IPLRA DEVELOPMENTS

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ILLINOIS PUBLIC LABOR RELATIONS ACT
RECENT DEVELOPMENTS

OCTOBER 2018 – OCTOBER 2019

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IPLRA UPDATES
Board and Court Decisions
October 2018 – October 2019

I. Representation Issues

11/15/18
ILRB SP
Bargaining Unit Appropriateness/Historical Unit

In *Illinois Association of Firefighters, Local 2391 and Village of River Forest,* 35 PERI ¶87 (IL LRB-SP 2018) (Case No. S-RC-17-003), the Illinois Association of Firefighters (IAFF) filed a petition seeking to represent lieutenants in the Village's Fire Department in an existing firefighters' bargaining unit. The ALJ found that there was a historical pattern of recognition and bargaining history, dating back to 1985, involving the fire lieutenants as part of a fire officers' group. The ALJ determined that a bargaining unit consisting of both firefighters and lieutenants was an appropriate bargaining unit under the factors set forth in Section 9(b) of the Act. The Board agreed with the ALJ's conclusion that the fire lieutenants were members of a historical bargaining unit but found that under the circumstances, the historical unit of lieutenants was itself an appropriate unit.

11/16/18
ILRB SP
Unit Clarification/Supervisory Exclusion

In *American Federation of State, County and Municipal Employees, Council 31,* 35 PERI ¶ 88 (IL LRB-SP 2018) (Case No. S-UC-17-067), the Employer filed a unit clarification petition seeking to exclude the position of Public Service Administrator (PSA) Option 6 (call floor supervisor) from an existing bargaining unit of State employees. The Board adopted the ALJ's conclusion that the petition was appropriately filed because the Employer sought to exclude statutorily excluded employees (supervisory employees) from the bargaining unit, relying on its decision in *Dep't of Central Mgmt. Servs. (DCFS/DES),* 34 PERI ¶ 79 (IL LRB-SP 2017), *aff'd in part, rev'd in part sub nom. American Fed'n of State, County and Mun. Employees, Council 31 v. Illinois Labor Relations Board,* 2018 IL App.(1st) 172476. The Board then rejected the Union's challenges to the ALJ's determination that the position in question was supervisory, accepting the ALJ's recommended finding that the work of the call floor supervisors was substantially different from the work of their subordinates, that the call floor supervisors possessed supervisory authority, exercising that authority using independent judgment, and that the call floor supervisors spent a preponderance of their time in the exercise of supervisory functions.

11/16/18
ILRB SP
Unit Clarification/Motion for Stay

In *State of Illinois, Department of Central Management Services and American Federation of State County and Municipal Employees, Council 31,* 35 PERI ¶ 51 (ILRB-SP 2018) (Case No. S-UC-17-083) the Board denied AFSCME's motion to stay the Board's September 12, 2018 Decision and Order pending AFSCME's petition for administrative review. In its September 12, 2018 Decision and Order, the Board granted the State's unit clarification petition seeking to exclude as confidential employees, two administrative positions—an Administrative Assistant I (AAI) position at the Illinois Liquor Control Commission and an Administrative Assistant II (AII) position at the Illinois Department of Financial and Professional Regulation—from a bargaining unit represented by AFSCME. The case remains pending administrative review.

02/5/19
ILRB LP
Supervisory Employees

In *American Federation of State, County and Municipal Employees, Council 31 and City of Chicago,* 35 PERI ¶ 129 (ILRB-LP 2019) (Case No. L-RC-16-034), the Union filed a majority interest representation petition seeking to include City of Chicago Department of Public Health employees in the position of supervising disease control investigator (SDCI) in an existing bargaining unit. In her Recommended Decision and Order, the ALJ decided that an exclusionary clause in a prior certification did not preclude the union from seeking to represent the employees at issue, since the prior certification failed to identify the reasons for exclusion. The ALJ, however, dismissed the petition based upon her determination that the SDCIs fell under the supervisory exclusion from the bargaining unit. The ALJ determined that the SDCIs' principal work substantially differed from their subordinates' work, that they used independent judgment in exercised their supervisory authority, and that they devoted a preponderance of time to the exercise of their supervisory functions. The Board adopted the ALJ's recommendation and dismissed the petition.

06/27/19
Illinois Appellate Court, First District Opinion
Managerial Employees

In *American Federation of State, County and Municipal Employees, Council 31 v. Illinois Labor Relations Board,* 2019 IL App (1st) 181685, the First District affirmed the Board's decision in *City of Chicago,* 35 PERI ¶ 12 (IL LRB-LP 2018) (Case No. L-RC-16-031), dismissing the majority interest petition seeking to represent sixteen Senior Procurement Specialist positions in the Department of Procurement Services at the City of Chicago and to include them in AFSCME's existing historical bargaining Unit #1 because the employees are excluded from collective bargaining as managerial employees. The court affirmed the Board's finding that there was sufficient evidence to support the ALJ's recommendations regarding the City's discretion in determining the lowest responsible bidder and rejected AFSCME's contention that the Board "eased" the City's burden to demonstrate the employees should be excluded and that the ALJ improperly relied on caselaw to support her findings. The court also found the Board did not clearly err in

finding the uncontroverted testimony indicated employees' recommendations regarding the lowest responsible bidder were almost always accepted.

07/10/19
ILRB LP
Confidential Employees

In *American Federation of State, County and Municipal Employees, Council 31 and City of Chicago,* 36 PERI ¶ 12 (ILRB-LP 2019) (Case No. L-RC-16-035), AFSCME filed a majority interest representation petition seeking to represent employees working in the title of Supervisor of Personnel Services (SPS) at various departments within the City of Chicago in an existing bargaining unit. The Board accepted the ALJ's recommended decision and order dismissing the petition because the SPSs are confidential employees pursuant to Section 3(c) of the Act. The Board agreed with the ALJ that the employees satisfied the authorized access test because the SPS had advanced knowledge of contemplated discipline in the normal course of their duties. The Board declined to abandon recent Board precedent as urged by AFSCME.

08/13/19
ILRB LP
Managerial Employees

In *International Brotherhood of Teamsters, Local 700 and Chicago Transit Authority*, 36 PERI ¶ 36 (IL LRB-LP 2019) (Case No. L-RC-18-021), the ALJ found that employees working in the classification of Project Manager-Construction ("Project Manager") at the Chicago Transit Authority ("CTA") were not managerial employees excluded from bargaining under Section 3(j) of the Act. Applying the traditional managerial test, the ALJ found the Project Managers did not engage in executive and management functions because they served as part of a team, playing a subordinate and advisory role, and thus lacked the requisite authority and discretion in carrying out their duties. The ALJ also determined their recommendations on major policy issues were not generally accepted. The Employer filed exceptions contending: (1) the ALJ disregarded the Employer's evidence demonstrating that the Project Managers are predominantly engaged in executive and management functions; (2) improperly relied on the testimony of one witness; (3) improperly relied on or distinguished Board precedent; and (4) incorrectly determined that Project Managers are public employees because they work as a team and improperly downplayed the significance of the Project Managers' recommendations as to day-to-day operations. The Board rejected the exceptions finding that the portions of the record identified by the Employer did not outweigh the evidence relied on by the ALJ and therefore did not compel rejection of the ALJ's recommendations regarding the managerial test. The Board, however, modified the RDO to exclude footnote 5 as noted in the Employer's exceptions.

