge was untimely, based on the date of the Employer's allegedly regressive proposals as recited in the charge. The Board reversed the Executive Director's dismissal, finding that, based on evidence submitted by the Union during the course of the investigation, it was apparent that the allegedly regressive proposal was in fact submitted less than six months prior to the filing of the charge, and that the date recited in the charge itself was merely a clerical error that should have prompted the investigator to address and resolve the discrepancy.

**7/19/13**
**ILRB SP**
**Refusal to Bargain**
In Int'l Association of Firefighters, Local 23 and City of East St. Louis (Fire Department), 30 PERI ¶67 (IL LRB-SP 2013) (Case No. S-CA-10-200), the Board accepted the ALJ's recommended decision finding that the Employer violated Section 10(a)(4) by failing to bargain over reductions in staffing levels implemented during the course of interest arbitration proceedings. The Board rejected the Employer's argument that the reductions were justified as a matter of economic necessity, concluding that this argument was unsupported by any showing that a reduction in staffing was the only solution, or by any authority for the proposition that, even if it was the only solution, such economic necessity would provide a valid justification for a unilateral change in previously agreed-to staffing levels. The Board also rejected the Employer's argument that the charge had been rendered moot by an arbitration award in the Union's favor, finding that the award addressed only the breach of the collective bargaining agreement, and not the statutory issue raised by the charge. Finally, the Board also agreed with the ALJ's denial of the Employer's request to defer to the award, because that request was not made until the Employer filed its post-hearing brief, and after the record in the case was closed, thereby precluding the parties from making an evidentiary record and litigating the issue.

**7/19/13**
**ILRB SP**
**Executive Director Dismissal – Retaliation/Discrimination; Deferral**
In SEIU Local 73 and Village of Oak Park, 30 PERI ¶51 (IL LRB-SP 2013) (Case No. S-CA-12-175), the Union alleged that the Employer violated Sections 10(a)(2) and (3) of the Act by issuing an employee a three-day suspension, denying her the opportunity to work overtime, and hiring a temporary worker to perform her job duties, all in retaliation for the employee's grievance filing activities. The Executive Director deferred the allegation regarding the three-day suspension to the parties' grievance/arbitration procedure under Dubo, and dismissed the other two allegations. The Board affirmed both the Executive Director's decision to defer and her dismissal of the remainder of the charge. In doing so, the Board rejected the Union's invitation to adopt a policy of non-deferral of discrimination charges, and instead found deferral appropriate under the Dubo standard. With respect to the dismissal, the Board noted that the Union's argument was based entirely on what the Union characterized as the "highly suspicious" timing of the Employer's action, and cited well-established Board precedent to the effect that timing alone is insufficient to establish improper motive.

**7/19/13**
**ILRB SP**
**Executive Director Deferral**
In SEIU Local 73 and Village of Oak Park, 30 PERI ¶50 (IL LRB-SP 2013) (Case No. S-CA-12-163), the Union alleged that the Employer violated Section 10(a)(4) by unilaterally reducing the work hours of one bargaining unit employee, and also unilaterally changing the job description of another unit employee, who was terminated based on the Employer's determination that she was unable to perform the essential functions of her position. The Union filed a grievance over the reduction in hours for the first employee, and a separate grievance challenging the termination of the second employee. The Board affirmed the Executive Director's deferral of the charge under Dubo. In its appeal of the deferral order, the Union argued that the Employer had previously stated its position that it was not bound by the collective bargaining agreement it had entered into with the Union's predecessor, and that, because the Employer had disclaimed any legal obligation to arbitrate the grievances, deferral was inappropriate. The Board rejected the Union's argument on the ground that, at least for the purpose of resolving this matter, the Employer had expressly stated its willingness to be bound by the grievance/arbitration procedure. The Board further ruled that, if the Employer in fact fails to do so, it will allow the Union to reinstate the charges, and would also consider a motion for sanctions.

**8/28/13**
**4TH DISTRICT ORDER**
**Retaliation**
By way of an unpublished order in Peter Wagner v. Ill. Labor Relations Bd., 2013 IL App (4th) 120827-U, __ PERI ¶__ , the Fourth District affirmed the Board's decision in Peter J. Wagner and State of Illinois, Dep't of Cent. Mgmt. Servs., 29 PERI ¶36 (IL LRB-SP 2012) (Case No. S-CA-12-072), upholding the Executive Director's dismissal of a Section 10(a)(1) retaliation charge on the ground that the Employer had already taken "significant steps" toward Charging Party's discharge before it learned of his union activity. The Court also affirmed the Board and the Executive Director in finding no basis for Charging Party's claim that his discharge violated Sections 10(a)(2) and (3) of the Act.

