IPLRA DEVELOPMENTS

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ILLINOIS PUBLIC LABOR RELATIONS ACT
RECENT DEVELOPMENTS

OCTOBER 2014 – SEPTEMBER 2015

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IPLRA UPDATES
Board and Court Decisions
October 2014 – September 2015

I. Representation Issues

12/26/14
ILRB SP
Voter Eligibility; Stipulations
In Illinois Council of Police and Village of Lyons and Illinois FOP Labor Council and Metropolitan Alliance of Police, Lyons Chapter #705 and Aaron Gatterdam, 31 PERI ¶ 107 (IL LRB-SP 2014) (Case No. S-RC-14-073), the Board unanimously affirmed the ALJ's RDO, and ordered that six challenged ballots be opened and the vote retallied. In March, 2014, ICOP filed a petition for an election to replace the incumbent FOP, after which MAP filed a petition to intervene. At the election, a total of 17 ballots were cast; six of these were cast by recently laid off employees and were challenged. Of the remaining 11 ballots, seven were cast for MAP, four for ICOP and none for FOP. Consequently, the challenged ballots had the potential of altering the election results. Various parties filed objections to the election and the Board's Executive Director subsequently ordered a hearing concerning the validity of the six challenged ballots. The Board concurred with the ALJ's determination that 1) the employer's past experience and 2) its future plans weighed in favor of finding that the inactive employees had an objectively reasonable expectation of future employment. While the ALJ had concluded that circumstances surrounding the layoff were entirely neutral, the Board modified this aspect of the ALJ's analysis. The Board concluded that the circumstances surrounding the layoff was the strongest factor weighing in favor of a reasonable expectation of future employment because there was no apparent diminution in the Village's need for police services, nor decrease in the equipment that would be needed by the officers should they be recalled, and that the laid off officers had a contractual and a statutory right to recall, as well as a statutory prohibition on having other employees perform the police duties formerly performed by the laid off police officers. The Board further found that MAP did not waive its right to challenge the ballots, reasoning that MAP was not bound by a prior stipulation that there would be 19 voters because the layoff of six officers the day after the stipulation was signed constituted a significant change in circumstances. The Board therefore ordered that the six ballots be opened and counted.

12/31/2014
1st DISTRICT OPINION
Managerial Exclusion
In AFSCME, Council 31 v. Ill. Labor Relations Bd. and Ill. Dep't of Cent. Mgmt. Servs. (Ill. Commerce Comm'n), 2014 IL App (1st) 130655, 31 PERI ¶ 97, a 2-1 majority of the First District Appellate Court affirmed in part and reversed in part the split decision of the State Panel, Ill. Dep't of Cent. Mgmt. Servs. (ICC), 29 PERI ¶ 129 (IL LRB-SP 2013) (ILRB Case No. S-RC-09-202), in which the Board majority excluded three of four ICC attorneys as managerial.

The court majority reversed the Board majority's determination with respect to two of the attorneys, and affirmed its finding regarding the last. The court found that only one of the attorneys was excluded; the fourth attorney at issue before the Board was not subject to appeal. Justice Gordon, dissenting, would have affirmed the Board majority's determination in its entirety relying on the attorneys' role as litigation counsel.

The court majority rejected the union's argument that the "predominant" aspect of managerial status, like the "preponderance" aspect of supervisory status, requires that the employees spend more than half their time on managerial tasks. The majority found that the Board applied the correct standard, but applied it incorrectly to the two positions where they reversed the Board. The court found that two examples of an individual's advice being followed in 20 years were insufficient to establish managerial status. The court also refused to find evidence that an individual's responsibility for flagging issues for ICC consideration was indicative of managerial status. Finding no authority regarding "gatekeeper" status, the court hesitated to find "her control over Commission policy in this respect is significant enough to warrant her status as managerial." Finally, the court affirmed the Board's finding that a third attorney's role in initiating citation proceedings provided enough examples to render him managerial, although it rejected the Board's reliance on the attorney's advice regarding the Governor's furlough order.

1/8/15
ILRB SP
Supervisory Exclusion; Preponderance of Time

In Service Employees Int'l Union, Local 73 and Village of Lombard, 31 PERI ¶ 123 (IL LRB-SP 2015) (Case No. S-UC-13-011), the Board adopted, with modification, the ALJ's recommendation that the unit clarification petition to represent the Customer Service Supervisor and Management Analyst at the Village of Lombard be denied. The Board concurred with the ALJ's finding that Respondent's Customer Service Supervisor devotes a preponderance of her work time performing supervisory duties; however, the Board reached that conclusion relying on the rationale articulated by the Supreme Court in City of Freeport v. Illinois State Labor Relations Board, 135 Ill. 2d 499 (1990) rather than the decision in Department of Central Management Services v. Illinois State Labor Relations Board, 278 Ill. App. 3d 79 (4th Dist. 1996), as the ALJ had done. In City of Freeport, the court found that the preponderance requirement of Section 3(r)(1) of the Act is met when an employee spends more time on supervisory functions than on any one non-supervisory function. Although the ALJ had found no evidence satisfying City of Freeport, the Board determined that the Customer Service Supervisor's unequivocal testimony that she spends an hour each day on tasks that the ALJ determined were supervisory in nature and an hour or less each day on her other responsibilities was a true reflection of the record, demonstrating that the Customer Service Supervisor met the preponderance standard as applied by the Board and affirmed in City of Freeport.

1/26/15
ILRB SP
Supervisory Exclusion

In Illinois FOP Labor Council and Village of Campton Hills, 31 PERI ¶ 132 (IL LRB-SP 2015) (Case No. S-RC-14-015), the Board adopted the ALJ's recommended decision to certify a bargaining unit that included all full-time sworn officers below the rank of sergeant, and excluded Sergeants and all other employees employed with the Village of Campton Hills. The Board's decision included two slight modifications of the RDO that did not affect the outcome of the case or the determination that the police sergeants employed by the Village were supervisory employees under the Act because Sergeants use independent judgment when exercising the supervisory authority to direct and issue discipline to subordinate officers.

2/23/2015
ILRB LP
Supervisory and Confidential Exclusions
In Local 200, Chicago Joint Board, Retail, Wholesale and Department Store Union, AFL-CIO and County of Cook (Health & Hospital System), 31 PERI ¶ 154 (IL LRB-LP 2015) (Case No. L-RC-14-009), appeal pending No. 1-15-0749, the Board accepted the ALJ's recommended decision to issue a certification adding the Recruitment and Selection Analyst (RSA) position to the bargaining unit. Here the ALJ found that the RSAs were not supervisory or confidential employees as defined by the Act, and that while they have access to personal information about applicants and fellow employees, including salaries, benefits, home addresses and social security numbers, that information, though possibly of interest to a union, was not shown to be specifically pertinent to the Employer's collective bargaining strategy. The Board rejected Respondent's generalized prediction that the information RSAs are involved with could potentially affect the Employer's strategy in the future.

3/13/2015
ILRB SP
Executive Director Dismissal - Blocking Election
In Ronda Powell and County of Kankakee and Kankakee County State's Attorney and American Federation of State, County and Municipal Employees, Council 31, 31 PERI ¶ 168 (IL LRB-SP 2015) (Case No. S-RD-15-003), the Board affirmed the Executive Director's decision to deny the request to block a decertification election pending resolution of unfair labor practice charge, and issued an order directing an election. Petitioner filed a petition to decertify the Incumbent as exclusive representative of Kankakee County State's Attorney's Office staff. Neither the Incumbent nor the Employer filed objections; however, the Incumbent filed an unfair labor practice charge alleging that the Employer had violated Section 4 of the Act by, among other things, direct dealing with a unit member, providing wage increases outside of the scope of the CBA, unilaterally implementing changes to health care amidst negotiations for a successor CBA, and engaging in bad faith bargaining. The Incumbent sought to block the election until the ULP was resolved. The Executive Director decided against blocking the election, concluding that even if the allegations proved true, they would not prevent a fair election. The lengthy passage of time between the filing of the petition and the scheduled date to begin hearing on the ULP, as well as risk that the Incumbent might manipulate the blocking procedure to gain an advantage in the election, further weighed against delaying the election.

4/14/15
4th DISTRICT OPINION

Unit Clarification; Impact of 2013 Amendments

In Int'l Union Operating Engineers, Local 965 v. Ill. Labor Relations Bd. and Office of the Comptroller, 2015 IL App (4th) 140352, 31 PERI ¶ 190, the Fourth District affirmed the State Panel's decision, Office of the Comptroller, 30 PERI ¶282 (IL LRB-SP 2013) (ILRB Case No. S-UC-13-044), granting a unit clarification petition filed by the Comptroller to remove from a collective bargaining unit certain positions recently excluded from the definition of a "public employee" by the 2013 amendments to the Act. The Union argued before the Board and again on appeal that to remove the at-issue Public Service Administrators from the bargaining unit during the term of an existing collective bargaining agreement was an unlawful retroactive application of the change in law. Although the court set out the legal analysis applicable to retroactive application of changes in the law, it agreed with the Board that the unit clarification petition sought only prospective application of the amendment, which is permissible in any event. The court also found the union had waived its argument that it should have been allowed to intervene in the unit clarification proceeding, because it had not argued the point, accompanied with applicable authority, to the Board.