09/12/19
ILRB SP
Confidential Employees

In *American Federation of State County and Municipal Employees, Council 31 and Chief Judge of the Circuit Court of Cook County,* 36 PERI ¶ 42 (IL LRB-SP 2019) (Case No. S-

RC-18-003), the Board adopted the ALJ's Recommended Decision and Order dismissing the majority interest petition filed by Petitioner seeking to represent employees in the title Investigator III working in the Cook County Juvenile Temporary Detention Center. Following the Board precedent in *Ill. Dep't of Central Mgmt. Servs. (Corrections)*, 33 PERI ¶ 121 (IL LRB-SP 2017), *aff'd sub nom. Metro. Alliance of Police, Chapter 294 v. Ill. Labor Relations Bd., State Panel,* 2018 Il App (1st) 171322-U (unpublished order), the ALJ determined the Investigator IIIs, who substantiated or unsubstantiated allegations of misconduct, were excluded from collective bargaining as confidential employees because they had advanced knowledge of discipline. Although the Board found some merit to the AFSCME's contention that the decision in *Ill. Dep't of Central Mgmt. Servs. (Corrections)* relied on by the ALJ inappropriately expanded the authorized access test to include advanced knowledge of discipline, it adopted the RDO because that decision was affirmed by the Appellate Court in an unpublished order and to maintain consistency with the Board's Local Panel decision in *City of Chicago,* 36 PERI ¶ 12 (IL LRB-LP 2019).

10/9/19
ILRB SP
Executive Director Election Order/Contract Bar

In *Policemen's Benevolent and Protective Association—Labor Committee and County of Marion and County Clerk, Treasurer, Supervisor of Assessments, Coroner and Sheriff of Marion County, and Laborers International Union of North America,* 36 PERI ¶ 53 (IL LRB-SP 2019) (Case No. S-RC-19-060), the petitioning union filed a majority interest petition seeking to represent employees at various offices within the County of Marion in a bargaining unit previously certified by the Board. The incumbent union and the County had bargained two separate collective bargaining agreements for the bargaining unit scheduled to expire on different dates. One agreement covered only the employees of the County Highway Department and is set to expire on November 30, 2020, two years after the other agreement covering the remainder of the bargaining unit which expired on November 30, 2018. The Executive Director found no issues of representation exist and ordered an election. She determined the County and the incumbent union improperly bargained separate agreements outside the Board' representation proceedings and that contract bar did not apply because the Board does not recognize a separate unit of Highway Department employees. The County appealed the order for an election contending the CBA covering the Highway Department employees bars the election, pointing to Section 1210.135(a)(1) of the Board's rules which bars the filing of representation petitions filed outside the designated window when a collective bargaining agreement is in effect covering "all or *some of the employees in the bargaining unit.*" The petitioning union responded by contending the current arrangement creates the potential for perpetual representation of the bargaining unit due to the staggered expiration dates. The Board found the circumstances presented novel issues and notably, raised, at least, an issue of law regarding the effect of the "all or some" phrase in Section 1210.135(a)(1) and remanded the case for hearing.

II. Employer Unfair Labor Practices

10/17/18
ILRB SP

Retaliation/Motive/Nexus

In *Travis Koester and County of Sangamon and Sheriff of Sangamon County,* 35 PERI ¶ 70 (ILRB-SP 2018), Charging Party, a member of the Sangamon County Sheriff's Tactical Response Unit (TRU), alleged the Respondents removed him from the TRU because he filed grievances in violation of Section 10(a)(1) of the Act. The grievances were filed over the promotion of three individuals, two of whom were fellow TRU members. Respondents claimed that trust among TRU members is vital to the successful operation of the TRU, a highly specialized law enforcement unit, and Charging Party was removed from the unit because the other members of the TRU expressed a lack of trust in the Charging Party due to the nature of the grievances filed. Charging Party's fellow TRU members requested his removal after a meeting with TRU members. Charging Party attended the meeting, but no members of management were present. The ALJ concluded the Respondent retaliated against Charging Party because he filed grievances in violation of Section 10(a)(1) of the Act. The Board rejected the ALJ's recommendation and dismissed the complaint, finding that the Charging Party had not established the requisite causation, *i.e.,* that the Charging Party's filing of the two grievances was the motivating factor in the Sheriff's decision to remove him from the TRU, and finding instead, the evidence supported the conclusion that it was lack of trust in Charging Party by his fellow team members that caused his removal from the unit. The matter is pending administrative review in the Appellate Court, Fourth District.

10/17/18
ILRB SP
Executive Director Dismissal—Refusal to Bargain/Submission of Permissive Subject to Interest Arbitration

In *Policemen's Benevolent Labor Committee and City of Decatur,* 35 PERI ¶ 71 (ILRB-SP 2018) (Case No. S-CA-18-074), the Board's Executive Director partially dismissed a charge of unfair labor practices by the Union alleging, in part, that the Employer violated the Act by submitting a permissive subject of bargaining to interest arbitration, refusing to bargain or select an arbitrator while seeking a declaratory ruling, and failing to respond to a proposal made by the Charging Party in collective bargaining. Relying on the Board's decision in *City of Wheaton,* 31 PERI ¶ 131 (IL LRB-SP 2015), the Executive Director noted that the mere submission of a permissive subject of bargaining to interest arbitration is not in and of itself an unfair labor practice and also noted that the proposal at issue was a mandatory subject of bargaining, citing the declaratory ruling in Case No. S-DR-18-003. The Executive Director dismissed as moot the allegations that the Respondent refused to bargain or select an arbitrator and also dismissed as factually incorrect the allegations that Respondent refused to respond to a proposal in bargaining. The Charging Party appealed. The Board affirmed the Executive Director's partial dismissal, finding that the Executive Director correctly relied on Board precedent and that the Union's reliance on *Skokie Firefighters Union, Local 3033 v. Illinois Labor Relations Board, State Panel, et al.,* 2016 IL App (1st) 152478 was misplaced.

10/17/18
ILRB SP
Executive Director Dismissal—Timeliness/ Unilateral Changes

In *Policemen's Benevolent Labor Committee and City of Sparta,* 35 PERI ¶ 72 (ILRB-SP 2018) (Case No. S-CA-18-085), the Executive Director dismissed a charge of unfair labor practices by the Union, alleging that the Employer violated the Act by instituting a new requirement for bargaining unit members to complete park patrols, by refusing to bargain over this new requirement, and by implementing new grounds for discipline without bargaining. The Executive Director found that the charge was untimely. In addition, the Executive Director found the alleged new requirement was not a change in terms and conditions of employment over which the Employer was obligated to bargain and possible disciplinary action for failure to follow the directive regarding park patrols was not a new subject of discipline. On appeal, the Board affirmed the Executive Director's dismissal on both timeliness and substantive grounds.

10/23/18
4th District State/AFSCME Impasse decision
Impasse Test/Agency Policy Change/Affidavits

In *State of Illinois, Department of Central Management Services and American Federation of State, County and Municipal Employees, Council 31*, 2018 IL App (4th) 160827 (IL LRB-SP 2016, Case Nos. S-CB-16-017 and S-CA-16-087, 33 PERI ¶ 67), the court reviewed the Board's decision finding parties were at impasse on single critical issue of subcontracting and the State unlawfully failed to respond to information requests. The Board dismissed the remaining allegations. The court held the Board erred in applying single critical issue impasse test and in failing to provide basis for departing from longstanding policy for determining existence of impasse. The court also concluded the Board erred in allowing affidavits instead of live testimony. The court then remanded to the case to the Board for further proceedings.

12/12/18
ILRB SP
Failure to Provide Information Relevant to Bargaining

In *American Federation of State, County and Municipal Employees, Council 31 and State of Illinois, Department of Central Management Services,* 35 PERI ¶ 100 (ILRB-SP 2018) (Case No. S-CA-17-060), the Board accepted the ALJ's finding that the Respondent failed to provide to the Charging Party relevant information in its possession in response to an appropriate request for information relating to an Employer proposal in collective bargaining. Member Snyder dissented in part, agreeing that the Employer committed an unfair labor practice by failing to respond at all to the request for information but disagreeing with the majority and the ALJ that a specific document (the Draft FY 2017 Metal Band Designs document) fell within the scope of the Union's information request.

12/12/18
ILRB SP
Sanctions

In *Policemen's Benevolent Labor Committee and City of Sparta,* 35 PERI ¶ 103 (ILRB-SP 2018) (Case No. S-CA-18-085), the Board denied the City's motion for sanctions against the Union after the Union's unfair practice charge was dismissed (*see* 35 PERI ¶ 72). The Board noted that the Employer failed to seek sanctions before the Executive Director, as required by Board rules. Moreover, the Board concluded, the circumstances presented did not provide sufficient grounds to award sanctions even if the Employer's motion were considered on its merits.