**8/30/13**
**ILRB SP**
**Retaliation**
In Illinois Troopers Lodge No. 41 and State of Illinois, Dep't of Cent. Mgmt. Servs. (State Police), 30 PERI ¶70 (IL LRB-SP 2013) (Case No. S-CA-10-130), the ALJ dismissed a charge alleging that a bargaining unit sergeant was given a five-day suspension in retaliation for engaging in the protected, concerted activity of writing and filing an expert witness report in support of another bargaining unit employee, as part of a disciplinary proceeding involving the other employee. The basis for the ALJ's dismissal was her finding that, at the time the discipline against the sergeant was initiated, the Employer was not aware that the sergeant had filed the report at the request of the Union, and the Union was therefore unable to prove the necessary causation element of its prima facie case. The Board reversed the ALJ, relying on established precedent to the effect that a charging party need not show union animus in order to make out a prima facie 10(a)(1) retaliation case. The Board found that that the sergeant filed his report on behalf of a fellow unit employee and offered testimony on his behalf, that this was protected, concerted activity, that there was no dispute that the Employer was aware that the sergeant engaged in this activity – in fact, it was the filing of the report which served as the basis for the discipline – and that it was therefore immaterial, under a 10(a)(1) analysis, whether or not the Employer was aware that the sergeant was acting at the request of the Union. The Board rejected the Employer's argument that there was no violation of the Act because the basis for the discipline was not retaliatory, but violation of the Employer's "conflict of interest" rules. The Board held that, because the very basis for the adverse action was the protected activity itself, the Union did not need to independently prove animus toward the protected activity. The Board also found that the Employer was unable to show that it had a substantial

business interest in enforcing its "conflict of interest" rules in this case which outweighed the sergeant's right to engage in the protected, concerted activity. Accordingly, the Board determined that the Employer violated Section 10(a)(1) by disciplining the employee for submitting his report on behalf of a fellow employee.

**9/4/13**
**ILRB SP**
**Retaliation; Interference**
In Hazel Crest Prof'l Firefighters Assn., IAFF Local 4087 and Vill. of Hazel Crest, 30 PERI ¶72 (IL LRB-SP 2013) (Case No. S-CA-13-005), the Union alleged that the Employer violated Section 10(a)(1) of the Act when it ordered the removal of a Union banner hung in a firehouse, and Union decals affixed to fire trucks. Both the banner and the decals had been in place for several years. The Board affirmed the ALJ's dismissal of the complaint, determining that, even though the display of the Union banner and decals generally constituted concerted activity, it was not activity that was protected under the Act in this case, because the Employer's interests in regulating the use of its property outweighed the employees' right to engage in this concerted activity. The Board noted that the Union had only displayed the banner and placed the stickers on trucks after first requesting and receiving the Employer's permission, thereby demonstrating that the Employer had consistently retained its right to control the display of the banner and decals on its property. The Board also rejected the Union's argument that the removal order was improperly motivated, finding no evidence of animus or other improper motivation on the part of the Employer.

**9/24/13**
**1ST DISTRICT ORDER**
**Make Whole Remedy**
By way of an unpublished summary order in William J. Foster v. Ill. Labor Relations Bd., 2013 IL App (1st) 123516, PERI ¶ , the First District affirmed the Board's decision in Local 8A-28A Metal Polishers, Sign & Display, Novelty Workers, Automotive Equipment Painters and Chicago Transit Authority, 29 PERI ¶73 (IL LRB-SP 2012) (Case No. L-CA-01-017-C), denying a compliance petition requesting, as part of the make whole remedy for an unfair labor practice finding that the petitioner had been transferred in violation of the Act, payment of over $25,000 in hourly wages for the additional travel time to and from work the petitioner claimed to have incurred as the result of the transfer. The Court found that the Board did not abuse its discretion in determining that, because the petitioner was never previously paid hourly wages for travel time, he did not lose any such wages by reason of the transfer, and that granting his petition would have constituted a windfall, and was therefore not appropriately included in any make whole remedy.

## Union Unfair Labor Practices

**12/29/12**
**ILRB LP**
**Executive Director Dismissal – Removal From Duties as Union Officer**
In Karl Cook and Amalgamated Transit Union, Local 241, 29 PERI ¶115 (IL LRB-LP 2012) (Case No. L-CB-12-050), the Charging Party alleged that the Union violated the Act by removing him from his duties as a Union officer. The Board upheld the Executive Director's dismissal of the charge, citing Board precedent for the proposition that, under Section 10(b)(1) of the Act, internal union matters are generally outside the Board's jurisdiction.