8/25/2015
ILRB SP
Supervisory Exclusion

In International Brotherhood of Teamsters, Local 700 and Illinois State Toll Highway Authority, 32 PERI ¶ 48 (IL ILRB-SP 2015) (Case No. S-RC-14-047), the ALJ's RDO addressed whether employees in various titles employed by the Toll Highway Authority were supervisors within the meaning of Section 3(r) of the Act. The ALJ determined that Maintenance Sections Managers and Supervisors were exempt under Section 3(r), but that other supervisory titles in the Sign Shop, Road Electric, and Central Garage were not statutory supervisors. The Board affirmed the portion of the RDO finding the Maintenance Sections Managers and Supervisors positions were supervisory employees, but found the record was insufficiently developed as to the supervisory status of the remaining petitioned-for employees, and reversed and remanded for further evidentiary hearing with respect to those petitioned-for titles.

9/10/2015
ILRB LP
Supervisory Exemption

In Chicago Joint Board, Local 200, RWDSU, United Food and Commercial Workers International Union and County of Cook (Health and Hospital System), 32 PERI ¶ 55 (IL ILRB-LP 2015) (Case No. L-RC-14-018), appeal pending, No. 1-15-2770, the Board affirmed the ALJ's recommendation dismissing the petition because the petitioned-for Pharmacy Supervisors were supervisors within the meaning of Section 3(r). The parties stipulated that the principal work of the Pharmacy supervisors was substantially different from that of their subordinates, and the ALJ determined, among other things, that while the Pharmacy Supervisors did not have authority to hire or unilaterally impose discipline, they did have the authority to effectively recommend discipline, as evinced by their broad authority to select a non-disciplinary approach to employee misconduct. Further, the Pharmacy Supervisors directed their subordinates with independent judgment when they reviewed their subordinates' work to assess its quality and make effective recommendations concerning subordinates' evaluations, and that they spent the preponderance of their work time engaged in supervisory functions because their most important

task was to ensure the quality of their subordinates' work through supervisory direction and discipline.

II. Employer Unfair Labor Practices

10/27/14
ILRB SP
Executive Director Dismissal – Weingarten Rights
In Patrick Nelson and Chief Judge of the Circuit Court of Cook County, 31 PERI ¶ 74 (IL LRB-SP 2014) (Case No. S-CA-14-185), the Board upheld the Executive Director's dismissal of the charge, based on the finding that Charging Party had presented insufficient evidence of a Weingarten violation to raise an issue for hearing. Charging Party's supervisor had summoned him to a meeting to discuss a proposal that Charging Party had made at an earlier staff meeting regarding earning compensatory time for performing certain volunteer work. Prior to meeting with his supervisor, Charging Party sought the advice of his Union steward, who advised Charging Party to request a Union representative if the meeting became investigatory in nature. The Union steward then contacted the supervisor to convey Charging Party's concerns, and the supervisor informed the steward that his presence would not be necessary because the meeting would not be disciplinary in nature. Upon arriving at the meeting, Charging Party invoked his Weingarten rights and requested union representation. The supervisor advised Charging Party that a representative was not necessary because the meeting was neither investigatory nor disciplinary in nature. When Charging Party continued to insist on union representation, the supervisor cancelled the meeting. Charging Party was not disciplined, but he filed a charge alleging that his supervisor treated him disrespectfully and that his Weingarten rights were violated. The Executive Director concluded that there was no evidence that the supervisor interrogated or solicited information from the Charging Party in derogation of his Weingarten rights, but rather cancelled the meeting.

10/27/14
ILRB SP
Executive Director Dismissal – Retaliation
In Dwayne McCann and County of Will (Land Use Department), 31 PERI ¶ 75 (IL LRB-SP 2014) (Case No. S-CA-14-189), the Board affirmed the Executive Director's dismissal of the charge based on the finding that Charging Party's allegations were untimely, failed to demonstrate or assert that Respondent took action against Charging Party because he had engaged in activity protected under the Act, and otherwise raised claims that were beyond the Board's jurisdiction. Respondent discharged Charging Party for failing to obtain certification required for Charging Party to perform his duties as a building inspector. Charging Party alleged that his discharge was unlawful, that a prior recall process was improper, that Respondent had discriminated against him by failing to provide proper training and material in advance of the certification exam because of Charging Party's race, that Respondent violated the Illinois

Worker's Compensation law, the American's with Disabilities Act and the United States Constitution. The Executive Director concluded that allegations regarding any irregularities in the recall process or Respondent's failure to provide Charging Party with proper training or materials for the certification exam were untimely. Although Charging Party's claim with respect to his termination was timely, the Executive Director determined that Charging Party had failed even to allege, much less offer evidence, that the Employer took any action against him because he engaged in activity protected under the Act. The remaining claims fell outside of the scope of the Board's jurisdiction.

11/7/14
ILRB SP
Interference; Retaliation; Discrimination; "Missing Witness" Rule

In International Union of Operating Engineers, Local 399 and Village of Stickney, 31 PERI ¶ 77 (IL LRB-SP 2014) (Case No. S-CA-12-121), the Union filed a majority interest petition on December 9, 2011, seeking to represent a unit composed of the Employer's nine full-time maintenance workers. Ten days later, the Employer asked each maintenance worker to sign an affidavit indicating whether he supported the Union. All refused to sign. Another eight days after that, the Employer informed the three least senior maintenance workers that they were being laid off, effective at the end of the year, "due to necessary cutbacks in order to save costs." A unanimous Board affirmed the ALJ's recommended decision that the Employer violated Section 10(a)(1) in seeking to determine employees' support for the Union. With one dissent, a majority of the Board also agreed with the ALJ's conclusion that the Employer did not violate Section 10(a)(2) when it laid off the three maintenance workers because the evidence demonstrated that the layoff decision was made prior to the Employer's becoming aware of the employees' Union activity, and the Union therefore failed to meet its prima facie burden of demonstrating a causal connection between the protected activity and the layoff. In reaching this conclusion, the Board credited the Mayor's unrebutted testimony that the decision to trim the workforce for reasons of economic efficiency had been made prior to the filing of the petition, and rejected the Union's argument that an adverse inference should be drawn from the Employer's failure to call any Village trustees as corroborating witnesses regarding the date the decision was made. In rejecting the Union's argument, the Board found the "missing witness" rule inapplicable because the Mayor's uncontradicted testimony regarding the timing of the layoff decision was facially plausible, and also supported by other evidence, such that it was not unreasonable for the Employer to decline to call corroborating witnesses.

In his dissent, Member Coli stated that he would have found a 10(a)(2) violation with respect to the layoffs based on the "suspicious circumstances" attendant to the layoffs, and his determination that the Mayor's testimony was not credible, and that an adverse inference should have been drawn from the Employer's failure to call corroborating witnesses.

12/2/14
3rd DISTRICT OPINION
Retaliatory Discharge, Repudiation

In County of Bureau and Bureau County Sheriff v. Ill. Labor Relations Bd. and Policemen's Benevolent Labor Committee, 2014 IL App (3d) 130271-U, 31 PERI ¶ 87, *pet. leave to appeal denied*, 392 Ill. Dec. 365, 32 N.E.3d 673, the Third District affirmed a decision of the State Panel

in Policemen's Benevolent Labor Committee and County of Bureau and Bureau County Sheriff, 29 PERI ¶163 (IL LRB-SP 2014) (Case No. S-CA-11-169), holding that (1) the Sheriff had violated the Act in dismissing a deputy for having engaged in protected activity, (2) the Union had not waived its right to file a grievance in that a contractual provision did not constitute a clear waiver, and (3) the Employer should be sanctioned for denying in its Answer matters that it clearly knew to be true. Justice McDade dissented from the first finding, not because the majority erred in its application of the relevant law, but because she was convinced the evidence showed the Union failed to make out a prima facie case of anti-union motivation or of a dual-motive situation.

12/15/14
ILRB SP
Discrimination; Retaliation; Timeliness of Charge
In Skokie Firefighters, Int'l Association of Firefighters, Firefighters Local 3033 and Village of Skokie, 32 PERI ¶ 6 (IL LRB-SP 2014) (Case No. S-CA-13-115), the Union filed a charge alleging that the Village unilaterally changed the status quo of employees' terms and conditions of employment during the pendency of interest arbitration proceedings and dealt directly with the Union's members concerning a mandatory subject of bargaining. Both allegations stem from the Respondent's decision to implement a Separation from Employment Reimbursement Agreement under which new firefighters were required to reimburse the Village for training and equipment costs if they resigned after less than two years. The State Panel affirmed and adopted the ALJ's RDO finding that the 2013 charge was untimely as it related to the unilateral change allegation because the Union reasonably should have known of that change in September 2011, when the policy was first announced. At that time, the Chief sent an email to officers and attached a memorandum outlining the new policy. The Union President received and was obligated to read this email in his capacity as a lieutenant, and was similarly obligated to review the memorandum in his capacity as Union President. Further, the Agreement's title, referenced in the email, made clear that the Village had changed employees' terms and conditions of employment. The direct dealing charge was also untimely because it was premised on assessing the lawfulness of the unilateral change which the Board had no jurisdiction to reach.