12/18/18
ILRB LP
Abeyance

In *Fraternal Order of Police, Lodge #7 and City of Chicago,* 35 PERI ¶ 107 (ILRB-LP 2018) (Case No. L-CA-17-034) the Board, noting that, on June 5, 2018, it had issued a decision and order holding the case in abeyance pending the outcome of the parties' negotiations for a successor collective bargaining agreement, and considering the parties'

joint request that the case be held in further abeyance, issued a Decision and Order continuing to hold the case in abeyance and directing the parties to report on the outcome, if any, or the status of negotiations to the Board's General Counsel on or before May 8, 2019. On that date, the parties advised that they were continuing negotiations for a successor agreement. On June 11, 2019, the Board held the case in further abeyance with directions to the parties to report either the outcome, if any, or the status of negotiations to the Board's General Counsel on or before November 8, 2019.

01/9/19
ILRB LP
Executive Director's Dismissal—Retaliatory Discharge

In *LaChelle Bowers and City of Chicago (Finance Department),* 35 PERI ¶ 115 (ILRB-LP 2019) (Case No. L-CA-18-060), the Board's Executive Director dismissed a charge alleging that the City of Chicago engaged in unfair labor practices when it discharged the Charging Party allegedly for having previously filed an unfair labor practice charge against the City and for having served as a witness for the Union in a grievance proceeding. In dismissing the charge, the Executive Director determined the evidence failed to indicate a nexus between the Charging Party's protected activity and her discharge. On appeal, the Charging Party claimed that the dismissal contained "numerous material errors," but the Board found the Charging Party failed to identify such errors or identify any unlawful motive on the part of the City. The Board thus concluded that the Executive Director's findings and determinations were correct and supported by the available evidence and Board precedent.

01/9/19
ILRB SP
Executive Director's Dismissal—Information Supporting Charge/Timeliness of Appeal

In *Illinois Fraternal Order of Police and Village of Riverdale,* 35 PERI ¶ 128 (ILRB-SP 2019) (Case No. S-CA-18-164), the Board's Executive Director dismissed the charge because Charging Party failed to respond to a request for information supporting the charge. The Charging Party appealed the dismissal, raising procedural and substantive issues. Procedurally, the Charging Party produced evidence to rebut the presumption of the date when the dismissal order was received, thus showing that the appeal was timely. On the merits, the Charging Party produced evidence that it did send the requested information to the Board agent by e-mail, although the Board agent apparently did not receive it. Accordingly, the Board reversed the dismissal and remanded the charge to the Executive Director for further investigation.

01/10/19
ILRB SP
Abeyance

In *American Federation of State, County and Municipal Employees, Council 31 and State of Illinois, Department of Central Management Services,* 35 PERI ¶ 118 (ILRB-SP 2019) (Case Nos. S-CA-17-067, S-CA-17-089 Cons.), the ALJ issued a Recommended Decision and Order (RDO) in which she found that the State did not violate the Act by refusing to

bargain after receiving a November 21, 2016 letter from the Union, but did violate the Act by refusing to bargain after receiving a letter from the Union on January 9, 2017. Upon the filing of exceptions and responses, the Board held the cases in abeyance pending the resolution of related proceedings in *State of Illinois, Department of Central Management Services and American Federation of State, County and Municipal Employees, Council 31 ("Impasse I"),* 33 PERI ¶ 67 (IL LRB-SP 2016).

02/5/19
ILRB SP
Executive Director's Dismissal—Timeliness of Appeal/Protected Activity

In *Murtrecca Winfrey and State of Illinois Central Management Services (Human Services—Madden Mental Health Center),* 35 PERI ¶ 131 (IL LRB-SP 2019) (Case No. S-CA-18-159), the Board's Executive Director dismissed a charge because the Charging Party failed to identify any protected concerted activity which caused the Employer to retaliate against her. On appeal, the Board found that the appeal was defective because it failed to comply with the Board's rules. It nevertheless granted a variance under Section 1200.160 of the Rules because 1) the provision from which the variance is granted was not statutorily mandated; 2) no party would be injured by granting the variance; and 3) the rule from which the variance is granted would, in the particular case in question, be unreasonable or unnecessarily burdensome. The Board noted that the granting of the variance would not prejudice the Employer because the appeal lacked merit, and also noted the fact that the Charging Party was a *pro se* party with limited labor law experience and resources. Considering the appeal on the merits, the Board affirmed the dismissal for the reasons stated by the Executive Director.

03/12/19
ILRB LP
Unilateral Change/Abeyance

In *Fraternal Order of Police, Lodge #7 and City of Chicago (Department of Police),* 35 PERI ¶ 148 (IL LRB-LP 2019) (Case No. L-CA-16-079), the ALJ found that the City did not engage in unfair labor practices by unilaterally implementing a policy known as the "Transparency Policy" that provided for the release of video footage in connection with investigations into police officer misconduct. The Union filed exceptions and the City filed a response. In considering the exceptions, the Board cited a consent decree signed by the Illinois Attorney General and the City of Chicago, and approved by a United States District Court Judge, to implement comprehensive reforms to the Chicago Police Department, the Independent Police Review Authority, and the Chicago Police Board. In approving the consent decree, the District Judge noted that the terms of the decree would require collective bargaining and also required the City to use its "best efforts" to secure collectively bargained terms consistent with the terms of the consent decree. In light of the consent decree and the status of two other cases involving the parties then before the Board, the Board found that the spirit and purposes of the Act would best be served by holding the present case in abeyance pending the outcome of the parties' negotiations for a successor agreement. The parties were directed to report either the outcome, if any, or the status of negotiations relative to the issues in the case to the Board's General Counsel on or before May 8, 2019. The parties' advised the Board of their continuing negotiations and thus, on

June 11, 2019, the Board held the case in abeyance and directed parties to report on the status of negotiations by November 8, 2019.

03/12/19
ILRB SP
Executive Director's Dismissal—Adverse Action/Conspiring with Union

In *Vincent Clemens and Wauconda Fire Protection District,* 35 PERI ¶ 147 (IL LRB-SP 2019) (Case No. S-CA-18-153), the Board's Executive Director dismissed a charge alleging that the Respondent engaged in unfair labor practices when it allegedly conspired with the Wauconda Professional Firefighters, IAFF Local 4876 (the Union) to take adverse action against the Charging Party with respect to his Public Employee Disability Act (PEDA) claim and to intervene in his pension board hearing. The Executive Director dismissed part of the charge on timeliness grounds and the remainder of the charge on the ground that the available evidence failed to raise an issue of law or fact sufficient to warrant a hearing. As to that part of the charge that was dismissed on the merits, the Executive Director found that the available evidence failed to establish the necessary link between the Charging Party's alleged protected concerted activity and the Respondent's investigation into the PEDA claims and its intervention in his disability claims before the pension board. The Board affirmed the dismissal for the reasons stated by the Executive Director, noting that the appeal "merely relies on bald assertions and speculation" to challenge the Executive Director's dismissal, and also observing that the Charging Party ultimately succeeded in his pension board disability claim.

04/9/19
ILRB LP
Executive Director's Dismissal—Retaliation

In *Reginald Dean and City of Chicago (Dept. of Innovation and Technology),* 35 PERI ¶ 155 (IL LRB-LP 2019) (Case No. L-CA-16-080), the Board's Executive Director dismissed a charge alleging that the Respondent engaged in unfair labor practices when it laid off the Charging Party in retaliation for filing a grievance and an unfair labor practice charge with the Board. Although the available evidence showed that the Charging Party engaged in protected activity and that the Respondent was aware of such activity, there was no evidence that the Charging Party was laid off because of his protected activity, noting that the layoff was the result of the Respondent's consolidation of its information technology departments, together with lack of funding, and that the Charging Party was selected for layoff on the basis of seniority. On appeal, the Board affirmed the dismissal for the reasons stated by the Executive Director, noting that the timing of the layoff alone did not establish a violation of the Act and that the other evidence submitted by the Charging Party was insufficient to raise suspicions that the Respondent laid off the Charging Party for any retaliatory or otherwise unlawful reason.