**2/15/13**
**ILRB LP**
**Executive Director Dismissal – Duty of Fair Representation**
In James Conlee Jackson and ATU Local 241, 29 PERI ¶134 (IL LRB-LP 2013) (Case No. L-CB-13-001), the Union mailed Charging Party a notice informing him that it was processing two of his grievances – one related to use of FMLA leave, and the other pertaining to a traffic accident. The Union subsequently sent a second notice informing Charging Party that it found merit to the traffic accident grievance and would advance it to arbitration; however, a third notice from the Union, to the effect that it was dropping the FMLA grievance, was never received by Charging Party, because the Union mistakenly sent the notice to an address at which Charging Party had never lived. Over twenty-one months later, not having heard anything from the Union regarding the traffic accident grievance, Charging Party emailed the Union inquiring about the status of the grievance. A little over two months after that, the Union local was placed in receivership. After another eight months had passed, still not having heard from the Union, Charging Party asked his Union steward about his traffic accident grievance. In response, a Union executive board member, mistaking the traffic accident grievance for the FMLA grievance, told Charging Party the grievance had been dropped because the notice to Charging Party had been returned by the post office. The Union executive board member also inaccurately informed Charging Party that the traffic accident grievance had been consolidated with the FMLA grievance, and that the Union had therefore stopped processing both. The Executive Director dismissed the charge, and the Board affirmed. In its decision, the Board cited Violar Murry and AFSCME Council 31, 14 PERI ¶3009 (IL LLRB 1998), aff'd sub nom. Murry v. AFSCME Council 31, 305 Ill. App. 3d 627 (1st Dist. 1999), for the proposition that "[n]egligence, even gross negligence, is insufficient; the union must do something with the intent to disadvantage the charging party." The Board concluded that, although the facts alleged suggested incompetence by the Union, there was no evidence that the Union intentionally took any action designed to retaliate against Charging Party or because of his status, and the dismissal was therefore appropriate.

**2/15/13**
**ILRB LP**
**Executive Director Dismissal – Duty of Fair Representation**
In Brenda Carter and AFSCME Council 31, 29 PERI ¶135 (IL LRB-LP 2013) (Case No. L-CB-13-005), Charging Party alleged that the Union failed to support her in connection with her suspension and eventual discharge, and that it did so in retaliation for her support for a rival candidate for Union local president. The Board affirmed the Executive Director's dismissal, which found that Charging Party's allegation that the Union failed to support her was simply not accurate, in that the Union in fact provided representation during the discipline process, and took her grievance to arbitration.

**4/8/13**
**ILRB LP**
**Executive Director Dismissal – Duty of Fair Representation**
In Beverly Boyd and AFSCME Council 31, 29 PERI ¶161 (IL LRB-LP 2013) (Case No. L-CB-13-009), the Board affirmed the Executive Director's dismissal of a charge alleging that the Union breached its

duty of fair representation by failing to make an effort to force Charging Party's employer, the Cook County Department of Corrections, to waive the requirement that she take a physical ability test as a condition of her requested reassignment to the Employer's boot camp. In affirming the dismissal, the Board agreed with the Executive Director's determination that Charging Party failed to provide any evidence of intentional conduct by the Union directed at Charging Party that was retaliatory and based on animosity or some past activity by the Charging Party, and that the evidence was therefore insufficient to warrant issuance of a complaint.

**5/20/13**
**ILRB SP**
**Executive Director Dismissal – Duty of Fair Representation, Right of Non-Association Based on Religious Beliefs**
In Brian Trygg and General Teamsters/Professional and Technical Employees Local 916, 29 PERI ¶184 (IL LRB-SP 2013) (Case No. S-CB-10-024), the Charging Party complained that the Union failed to advise him of his right of non-association based upon religious beliefs provided in Section 6(g) of the Act, and improperly denied his request that any fair share deductions from his pay be forwarded to his designated charity. The Board upheld the Acting Executive Director's dismissal of the charge on the ground that the issuance of such notices to employees is not the responsibility of the Union, but of the Board, that consideration of any amendment of Board notices is a matter for the Board, and that the charge therefore failed to raise an issue for hearing on the question of whether the Union violated the Act.

**5/24/13**
**ILRB SP**
**Executive Director Dismissal – Duty of Fair Representation**
In Julius C. Perryman and State of Illinois, Dep't of Cent. Mgmt. Servs., 30 PERI ¶12 (IL LRB-SP 2013) (Case No. S-CB-13-031), the Charging Party claimed that the Union violated its duty of fair representation by failing to pursue his discharge grievance. The Board upheld the Executive Director's dismissal of the charge based on the Charging Party's failure to provide evidence that the Union's agents held a personal bias against the Charging Party or some other motive to treat him differently from other employees.