12/30/14
ILRB LP
Executive Director Dismissal Timeliness; Information Request; Retaliation
In Debra Larkins and Chicago Transit Authority, 31 PERI ¶ 110 (IL LRB-LP 2014) (Case Nos. L-CA-14-068, -069 and -080), the Board affirmed the Executive Director's dismissal of Charging Party's several claims, finding that Larkins' 2014 charges were untimely or otherwise failed to present issues for hearing. Larkins, a former CTA bus driver, had been terminated for safety violations but later reinstated pursuant to an arbitrator's award. She charged that the Employer failed to pay interest and improperly handled tax issues in connection with her back pay award. The Executive Director determined that these charges were untimely and further failed to raise an issue for hearing because the award did not specifically include interest and the Charging Party presented no evidence to suggest that the Employer acted in retaliation for her having engaged in protected activity. Charging Party was later terminated a second time and contended that the Employer violated the Act when it failed to give her a copy of a settlement

award that she thought should trigger her reinstatement. The Employer contended that it had provided the document to her but had no obligation to do so. The Executive Director determined that the Act did not obligate the Employer to provide this information to an employee, that Charging Party would not have been entitled to reinstatement under the terms of the settlement in question and that Charging Party offered no evidence or allegation that CTA's refusal to reinstate her pursuant to the settlement agreement was motivated by her having engaged in protected activity.

12/30/14
ILRB LP
Retaliation; Imputed Knowledge

In Donna Barnes and County of Cook, 31 PERI ¶ 108 (IL LRB-LP 2014) (Case No. L-CA-13-007), the Board affirmed the ALJ's finding that Respondent violated Section 10(a)(1) and (3) of the Act when it refused to rehire Charging Party to a position comparable to the one she held prior to layoff in order to retaliate against her for testifying before the Board on behalf of a union representation petition. The ALJ found no violation of the Act as a result of the County's requiring Charging Party to formally apply and interview for employment. Only the County filed exceptions to the RDO, arguing that the Respondent was unaware of Charging Party's protected activity, that it did not act with animus toward Barnes, and that if it denied Barnes a position, it did so for legitimate business reasons, and that the fact that it later recalled Barnes shows lack of animus. The Board concurred with the ALJ's application of the general proposition that a manager's or supervisor's knowledge of an employee's union activities will ordinarily be imputed to the employer absent affirmative evidence to the contrary, which the ALJ implicitly found was not presented in this case. The Board credited the AJL's opportunity to observe witnesses and assess their credibility, rejecting Respondent's challenges to the ALJ's rationale.

Dissenting, Member Anderson indicated that he would have reversed the ALJ's finding that Respondent violated the Act principally because there had been a significant lapse of time between the Charging Party's protected activity and the alleged adverse employment action, and because alleged actions constituting adverse employment action are dramatically inconsistent with hiring protocol established, in part, by means of a federal judicial decree.

12/31/14
ILRB SP
Retaliation; Amendment of Complaint

In Metropolitan Alliance of Police, DuPage Sheriff's Police Chapter 126 and County of DuPage and DuPage County Sheriff, 31 PERI ¶ 112 (IL LRB-SP 2014) (Case No. S-CA-12-085), the Board affirmed the ALJ's dismissal of a retaliation charge finding that that there was insufficient evidence that the employer transferred the employee because the employee assisted in obtaining signature cards for representation. The Board addressed the Charging Party's contention that the ALJ had overlooked an allegation of a Section 10(a)(2) violation, noting that the complaint issued after investigation alleged only a violation of Section 10(a)(1), and Charging Party filed no motion to amend the complaint. Accordingly the Section 10(a)(2) allegation was not before the ALJ or subsequently before the Board.

12/31/14
ILRB SP
Unilateral Change; Waiver
In AFSCME Council 31 and Chief Judge of the Circuit Court of Cook County, 31 PERI ¶ 114 (IL LRB-SP 2014) (Case No. S-CA-13-175), the Board affirmed the ALJ's RDO holding that the employer did not violate Sections 10(a)(4) and (1) the Act when it filled a vacant Supervisory Probation Officer position in the Bridgeview Courthouse allegedly without providing the Charging Party notice and an opportunity to bargain its effects, and without completing impact bargaining over Respondent's reorganization plan. The ALJ determined that the Respondent's reorganization plan was not a mandatory subject of bargaining; therefore, Respondent acted within its managerial authority when it unilaterally removed the Bridgeview vacancy from that plan. Consequently, when it transferred Ortiz to Bridgeview, Respondent did not implement the reorganization plan prior to completing effects bargaining, because the Bridgeview vacancy was no longer part of that plan. The ALJ further found that the Union contractually waived its right to bargain over the Ortiz transfer because of clear and unequivocal language in the CBA giving Respondent the right to select employees for transfer to other positions.

12/31/14
ILRB SP
Compliance; Default
In Tyron McCullough and Harvey Park District, 31 PERI ¶ 113 (IL LRB-SP 2014) (Case No. S-CA-12-197-C, -201-C and -211-C), appeal pending No. 1-15-0861, the Board affirmed the ALJ's recommendation and ordered the Respondent to comply with the Compliance Officer's order. Previously, an ALJ had determined that Respondent had waived its right to a hearing, resulting in an admission of material facts alleged in the complaint. The ALJ found a violation of the Act and ordered Respondent to take specific affirmative measures. Neither party filed exceptions and the ALJ's RDO became binding on the parties. When Respondent failed to take ordered action, Charging Party filed a compliance action with the Board. The Respondent failed to comply with the Board Agent's request for information, but instead filed a motion for reconsideration of the initial order. That motion was denied, and a Compliance Order issued directing the Respondent to comply fully with the Board's Order. Respondent argued that the Board lacked subject matter jurisdiction because Charging Party is a supervisor and therefore lacked standing to bring the original charges. Charging Party contended that his entitlement to protection as a public employee under the Act was among the allegations in the Complaint to which Respondent had admitted as a consequence of failing to file a timely answer. The Board determined that Respondent's failure to seek administrative review of the Board's earlier decision precluded it from attacking that decision in this subsequent compliance action.

1/2/15
ILRB SP
Retaliation; Remedy
In Barbara A. Martenson and County of Boone and Boone County Sheriff and Barbara A. Martenson and Int'l Union, United Automobile, Aerospace and Agricultural Implement Workers of America, Local 1761, 31 PERI ¶ 120 (IL LRB-SP 2015) (Case No. S-CA-11-255 and S-CB-11-063), the Board affirmed the ALJ's finding that the Union had not violated Section 10(b)(1)

of the Act by its actions relating to discipline imposed on Charging Party, but that the Employer had violated the Act by imposing a gag order that proscribed Charging Party and other employees from discussing disciplinary investigations and related interviews. The Board slightly modified the ALJ's rationale as well as the remedy. The Board determined that the Charging Party's exception to the ALJ's determination that there was "no evidence" that the Union had retaliated against Martenson had merit; however, while the Board acknowledged that there was "some evidence" of retaliation, it maintained that the totality of the evidence was insufficient to establish Union retaliation. Further, the Board clarified that Martenson was not entitled to make whole relief because the record did not establish that the absence of the Employer's gag order would have impacted her disciplinary hearing so that she would not have been terminated.

1/16/15
ILRB LP
Retaliation; Adverse Action

In Chris Logan and City of Chicago, 31 PERI ¶ 129 (IL LRB-LP 2015) (Case No. L-CA-12-041), the Board reversed the ALJ's finding of a violation of the Act. The ALJ found that the City of Chicago did not violate Section 10(a)(1) of the Act when it held an initial (2011) pre-disciplinary meeting with Logan and recommended that the charge be dismissed; however, the ALJ found that the City violated Sections 10(a)(3) and (1) when it issued Logan notice of a second pre-disciplinary meeting in 2012 in retaliation for bringing the instant charge. The Board rejected Respondent's argument that the second charge was moot simply because Respondent did not proceed with discipline or even with the meeting, finding that the possible violation is in giving the Notice itself. The Board, however, did determine that the 2012 Notice was legally insufficient to sustain the alleged charge. The Notice is not an adverse action under Section 10(a)(3) because there was no qualitative change in or actual harm to Charging Party's terms and conditions of employment. Thus, the element requiring that the Employer take adverse action against the Employee was not satisfied.

Dissenting, Local Panel Chairman Robert Gierut stated that he would have found a violation of the Act under the circumstances presented in that the clear and intended chilling effect of the second notice constitutes an adverse employment action, and a pro se party should not be hindered in the exercise of his rights under the Act.

1/26/15
ILRB SP
Executive Director Dismissal – Dubo Deferral

In AFSCME Council 31 and State of Illinois, Department of Central Management Services, 31 PERI ¶ 142 (IL LRB-SP 2015) (Case No. S-CA-14-142), the Board affirmed the Executive Director's Order deferring a charge in which AFSCME alleged that CMS violated Section 10(a) of the Act by making unilateral changes to health benefits during the term of a collective bargaining agreement. In its appeal of the Deferral to Arbitration, AFSCME conceded the first two criteria under the Dubo analysis, but challenged the third prong (there exists a reasonable chance that the arbitration process will resolve the dispute), arguing that the grievance did not present an identical issue to that before the Board. By focusing on the allegations in both the unfair labor practice charge and in the grievance, as well as the contractual provisions, the Board concluded that there was a clear possibility that an arbitration award would eliminate the Board's

need to issue any remedy, and that the potential efficiencies of deferral were increased by the fact that the arbitration hearing already had been scheduled, while revoking the deferral for issuance of a complaint would not lead to the Board hearing the matter for quite some time.