04/9/19
ILRB LP
Executive Director's Dismissal—Timeliness/Retaliation

In *Stella Okwu and County of Cook, Health and Hospital System (John J. Stroger, Jr., Hospital),* 35 PERI ¶ 156 (Case No. L-CA-19-071) (IL LRB-LP 2019), the Board's Executive Director dismissed a charge alleging that the Respondent engaged in unfair labor practices by discharging her for failing to report an absence from work. The Executive Director determined that the charge was untimely, having been filed more than six months after her discharge. In addition, the Executive Director noted that, even if the charge were timely, the Charging Party failed to allege that the County discharged her in retaliation for exercising her rights under the Act. On appeal, the Board affirmed the Executive Director's dismissal.

04/9/19
ILRB SP
Executive Director's Dismissal—Failure to Process a Grievance

In *The Health Care, Professional, Technical Office, Warehouse, and Mail Order Employees Union, Local 743, Affiliated with the International Brotherhood of Teamsters and Village of Riverdale,* 35 PERI ¶ 157 (IL LRB-SP 2019) (Case No. S-CA-19-020), the Board's Executive Director dismissed a charge alleging that the Respondent engaged in unfair labor practices by refusing to arbitrate a grievance because it was untimely according to the provisions of the parties' collective bargaining agreement. Relying on the Board's decision in *Village of Creve Coeur,* 3 PERI ¶ 2063 (IL SLRB 1987), the Executive Director determined that an isolated refusal to process a grievance based on a good faith interpretation of the parties' collective bargaining agreement was insufficient to establish that an unfair labor practice had occurred. The enforcement of a collective bargaining agreement, the Executive Director observed, is a matter for the courts. On appeal, the Board found no basis in evidence or legal authority to deviate from the Board precedent established in *Village of Creve Coeur* and thus found that the Executive Director's determination was correct and supported by the available evidence and Board precedent.

05/8/19
ILRB SP
Executive Director's Dismissal—Timeliness/Improper Motive

In *Harold B. Thompson and State of Illinois, Department of Central Management Services (Employment Security),* 35 PERI ¶ 173 (IL LRB-SP 2019) (Case No. S-CA-19-034), the Board's Executive Director dismissed a charge alleging that the Respondent engaged in unfair labor practices by discharging the Charging Party for poor work performance. The charge was dismissed on both timeliness and substantive grounds. On appeal, the Board upheld the dismissal, finding that the Charging Party's charge was untimely under established Board precedent and that the Charging Party failed to present any evidence that he was discharged because he engaged in protected activity.

05/9/19
ILRB LP
Executive Director's Dismissal—Protected Activity/Employer's Knowledge/Nexus

In *Illinois Fraternal Order of Police and County of Cook and Sheriff of Cook County,* 35 PERI ¶ 175 (IL LRB-LP 2019) (Case No. L-CA-18-041), the Board's Executive Director dismissed a charge alleging the Respondents engaged in unfair labor practices by taking adverse action against a union steward consisting of (1) suspending him without pay pending investigation into allegations that the steward improperly obtained information subsequently used in a grievance meeting and (2) filing a complaint against the steward before the Cook County Sheriff's Merit Board seeking his discharge. The Executive Director dismissed the charge because the available evidence failed to indicate the Sheriff took action against the steward because he engaged in protected activity, reasoning that the steward's actions in accessing and copying of documents was improper and ran afoul of the Sheriff's established procedures. The Executive Director also found dismissal warranted because the Charging Party Union allegedly failed to present evidence of a causal connection between Sheppard's alleged protected activity and the Sheriff's decision to suspend him and seek his discharge. The Board reversed the dismissal and remanded to the Executive Director with instructions to issue a complaint for hearing. It found the evidence indicated a legal and factual dispute as to whether the steward's actions constituted protected activity and whether the Respondent Employer had knowledge of that activity. Also, the Board found the Merit Board determinations upholding the discharge were not binding on the Board and thus whether the Respondents discharged the Charging Party with improper motives is an issue for hearing.

06/11/19
ILRB SP
Executive Director's Dismissal—Service Defects/Adverse Action/Unlawful Motivation

In *Jeannie Wells and Chief Judge of the Circuit Court of Cook County (Juvenile Probation Department),* 35 PERI ¶ 182 (IL LRB-SP 2019) (Case No. S-CA-16-024), the Executive Director dismissed a charge alleging the Respondent engaged in unfair labor practices when it moved the Charging Party's office, changed her assignment, and issued counseling to her. On appeal, the Board found service of the appeal was defective but granted a variance from the rules because (a) the provision from which the variance was granted is not statutorily mandated, (b) no party was injured by granting the variance, and (c) strict compliance with the rule in question would, in the particular case, be unreasonable or unnecessarily burdensome. Upon considering the appeal, the Board affirmed the Executive Director's dismissal because the available evidence failed to indicate that the Respondent took any action that could be considered adverse and that the evidence did not indicate that the Respondent took any of the alleged adverse actions for unlawful reasons.

06/11/19
ILRB SP
Vacating Prior Decision and Order upon Court Mandate

In *Service Employees International Union Healthcare Illinois & Indiana and State of Illinois, Department of Central Management Services (Human Services),* 35 PERI ¶ 183 (IL LRB-SP 2019) (Case No. S-CA-16-132), the Board pursuant to the mandate of the Appellate Court of Illinois, First District, vacated its August 25, 2018 Decision and Order in the case. In that August 25, 2018 Decision and Order (*Service Employees International Union Healthcare Illinois & Indiana and State of Illinois, Department of Central Management Services (DHS)*, 35 PERI ¶ 35 (IL LRB-SP 2018)), the Board had reversed in part the Recommended Decision and Order of the ALJ, finding that the Respondent did not violate the Act by submitting a new overtime policy, which the Board found to be a non-mandatory subject of bargaining, to its rulemaking process or by making an unlawful unilateral change to its background check policy, which the Board also found to be non-mandatory. A majority of the Board, however, agreed with the ALJ that the Respondent violated the Act by failing to respond to several information requests from the Charging Party Union. Member Snyder concurred with the Board's findings regarding the overtime policy and background checks but dissented to the majority's finding regarding the information requests.

06/12/19
ILRB LP
Executive Director's Dismissal—Ineligibility of Former Employees to Receive Retroactive Wage Increases

In *Tony L. Carodine, et al. and Chicago Transit Authority,* 35 PERI ¶ 186 (ILRB-LP 2019) (Case Nos. L-CA-18-062, 063, 064, 065, 068, 069, 071, 075, 076, 077, 078, 079, 081, and 082, L-CA-19-001, 002, 004, 006 through 049, and 063), the Board's Executive Director dismissed unfair labor practice charges filed against the CTA by 63 former CTA employees and former members of bargaining units represented by Amalgamated Transit Union, Local 241 and Local 308. The charges alleged that the CTA committed unfair labor practices by entering into tentative agreements with the Unions that excluded the Charging Parties from receiving retroactive wage increase payments. The Executive Director dismissed the charges on the basis of lack of standing and the failure to allege any substantive violations of the Act. On the issue of standing, the Executive Director determined that the Charging Parties lacked standing because they were no longer employed by the CTA on the dates of the tentative agreements and therefore were not, by definition, public employees under the Act. With respect to the alleged substantive violations, the Executive Director dismissed claims under Section 10(a)(4) of the Act on the grounds that such claims may be made only by a labor organization and that there was no indication that the CTA bargained in bad faith. She also determined that the available evidence failed to indicate violations of Section 10(a)(1), observing that the Charging Parties' complaints stem from the terms of the collectively bargained tentative agreements and noting that Board precedent under *Village of Creve Coeur,* 4 PERI ¶ 2002 (IL SLRB 1987) holds that the Board does not police collective bargaining agreements or remedy alleged breaches of collective bargaining agreements. On appeal, Joann Robinson, one of the Charging Parties, claimed to have filed the appeal on behalf of all case numbers

involved. The Board determined that Robinson's appeal did not satisfy all requirements in the Board's rules for a representative appeal. Nevertheless, the Board found that, under the circumstances, the granting of a variance from compliance with the rules was warranted, determining that (a) the provision from which the variance was granted is not statutorily mandated, (b) no party was injured by the granting of the variance, and (c) the rule from which the variance is granted would, in the particular case, be unreasonable or unnecessarily burdensome. On the merits of the appeal, however, the Board affirmed the dismissal on the grounds stated by the Executive Director.