**5/24/13**
**ILRB SP**
**Executive Director Dismissal – Duty of Fair Representation**
In Robert Smith and AFSCME Council 31, **PERI ¶** (IL LRB-SP 2013) (Case No. S-CB-13-004), the Charging Party alleged that the Union failed to properly pursue two of his grievances and advise him of their status. The Board upheld the Executive Director's dismissal of the charge based on the Charging Party's failure to meet a deadline for filing materials in support of the charge. The Executive Director also noted the absence of any evidence that the Union harbored any personal bias toward the Charging Party, or provided other similarly situated employees with a greater level of action or diligence in their disciplinary or grievance processes.

**5/24/13**
**ILRB SP**
**Union Unfair Labor Practices**
In Pace South Div. and Amalgamated Transit Union, Local 1028, 28 PERI ¶88 (IL LRB-SP 2013) (Case No. S-CB-09-009), the Board adopted the ALJ's decision dismissing the Employer's charge alleging that the Union violated Sections 10(b)(4) and 17 of the Act by organizing a one-day "sick-out," and later encouraging employees to decline overtime, as a means to support the bargaining unit's rejection of a tentative agreement to the terms of a new CBA. The ALJ found that the Employer failed to prove that the Union had any involvement in organizing or authorizing the sick-out. The ALJ also found that, although Union officials did later encourage employees not to work overtime, all of the overtime declined was

voluntary, and no employee refused to work mandatory overtime. Therefore, the ALJ concluded that there was no basis in the record for finding any violation of the Act.

**5/30/13**
**ILRB LP**
**Executive Director Dismissal – Duty of Fair Representation**
In Leslie Jones and Amalgamated Transit Union, Local 241, 30 PERI ¶15 (IL LRB-LP 2013) (Case No. L-CB-13-011), Charging Party was a bus servicer who was terminated after injuring another employee while driving a bus on the Employer's property, his third accident in the previous 12 months. He alleged that the Union breached its duty of fair representation by not processing his termination grievance to arbitration, and that the Union disfavored bus servicers with bad driving records. The Board affirmed the Executive Director's dismissal of the charge, noting that it is not the Board's role to evaluate the relative merits of a grievance, and that the Charging Party failed to show any inappropriate prejudice against him in the Union's actions with respect to the handling of his termination grievance.

**6/26/13**
**ILRB LP**
**Executive Director Dismissal – Duty of Fair Representation**
In Anthony Mayes and AFSCME Council 31, 30 PERI ¶26 (IL LRB-LP 2013) (Case No. L-CB-13-025), the Board affirmed the Executive Director's dismissal of a charge alleging that the Union mishandled grievances related to Charging Party's demotion, finding the absence of any evidence or even allegations that the Union had engaged in intentional misconduct or discrimination against the Charging Party in violation of Section 10(b)(1).

**6/28/13**
**ILRB SP**
**Executive Director Dismissal – Duty of Fair Representation**
In Karla Knox and AFSCME Council 31, 30 PERI ¶31 (IL LRB-SP 2013) (Case No. S-CB-13-037), the Board affirmed the Executive Director's dismissal of a charge alleging that the Union improperly withdrew a grievance challenging Charging Party's discharge in exchange for three days' pay in settlement of a prior grievance. In upholding the dismissal, the Board noted that Charging Party failed to provide any evidence or even specific allegations of intentional misconduct by the Union, despite a specific request for such information by the Board investigator.

**6/28/13**
**ILRB SP**
**Executive Director Dismissal – Duty of Fair Representation**
In Joseph S. McGreal and Metropolitan Alliance of Police, Chapter #159, 30 PERI ¶29 (IL LRB-SP 2013) (Case No. S-CB-13-003), the Union and the Employer selected an arbitrator to hear consolidated grievances pertaining to Charging Party's discharge. During the course of the hearing, Charging Party attempted to file a grievance, as well as his own motion before the arbitrator to stay the arbitration proceedings, complaining that the arbitrator was not a member of the National Academy of Arbitrators, in violation of a specific term of the collective bargaining agreement between the Union and the Employer. The Union disclaimed the grievance, and the arbitrator denied the Charging Party's motion upon opposition from both the Union and the Employer. The arbitrator ultimately ruled that the Employer had just cause to terminate Charging Party's employment. In his charge, Charging Party alleged that the Union violated Section 10(b)(1) by refusing to process certain grievances in retaliation for his having filed an ARDC complaint against a Union attorney, that the Union failed to return his phone calls, denied him access to transcripts of the arbitration hearing, and denied him the opportunity to participate in the drafting of the Union's post-hearing brief in the arbitration case. The Executive Director dismissed the charge and Charging Party filed exceptions, arguing only that the arbitrator lacked jurisdiction to hear the arbitration case because he was not a member of the NAA, and that the Executive Director's dismissal