1/26/15
ILRB SP
Permissive Subject; Interest Arbitration

In Wheaton Firefighters Union, Local 3706, IAFF and City of Wheaton, 31 PERI ¶ 131 (IL LRB-SP 2015) (Case No. S-CA-14-067), appeal pending No. 1-15-0552, a majority of the Board's State Panel upheld a decision by an ALJ to dismiss an unfair labor practice charge that alleged that the City refused to bargain in good faith when it submitted a permissive bargaining proposal to an interest arbitrator. In so holding, the Board affirmed its prior decision in Village of Bensenville, 14 PERI ¶ 2042 (IL LRB-SP 1998), in which it held that "mere submission to an interest arbitrator of a contract proposal pertaining to a permissive subject of bargaining does not violate the statutory duty to bargain in good faith." The Board reiterated its earlier observation that Section 1230.90(k) of the Board's Rules provides a mechanism by which a party may prevent an arbitrator's consideration of an allegedly permissive subject of bargaining, which cures any adverse impact from its submission. The Board rejected the Union's reliance on the Board's more recent decisions in Village of Wheeling, 17 PERI ¶ 2018 (IL LRB-SP 2001) and Village of Midlothian, 29 PERI ¶125 (IL LRB-SP 2013), in which the Board found that the respondents unlawfully bargained to impasse on a permissive subject of bargaining in the interest arbitration context. The Board reasoned that the cases did not squarely address the matter before the Board in Village of Bensenville because they focused on the nature of the particular bargaining proposal and not the precise topic of whether submission of a permissive subject of bargaining to an interest arbitrator constitutes an unfair labor practice.

The Board also accepted the ALJ's determination that the Respondent's proposal on health care addressed a permissive subject of bargaining because it sought the Union's waiver of its right to midterm bargaining over unforeseen changes to its members' health care benefits, and granted the Respondent unfettered discretion to make such midterm changes.

Chairman Hartnett dissented from the majority's decision to rule on the case without the benefit of oral argument. While he espoused no substantive disagreement with the ALJ's RDO, he was left with additional questions concerning the nature of the Respondent's health care proposal, which oral argument could have answered.

1/27/15
ILRB SP
Executive Director Dismissal – Timeliness

In Baldemar Ugarte Avila and State of Illinois, Department of Central Management Services, 31 PERI ¶ 135 (IL LRB-SP 2015) (Case No. S-CA-15-042), *appeal dismissed* 1st Dist. Case No. 1-15-0368, *pet. leave to appeal denied* Sup. Ct. Case No. 119529, the Board affirmed the Acting Executive Director's Dismissal of the allegation that the Employer violated the Act when it denied Charging Party's request for a work accommodation. The complained-of conduct is protected by a statute other than the Illinois Public Labor Relations Act, and is beyond the scope of the Board's authority to consider. Further, even if the Board had jurisdiction, the charge was

not filed within the applicable six-month limitations period. The charge was filed on October 1, 2014; Charging Party was aware of the Employer's denial of the accommodation request no later than January 2003.

1/27/15
ILRB SP
Executive Director Dismissal – Bad Faith
In Byron Fire Protection District and Byron Firefighters, Int'l Association of Firefighters, Local 4775, 31 PERI ¶ 134 (IL LRB-SP 2015) (Case No. S-CA-14-251), the Board affirmed the Executive Director's Dismissal and denied the Union's motion to defer to arbitration. The charge stemmed from Respondent's denial of a retiree's request for contribution to health insurance premiums. The Respondent denied the request on the basis that the retiree was not enrolled in Respondent's health plan. The Union grieved the decision but failed to file a timely request for arbitration. The Union filed the instant charge; however, the Executive Director dismissed it observing that the Union had pled no more than a breach of contract claim and failed to raise issues of fact or law for hearing on an alleged repudiation. The Board concurred, noting the complete absence of any evidence of Respondent's bad faith. The Board denied the motion for deferral as untimely because it was not filed during the investigation of the charge.

2/13/2015
ILRB SP
Executive Director Dismissal – Request to Reopen
In Troopers Lodge #41, Fraternal Order of Police and State of Illinois, DCMS (State Police), 31 PERI ¶ 44 (IL LRB-SP 2015) (Case No. S-CA-13-148), the Board affirmed the Executive Director's Dismissal of a charge alleging that CMS violated Section 10(a) of the Act. On December 13, 2013, following investigation of the charge, the Executive Director ordered this matter deferred to arbitration. The Order specified that within 15 days after completion of the arbitration process, Charging Party may request that the Board reopen the case. The Charging Party submitted the Arbitrator's award to the Board on September 5, 2014, but never made a request to reopen the case at any time before the dismissal issued on December 5, 2014.

3/11/2015
ILRB SP
Executive Director Dismissal – Repudiation
In Policemen's Benevolent and Protective Association, Unit No. 5 and City of Springfield, 31 PERI ¶ 158 (IL LRB-SP 2015) (Case No. S-CA-15-056), the Board upheld the Executive Director's Dismissal of the Union's charge that the City engaged in unfair labor practices by repudiating the parties' Memorandum of Understanding, which required Respondent to expunge certain disciplinary records of disciplinary action after four years. The Board had previously dismissed the City's charge against the Union alleging that the Union negotiated the MOU in bad faith when it 1) negotiated a memorandum of understanding modifying language in the parties' CBA addressing the City's obligation to expunge disciplinary records; and 2) subsequently refused to renegotiate the agreement after the parties executed it. In the instant case, during the course of subsequent litigation over a FOIA request initiated by a third party, it was discovered that some documents that should have been expunged under the MOU or CBA had not yet been

destroyed, and the Union filed a grievance citing the City's failure to abide by the CBA and MOU. Charging Party asserts that since the grievance was filed, the City has unjustifiably stopped moving forward with expunging files. The City contended that there were ongoing investigations about the City's retention policies and that it was not moving forward with the destruction of any files because the investigations might lead to litigation that would require the use of those files. However, the charge was dismissed as untimely because the Union had become aware of the City's failure to expunge the files in accordance with the MOU more than six months before it filed the instant charge.

3/11/2015
ILRB SP
Failure to Bargain

In Metropolitan Alliance of Police, Chapter 117 and Village of Steger, 31 PERI ¶ 157 (IL LRB-SP 2015) (Case No. S-CA-14-097), the Board upheld and adopted the ALJ's recommended decision, dismissing MAP's charge that the Village of Steger violated Sections 10(a)(4) and (1) by closing a 911 dispatch center and subcontracting the work of bargaining unit dispatchers without providing the Union notice or an opportunity to bargain over its decision. Here, the Village conceded that the subcontracting in question presented a mandatory subject of bargaining. The ALJ found that the Village gave the Union actual notice more than two months before the final outsourcing decision was made, and that the Village advised the Union that it was having financial problems and estimated the amount of savings to be realized by outsourcing. Further, the Union had a meaningful opportunity to bargain. Based on the totality of the Village's conduct, the ALJ rejected the Union's contention that the Village was unwilling to bargain. Even though the Union demanded to bargain, it did not appear from the record that the Union provided the Village with bargaining dates, a counterproposal, or a request for information in order to draft a counterproposal; thus, the Village was warranted in assuming the Union had abandoned any desire for further negotiations.

3/13/2015
ILRB SP
Executive Director Dismissal – Direct Dealing

In American Federation of State, County and Municipal Employees, Council 31 and County of Kankakee and Kankakee County State's Attorney, 31 PERI ¶ 160, (IL ILRB-SP 2015) (Case No. S-CA-15-058), the Board affirmed the Executive Director's Partial Dismissal of the charge. AFSCME filed an unfair labor practice charge alleging that Respondent had violated Section 10(a)(4) of the Act by: 1) direct dealing with a bargaining unit member; 2) providing a wage increase outside of the CBA without negotiating with Charging Party; 3) unilaterally implementing health insurance changes amidst negotiations for a successor contract without notice or opportunity to bargain; and 4) engaging in regressive and overall bad faith bargaining. The Executive Director issued a complaint on the third and fourth allegations but dismissed the first and second allegations. The employee who was the subject of the direct dealing and wage increase allegations is a bargaining unit member who had recently filed a petition to decertify the incumbent union. The Executive Director determined that during the investigation, that employee provided documentation that negated the Unions' allegation of direct dealing with her

and that the Union otherwise failed to raise an issue for hearing on its allegation of direct dealing and providing a wage increase outside the scope of the CBA. The Board's Order is titled "Corrected Decision and Order" simply because the initial decision listed one incorrect date and omitted another.

3/31/2015
ILRB LP
Retaliation; Dual Motive
In Pamela Mercer and County of Cook and Sheriff of Cook County, 31 PERI ¶ 17 (IL ILRB-LP 2015) (Case Nos. L-CA-14-009 and 063), appeal pending No. 1-15-1258, the Board affirmed the ALJ's RDO finding that the Respondents did not violate Sections 10(a)(3) and (1) of the Act when they assigned Mercer to Post 1 for four hours, denied Mercer premium pay, and issued her a 10-day suspension. Mercer failed to show how her brief assignment to Post 1, just 20 feet away from her usual location, caused her to suffer any real harm. Even if the assignment did constitute an adverse employment action, it was too far removed from the protected activity that had occurred a full year earlier. As to the denial of premium pay, in addition to the same proximity issues, Mercer failed to prove that the premium pay decision-maker knew she had engaged in protected activity, and Mercer failed to establish that Respondents granted premium pay to similarly-situated employees. Finally, the ALJ determined that Mercer's refusal to discipline her subordinates for observed rule violations was a compelling reason for Respondents' imposing the suspension.