08/13/19
ILRB LP
Repudiation/Modification Under Section 7

In *International Brotherhood of Teamsters, Local 700 and County of Cook and Sheriff of Cook County*, 34 PERI ¶ 72 (IL LRB-LP 2019) (Case No. L-CA-15-042), Local 700 alleged the Employers violated Sections 10(a)(4) and 10(a)(1) of the Act when Respondents required unit members—Correctional Officers in the Sheriff's Department of Corrections (DOC)—to pass a Physical Agility Test (PAT) as a condition of transfer to the Sheriff's Court Services Department (CSD). Local 700 alleges the PAT prerequisite to transferring out of DOC repudiated the collective bargaining process by refusing to comply with the "Lunch Premium Award" and subsequent related arbitration awards and modified the collective bargaining agreement without bargaining in good faith as required by Section 7 of the Act. The ALJ found the "Lunch Premium Award," *inter alia*, established a process by which unit members could transfer from the Department of Corrections unit to the Court Services Department (CSD) bargaining unit which did not include the PAT requirement, and that process was later incorporated in the parties' collective bargaining agreement. This all occurred at time when Local 700 represented deputy sheriffs working in DOC as well as CSD. Upon certification of the Illinois Fraternal Order of Police Labor Council (IFOP) as exclusive representative of CSD deputies, the Employer negotiated a collective bargaining provision with IFOP whereby the PAT requirement would be instituted for any employee entering the CSD after September of 2014. A subsequent arbitration award determined the Respondents and Local 700 had agreed not to use the PAT as a transfer requirement for employees seeking to transfer from DOC into CSD, that the Respondents had not amended their agreement with Local 700 so as to implement the PAT requirement, and that, rather, the Respondents simply implemented the PAT requirement so as to apply after transferring employees were on the CSD payroll as a way of evading the provisions of the Lunch Premium Award and subsequent awards. Based on these facts, the ALJ found the Respondents repudiated and unlawfully modified, the collective bargaining agreement with Local 700 in violation of Sections 10(a)(4) and 10(a)(1) of the Act.

The Respondents filed multiple exceptions to the ALJ's Recommended Decision and Order (RDO), contending, *inter alia*, that because Local 700 was decertified as the representative of the CSD unit and replaced as the bargaining representative by the IFOP, it lacked standing to challenge the terms of the bargaining agreement between the Respondents and the IFOP and that the arbitrator had no jurisdiction to evaluate the terms of the agreement between the Respondents and the IFOP. On consideration of the Respondents' exceptions, the Board found them to be without merit. The Board accepted the ALJ's

recommendations and adopted them as the decision of the Board, determining the allegations in the Complaint, as well as the ALJ's findings, were tailored to the allegations regarding the terms of the agreement covering the DOC bargaining unit and that the ALJ had considered the terms of the agreement between the Respondents and IFOP only as evidence of the Respondents' repudiation of their agreement with Local 700. Moreover, the Board found that since the IFOP agreement called for DOC employees who transferred to the CSD unit but who did not pass the PAT to be returned to the DOC unit, the Local 700 agreement still applied to those returning members.

08/13/19
ILRB SP
Default/Grounds for Variance

In *International Association of Fire Fighters, Local 50 and City of Peoria*, 36 PERI ¶ 27 (IL LRB-SP 2019) (Case No. S-CA-18-160), the ALJ found the Respondent in default for failure to answer the complaint for hearing and thus found the allegations of the complaint—that the Respondent violated the Act by failing to give Local 50 a signed copy of the memorandum of understanding (MOU) regarding the staffing of 17 machines and by violating the terms of the MOU by unilaterally implementing a "brownout" policy—to have been admitted. In response to exceptions filed by the Respondent, the Board's State Panel determined that, although the Respondent claimed that it was not aware of the complaint until it received the ALJ's RDO, the grounds for granting a variance from the Board's rule relating to the time for answering a complaint were not present in this case. Citing an extensive list of communications to the Respondent and its representative, as listed in the representative's Notice of Appearance, including issuance by the ALJ of an Order to Show Cause to which there was no response by the Respondent, the State Panel found that the lack of a response to the complaint and the Order to Show Cause and the lack of persuasiveness of the reasons given by the Respondent for this failure to respond warranted the denial of a variance. The matter is pending administrative review in the Appellate Court, Third District.

09/12/19
ILRB LP
Executive Director's Dismissal—Retaliation/Joint Employer Status/Definition of Employer

In *Chicago Journeymen Plumbers' Local 130, U.A., and City of Chicago,* __ PERI ¶ _ (IL LRB-LP 2019) (Case No. L-CA-18-072), the Board reversed the Executive Director's dismissal of a charge filed by Local 130 alleging the City of Chicago retaliated against Stanley DeCaluwe for filing a grievance over his discharge from the City by directing one of its contractors, NPL Construction, to terminate his employment. The charge was dismissed because the Executive Director determined DeCaluwe was not a public employee at the time of the complained of conduct and NPL Construction was not a public employer. Local 130 appealed contending the allegations raised issues of fact and law regarding NPL Construction's status as a joint employer. The Board reversed the dismissal observing the charge raised several issues of law and fact regarding whether the City blacklisted DeCaluwe, whether City's direction to NPL Construction due to DeCaluwe's grievance filing constitute an unlawful retaliation, and whether NPL Construction itself

can be considered an employer under the Act in addition to whether it can be considered a joint employer. The Board then remanded the matter for further investigation into the relationship between the City and NPL Construction.

09/12/19
ILRB LP
Executive Director's Dismissal—Nexus/New Allegations on Appeal

In *Bonnie K. Miller-Herron and State of Illinois, Department of Central Management Services (Financial and Professional Regulation),* 36 PERI ¶ 41 (IL LRB-SP 2019) (Case No. S-CA-19-065), the Board affirmed the Executive Director's dismissal of the charge filed by Bonnier Miller alleging her employer engaged in unfair labor practices when it denied her request for a flexible schedule. The Executive Director determined that the available evidence failed to indicate the employer took action against Miller because she participated in any activity protected by the Act. In affirming the dismissal, the Board declined to consider the new allegations included in Miller's appeal because it found the investigation was designed to illicit information from Miller to substantiate an unfair labor practice charge, but Miller failed to provide such information.

09/16/19
Illinois Appellate Court, First District Rule 23 Unpublished Order
Retaliation/Threats/Protected Activity/Use of Office Space

In *Erik Slater v. Illinois Labor Relations Board,* 2019 IL App (1st) 181007-U, in and unpublished order, the First District affirmed the Board's decision in *Erik Slater and Chicago Transit Authority,* 34 PERI ¶ 160 (IL LRB-LP) (Case No. L-CA-16-017) finding the Chicago Transit Authority engaged in unfair labor practices within the meaning of Sections 10(a)(1) and 10(a)(2) and (1) of the Act. The court affirmed the Board's findings and conclusions that the CTA violated Section 10(a)(1) and 10(a)(2) by threatening and taking several adverse actions against Slater for engaging in protected activity but did not violated those sections of the Act when it denied Local 308, and consequently Slater, use of office space, finding that such denial not an adverse action because neither Local 308 nor Slater had a proprietary interest in the office space.