was therefore contrary to the Illinois Uniform Arbitration Act. The Board rejected this argument and upheld the dismissal, determining that the charge, in essence, complained of the manner in which the Union and the Employer agreed to administer the collective bargaining agreement with respect to the arbitration of the grievances pertaining to Charging Party's discipline, and noting that the Board has long held that it is not the Board's role to police collective bargaining agreements. The Board also went on to state its affirmance of the Executive Director's ruling that the Union did not violate Section 10(b)(1) in its handling of Charging Party's grievances, citing the considerable discretion generally accorded to unions in this regard, and also the fact that the Union in this case expended considerable effort on Charging Party's behalf.

**7/19/13**
**ILRB LP**
**Executive Director Dismissal – Duty of Fair Representation**
In Richard Sanabria and FOP, Lodge 7, 30 PERI ¶49 (IL LRB-LP 2013) (Case No. L-CB-13-029), the Board affirmed the Executive Director's dismissal of a charge alleging that the Union breached its duty of fair representation with respect to its handling of Charging Party's grievance pertaining to his employer's failure to place him on "injured on duty" status. The Board agreed with the Executive Director's determination that Charging Party failed to raise an issue of law or fact sufficient to warrant hearing, and rejected his arguments on appeal challenging the propriety of the Act's "intentional misconduct" standard.

**8/28/13**
**ILRB LP**
**Executive Director Dismissal – Duty of Fair Representation**
In Pamela Mercer and AFSCME Council 31, 30 PERI ¶69 (IL LRB-LP 2013) (Case No. L-CB-13-008), the Charging Party alleged that the Union violated Section 10(b)(1) by failing to adequately represent her with respect to her grievance against her employer over a denial of premium pay for hours worked. The Executive Director dismissed the charge because Charging Party failed to present evidence which raised any issue as to whether the Union took action against her because of her status or out of personal animosity. In her appeal, Charging Party argued that she was denied the opportunity to provide relevant information during the investigation. The Board rejected this argument and affirmed the dismissal, noting that Section 1220.40(a)(1) of the Board's rules requires a charging party to provide relevant information during the course of an investigation, and finding that Charging Party's attorney never responded to the Board investigator's letter requesting information, sent some five months before the dismissal, and that the attorney never denied receiving the letter.

## Procedural Issues

**1/28/13**
**ILRB SP**
**Executive Director Dismissal - Failure to Provide Certificate of Service**
In Patrick C. Nickerson and Vill. of University Pk., 29 PERI ¶126 (IL LRB-SP 2013) (Case No. S-CA-12-011), the Executive Director dismissed a charge alleging that Charging Party was terminated in retaliation for engaging in protected concerted activity, finding that Charging Party had failed to establish a causal connection between his protected activity and his termination. Charging Party filed exceptions to the dismissal with the Board; however, contrary to the Board's rules and the direction included the Executive Director's dismissal, Charging Party failed to include with his exceptions either a certification or any other indication that he had served a copy of his exceptions on the Respondent. The Board found that, under these circumstances, it would be unfairly prejudicial to the Respondent to consider Charging Party's exceptions. Accordingly, the Board struck the exceptions, and let the Executive Director's dismissal stand as binding but non-precedential.

**7/19/13**
**ILRB LP**
**Executive Director Dismissal Reversed – Timeliness**
In Salvatore T. Ziccarrelli and Teamsters Local 700, **PERI** ¶ (IL LRB-LP 2013) (Case No. L-CB-13-020), the Charging Party alleged that the Union violated Section 10(b)(1) by conspiring with the Employer to deny Charging Party the opportunity to testify at a grievance hearing. The Executive Director dismissed the charge, finding that, because the Charging Party had knowledge of the alleged misconduct as of May 22, 2012, the charge should have been filed no later than November 22, 2012, and the November 26, 2012 filing was therefore untimely. The Board reversed the Executive Director's dismissal and remanded the matter for further investigation, agreeing with the Charging Party that, because November 22, 2012 was the Thanksgiving holiday, under Section 1200.30(a) of the Board's rules, the deadline for filing the charge automatically extended to the next business day, which was November 26, 2012, the date the charge was filed. The Board also reasoned that it would be appropriate in this case to grant a variance from its rule requiring proof of service on Respondent, even though Charging Party did not provide such proof of service, inasmuch as there was no dispute that Respondent was in fact served with the charge.