4/28/2015
ILRB SP
Duty to Bargain; Sanctions
In Illinois Council of Police and Village of Elburn, 31 PERI ¶ 194 (IL ILRB-SP 2015) (Case No. S-CA-14-057), the Board affirmed the ALJ's recommendation dismissing the Complaint, and specifically noted that the ALJ properly declined to address Charging Party's motion for sanctions, which consisted of a single unsupported sentence and failed to conform to Board Rule 1220.90(d). Further the ALJ found no violation of the duty to bargain in this case where Respondent failed to fill a vacancy but instead assigned full-time work to part-time employees, recognizing that the Employer's part-time police officer position was not new and had been used in a similar supplementary capacity for many years.

4/28/2015
ILRB LP
Retaliation; Protected Activity
In Frank Marasco and Oak Brook Park District, 31 PERI ¶ 193 (IL LRB-SP 2015) (Case No. S-CA-13-075), the Charging Party argued that the Park District had violated Section 10(a)(1) of the Act when it discharged him in retaliation for his protected concerted activity. The ALJ recommended dismissal of the complaint, and the Board adopted the ALJ's recommendation finding the Charging Party had not engaged in concerted activity. In short, the Charging Party had voiced concerns to several Park District supervisors about the Park District's recent termination of several employees. Although the Charging Party's actions were largely selfless, the evidence did not establish that the Charging Party had ever discussed his concerns with other

employees or establish that he was voicing true group concerns. As such, his conduct was not concerted as required by the Act.

7/21/2015
ILRB SP
Executive Director Dismissal - Unilateral Change During Bargaining
In Metropolitan Alliance of Police, Grundy County Civilians, Chapter 693 and County of Grundy, 32 PERI ¶ 26 (IL ILRB-SP 2015) (Case No. S-CA-15-045), appeal pending No. 3-15-0574, the Board affirmed the Executive Director's partial dismissal, which dismissed the portion of the charge alleging that Respondent violated the Act by dismissing an at-will employee while the parties were in negotiations for an initial contract. The Executive Director determined that the County's Personnel Manual established at-will employment as the status quo pending negotiations. Consequently, there was insufficient evidence of an unlawful unilateral change during bargaining.

8/10/2015
ILRB SP
Retaliation; Transferring Bargaining Unit Work
In Policemen's Benevolent and Protective Association, Unit 14 (Patrol) and City of Alton, 32 PERI ¶ 30 (IL ILRB-SP 2015) (Case No. S-CA-15-103), the Board upheld the Executive Director's Dismissal of the Union's charge alleging that the Employer violated Sections 10(a)(2) and (3) of the Act when it transferred a bargaining unit member and Union Treasurer to the Patrol Division in retaliation for a letter he had drafted protesting Respondent's decision to change training policies. Respondent contended that the member was transferred because he was the least senior employee. Ultimately, the Executive Director dismissed the charge because Charging Party failed to respond to the Board agent's directive to produce any evidence that the Chief of Police had knowledge of the letter in question before the transfer. Accordingly, the available evidence was not sufficient to raise an issue for hearing.

8/31/2015
ILRB SP
Permissive Subject; Interest Arbitration
In Skokie Firefighters Local 3033, IAFF and Village of Skokie, 32 PERI ¶ 50 (IL ILRB-SP 2015) (Case No. S-CA-14-053), appeal pending No. 1-15-2478, the Board affirmed an ALJ's dismissal of an unfair labor practice charge that alleged that the Village refused to bargain in good faith when it submitted a permissive bargaining proposal to an interest arbitrator. The ALJ initially determined that she had authority to dismiss a Complaint without a hearing under the Board's rules, where the Board's precedent had changed after the Complaint had issued. On the merits, she found that the Complaint failed to state a claim when read in light of the Board's intervening decision in City of Wheaton, 31 PERI ¶ 131 (IL LRB-SP 2015). In City of Wheaton, the Board held that a respondent's mere submission of a permissive bargaining subject to an interest arbitrator does not violate the Act. The Complaint before the ALJ alleged that the Respondent violated the Act simply by submitting a permissive bargaining proposal to an interest arbitrator. The ALJ concluded without a hearing that the Complaint failed to state a claim under the Board's decision in City of Wheaton, and the Board affirmed her rationale.

9/28/2015
ILRB LP
Timeliness; Duty to Bargain Unilateral Change
In Service Employees International Union, Local 73 and County of Cook, 32 PERI ¶ 68 (IL ILRB-LP 2015) (Case No. L-CA-12-062), appeal pending No. 1-15-3032, the Union alleged that Respondent violated Sections 10(a)(4) and (1) of the Act when it unilaterally imposed new licensing and educational requirements for unit employees holding the titles of Mental Health Specialist I and Mental Health Specialist Senior. A primary function of employees in these titles was to screen arriving Cook County Jail inmates for mental health problems. Incident to this case, the U.S. Attorney General had filed suit against Cook County alleging civil rights violations as a consequence of the County's failure to provide adequate mental health screening at the jail. A subsequent Agreed Order set forth improvements that the County was required to make in its mental health services. Respondent developed a plan to transition its mental health professionals to an all-licensed staff to help achieve compliance with the Agreed Order, which included modifying the educational and licensing requirement for the title Mental Health Specialist II position and eliminating the other positions that did not require these higher qualifications. Respondent afforded incumbents an opportunity to acquire the credentials necessary to transition into the higher-level position. The ALJ determined that the charge (filed on April 19, 2012) was untimely because the Union knew or should have known of the Employers decision to transition to an all-licensed staff as early as October 19, 2010. The Board agreed that the charge was untimely, but found that the ALJ imputed knowledge to the Union earlier than appropriate. The Board held instead that the Charging Party had reason to know of a sufficiently definite change only as of September 15, 2011, when Respondent's attorney informed the Union President that Respondent would terminate incumbents of unlicensed positions, but that those employees could remain employed if they began to pursue the additional requirement by November 1, 2011.

The Board rejected the Union's contention that the limitations period runs from the Respondent's latest refusal to bargain over its decision or that Respondent's decision to extend the deadline for implementation otherwise extended the limitations period. The Board further noted that even if the Union had filed a timely charge, it would have dismissed the case on the merits because Respondent's decision was not a mandatory subject of bargaining, finding that under the Central City test, Respondent's decision clearly impacted a central matter of managerial authority and that the burdens of bargaining over the transition to an all-licensed mental health staff serving jail inmates whose related civil rights had already been deemed impaired, outweighed the benefits of bargaining to the decision-making process.

9/28/2015
ILRB LP
Timeliness; Duty to Bargain Unilateral Change
In International Brotherhood of Teamsters, Local 700 and Illinois FOP Labor Council and County of Cook and Sheriff of Cook County, 32 PERI ¶ 69 (IL ILRB-LP 2015) (Case No. L-CA-13-055), appeal pending, No. 1-15-2993, Teamsters argued the County had violated Sections 10(a)(4) and (1) of the Act by unilaterally implementing a new work policy without bargaining with Teamsters to agreement or impasse. The County's new policy addressed its employees' relationships with gangs and gang members. The ALJ found the new gang policy was a

mandatory subject of bargaining and that the County had violated the Act by unilaterally implementing the policy without bargaining. A majority of the Board reversed the ALJ's recommendation concluding the gang policy was not a mandatory subject of bargaining. Contrary to the ALJ, the majority found the gang policy was a matter of inherent managerial authority as there was a strong connection between the widespread gang problem and the County's need to provide safety. The majority also concluded that the burden of bargaining on the County's managerial authority far outweighed any benefit of bargaining over the policy. Member Lewis dissented from the majority's reversal of the RDO with respect to the gang policy. He stated that the while he understood the County's need to limit its employees' association with gangs, the County had failed to demonstrate that bargaining over the policy would impair its ability to carry out its statutory mission.

Teamsters also alleged that the County had violation Section 10(a)(1) of the Act by maintaining a rules of conduct policy that interfered or coerced with employees' rights under Section 6. At the same time the County created the gang policy, it altered its rules of conduct policy to include language regarding social media. The ALJ found the policy was overly broad in violation of 10(a)(1), but the Board reversed. The Board found the rules of conduct policy had existed without mention of social media for some time without complaint. Further, the Board found that the new social media language had not substantively changed the conduct proscribed by the policy. Thus, the Board concluded that no reasonable employee would believe the rules of conduct policy with the social media language included actually prohibited employees from exercising the rights guaranteed by the Act.

9/29/2015
ILRB LP
Mandatory Bargaining; Unilateral Change
In International Brotherhood of Teamsters, Local 700 and Illinois FOP Labor Council and County of Cook and Sheriff of Cook County, 32 PERI ¶ 70 (IL ILRB-LP 2015) (Case No. L-CA-14-016), appeal pending, No. 1-15-3015, Teamsters alleged the County had violated Sections 10(a)(4) and (1) of the Act by unilaterally changing its secondary employment policy. Using the Central City test, the ALJ found, and the Board agreed, that the altered secondary employment policy was a mandatory subject of bargaining. In concluding the first Central City prong was met, the ALJ found the policy impacted employees' terms and conditions of employment as the changes in the policy subjected employees to additional discipline and impaired their reasonably anticipated work opportunities. Next, the ALJ concluded the County had failed to establish the policy was a matter of its inherent managerial authority as required by the second prong of the Central City test. Even assuming the County had met the second prong, the ALJ concluded the burden of bargaining on the County did not outweigh the benefits of bargaining over the policy. In essence, the evidence did not establish that bargaining over the proposed changes to the policy would diminish the County's ability to effectively perform its statutory duties or governmental mission. As such, the ALJ concluded and the Board agreed that the secondary employment policy was a mandatory subject of bargaining and that the County had violated Section 10(a)(4) and (1) by failing to bargain over those changes.