10/9/19
ILRB LP
Effects Bargaining/Unilateral Change/Layoffs

In *Policemen's Benevolent Labor Committee and County of Cook and Sheriff of Cook County,* 36 PERI ¶ 54 (IL LRB-LP 2019) (Case No. L-CA-18-037), the union alleged Respondents implemented the layoff of unit members, Lieutenants in the Sheriff's Department of Corrections, without first bargaining to impasse, the layoff decision and its effects. The ALJ found Respondents were not obligated to first bargain the decision to layoff the Lieutenants but were obligated to bargain the effects of the layoff. The ALJ found the effects the union wished to bargain included the effective date, seniority of the laid off lieutenants, compensatory time, and the assignments of the remaining Lieutenants, but Respondents implemented the layoffs before completion of bargaining over these subjects. The ALJ thus concluded the Respondents violated Section 10(a)(4) and derivatively, Section 10(a)(1) of the Act. Respondents filed exceptions. The Board

rejected the ALJ's recommendations and dismissed the complaint for hearing. The Board found Respondents were not obligated to bargain over the effective date of the layoff as the effective date is an inevitable consequence of the layoff decision. Regarding the remaining effects the union wished to bargain, the Board determined the parties' collective bargaining agreement indicated the parties had already bargained over seniority and compensatory time, and the union waived bargaining over assignments.

10/9/19
ILRB LP
Executive Director's Dismissal—Retaliation

In *Derek B. Webb and City of Chicago,* 36 PERI ¶ 55 (IL LRB-LP 2019) (Case No. L-CA-19-095), the Executive Director dismissed as untimely the charge filed by Derek Webb alleging the City of Chicago committed unfair labor practices when it ceased to assign him to the City's Warrant Desk. The Board affirmed the Executive Director's dismissal regarding the Warrant Desk allegation, but determined that Webb, a pro se litigant, amended his charge during the investigation to include allegations that the City retaliated against him by denying overtime opportunities because he engaged in protected activity and remanded the case for further investigation into the new allegations.

10/9/19
ILRB SP
Unilateral Change/Retaliation/Amendment to Complaint/Adequate Remedy

In *North Riverside Fire Fighters, Local 2714 and Village of North Riverside,* 36 PERI ¶ 56 (IL LRB-SP 2019) (Case No. S-CA-18-108), the Board adopted the ALJ's findings and conclusions that the Village of North Riverside committed unfair labor practices in violation of Sections 10(a)(1), 10(a)(2), and 10(a)(4) but modified a portion of the remedy. The complaint for hearing alleged the Village unlawfully changed the health insurance of newly-hired firefighters during the pendency of impasse resolution proceedings and threatened to retaliate against the newly-hired firefighters because the union filed a grievance over the change in their health insurance. The union moved to amend the complaint to include the allegation that the Village terminated a probationary firefighter in retaliation for the union filing the health insurance grievance and for pursuing the unfair labor practice charge. The ALJ amended the complaint to include the retaliation allegation and concluded the union successfully proved the allegations and supported recommending the Village's conduct violated the Act. Regarding the remedy for the discharge firefighter, the ALJ recommend the extension of the probationary period along with backpay and interest. The Board, however, determined the extension of the probationary period inadequately remedied the Village's unlawful conduct because merely extending the probationary period would only serve to provide another opportunity to discharge the firefighter. Thus, the Board ordered reinstatement as a permanent firefighter with backpay plus interest, finding such remedy would best effectuate the purposes of the Act.

III. Union Unfair Labor Practices

10/5/18
Illinois Appellate Court, First District Opinion
Health Insurance/Permissive Subjects/Interest Arbitration/Sanctions

In *Illinois, Department of Central Management Services (State Police) v. Illinois Labor Relations Board,* 2018 IL App (1st) 171382, the First District affirmed the Board's decision in *State of Illinois, Department of Central Management Services and Troopers Lodge #41, Fraternal Order of Police*, 34 PERI ¶ 18) (IL LRB-SP 2017) (Case No. S-CB-16-023) dismissing the unfair labor practice charge filed by the State and denying sanctions requested by the union. The court declined to address Board's interpretation of the Act and the State Employees Group Insurance Act (SEGIA). In the underlying charge, the State alleged the union violated Act by submitting the issue of health insurance to interest arbitration and contended health insurance is a permissive subject of bargaining. The Board found that premiums, deductibles, co-payments, and out of pocket maximums are mandatory subjects of bargaining; choice of vendor and State's procurement process for health insurance are permissive subjects. The Board also found SEGIA does not prohibit collective bargaining over health insurance for the State. The Board further determined the union's submission of health insurance issue to interest arbitration panel was lawful because the State did not make timely and clear objections.

10/17/18
ILRB SP
Executive Director's Dismissal—Timeliness/Breach of Duty of Fair Representation

In *George A. Pruitt, III and American Federation of State, County and Municipal Employees,* 35 PERI ¶ 73 (IL LRB-SP 2018) (Case No. S-CB-18-023), the Board's Executive Director dismissed a charge by the Charging Party alleging that the Respondent Union engaged in unfair labor practices by failing to properly represent him at an investigatory interview and then by refusing to take his discharge grievance to arbitration. The Executive Director found that a portion of the charge, relating to the investigatory interview allegation, was untimely filed and the Respondent lawfully exercised its discretion when it decided not to take the Charging Party's grievance to arbitration. On appeal, the Board found the appeal lacking in merit in that it identified no flaw or error in the Executive Director's analysis, findings, or conclusions.

11/9/18
ILRB LP
Executive Director's Dismissal—Timeliness/Breach of Duty of Fair Representation

In *Jenise Albritton and Amalgamated Transit Union, Local 241,* 35 PERI ¶ 82 (IL LRB-LP 2018) (Case No. L-CB-18-022), the Executive Director dismissed a charge by the Charging Party that the Respondent Union engaged in unfair labor practices by failing to properly represent her at her termination hearing and at the grievance arbitration hearing conducted to determine whether her discharge was proper under the applicable collective bargaining agreement. The Executive Director found that the charge was untimely and because the available evidence failed to show that the Respondent engaged in a breach of the duty of fair representation under the intentional misconduct standard set forth in Section

10(b)(1) of the Act. On appeal, the Board affirmed the dismissal, finding that the appeal merely reiterated allegations in the charge and provided no meaningful or viable basis to overturn the dismissal. While the Charging Party contended that the charge was timely because it was filed within six months after the arbitration award sustaining her discharge was issued, the Local Panel found that the conduct giving rise to the charge occurred, at the latest, at the time of the arbitration hearing rather than at the time that the arbitration award was issued.

01/9/19
ILRB LP
Executive Director's Dismissal—Breach of Duty of Fair Representation

In *LaChelle Bowers and American Federation of State, County and Municipal Employees, Council 31,* 35 PERI ¶ 117 (IL LRB-LP 2019) (Case No. L-CB-18-038), the Executive Director dismissed a charge by the Charging Party that the Respondent Union engaged in unfair labor practices by failing to pursue her discharge arbitration grievance to arbitration in retaliation for having previously filed an unfair labor practice charge against the Union and for requesting a change in the attorney assigned to her case. The Executive Director dismissed the charge because the available evidence did not show that the Respondent engaged in a breach of the duty of fair representation under the intentional misconduct standard set forth in Section 10(b)(1) of the Act. Citing Board precedent, the Executive Director also observed that a union has considerable discretion in handling grievances and that, absent evidence of improper motivation, a union is not required to take all available steps to achieve the result desired by the grievant. On appeal, the Board affirmed the Executive Director's dismissal, finding that the record lacked evidence indicating that the Union failed to pursue the Charging Party's grievance to arbitration because of any animus it held against her or that the Union retaliated against the Charging Party because of her prior charge or for having requested a different attorney to represent her in grievance proceedings.

01/9/19
ILRB LP
Executive Director's Dismissal—Breach of Duty of Fair Representation

In *Marqueal L. Williams and Amalgamated Transit Union, Local 241,* 35 PERI ¶ 116 (IL LRB-LP 2019) (Case No. L-CB-18-020), the Executive Director dismissed the charge alleging the Respondent Union engaged in unfair labor practices by failing to negotiate a 40% wage increase for bus maintenance employees because the Union's president was biased against those employees. Noting the established precedent requiring proof of intentional misconduct in breach of the duty of fair representation cases, together with the broad discretion allowed a union in negotiations, the Executive Director determined that the available evidence did not indicate that the Respondent Union took any adverse action against the Charging Party or the maintenance employees generally or that the Respondent took any action based on animus or bias. Instead, she noted that the Respondent advocated for a 40% increase, that a bargained-for wage increase was achieved, and that the Union's bargaining committee, which included the Charging Party, approved the settlement package unanimously. On appeal, the Board affirmed the dismissal, finding the appeal

offered no feasible basis for reversal, as it merely provided a rehash of the allegations in the charge and offered no evidence indicating unlawful conduct on the part of the Union.

04/9/19
ILRB SP
Executive Director's Dismissal—Timeliness/Breach of Duty of Fair Representation/Disability Discrimination

In *Brandon Santiago and Village of Riverdale,* 35 PERI ¶ 153 (IL LRB-SP 2019) (Case No. S-CB-19-009), the Executive Director dismissed a charge by the Charging Party alleging the Villa Park Professional Firefighters Association, International Association of Firefighters Local 2392, engaged in unfair labor practices when it allegedly failed to represent the Charging Party adequately during the investigation of his on-duty injury and with respect to his discharge, and that it failed to do so in retaliation for the Charging Party's having voiced concerns about expenditures by the Union's Executive Board. The Executive Director dismissed as untimely allegations regarding the Union's conduct occurring prior to March 13, 2018. On the merits, the Executive Director determined that the available evidence was not sufficient to raise a question of law or fact requiring a hearing. On appeal, the Charging Party did not contest the Executive Director's timeliness determination but asserted that the Union had a "pattern and practice" of failing to represent disabled workers, attaching an affidavit from a former firefighter in support of that claim. The Board affirmed the dismissal, finding the affidavit and additional allegations were not submitted during the investigation and as such, declined to consider them on appeal, noting that the affidavit and allegation could have been presented during the initial investigation of the charge but were not. Also, the Board found the investigator guided the Charging Party appropriately during the investigation to elicit information supporting his charge, but the Charging Party failed to mention or claim that the Union was discriminating against disabled workers or to identify the affiant or anyone else who was allegedly the victim of disability discrimination by the Union. Moreover, the Board determined that the affidavit did not substantiate Charging Party's allegation of discrimination and also noted that the incidents recounted in the affidavit occurred over seven years before the relevant events in this case.

05/8/19
ILRB SP
Executive Director's Dismissal—Breach of Duty of Fair Representation

In *Harold B. Thompson and American Federation of State, County and Municipal Employees, Council 31,* 35 PERI ¶ 174 (IL LRB-SP 2019) (Case No. S-CB-19-010), the Executive Director dismissed a charge that the Respondent Union had engaged in unfair labor practices by having failed to take the Charging Party's discharge grievance to arbitration and instead having settled the grievance by agreeing, without consulting him, to have the Charging Party resign from his position in lieu of being discharged. In dismissing the charge, the Executive Director determined that the available evidence did not raise an issue of fact or law warranting a hearing. Observing under Board precedent that a union is afforded substantial discretion in deciding whether to pursue a grievance, the Executive Director determined that the Charging Party did not identify any bias or hostility on the part of the Union against the Charging Party and that the Charging Party

failed to raise an issue for hearing as to any allegation that the Union abused its discretion in handling the grievance. On appeal, the Board found that the Charging Party's appeal was without merit in that it identified no flaw in the Executive Director's analysis, findings of fact, or conclusions that would have provided a viable basis for overturning the dismissal.

05/9/19
ILRB LP
Executive Director's Dismissal—Breach of Duty of Fair Representation/Failure to Respond to Request for Information

In *Fahad Nazir and Cook County Pharmacy Association, Chicago Joint Board Retail, Wholesale and Department Store Union, Local 200,* 35 PERI ¶ 170 (IL LRB-LP 2019) (Case No. L-CB-19-013), the Executive Director dismissed a charge that the Union had engaged in unfair labor practices when it failed to represent him at a pre-disciplinary hearing. The Executive Director dismissed the charge on the ground that the Charging Party failed to respond to the investigator's request for additional information in support of the charge and that the available evidence did not raise issues for a hearing. In appealing the dismissal, the Charging Party included information purportedly in response to the request for information but offered no reason for failing to respond to the investigator's information request. The Board affirmed dismissal, finding the Executive Director had followed Board rules and precedent and noted that, even if it were to consider the information presented with the appeal, the information did not compel a reversal of the dismissal because it did not supply any evidence that the Union engaged in intentional misconduct or was motivated by bias against the Charging Party.

05/9/19
ILRB LP
Executive Director's Dismissal—Breach of Duty of Fair Representation/Failure to Respond/Discrimination

In *Fahad Nazir and Cook County Pharmacy Association, Chicago Joint Board Retail, Wholesale and Department Store Union, Local 200,* 35 PERI ¶ 169 (IL LRB-LP 2019) (Case No. L-CB-19-014), the Charging Party alleged that the Union committed unfair labor practice charges when it failed to assist him with his workplace issues. As was the case in Case No. L-CB-19-013, the Charging Party failed to respond to the investigator's request for information supporting the charge, and the Executive Director dismissed the charge on the grounds that the available evidence failed to raise issues for a hearing. Charging Party appealed, attaching information purportedly in response to the request for information, but did not offer any reason for failing to comply with the investigator's request for information or any reason why the Board should consider the information on appeal. The Board affirmed dismissal, finding the Executive Director had followed Board rules and precedent and noted that, even if it were to consider the information presented with the appeal, the information did not compel a reversal of the dismissal because it did not supply any evidence that the Union engaged in intentional misconduct or was motivated by bias against the Charging Party. The Board observed the Charging Party submitted a new allegation on appeal, that he was the victim of discrimination on the basis of gender, marital

status, and ethnic origin, but that the information submitted did not connect any actions or behavior of the Respondent Union to the alleged discrimination.

06/12/19
ILRB LP
Executive Director's Dismissal—Ineligibility of Retirees and Former Employees to Receive Retroactive Wage Increases

In *Luis G. Diaz, et al. and Amalgamated Transit Union, Local 241 and Local 308,* 35 PERI ¶ 187 (ILRB-LP 2019) (Case Nos. L-CB-18-031, 033, 034, 039, 040, 041, 042, 043, 044, 045, 046, 047, 048, 049, 050, 052, L-CB-19-001 through 19-008, and L-CB-19-010 and 034), the Board's Executive Director dismissed unfair labor practice charges filed against the Unions by 27 retired Chicago Transit Authority employees and former members of bargaining units represented by the Unions. The charges alleged the Unions committed unfair labor practices by entering into tentative agreements with the CTA that excluded the Charging Parties from receiving retroactive wage increase payments. The Executive Director dismissed the charges on the basis of lack of standing and the failure to allege any substantive violations of the Act. On the issue of standing, the Executive Director determined that the Charging Parties lacked standing because as retirees (1) they were no longer public employees under the Act; (2) could not sue because they are attempting to enforce a provision of a collective bargaining agreement that was effective after they retired, citing the Illinois Supreme Court's decision in *Mathews v. Chicago Transit Authority,* 2016 IL 117638 (2016); (3) were taking issue with the activities of the Unions at a time when the Unions were no longer obligated to represent their interests; and (4) to the extent they were attempting to bring a claim under Section 10(b)(4) of the Act, did not have standing to bring such a claim as individuals. With respect to the alleged substantive violations, the Executive Director dismissed claims under Section 10(b)(1) of the Act because of the Unions' considerable discretion in negotiations and because there was no indication in the available evidence that the Respondents took any action to retaliate against the Charging Parties and the unions' failure to reach a desired outcome in negotiations does not constitute a breach of the duty of fair representation.