III. Union Unfair Labor Practices

10/27/14
ILRB SP
Executive Director Dismissal – Duty of Fair Representation
In Dwayne McCann and AFSCME Council 31, 31 PERI ¶ 76 (IL LRB-SP 2014) (Case No. S-CB-14-025), appeal pending, No. 4-14-1005, Charging Party, a Building Inspector, was discharged for failing to obtain certifications necessary to perform his job. The Union filed a grievance on Charging Party's behalf, which it processed through three grievance steps. Based on the Employer's explanation that Charging Party had failed the licensing exam despite having been given every opportunity by the Employer to prepare for and pass the exam, the Union elected not to pursue Charging Party's grievance to arbitration. The Executive Director dismissed Charging Party's charge against the Union, finding that, although Charging Party alleged that the Union's handling of his grievance was incompetent, inefficient and ineffective, he failed to provide any evidence to show that the Union's decision not to pursue his grievance to arbitration was based on any animus toward Charging Party. The Executive Director also noted that Section 6(d) affords wide latitude to unions in determining which grievances to process to arbitration. The Board affirmed the Executive Director's dismissal.

11/7/14
ILRB SP
Duty to bargain in good faith; Motion to Strike
In Tri-State Fire Protection District and Tri-State Professional Firefighters Union, Local 3165, 31 PERI ¶ 78 (IL LRB-SP 2014) (Case No. S-CB-13-033), *appeal denied* 2015 IL App (1st) 143418-U. In the course of 2012 negotiations for a successor CBA, the District filed an unfair labor practice charge contending that the Union refused to bargain in good faith in violation of Section 10(b)(4) of the Act, when it (1) failed and refused to meet at reasonable times and places with the Employer's representatives and (2) failed to appoint representatives with sufficient authority to negotiate a successor CBA in good faith. Finding no merit to Respondent's exceptions, the Board affirmed the ALJ's conclusion that the Union had failed and refused to bargain in good faith in violation of the Act. The Board also modified the recommended remedy to correct technical deficiencies and to affirmatively require the Union, at the request of the Employer, to bargain in good faith in the future, despite the fact that the parties had already proceeded through interest arbitration.

12/22/14
ILRB SP
Executive Director Dismissal – Repudiation
In City of Rockford and Policemen's Benevolent and Protective Association, 31 PERI ¶ 106 (IL LRB-SP 2014) (Case No. S-CB-14-033), *Appeal dismissed* 2nd Dist. Case No. 2-15-0043**,** the Board upheld the Executive Director's Dismissal of the City's unfair labor practice charge asserting that the Union had violated Sections 10(b)(1) and (2) when it filed a complaint with the City's Board of Fire and Police Commissioners alleging that the City's Chief of Police had violated various departmental rules. The City asserts that the subject of the complaint against the Chief should have been resolved via the CBA's grievance process because it was really a matter "concerning the interpretation of, application of, or compliance with the terms of this Agreement," bringing it under the ambit of the CBA's grievance procedure. The City contends

that the Union's decision not to pursue this matter via the grievance process violated the CBA and restrained or coerced the Chief in the exercise of his managerial rights. The Executive Director concluded that the City presented no evidence or argument to support its assertion that the Chief of Police is a public employee under the Act and further failed to present evidence that the Chief had been restrained or coerced in his exercise of any rights as a consequence of the Union's decision not to file a grievance over the issue in question.

12/30/14
ILRB LP
Executive Director Dismissal – Duty of Fair Representation
In Debra Larkins and Amalgamated Transit Union, L-CB-14-035 31 PERI ¶ 111 (IL LRB-LP 2014) (Case Nos. L-CB-14-030, -034 and -035), the Board affirmed the Executive Director's dismissal finding that Larkins' charges failed to establish a violation of the Act where she presented no evidence of any personal bias or invidious motive for the Union's failure to process her grievances in a more timely fashion. Moreover, Larkins failed to present evidence that the Union's decision to postpone the arbitration of the grievance over her termination was based on vindictiveness, discrimination, or enmity. Finally, the Union's failure to provide Larkins with a copy of a settlement agreement it determined was not applicable to her situation was not a violation of the Act.

1/7/15
ILRB LP
Retaliation; Animus
In Darryl Spratt and Amalgamated Transit Union, Local 241, 31 PERI ¶ 121 (IL LRB-LP 2015) (Case No. L-CB-09-066), the Board affirmed the ALJ's recommendation dismissing Spratt's Complaint alleging that Respondent violated Section 10(b)(1) by refusing to advance a 2008 grievance on his behalf because in 2005 Spratt had supported a different candidate than the incumbent union president. Initially, the Union failed to file a timely answer and requested a variance. After oral argument, the State Panel reversed the ALJ's initial denial of a variance, allowed the Respondent's answer and remanded for hearing. Subsequently, the ALJ recommended the Complaint be dismissed, finding that there was insufficient evidence to demonstrate that the Union's determination not to advance Spratt's grievance (or to promptly inform him of that decision) was motivated out of animosity arising out of Spratt's 2005 campaign activity, particularly where the only purported evidence of animus was Spratt's unsupported and inconsistent testimony of a single statement attributed to the Union President. The Board rejected Charging Party's contention that the ALJ should have amended the Complaint *sua sponte* to include an additional claim concerning the Union's failure to keep him informed as to the status of his grievance. The Board noted that Spratt did not seek to amend his Complaint and that the ALJ was under no obligation to do so. Nonetheless, the Board observed that the addition of such allegations would not have impacted the outcome.

1/26/15
ILRB LP
Executive Director Dismissal – Duty of Fair Representation
In Ricardo Gonzalez and Amalgamated Transit Union, Local 241, 31 PERI ¶ 130 (IL LRB-LP 2015) (Case No. L-CB-14-033), the Board affirmed the Executive Director's Dismissal of

Charging Party's allegation that Respondent breached the duty of fair representation when it allegedly did not do enough to prosecute his grievance, leaving him vulnerable to future discipline because past discipline remained on his employment record. The investigation revealed no evidence that Respondent had taken any type of adverse action against the Charging Party. At that time, Respondent had filed three grievances on Charging Party's behalf, two of which had been moved to arbitration and third was pending at a lower level in the grievance procedure. Further, the investigation demonstrated no evidence that Respondent harbored any type of animus for the Charging Party, further warranting dismissal.

1/26/15
ILRB SP
Executive Director Dismissal – Duty of Fair Representation
In Monica Barry and AFSCME Council 31, 31 PERI ¶ 133 (IL LRB-SP 2015) (Case No. S-CB-15-002), the Board affirmed the Executive Director's Dismissal of Berry's charge that AFSCME had violated its duty of fair representation because it had failed to attain a reasonable accommodation from Barry's employer, Illinois Department of Corrections. Barry took a medical leave of absence contending that she could not work because of asthma and exposure to pepper spray. Barry filed a grievance seeking a medical accommodation that would permit her to use a gas mask to avoid exposure to certain asthma "triggers." The grievance proceeded to step 3 and then IDOC and the Respondent agreed that the dispute was a medical issue that should be submitted for a determination under the Americans with Disabilities Act. In her accommodation request, Barry asked for transfer to another facility or permanent reassignment at her present location. IDOC eventually denied Barry's request for accommodation and AFSCME declined to initiate a second grievance, which was within AFSCME's discretion under Section 6(d). In the absence of any evidence that Respondent acted with bias or with a discriminatory motive, Barry's charge failed to raise an issue for hearing.

1/27/15
ILRB SP
Executive Director Dismissal – Timeliness
In Baldemar Ugarte Avila and AFSCME Council 31, 31 PERI ¶ 136 (IL LRB-SP 2015) (Case No. S-CB-15-004), *appeal dismissed* 1st Dist. Case No. 1-15-0368, *pet. leave to appeal denied* Sup. Ct. Case No. 119529, the Board affirmed the Acting Executive Director's Dismissal of the allegation that the Union violated the Act when it settled Charging Party's grievance allowing him to resign in lieu of discharge, because the charge was not filed within the applicable six-month limitations period. The charge was filed on October 1, 2014. Charging Party was aware of the grievance settlement no later than January 2003.

2/13/2015
ILRB SP
Executive Director Dismissal – Bad Faith Bargaining
In City of Springfield and Policemen's Benevolent and Protective Association, Unit No. 5, 31 PERI ¶ 145 (IL LRB-SP 2015) (Case No. S-CB-14-008), the Board upheld the Executive Director's Dismissal of City of Springfield's charge that Respondent engaged in unfair labor practices when it 1) negotiated a memorandum of understanding modifying language in the parties' CBA addressing the City's obligation to expunge disciplinary records, and 2)

subsequently refused to renegotiate the agreement after the parties executed it. In April 2013, the parties executed an MOU that reduced the retention period for some internal disciplinary files. During the course of subsequent litigation over a FOIA request initiated by a third party, it was discovered that some documents that should have been expunged under the MOU or CBA had not yet been destroyed, and the Union filed a grievance citing the City's failure to abide by the CBA and MOU. In turn, the City filed the instant charge seeking to have the Board invalidate the MOU before Respondent could attempt to arbitrate enforcement of the MOU. The Board rejected the City's argument that the Union had negotiated in bad faith because the City's participants to the MOU were not authorized to negotiate that agreement, the Union knew or should have known that the MOU required City Council ratification and the MOU involved an illegal subject of bargaining. As to the latter, the City points to the local record retention law which mandates retention of some records beyond what is agreed to in the MOU. In rejecting the City's arguments, the Executive Director noted that this MOU was negotiated by City representatives, including the Chief of Police and an Assistant Corporation Counsel. There was evidence that the Union had negotiated MOUs with the Chief on other occasions and no evidence that the Union knew or should have known that the City's representatives for this negotiation lacked authority to enter into this MOU. In rejecting the City's argument that the MOU involved a prohibited subjected of bargaining, the Executive Director noted that there was nothing inherently illegal about the removal of disciplinary records, that the current CBA included such language, and that the Local Records Commission had the discretion to approve applications requesting expungement of records.