On appeal, Joann Robinson, one of the Charging Parties, claimed to have filed the appeal on behalf of all case numbers involved. Another one of the Charging Parties, Dana Williams, filed an appeal on behalf of herself and another Charging Party, Andre Huff, whom she characterized as "Retired Executive Board Members of Local 308". The Local Panel determined that neither appeal satisfied all requirements in the Board's rules for a representative appeal but granted a variance from those rules and allowed the appeal. Upon consideration of the appeal, the Board affirmed the Executive Director's dismissal because the appeal failed to identify any error in the Executive Director's findings of fact, analysis or conclusions. With respect to the Williams's appeal, however, the Local Panel found that that appeal included an additional allegation regarding the conduct of ATU Local 308 with respect to retired members of the Local 308 Executive Board that the Executive Director did not address in her dismissal decision. The Board determined that the claims not addressed in the Executive Director's dismissal should be investigated and therefore remanded Case Nos. L-CB-18-040 and L-CB-19-004 to the Executive Director for

investigation, holding in abeyance the Board's adoption of the Executive Director's dismissal of those charges.

07/10/19
ILRB LP
Executive Director's Dismissal—Breach of Duty of Fair Representation

In *Glenn E. Jones and Amalgamated Transit Union, Local 241*, 36 PERI ¶ 11 (IL LRB-LP) (Case No. L-CB-19-020), the Executive Director dismissed a charge alleging that the Respondent Union had engaged in unfair labor practices when it allegedly breached its duty of fair representation by failing to seek enforcement on behalf of employees in the classification of bus server of the wage provisions of a collective bargaining agreement and by pursuing a grievance regarding those wage provisions on behalf of mechanics and car servers, but not bus servers. On appeal, the Board affirmed the dismissal because the Charging Party failed to raise issues of fact or law necessitating a hearing. In support of its decision, the Board noted it will not second guess a union's administrative decision regarding grievance handling unless there is compelling evidence of intentional misconduct, citing *American Federation of State, County and Municipal Employees, Council 31 (Jackson)*, 33 PERI ¶ 34 (IL LRB-SP 2016). With respect to the Charging Party's additional contention that the Union breached its duty of fair representation by entering into a contract that was unfair to bus servers, the Board declined to accept the Executive Director's determination that part of the charge was untimely but found that the Executive Director correctly determined that the Charging Party had raised no issues of fact or law requiring a hearing on the merits as to that contention.

08/13/19
ILRB SP
Timeliness/Breach of Duty of Fair Representation

In *Vincent Clemens and Wauconda Professional Firefighters, International Association of Firefighters, Local 4876*, 36 PERI ¶ 28 (IL LRB-SP) (Case No. S-CB-18-036), the Executive Director dismissed a charge that the Respondent Union had engaged in unfair labor practices when it allegedly retaliated against the Charging Party by conspiring with the Employer (Wauconda Fire Protection District) to defeat his disability claim before the local pension board and by allegedly refusing to represent him in disciplinary matters. The Charging Party alleged that the Union engaged in such conduct in retaliation for the Charging Party's having supported another union during efforts to organize the Employer's fire captains and lieutenants. The Executive Director dismissed the charge on timeliness grounds and determined that, even if the charge were timely, it failed to raise issues warranting a hearing. On appeal, the Board affirmed the dismissal, finding the Executive Director correctly found the time period began to run on the date that the Union filed its petition to intervene in the hearing, rather than on the date of the hearing itself. With respect to the Charging Party's assertion that the Union's action was a continuing violation, the Board noted that the continuing violation doctrine cannot make actionable alleged unlawful conduct occurring outside the limitations period. In regard to the merits of the charge, the Board found the available evidence failed to indicate the existence of issues for a hearing, noting that although the Charging Party alleged that the Union was motivated against him in light of his having encouraged support of a rival union, nothing in the appeal

or supporting materials indicated that the Union took the allegedly adverse action *because* of this alleged animus.

08/16/19
Illinois Appellate Court, First District Rule 23 Unpublished Order
Timeliness/Breach of Duty of Fair Representation/Motion for Sanctions

In *Carlo J. Carlotta v. Illinois Labor Relations Board,* 2019 IL App (1st) 182002-U, the First District in an unpublished order affirmed the Board's decision in *Illinois Council of Police (Carlotta)*, 35 PERI ¶ 38 (IL LRB-SP 2018) (Case No. S-CB-18-021) sustaining the dismissal of Carlotta's charge alleging the Union engaged in intentional misconduct by refusing to arbitrate a grievance over his termination from employment. The court affirmed the Board's finding that Carlotta's appeal lacked merit and the Executive Director properly dismissed the charge.

10/9/19
ILRB SP
Executive Director's Dismissal—Timeliness/Breach of Duty of Fair Representation/Motion for Sanctions

In *Thomas Tate and Carmelita Terry and Illinois Municipal Police Association #1,* 36 PERI ¶ 53 (IL LRB-SP 2019) (Case No. S-CB-19-016), the Board affirmed the Executive Director's dismissal of the charge alleging the union breached its duty of fair representation when it withdrew and refused to settle grievances filed by the charging parties over their failure to be promoted. The Executive Director dismissed the charge because the available evidence failed to raise issues of fact or law for hearing. The charging parties appealed contending the Executive Director did not consider their claim that the union refused to settle their promotion grievance not to discriminate against charging parties but to work against them so that members of the union leadership would be promoted instead. The Board found no evidence indicating misconduct on the part of the union. The Board also denied the union's motion for sanctions on procedural and substantive grounds.

IPLRA UPDATES
General Counsel's Declaratory Rulings
October 2018 – August 2019

S-DR-18-005 *City of Mattoon (Fire Department) and Mattoon Firefighters Association, Local 691*, 35 PERI ¶ 81 (IL LRB GC) 11/2/2018

Local 691 filed a unilateral petition seeking a declaratory ruling regarding whether the Employer's proposals relating to Employer's plan to eliminate ambulance services using Local 691-unit member firefighter-paramedics and replace them with ambulance services provided by private companies under contract with the City. The proposals included a proposal to redefine firefighter work in the "Bargaining Unit Integrity" section of the collective bargaining agreement so as to remove references to ambulance work, a proposal to remove all other references in the collective bargaining agreement to ambulance work, and a proposal to retain the Employer's authority to subcontract. The Employer's proposals also included a proposal retaining language that the parties would observe the provisions of the Substitutes Act (65 ILCS 5/10-2.1-4 (2016)). The Union argued that the Employer's proposals, in the aggregate, constituted a permissive subject of bargaining because its acceptance would require the Union to waive its rights under the Substitutes Act. The Employer asserted that, on the contrary, the Substitutes Act did not bar it from using a third-party contractor to provide paramedic services to the City because that statute pertains only to a municipal employer's hiring practices.

The General Counsel ruled the Employer's proposals would require the Union to waive its statutory rights and therefore constituted, in the aggregate, a permissive subject of bargaining. In so ruling, the General Counsel rejected the Employer's claim that the Substitutes Act applies only to hiring practices, noting that the Substitutes Act utilizes the word "use", which is broader than the word "hire".

Following the issuance of the General Counsel's Declaratory Ruling, the Employer filed a Motion to Reconsider the ruling. The Motion was denied on the ground that nothing in the Board's rules provides for reconsideration of a General Counsel's ruling. *City of Mattoon and Mattoon Firefighters Association, Local 691*, 35 PERI ¶ 105 (IL LRB GC) (Case No. S-DR-18-005) (December 12, 2018).

S-DR-19-002 *City of Litchfield and Illinois Fraternal Order of Police Labor Council*, 36 PERI ¶ 22 (IL LRB GC) 7/24/19

The Employer filed a unilateral petition seeking a declaratory ruling regarding whether the Union's proposals to include the Patrol Dispatcher position in the recognition clause of the parties' collective bargaining agreement and to maintain reference to the rank of "sergeant" in the collective bargaining agreement provision pertaining to hours of work concerned permissive or mandatory subjects of bargaining.

Noting dispatchers are not part of the bargaining unit certified by the Board, the General Counsel determined the terms and conditions of employment of non-unit employees are not mandatory subjects of bargaining unless those terms and conditions "vitally affect" the terms and conditions of employment of unit employees. In addition, the General Counsel observed, the Union's "recommendation" could also be viewed as a proposal to change the scope of the unit, which is a permissive subject of bargaining. Regarding the "sergeant" reference in the work day provision of the collective bargaining agreement, the General Counsel determined that it was a mandatory subject of bargaining because it concerned the hours of a unit employee.