2/23/2015
ILRB LP
Executive Director Dismissal – Duty of Fair Representation
In Ronald Stubbs and Amalgamated Transit Union, Local 241, 31 PERI ¶ 153 (IL LRB-LP 2015) (Case No. L-CB-15-016), the Board affirmed the Executive Director's Dismissal of the charge that the Union had violated Section 10(b) of the Act by failing to pursue Charging Party's grievance to arbitration. The Executive Director found that Charging Party failed to present evidence or otherwise assert that the Union's conduct was motivated by animus or another discriminatory motive.

4/28/2015
ILRB LP
Executive Director Dismissal - Timeliness
In Brian K. Jones v. Amalgamated Transit Union, Local 241, 31 PERI ¶ 192 (IL ILRB-SP 2015) (Case No. L-CB-15-004), the Board affirmed the Executive Director's Dismissal of a charge alleging that the Respondent engaged in misconduct by not processing Charging Party's grievance, which may have been in retaliation for Charging Party's having participated in an effort to remove the Local President. Charging Party failed to provide information requested by the Board Agent investigating the charge; however, the events that gave rise to the charge occurred outside the six-month limitation period provided by the Act, even if measured from Charging Party's last conversation with a Union representative concerning the status of his grievance.

4/29/2015
ILRB SP
Executive Director Dismissal - Timeliness; Duty of Fair Representation
In William Friend and American Federation of State, County and Municipal Employees, Council 31, 31 PERI ¶ 196 (IL ILRB-SP 2015) (Case No. S-CB-15-011), the Board affirmed the Executive Director's Dismissal of Charging Party's allegation that the Union violated the Act by the manner in which it processed a grievance filed in connection with Charging Party's termination, following an investigation of a co-worker's accusation of sexual harassment. The Executive Director found that certain of Charging Party's allegations were outside the limitations period and, as to the remaining allegations, he could not proffer evidence sufficient to meet the intentional misconduct standard required to establish a violation of the duty of fair representation under Section 10(b)(1) of the Act. Indeed, the available evidence demonstrated that the Union pursued Charging Party's grievance to arbitration. Charging Party's dissatisfaction with the manner in which the Union represented him, absent a showing that the Union's conduct appears to have been motivated by vindictiveness, discrimination or enmity, was not sufficient to raise an issue for hearing.

9/13/2015
1st DISTRICT OPINION
Failure to Bargain in Good Faith; Appropriate Remedy; Interest Arbitration
In Tri-State Professional Firefighters Union, Local 3165, IAFF v. Ill. Labor Relations Board, et al., 2015 IL App (1st) 143418, __ PERI ¶__, the First District affirmed the State Panel's finding, Tri-State Professional Firefighters Union, Local 3165, IAFF, 31 PERI ¶78 (IL LRB-SP 2014) (ILRB Case No. S-CB-13-033), that the Union engaged in bad faith bargaining by failing to meet at reasonable times and failing to appoint negotiators with the authority to bargain. The State Panel's remedy included a posting requirement and an affirmative bargaining order returning the parties to the *status quo ante* which also directed the parties to, at the District's request, return to the table. The Union appealed, arguing, among other things, that the Board was not empowered to vacate the award subsequently issued by the arbitrator who presided over the interest arbitration that commenced between the parties while the ULP was pending.

The First District affirmed the Board's decision and order finding that the Board correctly found that the Union engaged in bad faith bargaining, appropriately considered facts outside the statutory limitations period in assessing the timely charge, and crafted a remedy that was squarely within the Board's "principle purpose" of putting the parties in the "same position they would have been had the charged party not acted in bad faith." In response to the Union's argument that the Board was without authority to vacate the interest arbitration award, the Court found "no merit in [the] bald assertion that the interest arbitration which took place in this cause must stand simply because it took place." Instead, the Court found no authority that would limit the "Board's substantial flexibility and wide discretion in determining its own appropriate remedies."

IV. Procedural Issues

12/16/2014

1st DISTRICT OPINION

Deferral; Default Dismissal

In Joseph McGreal v. Ill. Labor Relations Bd., Metro. Alliance of Police, Village of Orland Park and Dennis Stoia, 2014 IL App (1st) 133635, 31 PERI ¶90, the First District affirmed a decision of the State Panel in Village of Orland Park, 30 PERI ¶114 (IL LRB-SP 2014), (Case No. S-CA-10-167), affirming the Executive Director's dismissal of the matter after neither party sought to reopen the matter following the arbitration to which the unfair labor practice had been deferred. On appeal, McGreal argued that the selected arbitrator lacked authority to preside over the arbitration. The court held that the parties to the collective bargaining agreement had waived the requirement that the arbitrator belonged to the National Academy of Arbitrators; therefore, it affirmed the Board's dismissal.

2/3/2015

ILRB LP

Compliance; Sanctions

In Wayne Harej and Fraternal Order of Police, Lodge 7, 31 PERI ¶ 137 (IL LRB-LP 2015) (Case No. L-CB-12-032-C), the Board affirmed the Compliance RDO and ordered Respondent to pay reasonable litigation expenses incurred by Charging Party. This compliance case initiated after Respondent failed to answer the underlying Complaint, to file exceptions from the resulting default recommended by the ALJ, to file a petition for Administrative Review after the RDO became final and, to comply with the requirements of that order. The Board rejected Respondent's argument that the Compliance RDO should be rejected because Respondent had made a good faith attempt to comply with the Board's earlier Order. The Board specifically took notice of the fact that Respondent had provided the same very limited and ineffective posting of the Board's order in another case where the Board clearly directed Respondent to post notice where it would be conspicuous to bargaining unit members. The Board determined that Respondent's conduct demonstrated a clear attempt to thwart the intent of the Board's order, rather than an attempt to strictly comply. The Board further found that Respondent's refusal to supply information ordered by the Compliance officer necessitated a hearing in a case the Charging Party already had won, and Respondent's requesting sanctions against the Charging Party necessitated his obtaining legal counsel, making sanctions against Respondent appropriate in this instance. Respondent was ordered to pay reasonable costs and attorneys' fees incurred by Charging Party during the compliance hearing and as a result of Respondent's cross-exceptions.

3/13/2015

ILRB SP

Executive Director Dismissal – Spielberg Deferral; Retaliation

In James Young and Village of University Park, 31 PERI ¶ 159 (Case No. S-CA-14-107), the Board affirmed the Executive Director's Partial Dismissal, finding that the deferral to the arbitration award was appropriate under the standards set forth in Spielberg. Charging Party previously asserted that Respondent suspended him indefinitely from his part-time police officer position in retaliation for Young's activity as a Union Steward. The Executive Director previously entered an Order Holding Case in Abeyance, pending the outcome of a related grievance. In a subsequent grievance arbitration award, the Arbitrator reduced Young's discipline and directed the Employer to make Young whole for lost wages and benefits associated with his suspension. However, the Arbitrator ruled that there was no evidence

presented to support a finding that Young's discipline, in whole or in part, was the result of his union activities. The Executor Director found that the Award was dispositive of that portion of the charge that contended the employer had disciplined Young in retaliation for his union activity.

3/31/2015
1st DISTRICT OPINION
Default Dismissal
In Ziccarelli v. Ill. Labor Relations Bd. and Int'l Brotherhood of Teamsters, Local 700, 2015 IL (1st) 141223-U, 31 PERI ¶ 167, the Court affirmed the Local Panel's decision, Int'l Brotherhood of Teamsters, Local 700 (Ziccarelli), 30 PERI ¶ 253 (IL LRB-LP 2014) (ILRB Case No. L-CB-13-020) to uphold an Executive Director Dismissal. During investigation of a charge that his Union failed to fairly represent him at an employment-related arbitration, Ziccarelli, through his counsel, failed to respond to the Board investigator's requests for information. Accordingly, the Executive Director dismissed the charge. Charging Party appealed to the Board asking for an extension of time within which to respond to the investigator. The Board declined to allow a variance in order to extend the time and affirmed the dismissal. On appellate review, Charging Party argued the investigator's request for additional information was not sufficiently formal and did not spell out the consequences for non-compliance. The Court affirmed the decision finding that Ziccarelli had waived these arguments by failing to present them to the Board.

4/29/2015
ILRB SP
Executive Director Dismissal - Deferral
In Labor Organization Comprising the Springfield Building Trades and Illinois Secretary of State, 31 PERI ¶ 195 (IL ILRB-SP 2015) (Case No. S-CA-15-097), the Board affirmed the Executive Director's Dismissal and denied the request for oral argument. Charging Party had filed an earlier charge alleging that Respondent had violated the Act by making unilateral changes to wages. During the initiation of that allegation, Charging Party indicated that the related grievance had proceeded to arbitration and requested that the charge be deferred pending the outcome of that arbitration. The Executive Director granted that request and entered a Deferral Order; Neither party appealed. During the arbitration proceedings, Respondent raised the procedural argument that the grievance was untimely and should be denied. In the instant charge, Charging Party contends that by raising a procedural objection in the arbitration, Respondent violated Section 10(a)(4) of the Act. The Executive Director rejected this argument noting that the original charge was deferred to arbitration under the Dubo standard, which was properly utilized in this case because the Union already had filed a grievance. A Dubo deferral does not require the parties to waive procedural defenses. Because the Respondent was not precluded from raising a procedural defense at arbitration, the Charging Party failed to raise an issue for hearing, warranting dismissal of the instant charge.

6/12/2015
ILRB SP
Executive Director Dismissal – Information Request; Default
In Zaundrareka Helen Trigleth-Anderson and Cook County Clerk, 31 PERI ¶ 212 (IL ILRB-SP 2015) (Case No. S-CA-15-077), the Board affirmed the Executive Director's Dismissal of

Trigleth-Anderson's charge that the Respondent violated the Act when it allegedly failed to provide her with a copy of her "rating sheet," a document completed by Respondent that described Charging Party's qualification for promotion or a new position. The Charging Party failed to respond to a Board Agent's written request that she provide any and all evidence to support her charge. Charging Party neither complied with nor responded to the request, and the available evidence was not sufficient to raise an issue for hearing.

7/21/2015
ILRB SP
Executive Director Dismissal – Refusal to Bargain; Set Aside Oral Decision
In American Federation of State, County and Municipal Employees, Council 31 and County of Macoupin (Public Health Department, 32 PERI ¶ 25 (IL ILRB-SP 2015) (Case No. S-CA-14-156), the Executive Director dismissed the Union's charge that the Respondent had violated the Act by refusing to bargain with respect to a title not previously certified as included in the Unit. The Board orally affirmed the Executive Director's decision. Before the Board's decision was reduced to writing, the parties advised the Board that they wished to enter into a Memorandum of Understanding, which included the stipulation that Charging Party withdraw the charge. Pursuant to the agreement of the Parties, and for the sole, limited and exclusive purpose of promoting labor harmony and facilitating the Parties' MOU, the Board subsequently took up the matter on its own motion and voted to set aside the prior oral decision, enabling Charging Party to withdraw the charge in accordance with the MOU.

7/21/2015
ILRB SP – Showing of Interest; Split Decision
In American Federation of State, County and Municipal Employees, Council 31 and Lake County Clerk of the Circuit Court, 32 PERI ¶ 28 (IL ILRB-SP 2015) (Case No. S-RC-15-049), appeal pending No. 2-15-0849, the ALJ recommended that the Board certify AFSCME as the exclusive representative of a unit of certain employees employed by Respondent. In so holding, the ALJ had rejected the Employer's contention that it had raised issues of fact for hearing on the allegation that the Union had obtained its showing of interest through fraud of coercion. Two of the four present and voting Members voted to reverse the ALJ's decision on the basis that a hearing would shed additional light on the Employer's objections and supporting affidavits or that the Employer had presented sufficient evidence to raise issues of fact for hearing as to AFSCME's alleged fraud or coercion. The two remaining Members voted to affirm the ALJ's decision for the reasons stated in the RDO. In the absence of a majority vote on the disposition of the RDO, the Board did not address the substance of the exceptions and left the ALJ's decision to stand as non-precedential.

8/25/2015
ILRB SP
Executive Director Abeyance Order
In James Young and Village of University Park, 32 PERI ¶ 47 (IL ILRB-SP 2015) (Case No. S-CA-15-095), the Executive Director issued an Abeyance Order pending final disposition of related contractual grievances after determining that specific conduct alleged in the charge was covered by a series of grievances currently pending on behalf of Charging Party. The Charging Party filed a timely appeal but raised no exception to the substantive determination that the

matter be held in abeyance until final disposition of the related grievances. Instead, the only issue Young raised was that a summary of his 17-page charge included in the Abeyance Order purportedly contained two incorrect statements. The Board affirmed the Executive Director's Abeyance Order, which Young had not challenged on the merits. The Board further determined that it could not reconcile any alleged discrepancies between the charge and the Executive Director's summary of the charge. Further, even if the summary were clearly inaccurate, as Young contends, there was no need to modify the summary because it has no legal significance in this case and was merely offered to provide background information in the limited context of explaining the Abeyance Order.

V. Gubernatorial Designation Cases

4/9/15
4th DISTRICT OPINION
Gubernatorial Designation; Authority to Designate under Section 6.1
In State of Ill. (CMS) v. Ill. Labor Relations Bd. and AFSCME, 2015 IL App (4th) 131022, __ PERI ¶__ , the Fourth District affirmed a State Panel majority's decision, State of Ill. (CMS)30 PERI ¶83 (IL LRB-SP 2013) (ILRB Case Nos. S-DE-14-047, -083, and -086), dismissing three gubernatorial designation petitions on the basis that the Governor lacked authority to designate positions for exclusion at the Workers' Compensation Commission, the Illinois Commerce Commission, and the Pollution Control Board. The Fourth District affirmed the Board's decision that Section 6.1's use of the phrase "State agencies directly responsible to the Governor" clearly states the legislature's intent to limit the Governor's authority in designating positions employed in the at-issues entities.

5/19/2015
1st DISTRICT OPINION
Gubernatorial Designation; Constitutional Challenges to 2013 amendments
In AFSCME, Council 31 v. Ill. Labor Relations Bd. and Ill. Dep't of Cent. Mgmt. Servs.
2015 IL App (1st) 133454, __ PERI ¶___, the First District heard a consolidated appeal of numerous gubernatorial designation petitions, ILRB Case Nos. S-DE-14-005, -008, -009, -010, -017, -021, -026, -028, -028, -030, -031, -032, -034, -039, -040, -041, -041, -043, -044, and -045, (various PERI cites). On appeal, the Union raised numerous constitutional challenges to the gubernatorial designation process. Specifically, AFSCME argued that Section 6.1 is an improper delegation of legislative authority to the executive; violates the equal protection clause; deprives AFSCME and members of due process because Section 6.1 forecloses meaningful objection to the exclusion; constitutes an impairment of contract; and is unconstitutional special legislation. Moreover, AFSCME contended that the Board violated its substantive and procedural due process rights and those of its members in a number of ways: refusing to consider evidence of actual job duties; using a conclusive presumption; and failing to afford AFSCME the opportunity to present an as-applied challenge to Section 6.1 of the Act. The Court rejected each of AFSCME's claims and affirmed the Board's decisions.

7/7/2015
4th DISTRICT OPINION
Gubernatorial Designation; Section 6.1(b)(5) Exclusion

In Lindorff, et al. v. Ill. Dep't of Cent. Mgmt. Servs., AFSCME, Council 31, Ill. Labor Relations Bd., 2015 IL App (4th) 131025, __ PERI ¶__, the Fourth District affirmed the State Panel's decision, State of Ill. (DOC), 30 PERI ¶102 (IL LRB-SP 2013) (ILRB Case No. S-DE-14-055), finding that two Department of Corrections Healthcare Unit Administrators were properly designated for exclusion under Section 6.1(b)(5). The Court affirmed not only the Board's interpretation of the test relevant for determining if a petition met the requirements of Section 6.1(c)(i), but also affirmed the Board's factual findings.

IPLRA UPDATES
General Counsel's Declaratory Rulings
October 2014 – September 2015

S-DR-15-004 County of Mercer and
International Union of Operating Engineers, Local 150 (3/10/15)

Proposal to retain a provision requiring the use of interest arbitration to resolve potential impasse in future negotiations is a permissive subject of bargaining.

S-DR-15-007 International Association of Firefighters, Local 429 and
S-DR-15-008 City of Danville (4/30/15)

The Union's proposals to maintain the status quo reference to "Assistant Chief" and Station 3" are mandatory subjects of bargaining except to the extent that they include provisions previously found to address permissive subjects of bargaining in Case No. S-DR-15-003.

The Employer's proposals on station assignments, working out of classification, compensation for travel time, call backs, and the grievance procedures address mandatory subjects of bargaining.

IPLRA UPDATES
Legislative Amendments
October 2014 – September 2015

Public Act 98-1151: Amends Section 14(i) to include fire fighter manning as a mandatory subject of bargaining that can be decided by an interest arbitrator. This Public Act became effective January 7, 2015.

> (i) …
>
> In the case of fire fighter, and fire department or fire district paramedic matters, the arbitration decision shall be limited to wages, hours, and conditions of employment (<u>including manning and also including</u> residency requirements in municipalities with a population under 1,000,000, but those residency requirements shall not allow residency outside of Illinois) and shall not include the following matters: i) residency requirements in municipalities with a population of at least 1,000,000; ii) the type of equipment (other than uniforms and fire fighter turnout gear) issued or used; iii) the total number of employees employed by the department; iv) mutual aid and assistance agreements to other units of government; and v) the criterion pursuant to which force, including deadly force, can be used; provided, however, nothing herein shall preclude an arbitration decision regarding equipment levels if such decision is based on a finding that the equipment considerations in a specific work assignment involve a serious risk to the safety of a fire fighter beyond that which is inherent in the normal performance of fire fighter duties. Limitation of the terms of the arbitration decision pursuant to this subsection shall not be construed to limit the facts upon which the decision may be based, as set forth in subsection (h).

Public Act 99-143: Amends the Act's definitions sections to replace any reference to the "Disabled Persons Rehabilitation Act" with "Rehabilitation of Persons with Disabilities Act." This amendment became effective on July 27, 2015.